

ANALYSIS OF COMPARATIVE PRACTICES IN SELECTED COUNCIL OF EUROPE MEMBER STATES

regarding criteria for assessing the complexity of cases
in relation to the work of public prosecutors



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Introduction

The study *'Analysis of comparative practices in selected Council of Europe member states regarding criteria for assessing the complexity of cases in relation to the work of public prosecutors'* was commissioned by the Council of Europe, Serbia, to the Themistocles and Dimitris Tsatsos Foundation – the Centre for European Constitutional Law (CECL).

■ The objective of the study is to provide a thorough comparative analysis of the systems and practices applied in selected Council of Europe member states for the professional evaluation of work, performance standards and career advancements of public prosecutors by putting particular emphasis on analyzing the criteria for assessing the complexity of cases in relation to the work of public prosecutors.

THE PROJECT SPECIFICALLY FOCUSED ON THE FOLLOWING RESEARCH QUESTIONS:

- ▶ How is the performance of public prosecutors evaluated and assessed?
- ▶ What criteria are in place and how are these applied in practice?
- ▶ Which bodies are involved?
- ▶ Are there specific criteria related to the complexity of cases?
- ▶ What are these criteria?
- ▶ How are they applied in practice?

■ The study covered the experience of nine Council of Europe member states, namely Austria, Bulgaria, France, Germany, Greece, Hungary, Portugal, Romania and Spain. The countries were selected to cover a variety of approaches to the topic, while paying special attention to the experience and approach of jurisdictions that have engaged in recent reforms in the justice sector.

THE STUDY WAS PREPARED ON THE BASIS OF:

- ▶ Desk review and analysis of national legislation, regulations, reports and background material
- ▶ Reports from rapporteurs in some selected countries;
- ▶ Interviews with experts from some of the selected Council of Europe member states.

THE OUTPUTS INCLUDE THE PRESENT COMPARATIVE ANALYSIS REPORT.

THE REPORT IS STRUCTURED AS FOLLOWS:

- ▶ **Chapter 1** focuses on the key features of evaluation and appraisal of the work of public prosecutors in the selected countries, including the types of evaluation, the criteria used, data collection methods, the result and the consequences of professional appraisal, bodies and procedures for evaluation.
- ▶ **Chapter 2** focuses on case complexity in evaluation and performance appraisal systems for public prosecutors, their application in practice and the analysis of the different approaches.
- ▶ **Chapter 3** includes recommendations for the further development of the appraisal of the work of public prosecutors, the consideration of the complexity of cases in appraisal systems.

■ The research was conducted and the study was elaborated by Dr. Stefanos Kareklas and Dr. Maria Mousmouti in the period of April - June 2021. It was commissioned under the Action "Strengthening Independence and Accountability of the Judiciary in Serbia" which is part of the joint European Union-Council of Europe programmatic framework "Horizontal Facility for the Western Balkans and Turkey – phase II".

■ The authors of the report would like to thank (in alphabetical order) Dr. Gergely Bánhegyi, lawyer, consultant (Hungary), Carlos Fraga Figueiredo, Procurador da República (Portugal), Elsa García-Maltrás, Senior Prosecutor, Technical Cabinet of the Attorney General, Attorney General's Office (Spain), Jean-Marie HUET, Honorary Prosecutor General and a former member of the Superior Council of Magistrates (France), Cornelia Koller (Austria), Christoph Kopecky, lawyer, consultant, (Austria), Sava Petrov, Prosecutor, the Supreme Cassation Prosecutor's Office (Bulgaria), Alexandru TĂNASE, Attorney at Law in Chisinau, Moldova, Lecturer at the Universities of Chisinau/Moldova and Iasi/Romania, Previous Minister of Justice in Moldova, Previous Judge and President of the Constitutional Court of Moldova, Lambros Tsogkas, Deputy Public Prosecutor of the Court of Appeal (Greece) for their valuable input into this report. The views expressed in the paper, as well as errors and mistakes, remain of the authors alone.

1. Evaluation and performance appraisal of the work of public prosecutors: a comparative overview

The [Basic Principles on the Independence of the Judiciary](#) (1985) and the Opinion n°1 of the Consultative Council of European Judges [on independence of judges](#) (2001) state that promotions within the judiciary need to rely on objective criteria like capacity, integrity and experience. Performance appraisal or evaluation, on the basis of objective criteria, is the only way to ensure promotions on the basis of merit. The [European Network of Councils for the Judiciary](#) in its 2012-2013 report recommends exhaustive evaluation criteria that integrate quantitative and qualitative indicators, in order to ensure a complete and in-depth assessment of the work of judges. The Consultative Council of European Judges (CCJE) in its Opinion 17/2014 highlights that the rule of law requires independent justice but at the same time courts that issue judgments of the highest possible quality.

■ Performance appraisal or evaluation of judges and prosecutors is a sensitive topic that plays an important role for judicial independence, impartiality, accountability and quality and efficiency of judicial systems¹. A number of intricacies relevant to the work of prosecutors need to be taken into account in the appraisal of their performance². Their difficult and demanding mission requires professionalism, character, courage, balance and determination and these factors should be determining criteria throughout their career and should be pursued through legal education, selection, training³ and professional appraisal⁴.

■ It is also important to highlight the complementary nature of measures to appraise the performance of prosecution services and the work of individual prosecutors. With regard to the latter, the evaluation of prosecutors and their work is a useful strategic tool to improve skills necessary for confronting the evolving demands for quality, efficiency and professionalism and developing the most relevant training at all levels⁵. This strategic tool allows room for different types of evaluation as long as they ensure transparency and foreseeability, clear and previously published criteria, both as regards substantive and procedural rules, dialogue with the evaluated prosecutor and possibility for review of the results of the evaluation.

■ This study will take a closer look at the evaluation and performance appraisal systems for prosecutors put in place in Austria, Bulgaria, France, Germany, Greece, Hungary, Romania, Portugal and Spain. It aims to identify distinct approaches to the performance evaluation of public prosecutors, the criteria used for this purpose and their application in practice, the bodies involved, and specific criteria aimed to capture the complexity of cases.

¹ CONSEIL CONSULTATIF DE JUGES EUROPEENS (CCJE), [Avis n°17 \(2014\) sur l'évaluation du travail des juges, la qualité de la justice et le respect de l'indépendance judiciaire](#)

² See all Opinions [here](#)

³ See point 23 of the Opinion.

⁴ Opinion No. 13 (2018) on the 'Independence, accountability and ethics of prosecutors' highlighted.

⁵ Opinion No. 11 (2016) focuses on the quality and efficiency of the work of prosecutors, including when fighting terrorism and serious and organised crime, point 42 of the Opinion

1.1. Key features of evaluation and performance appraisal systems in selected countries

This section will offer an overview of the key features of evaluation and performance appraisal of prosecutors undertaken in the countries included in the study. Specifically, the section looks at evaluation and performance appraisal systems, the criteria used, the bodies involved, the procedures and the results and consequences of the evaluation.



1.1.1. Evaluation and performance appraisal of public prosecutors in Portugal

In Portugal, public prosecutors⁶ are an autonomous body. The Portuguese Constitution and the Estatuto do Ministério Público set the basic framework for the work of public prosecutors. The more relevant provisions of the Constitution are Articles 133-m), 219 and 220. Article 219 consolidates the Public Prosecutors' Office and its competence to represent the state and defend the interests laid down by law, participate in the implementation of the criminal policy, exercise penal action and defend democratic legality. The Public Prosecutors' Office has its own statute and autonomy and its agents are accountable judicial officers who form a part of and are subject to a hierarchy. The competence to appoint, assign, transfer and promote agents of the Public Prosecutors' Office and exercise discipline over them pertains to the Attorney General's Office. The Attorney General's Office is the senior organ of the Public Prosecutors' Office (Article 220 of the Constitution). The Attorney General's Office is presided by the Attorney General and encompasses the Supreme Council of the Public Prosecutors' Office, which includes members elected by the Assembly of the Republic and members elected by the public prosecutors from among them. The current Estatuto do Ministério Público was approved by the Law 68/2019 of the 27th of August, amended by the Law 2/2020 of the 31st of March.

In Portugal, autonomy and impartiality are fundamental values of the activity of the Public Prosecution Service. District prosecutors and deputy district prosecutors are periodically evaluated on their functional performance and merit. Inspections have a formal character and are defined on an annual basis by the High Council of the Public Prosecution Service, which decides, on the basis of pre-defined objective criteria, who will be inspected. The frequency of evaluations is approximately every 6 years.

⁶ www.ministeriopublico.pt

■ The inspections of the Public Prosecution Office falls within the competence of the Public Prosecution Office Inspectorate and are determined by the Supreme Judicial Council of the Public Prosecutor's Office or by the Prosecutor General. Their aim is to collect information on the function of the bodies and services of the Public Prosecutor's Office and their secretariats and to propose measures to enhance efficiency and evaluate the performance and merit of public prosecutors in order to enable the Supreme Judicial Council of the Public Prosecutor's Office to award a functional classification.

■ Inspections can be ordinary or extraordinary, carried out in accordance with the annual inspection plan approved by the Supreme Judicial Council of the Public Prosecutor's Office. Different types of inspection include: a) Initial inspection of performance for newly appointed prosecutors, b) Inspection for the first classification, c) Ordinary inspections, d) Extraordinary inspections, and e) Inspections of the bodies and services of the Public Prosecution Service and their secretariats.

■ **Initial inspection of performance**⁷ is conducted at the end of the first year of effective exercise of functions of new prosecutors. The period subject to inspection cannot be less than 6 months and the inspection aims to provide information on how newcomers have adapted to and perform their functions on the job. (Article 4). In the event of a negative assessment, the ways in which the performance of the magistrate may be corrected or improved are highlighted.

■ **Inspections of the merit of Public Prosecutors**⁸ aim to verify how prosecutors perform their functions and assess their professional merit.

■ **Inspections of bodies, services and respective secretariats** of the Public Prosecution Service aim to show the state and organisation of the inspected services, the way in which the inspected services function, their needs and deficiencies and appropriate measures to address them and monitor the level of fulfilment of the services' strategic goals.

■ Inspections are conducted on the basis of an annual inspection plan approved by the Supreme Judicial Council of the Public Prosecutor's Office. Inspections are conducted by a team composed of 15 inspectors, all of them members of the Public Prosecution Service.

■ As a result of the inspection, the performance of a member of the Public Prosecution Service is rated and this is relevant for career advancement, transfer or promotion. Evaluation as Insufficient leads to suspension from duties and an inquiry as to whether the person is fit for the office. Once the inspection regarding the performance of a public prosecutor is concluded, the inspector draws up a report in which he/she describes, in a concrete manner, the work carried out by the inspected prosecutor, and proposes an evaluation. Such a report is, initially, only submitted to the inspected prosecutor, who then has the possibility, if he/she so wishes, to reply within 15 days.

■ After the expiry of such a period and, if a reply has been produced by the inspected prosecutor, the inspector may make his/her remarks, but shall not refer to new facts that are disadvantageous to the prosecutor concerned (the prosecutor concerned shall be informed of such remarks) and shall then submit the whole inspection procedure document to the High Council of the Public Prosecution Service. However, if no reply is produced by the prosecutor subject to the inspection, the inspector submits the inspection procedure document without delay to the High Council of the Public Prosecution Service.

■ The inspection procedure document, composed of all the elements collected by the inspector, along with the final report and the eventual reply of the inspected prosecutor, are considered at a meeting of the Disciplinary Section of the High Council of the Public Prosecution Service (composed of a certain number of members of this Council), in which a written and reasoned decision shall be issued granting an evaluation to the inspected prosecutor (not necessarily coincidental with the one proposed by the inspector).

■ Should the inspected prosecutor disagree with the evaluation given to him/her, he/she may react to it by lodging an appeal before the plenary of the High Council of the Public Prosecution Service (as such, composed by all its members) and later on, lodge an appeal concerning the decision rendered by the High Council of the PPS before the Supreme Administrative Court.

⁷ Article 141(1) of the Statute of the Public Prosecutor's Office.

⁸ Article 140 of the Statute of the Public Prosecutor's Office and Regulations.

■ As a result of the inspection, classifications can be assigned and these play a role in promotions and applications for specialised posts and, in combination with seniority, concerning the level of pay of the prosecutors in the long term. The classifications are as follows: Very Good; Good with Distinction; Good; Satisfactory and Mediocre to those whose performance is less than satisfactory. The first two (Very Good and Good with Distinction) are considered as merit classifications and are justified by exceptional performance qualitatively and quantitatively or clearly above the average and sustained over time; special qualities of research, initiative and/or innovation; special management, organizational and methodological qualities, unusual speed, productivity and efficiency in the execution of the service, without prejudice to quality; service in order and on time, or with justified delays when particularly voluminous or complex; adequate use of simplified and consensual instruments in proceedings.

■ The attribution of the highest merit presupposes exceptionality, namely in terms of a) Productivity, technical legal preparation, exceptionality with regard to productivity, of technical legal preparation mirrored in the quality, weighting and innovation of the critical argumentation in decisions or other procedural interventions and of clarity and simplicity of presentation and argumentative discourse, and b) Performance on matters of high complexity or extent, or in very adverse circumstances.

■ With regard to the first performance assessment, inspection concludes with a positive or negative performance evaluation, proposing, in the case of a negative evaluation, specific corrective measures. A positive evaluation demonstrates adequate compliance with the duties of the post. In the case of negative performance assessment, specific corrective measures are proposed.

■ Upon conclusion of the inspection procedure, a report is prepared. For the first performance review, the report is prepared within 15 days and covers the essential aspects of the overall performance. For inspections of the service and merit, a detailed report is prepared and submitted within 30 days, summarising the observations recorded. The report must be written in a clear and concise manner, in accordance with a standardised structure relevant to the area of jurisdiction subject to inspection. The report concludes on a) A proposal for assigning an evaluation; b) In inspections of merit, the proposal for a duly reasoned classification; c) In inspections of the status of services, the observations verified and relevant measures.

■ The inspection procedure begins following the notification to the inspected of at least 10 days. The inspector communicates with the inspected person with regard to a probable date of travel and the period of stay. As a rule, inspections are carried out uninterrupted, observing specific time limits.

■ The inspection procedure is confidential. The inspected person may consult it for the purposes of preparing a response to the inspection report, a complaint to the plenary session or an appeal.



1.1.2. Evaluation and performance appraisal of public prosecutors in Germany

Germany, officially the Federal Republic of Germany, is a federal state and comprises 16 constituent states (*Länder*). Every state has its own Constitution, government, judicial system and administration; however, there is also a Constitution, government, courts and administration on the federal level whose competences and activities cover the entire Federal Republic of Germany. Competences between the federal and state levels are divided and, as a rule, if a certain competence is not explicitly assigned to the Federal Republic, it is the competence of the states. Due to this two-level system, each of the 16 states, for example, has its own system of judicial administration, which – with few exceptions – is headed by the Ministry of Justice of the respective state.

■ Judicial administration includes human resource management, i.e. the management of the entire personnel (judicial and non-judicial) who work at the courts and other judicial bodies of the respective state. Since there are 16 different personnel management systems, correspondingly, there is neither one unique personnel management nor evaluation system for the entire Federal Republic of Germany, but instead there are 16 different ones. Nevertheless, all the systems essentially function in a similar way and are based on the same fundamental values and principles.

■ For the purpose of this study, the evaluation system for public prosecutors of the state of Nordrhein-Westfalen, the most populated of the 16 German states, shall be used to exemplify the evaluation system in Germany and explain the main principles and guidelines. Since, in Germany, judges and public prosecutors are subject to the same career system, the evaluation systems for these two professions including evaluation criteria are essentially the same.

■ Evaluating personnel is only one component of human resource development. With the economy and legislation becoming increasingly complex and demanding, it is very important for the judicial systems of the states to take measures to ensure that they can retain qualified and motivated staff, which are fit for the challenges of a modern justice system. In this respect, the states, their respective Ministries of Justice, in recent years, started to develop and issue human resource development concepts as one of these measures. The purpose of all these concepts is to provide courts, prosecution offices and training centres with an obligatory framework to organise their human resource development for their employees. These concepts do not only focus on the evaluation of personnel, but also contain measures and provisions regarding other aspects of human resource development, e.g. management of career starters and their proper introduction to the workplace, communication to the authority, advanced training, compatibility of job and family, health management, leadership potential programmes and development management. In general, the purpose of personnel development is to offer employees, in all the phases of their professional career, the opportunity to use and develop their individual skills and competencies in a committed manner. The attractiveness of the judiciary as an employer deserves particular attention.

■ Evaluation is one mechanism of human resource development. It is an important tool and the basis for making decisions in personnel management and regarding promotion. As far as the public sector in Germany is concerned, evaluation is also considered to be an expression of the so-called *merit principle* (*Leistungsprinzip*) enshrined in Article 33 of the German *Grundgesetz* (*Constitution*). According to this fundamental principle, every German has equal access to every public office according to his or her suitability, qualifications and professional performance.

■ In general, German evaluation systems for judges and public prosecutors distinguish between two types of performance evaluation: firstly, the so-called **regular evaluation** (in German: *“Regelbeurteilung”*) and, secondly, the **ad-hoc evaluation due to a certain event** (in German: *“Anlassbeurteilung”*). The first kind of evaluation is usually carried out once every 4 years for each individual public prosecutor and judge until they reach a certain age limit (for example, in Nordrhein-Westfalen, public prosecutors over 55 years of age are not subject to regular evaluation any longer, public prosecutors and judges from the age of 50 can be exempted at request). An ad-hoc evaluation, the second form of evaluation, must be carried out when, for example, a public prosecutor applies for promotion or in certain cases when the public prosecutors have been on leave or otherwise absent from their position for a period longer than 3 months. Also, young judges on a probation period (in German: *“Richter auf Probe”*) are subject to this kind of evaluation. Details may vary here in different states.

■ The evaluation is carried out by the immediate superior of the public prosecutor to be due for evaluation. This is usually the leading public prosecutor (in German: *“leitende Oberstaatsanwalt”*), i.e. the head of office. In case of larger public prosecution offices, the leading public prosecutor can assign this task to other authorised persons, for example, to his/her deputy.

■ Evaluation of the public prosecutor is performed using certain templates which guide the evaluator and help him/her to carry out the evaluation in a standardised manner. The basis for any evaluation is the profile of qualification for the position (in German: *“Anforderungsprofil”*) the public prosecutor holds. The following main areas of skills and competences are subject to evaluation:

- ▶ Professional competence
- ▶ Personal competence
- ▶ Social competence
- ▶ Leadership competence.

■ Within these four competences, certain criteria are used as the basis for the evaluation of the public prosecutor. The criteria detail and structure the evaluation and shall be further described below.

■ As said, when evaluating a public prosecutor, the supervisor uses certain forms, which are standardised and are usually issued by the Ministry of Justice of the respective state. In general, the entire evaluation process is very formalised in order to be fair and transparent.

■ In the evaluation form, the public supervisor, at the end of the evaluation, must give a summing up statement concerning the skills, competences and achievements of the public prosecutor. This final statement must contain a final grade. Usually the following grades are applied:

- ▶ Excellent
- ▶ Considerably above average
- ▶ Above average
- ▶ Mediocre
- ▶ Below average.

■ Except for the top grade, it is also permissible to indicate intermediate levels within these grades to stress certain ranges (i.e. to indicate an “upper or lower range” – in Deutsch *“oberer oder unterer Bereich”*). However, other major grades than the ones prescribed in the guidelines (mentioned above), are not permissible.

■ The final evaluation statement given by the supervisor must be conclusive in relation to the evaluation grade granted and must not provide any form of differentiation, for example, in relation to certain time periods. This provision ensures that the final evaluation form eventually provides a concluding and comprehensive view on the public prosecutor’s performance and his/her personal, professional, social and leadership competences and skills over the *entire* evaluation period. So, the evaluation result is not a snapshot view, but a comprehensive view and assessment over a longer period (mostly over years).

■ In case the evaluation is carried out in view of a desired promotion (i.e. in case of an ad-hoc evaluation due to a certain event, an *"Anlassbeurteilung"*), the final evaluation statement must also contain a prognosis of the supervisor about the candidate's eligibility for the desired position. Benchmark for the prognosis is the profile of qualification for the desired position. The candidate's eligibility must be summed up in a final statement which is usually graded to the following levels:

- ▶ Excellently suited
- ▶ Very well suited
- ▶ Well suited
- ▶ Suited
- ▶ Not suited.

■ Like for the grades of evaluation, as mentioned above, it is also possible to use intermediate levels for the prognosis of eligibility of a candidate.

■ The evaluation procedure must be transparent and fair. Once the evaluation process is completed, the draft evaluation result must be provided to the respective prosecutor in good time. At the same time, an evaluation interview is to be offered in which the basis for the evaluation and standards are to be disclosed. The interview is usually conducted by the leading public prosecutor, who is the immediate superior, or by a person authorised by him or her. During the interview the prosecutor shall be given the opportunity to provide his/her own assessment of his/her skills, services and achievements. The purpose of the interview is to compare the prosecutor's self-evaluation with the results of the professional evaluation. The prosecutor must be given the opportunity to comment or elaborate on those aspects of the evaluation which the prosecutor considers most important.

■ Finally, after the interview, the draft evaluation form is completed, becoming final; a copy of the final evaluation form is to be personally handed over to the respective public prosecutor. If the respective public prosecutor agrees with the evaluation, he/she has to sign the form; in case he/she disagrees, the public prosecutor has the right not to sign it and, thereafter, can provide a counterstatement on the issues he/she disagrees with. At the same time, when the public prosecutor is handed the copy, he/she is to be informed that the evaluation form will be sent to the respective public prosecutor's personnel file after a certain period (usually after 2 weeks). During this period, in case the public prosecutor disagrees with the evaluation or parts of it, he/she must be given the possibility to discuss the evaluation with his/her immediate superior, i.e. the leading public prosecutor, again. In case of a non-agreement between the evaluator and the public prosecutor, the leading public prosecutor (=the evaluator) sends the file to his/her superior, i.e. the General Prosecution Office, who takes over the case.

■ As previously said, all evaluation systems are very formalised and the judicial systems of the states attach great importance to fairness, objectivity and transparency of the process. In view of the great importance of the evaluation system, persons in supervising positions, who will also be evaluators, are regularly trained. In doing so, they are particularly sensitised to avoid a negative evaluation of professional performance due to part-time employment, teleworking or parental leave (etc.) and not to follow gender stereotypes. Opportunities for the exchange of experiences - also across jurisdictions - are to be created and used.

■ The transparency and hence also the acceptance of the evaluation system are additionally increased by the publication of transcripts of grades for all the branches of service within the judiciary. Complete anonymisation must be ensured.

■ In conclusion, the German evaluation system for prosecutors is very formalised and standardised. Detailed regulatory provisions, templates and long-term practice combined with regular training of persons in supervising positions, who act as evaluators, help to ensure uniform application of the evaluation practice and safeguard objectivity and transparency of the entire process. As demonstrated, in Germany, evaluation is an important tool to single out highly qualified prosecutors for senior positions, which require a high level of professionalism and competence. Only those prosecutors, who demonstrate an evident interest in senior positions and who have achieved the highest ratings in evaluations with a clear recommendation for their suitability for the position, have a chance for promotion.

■ It also needs to be highlighted that the evaluation system for prosecutors and judges in Germany is a purely internal matter of the judiciary. There is neither influence nor participation in the evaluation process by persons outside the service. Only prosecutors evaluate prosecutors, and judges evaluate judges. An external evaluation or participation of persons other than the judicial staff in the evaluation of prosecutors or judges is not foreseen and does not exist in Germany. Any form of external evaluation of these officials would be seen as undue interference and would violate the constitutional principle of the independence of justice.



1.1.3. Evaluation and performance appraisal of public prosecutors in Romania

The assessment and the evaluation of the performance of the prosecutors of the fulfilment of their duties in Romania are regulated by Art. 39 of the Law no. 303/2004 “On the Statute of Judges and Prosecutors” and further developed in the Regulation “On the procedure for evaluating the professional activity of judges and prosecutors”, approved by the Romanian Superior Council of Magistracy.

— The Law no. 303/2004 on the Statute of Judges and Prosecutors⁹ reads:

Art. 39 – (1) In view of verifying whether the requirements of professional competence and performance are met, once every three years, the judges and prosecutors shall be subject to an evaluation on their effectiveness, on the quality of their activity and on their integrity, on their obligation to undergo continuous training and to graduate specialization courses. The judges and prosecutors in leading position shall be evaluated also with regard to how they fulfil their management duties.

(2) The first evaluation of judges and prosecutors shall be performed as follows:

- a) Once every 2 years, for judges and prosecutors between 1- and 5-years from their appointment;*
- b) Once every 3 years, for judges and prosecutors between 5- and 10-years from their appointment;*
- c) Once every 4 years, for judges and prosecutors between 10- and 15-years from their appointment;*
- d) Once every 5 years, for judges and prosecutors more than 15-years from their appointment.*

(3) The evaluation in paragraph (1) shall be the task of boards set up by decision of the Superior Council of Magistracy, separately for judges and prosecutors, which shall be composed of the president of the court, respectively the head of the prosecutor’s office of which the evaluated person is a part, as well as of 2 or more judges or prosecutors from the hierarchically superior court or prosecutor’s office, of this court or prosecutor’s office, with the same specialisation as the judge or prosecutor assessed.

⁹ <http://legislatie.just.ro/Public/DetaliuDocument/64928?fbclid=IwAR0r7HBPbC5k6PZx0jdPQx7ao19qQh6YnCDpEjq-GZyEEb21IWZDaMNOIk>

The evaluation of the President of the Court and the vice-president is made by a commission composed of the president of the superior court, the president of the section corresponding to the specialisation of the evaluated judge, as well as a judge from the superior court, appointed by the board. The evaluation of the head of the prosecutor's office, his deputy and the chief prosecutor is carried out by a commission from the hierarchically superior prosecutor's office, which includes its head, a prosecutor with a leading position corresponding to the specialization of the evaluated prosecutor and another prosecutor appointed by the management board.

The evaluation of the presidents, vice-presidents and section presidents of the courts of appeal or of the Military Court of Appeal is made by a commission composed of judges from the High Court of Cassation and Justice, appointed by the management board of this court, and the evaluation of prosecutors of general prosecutors and deputy chief prosecutors of the prosecutor's offices attached to the courts of appeal or of the Prosecutor's Office attached to the Military Court of Appeal is made up of a commission composed of prosecutors from the Prosecutor's Office attached to the High Court of Cassation and Justice, appointed by the board of directors of this prosecutor's office. The evaluation of the President and Vice Presidents of the High Court of Cassation and Justice is made by a commission composed of judges, elected members of the Section for Judges of the Superior Council of Magistracy, with at least the rank of the Court of Appeal, appointed by the Section of Judges of the Superior Council of Magistracy.

The evaluation of the Prosecutor General of the Prosecutor's Office attached to the High Court of Cassation and Justice and of the Chief Prosecutors of the specialized directorates is made by a commission composed of prosecutors, elected members of the Section for Prosecutors of the Superior Council of Magistracy, appointed by the Section for Prosecutors of the Superior Council of Magistracy.

(4) The boards for the evaluation of prosecutors within the Directorate for Investigation of the Offences of Organised Crime and Terrorism and within the National Anti-Corruption Directorate shall also include the General Prosecutor of the Prosecutor's Office attached to the High Court of Cassation and Justice and, respectively, the General Prosecutor of the National Anti-corruption Directorate, which shall answer directly for the performance of these structures.

(5) For the ordinary courts and tribunals and, respectively, for the prosecutor's offices attached to them, the commissions provided in para (4) shall be constituted by decision of the management board of the court of appeal or of the prosecutor's office attached to it. For the courts of appeal and for the prosecutor's offices attached to them, the evaluation commissions are constituted by the decision of the management board of the High Court of Cassation and Justice. For the High Court of Cassation and Justice, the evaluation commission is formed by the decision of the Section for Judges including 3 judges, appointed from among the elected members of the Section for Judges, with at least the rank of Court of Appeal. For the Prosecutor's Office attached to the High Court of Cassation and Justice, the evaluation commission is formed by decision of the Section for Prosecutors including 3 prosecutors, appointed from among the elected members of the Section for Prosecutors, with at least a court rank.

(6) The Regulation on the procedure for evaluating the professional activity of judges and prosecutors shall be approved by decision of the Superior Council of Magistracy.

■ Regarding the distribution of cases, according to Art. 95 of Romania's Law no. 304/2004, these are allocated by the chief prosecutor to the subordinate prosecutors on the basis of criteria concerning the specialisation and workload of prosecutors. Art. 64 of the same Law provides for the rules on the reassignment of cases. According to it, chief prosecutors can reassign a file in case of a prosecutor's suspension from or termination of office, his or her absence or inactivity for more than 30 days. The prosecutor is entitled to challenge the reassignment decision before the Superior Council of Magistracy.

■ Romania's prosecutors are promoted only by means of a competitive exam held at the national level, within the limits set by the vacancies existing in the prosecutor's offices. The competitive exam for the promotion is held annually or at any time considered necessary by the Superior Council for Judiciary, through the National Institute of Magistracy. The Board for the Promotion of Prosecutors is composed of prosecutors from the Prosecutor's Office attached to the High Court of Cassation and Justice (the Supreme Court), prosecutors from prosecutor's offices attached to courts of appeal and trainers from the National Institute of Magistracy. Members are appointed by the decision of the Superior Council for Judiciary, at the proposal of the National Institute of Magistracy. The date, location and modus of holding the exam, as well as the number of vacancies are notified to all the prosecutors and published on the Web pages of the Superior Council of Judiciary, the National Institute of Magistracy, the Prosecutor Offices attached to the High Court of Cassation and Justice and in three central daily newspapers, at least 60 days before the date established for the exam. (See Art. 43-47 of Law no. 303/2004, see Art. 75-77 of the Law on the Public Prosecution Office).

■ Romania's judges and prosecutors have to participate, at least once in 3 years, in professional training programmes organised by the National Institute of Magistracy, the Romanian or foreign universities, or other entities (See Art. 36 of the Law no. 303/2004).

Procedure for evaluating the professional activity of judges and prosecutors¹⁰

The process of evaluation of judges and prosecutors involves the following steps:

- ▶ Observation by the designated member of the commission of public professional activities carried out by the evaluated judge,
- ▶ Analysis of documents containing results of the professional activity of the evaluated judge or prosecutor,
- ▶ Self-analysis and self-assessment, and Awarding the grade.

■ The process of evaluation of judges and prosecutors may also include an evaluation interview, as well as the establishment by mutual agreement of an individual professional development plan. The aspects revealed following the self-analysis and self-assessment are taken into account at the interview, in order to elaborate, by mutual agreement between the evaluator and the evaluated, the professional development plan.

■ The first evaluation of judges and prosecutors takes place 2 years after the publication of their nomination and the undertaking of their duties in the Official Gazette of Romania, Part I, of the decree of appointment in accordance with Art. 31 para (1) of the Law no. 303/2004 on the status of judges and prosecutors.

■ The following evaluations are made every 3 years, usually until June of the following year. The evaluation can be performed in another calendar period, at the request of the judge or prosecutor, insofar as the evaluation is necessary for promotion to executive positions or appointment to management positions, but only after an interval of 2 or 3 years.

■ For judges and prosecutors members of the Superior Council of Magistracy, the evaluation is made after 3 years from the end of the mandate.

■ The activity of evaluating the professional activity of judges and prosecutors is carried out during the entire period of 3 years.

■ During the evaluation period, the evaluation commission, if it deems it necessary to remove deficiencies found in the activity, can make recommendations to the evaluated judge or prosecutor, in order to improve the activity, by drawing up a report. The evaluation report of the professional activity has a confidential character, it is drawn up separately, for each judge and prosecutor, based on the documents of the evaluation file, after which it is communicated to the evaluated person.

■ For each of the criteria regarding the efficiency of the activity, the quality of the activity and the integrity, a maximum score of 30 points is awarded and, for the criterion regarding the obligation of continuous professional training and graduation of specialization courses, the maximum score is 10 points. Judges or prosecutors dissatisfied with the grade awarded may appeal to the appropriate section of the Superior Council of Magistracy, within 30 days from the communication.

■ The Venice Commission issued, in October 2018, the Opinion No. 924 / 2018 (CDL-AD(2018)017)¹¹ on the Law No. 303/2004 on the statute of judges and prosecutors, the Law no. 304/2004 on judicial organization, and the law no. 317/2004 on the superior council for magistracy. According to this Opinion, the reform process was necessary to provide answers to the existing problems and needs of the judicial system and to adapt it to new social realities. The aim of the laws is strengthening the independence of judges, by separating judges' and prosecutors' careers, but also increasing efficiency and accountability of the judiciary. Some of the changes were needed in order to implement a number of decisions of the Romanian Constitutional Court.

The Venice Commission recommended to Romanian authorities to:

¹⁰ http://legislatie.just.ro/Public/DetaliiDocumentAfis/199331?fbclid=IwAR3kXIVk9JfkmBHHyNEAfUJCI_SGi_E0JXE97MyuQ3QrM7_dzclw4zbwm2A

¹¹ [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2018\)017-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2018)017-e)

- ▶ Reconsider the system for the appointment / dismissal of high-ranking prosecutors, including by revising related provisions of the Constitution, with a view to providing conditions for a neutral and objective appointment/ dismissal process by maintaining the role of the institutions, such as the President and the SCM (the Supreme Council of Magistracy) and to balance the influence of the Minister of Justice;
- ▶ Remove the proposed restriction on judges and prosecutor freedom of expression;
- ▶ Supplement the provisions on magistrates' substantive liability by explicitly stating that, in the absence of bad faith and/or gross negligence, magistrates are not liable for a solution which could be disputed by another court; amend the mechanism for recovery action in such a way as to ensure that the action for recovery takes place only once and if liability of the magistrate has been established through the disciplinary procedure;
- ▶ Reconsider the proposed establishment of a separate prosecutor's office structure for the investigation of offences committed by judges and prosecutors; the recourse to specialised prosecutors, coupled with effective procedural safeguards appears as a suitable alternative in this respect;
- ▶ Re-examine, with a view to better specifying them, the grounds for the revocation of the SCM members; remove the possibility to revoke elected members of the SCM through the no-confidence vote of the general meetings of courts or prosecutors' offices (including by the way of petition);
- ▶ Identify solutions enabling more effective participation, in the work of the SCM, of the SCM members who are outside of the judiciary;
- ▶ Definitively abandon the proposed early retirement scheme unless it can be ascertained that it will have no adverse impact on the functioning of the system;
- ▶ Ensure that the proposed "screening" measures of magistrates are based on clearly specified criteria and coupled with adequate procedural safeguards and a right of appeal to a court of law and identify ways to strengthen oversight mechanisms of the intelligence services.



1.1.4. Evaluation and performance appraisal of public prosecutors in Hungary

In Hungary, the prosecutorial service has been an independent body of the state architecture since 1989. As of 2009, prosecutors have been allowed to deal with complaints made against investigating authorities, hence receiving stronger powers to oversee all kinds of investigations. The new current Constitution of 2011 stipulates that the prosecutorial service shall “contribute to the administration of justice by enforcing the State’s demand for punishment. Prosecution services shall prosecute offences, take action against any other unlawful act or omission, and shall promote the prevention of unlawful act”. Furthermore, the Constitution reiterates that the prosecutorial service is independent.

■ The Prosecutor General is elected for nine years (the new Constitution increased the term from six to 9 years) and may serve beyond the general retirement age for prosecutors. In 2011, the two substantive laws governing the prosecutorial service were adopted, the Law CLXIII of 2011 on the Prosecutorial Service and the Law CLXIV of 2011 on the Status of the General Prosecutor, the Prosecutors and Other Employees of the Prosecutorial System and their Career (hereinafter the Law on the Status of Prosecutors). The second law regulates the status of prosecutors and contains detailed rules about their performance evaluation. The Instruction No. 4/2012 (I. 6) of the General Prosecutor on Certain Issues Relating to the Status of Prosecution Staff contains further detailed rules on the examination of files of a prosecutor, which serves as a basis for the performance evaluation.

■ The Law on the Status of Prosecutors includes detailed rules on the selection and the evaluation of prosecutors. The final decision on the selection is made by the Prosecutor General based on the non-binding opinion of the so-called Prosecutors’ Council, elected by prosecutors from among their ranks. Concerning the performance evaluation of prosecutors, the law stipulates when prosecutors must undergo the regular evaluation. These cases are:

- ▶ Before the end of their appointment for a fixed term,
- ▶ In case of prosecutors appointed for an indefinite term, within three years as of the first appointment, and after that,
- ▶ Every eight years.

■ Prosecutors in the last 6 years before reaching the retirement age shall not be evaluated. Exceptional evaluation can be made at the request of the prosecutor him-/herself, if at least two years have already passed after the last evaluation and in case special circumstances arise which make an exceptional evaluation necessary.

■ The final marks of the evaluation can be:

1. Excellent, suitable for promotion;
2. Excellent and fully eligible;
3. Eligible;
4. Eligible; follow-up assessment required; or
5. Ineligible.

■ Furthermore, disciplinary procedures can be brought against the prosecutor. The process is carried out by the prosecutor's direct manager, whose decision can be challenged before the Prosecutor General and after that appealed before the court. The following actions can lead to disciplinary measures:

- ▶ "Culpably violating their official obligations";
- ▶ "Curtailing or jeopardising the prestige of their profession with their lifestyle or conduct".

Procedure of performance evaluation

■ Articles 50-52 of the Law on the Status of Prosecutors determines the detailed rules of the performance evaluation of prosecutors, resulting in a score system serving as basis for promotion. The evaluation must be carried out regularly, based on the following scheme:

- ▶ Before the end of their appointment for a fixed term,
- ▶ In case of prosecutors appointed for an indefinite term, within three years as of the first appointment, and after that,
- ▶ Every eight years.

■ Prosecutors in the last 6 years before reaching the retirement age shall not be evaluated. Exceptional evaluation can be made at the request of the prosecutor him-/herself, if at least two years have already passed after the last evaluation and in case special circumstances arise which make an exceptional evaluation necessary.

■ The evaluation is based on the examination of the files dealt with by the prosecutor. The detailed rules of the file examination are laid down in the Instruction No. 4/2012 (I. 6) of the General Prosecutor on Certain Issues Relating to the Status of Prosecution Staff.

■ The evaluation is carried out by the person exercising the employer's rights (a line manager). The official work of prosecutors assigned to the Ministry of Justice is evaluated by the Minister of Justice in accordance with the rules applicable to government officials. The purpose of the performance evaluation is to assess the quality of the prosecutor's professional activities, to evaluate his/her skills, abilities, and character traits and to facilitate professional development based on factual findings. The evaluation is based on the results of the file examination in conjunction with other facts and circumstances of the performance of the prosecutor to be taken into account in the evaluation.

■ As mentioned before, the following evaluation grades can be awarded to the prosecutor:

1. Excellent, suitable for promotion;
2. Excellent and fully eligible;
3. Eligible;
4. Eligible; follow-up assessment required; or
5. Ineligible.

■ In case of the ineligible grade, upon the disclosure of the result of the evaluation, the prosecutor shall be called upon to resign his/her office within thirty days. If the ineligibility is a consequence of health-related circumstances and the prosecutor does not resign from office, a medical examination must be carried out. The prosecutor is obliged to undergo the medical examination.

■ If the prosecutor is awarded the evaluation grade "eligible, follow-up assessment required" as a result of the assessment, the line manager will single out the deficiencies identified by the assessment and determine the main criteria for improvement for the repeated assessment. The repeated assessment must be carried out within two years.

■ The prosecutor has the right to have access to the results of the evaluation. The assessment results shall be handed over to the prosecutor minimum three working days before the hearing. The hearing must be attended by the line manager and the head of the prosecutorial office where the evaluated person is serving. After the disclosure of the evaluation assessment, the prosecutor shall acknowledge the receipt of the evaluation and may state his/her remarks. The prosecutor has the right to challenge any untrue findings or violation of his/her rights in front of the court.

The persons having access to the evaluation are:

- ▶ The prosecutor being evaluated,
- ▶ Persons authorised by the prosecutor being evaluated,
- ▶ The prosecutor's managers,
- ▶ The manager of human resources of the prosecutorial office,
- ▶ The manager of human resources of the prosecutorial office where the prosecutor is foreseen to be transferred to.

■ The performance evaluation system for prosecutors is intricately connected to promotions. Considering that the laws regulating the status of prosecutors have the status of constitutional laws, it is difficult to amend them. This restricts the flexibility of the Prosecutor General – otherwise an immensely powerful head of the independent prosecutor service – in determining the evaluation criteria for prosecutors. The disciplinary procedure reflects the disciplinary rules set out in general labour legislation, giving power to duty managers with an appeal to the Prosecutor General and to the court afterwards. In general, there seems to be a contradiction between the strong power of the independent Prosecutor General and the fact that most evaluation, promotion and disciplinary rules are determined by a constitutional law, which restricts the flexibility and discretionary power of the Prosecutor General. A future fine-tuning of the evaluation system might require a stronger involvement of the so-called prosecutorial councils – which already play an important role in the appointment and promotion procedure.

■ The evaluation system is qualitative rather than quantitative. The criteria for examination have been carefully selected, since they give a concise picture of the prosecutors' performance. The independent examiner plays an important role in the procedure; their statements are the basis of the final evaluation made by the duty manager. The prosecutor under evaluation also has possibilities to influence the outcome of the evaluation by suggesting some cases to be examined and by having the right to a personal interview. However, unfortunately, the perplexity of the cases is not being taken into account automatically, this is only subject to the approach of the examiner.



1.1.5. Evaluation and performance appraisal of public prosecutors in Greece

In Greece, the term used for the professional appraisal of judges and prosecutors is 'inspection' and its main principles are defined by the Constitution. Article 87 para 3 of the Hellenic Constitution provides for *inspection by peers of superior rank*. With regard to public prosecutors, this means that they can only be inspected by the Supreme (Civil and Criminal Court) judges and public prosecutors of a superior rank¹².

■ This principle is further specified and set out in the Code of the Organisation of Courts and the Status of Judges¹³ which is the main law that determines the operation of the courts of all levels and the rights and obligations of judges. The Code provides for annual regular inspections as the main way to assess the performance of the courts, prosecution services and individual judges and prosecutors.

■ Inspection is coordinated by the Inspection service, a non-permanent body, whose membership is determined on an annual basis by ballot. The mandate to inspect rests with chairpersons of appeal courts in civil and criminal courts and prosecutors of appeal courts. The law determines in detail the criteria, the process and the scoring system for the inspection.

■ In principle, all judges up to the grade of judge of appeal and assistant appellate prosecutor are subject to inspection. The presidents of the courts of appeal and the prosecutors of the court of appeal can be inspected by the Chair of the Inspection Council, following an order from the President or the Prosecutors of the Supreme Court.

■ Inspections take place on an annual basis and result in individual inspection reports. These include mandatory references to the handling of specific cases or cases where pre-trial arrest warrants have been issued. Observations in the report on the handling of the cases and the respect of deadlines are important for promotion to the next rank. Inspectors need to make a justified proposal as to whether the inspected judges and prosecutors are suitable for promotion. Inspection reports are submitted to the president of the Inspection Council. If inspectors witness

¹² "Regular judges shall be inspected by judges of a superior rank, as well as by the Public Prosecutor and the Deputy Prosecutor of the Supreme Civil and Criminal Court; public prosecutors shall be inspected by the Supreme Civil and Criminal Court judges and public prosecutors of a superior rank, as specified by law"

¹³ Law 1756/1988 Code of the Organization of Courts and the Status of Judges

unsuitability of a prosecutor for service, they report to the chief inspector who forwards the finding to organs competent to initiate suspension procedures.

■ The inspected person can appeal against the inspection report within 30 days. The appeal is considered by the Inspection Council and can lead to the correction of the report or re-inspection. If the appeal is rejected the decision is included in the inspected person's file.

■ An assessment of the inspection system and its practice identified the following¹⁴: first, the way in which inspection is set out in the law does not guarantee a substantive and in-depth assessment of merit. Almost all judges and prosecutors are promoted, mainly on the basis of seniority, so promotions are not determined primarily on the basis of merit. An important gap in the inspection system concerns the duties of those exercising administrative duties, as no related criteria are included in the existing rules. Further, response to additional duties, like the supervision and education of new judges, is not foreseen.

■ Secondly, the selection of inspectors by ballot is objective but does not take into account the willingness and skills in those selected to exercise this important function adequately and effectively. In practice, this additional duty might be seen as a burden for highly ranking judges and the reflex is to deal with it in the least burdensome way and especially without displeasing those who are inspected.

■ The frequency of the inspection (every year) leaves insufficient time for in-depth examination of the work, capacities and needs of those inspected in order to improve their work and promotion. In addition, the workload of inspectors (who have to inspect the work of a significant number of judges in their respective districts) does not facilitate an in-depth assessment. Further, the system of inspection bodies for every branch of justice does not facilitate a uniform inspection with common coordination. Lack of cooperation is also noted among inspectors in the same branch, leading to significant deviation in the exercise of the inspection duties and assessments. This might lead to horizontal and vertical inequalities.

■ The general criteria for inspection set out by the law are not adequate to ensure an in-depth assessment of the merit of the inspected persons and their suitability for promotion. There is no detailed methodological guidance on how to apply these criteria in a uniform way, so in practice these are used differently by different inspectors, leading to major deviations in the content of the inspections. In addition, inspectors might often rely extensively on the selected cases/decisions put forward by those inspected, which might not be representative of their entire work. Another issue is that reliance on selected written work does not necessarily take into account the performance of prosecutors inside and outside the courtroom and in relation with the other actors of the process and parties. Inspections do not adequately capture the quantitative dimensions of work of judges and prosecutors either, especially with regard to unjustified delays and postponements. As a result, difficult cases are avoided, to the extent possible, postponements are issued without due justification, cases are addressed superficially or 'similar' cases are sought.

■ Inspection reports on ten criteria have a standardized content where those inspected are classified as 'very good' or 'excellent'. Inspectors who might decide to conduct a substantive scrutiny of the work of those inspected, are an exception and their assessment is often reversed following an appeal from the person inspected. The Inspection Council is very lenient in the handling of appeals.

¹⁴ DIANEOSIS, [Reform in three critical sectors of the Judicial System](#) (Μεταρρύθμιση σε Τρεις Κρίσιμους Τομείς του Δικαστικού Συστήματος, 2021).



1.1.6. Evaluation and performance appraisal of public prosecutors in Spain

In Spain¹⁵ there is no special procedure for the evaluation of the work of prosecutors. The autonomy of the prosecutor is a highly respected principle. The Inspection service is a specialised service that does not formally evaluate the performance of judges and prosecutors but is involved in annual inspections of prosecutorial offices and in investigating complaints or misconduct in the work of prosecutors. If the problems are linked to a disciplinary offence, disciplinary proceedings are initiated.

■ The Inspection service operates on the basis of annual inspection plans that focus on the operation of prosecution offices. The Inspectorate also has access to a dashboard allowing access to quantitative information and the timing of proceedings. This data is used to monitor the progress of the work of the prosecution offices and it is used to trigger inspections of Prosecution Offices and monitor the quality of work.

■ Chiefs of prosecution offices have a role in supervising prosecutors that work in their offices. They also have a role in distributing productivity bonuses on the basis of work that exceeds the normal workload. Such funds are allocated to each prosecution office and the Chief can decide if and how to allocate them to individual prosecutors.

¹⁵ <https://rm.coe.int/consultative-council-of-european-prosecutors-ccpe-questionnaire-for-th/16807224db>



1.1.7. Evaluation and performance appraisal of public prosecutors in Bulgaria

In Bulgaria, there are **three different mechanisms** to evaluate the work of the prosecutors, each of them having certain consequences regarding the career growth, bonuses (rewards), qualifications and disciplinary liability of the respective prosecutor.

First and foremost, there is the **appraisal (attestation) of prosecutors** as an integral part of the judiciary, which is based on both quantitative and qualitative criteria. The appraisal is regulated by the Bulgarian Judiciary Act (the JA) and is a compulsory procedure at a certain stage of each magistrate's career development. Apart from that, it is a mandatory element of every procedure, concerning career growth through the levels of the judiciary, elections for heads of courts and prosecutor's offices, transferring from one court/prosecutor's office to another of the same level or earning a higher rank status, while remaining on the same position.

Nevertheless, apart from the appraisal, regulated by the JA, there are other ways to attest and evaluate the performance of the prosecutors from a qualitative, quantitative and organizational perspective. Such mechanisms are the inspections, conducted by the Inspectorate of the Supreme Judicial Council, as well as the internal control within the system of the Bulgarian Public Prosecution. The latter methods are deeply connected to the appraisal procedure, yet they also have certain legal consequences of their own.

The appraisals and inspections, concerning the performance of the administrative heads of prosecutor's offices and their deputies are not addressed here. This is so, since these procedures are based on some additional and different criteria and their primary aim is to evaluate the administrative and organizational capabilities of their subjects, rather than their work as regular members of the judiciary.

Appraisal procedures according to the JA. The appraisal procedure has a **detailed and complicated** regulation within the law. Its precise conducting is seen as the basis, upon which the Supreme Judicial Council (the SJC) exercises its functions with regard to the appointing, career growth, transferring¹⁶, removing from office, enacting

¹⁶ The career growth and the transferring of magistrates is mandatorily the subject of a unified competition procedure – Part IIa of Chapter IX of the JA.

disciplinary sanctions and organizing the qualification of the members of the judiciary¹⁷. Appraisal procedures are the subject of the entire Part IV of Chapter IX of the JA¹⁸, as well as a specific Appraisals Regulation, issued by the SJC in accordance with Art. 209b of the JA¹⁹.

■ The appraisal of prosecutors aims to inspect, on a regular basis (certain stage of the career), whether the respective magistrate performs their job with the required professionalism, knowledge of the law and integrity. The first appraisal is conducted within a relatively short period of time after the appointment of the respective prosecutor. The next appraisal aims to cover a longer period of time (5 years) and the results from it are the main basis, upon which the respective magistrate is to be granted tenure (the status of irremovability). Every next appraisal is basically a tool, which guarantees the magistrates' career growth in accordance with their professional qualities, as well as a way to react if a certain magistrate needs any improvement of his/her qualifications.

■ Depending on their purpose and on the time of their conducting, there are four different types of appraisals²⁰:

a) *Initial appraisal*, which covers the three-year period, following the appointment of the respective magistrate, and is conducted in case he/she participates in a competition procedure or proposed for promotion in ranking²¹;

b) *Appraisal for the purpose of acquiring tenure*, which is conducted upon completion of five years' service as a judge, prosecutor or investigating magistrate;

c) *Periodic (regular) appraisal*, which is conducted upon the passing of a five years' period since the appraisal for tenure;

d) *Extraordinary appraisal*, which is conducted in case five years have elapsed since the periodic appraisal and:

- ▶ The magistrate enters a competition for promotion, transfer or election as an administrative head
- ▶ There is a reasoned proposal by the Inspectorate within the Supreme Judicial Council or by the respective administrative head, where there is data of sustained deterioration of the quality of work or non-compliance with the ethics rules by the respective magistrate;
- ▶ There is a specific request by the respective magistrate, when they have a legal interest.

■ As the previous paragraph shows, the most important appraisals, concerning the career growth of the prosecutors, are the appraisal for the purpose of tenure, the periodic appraisal and the extraordinary appraisal, when the latter is connected with the participation in a competition.

■ The periodicity of the appraisal derives from the existence of different forms of appraisal, which were mentioned above. It is also obvious that in certain cases the subject of the appraisal is also the one who initiates it – for instance, in the case of extraordinary appraisal, which is usually the result of participation in a competition procedure. At other times, however, the appraisal is carried out regardless of the prosecutor's initiative and is instead the result of the passing of a certain period of service time, or time since the gaining of tenure. In these cases, the appraisal is carried out by decree of the administrative head of the respective prosecutor's office.

■ The appraisal results in a complex evaluation mark, which the CAC-PC proposes to the PC-SJC could be either a positive, or a negative one. The positive mark has the following three grades, from the best to the worst:

- ▶ Very good;
- ▶ Good;
- ▶ Satisfactory.

¹⁷ According to the Bulgarian Constitution, the judiciary consists not only of judges, but also of prosecutors as well as certain investigators (investigative magistrates), who are within the administrative structure of the prosecution, rather than the Ministry of the Interior. These three groups are also generally labeled as „magistrates“.

¹⁸ Art. 196-209b of the JA.

¹⁹ The exact name of the Regulation is Regulation №3/23.07.2017, Concerning the Criteria and Methods for the Appraisal of Prosecutors, Investigating Magistrates, Administrative Heads of Prosecutor's Offices and Their Deputies.

²⁰ Art. 196 of the JA.

²¹ Junior prosecutors do not undergo a preliminary appraisal. Instead, upon the completion of two years of service, their respective supervisor issues a report on their professional qualities – Art 196, para 2 of the JA.

■ The algorithm, leading to the forming of the evaluation mark, is the subject of a thorough regulation in Chapter VIII of the Appraisals Regulation and cannot be described in detail, considering the volume of this report. However, it is important to mention that the complex evaluation mark is an automated sequence of the grade scale, used for the numerical evaluation. Each of the many criteria is evaluated with a numerical mark and each of them also has a different importance with regard to the final result, which is calculated using a mathematical formula, common for all appraisals.

Inspections conducted by the Inspectorate of the Supreme Judicial Council concerning the performance of the prosecutors

The **Inspectorate of the Supreme Judicial Council (ISJC) is a completely separate institution**, despite its name, which creates the impression that it is somehow „attached“ to the SJC. The ISJC has its legal regulation in the Bulgarian Constitution²² and it is tasked with inspecting the work of the members of the judiciary without affecting their independence and inner conviction. Its functions include the following²³ : *inspecting the existing organization, concerning the administering of the cases; analyzing the solved cases; discovering and pointing out contradictions in the interpretation and application of the law, which are to be resolved²⁴; discovering disciplinary violations and presenting them to the administrative head of the respective prosecutor's office or to the SJC; proposing disciplinary sanctions; resolving complaints and grievances, concerning violations of the citizens' right to have their case administered and solved within a reasonable time.*

■ In order to fulfil the aforementioned functions, the ISJC inevitably has to analyze, at least to a certain extent, the complexity of each case, the workload of the respective prosecutor, and the quality of their work. The analyzes made by the ISJC do not concern any of the pending cases on the merits in order not to violate the independence of the prosecutors. Nevertheless, they remain an important tool in the evaluation of the magistrates' work and could easily affect their status and career development (for instance, by discovering disciplinary offenses, leading to the respective disciplinary liability). Apart from that, as was already mentioned, the results of the ISJC's inspections are a primary source of information during appraisal procedures. In addition, it must be mentioned that the Appraisals Regulation²⁵, as well as the General Appraisal Form, which exists as an application with respect to the Regulation, both explicitly refer to the conclusions, made by the ISJC concerning the performance of the respective prosecutor. More specifically, if such conclusions exist, it is mandatory that they be taken into consideration by the CAC-PC during the forming of the complex evaluation, which is then to be suggested to the SJC's Prosecution College.

Internal control within the system of the Bulgarian Public Prosecution

■ This particular form of control does not have a detailed regulation within the law. It is in fact a sequence of the united and hierarchical structure of the Bulgarian Public Prosecution, which is based on the concept that the Prosecutor General oversees the legality of the work of all the other prosecutors, as well as of the investigators, who are a part of the judiciary. Therefore, this form of control is regulated primarily by decrees (*methodological guidelines*), issued by the Prosecutor General.

■ The internal control is implemented through the use of revisions (both complex and thematic), concerning the general performance of entire structures within the system of the Bulgarian Public Prosecution, as well as of individual inspections and analyzes. The latter are more closely connected to the topic at hand. These inspections are usually dedicated to particular circumstances, regarding the performance of the respective prosecutor or their adherence to the rules, established by the Ethical Code of the Judiciary. When the inspection concerns the work of the prosecutor on day-to-day cases, the accent usually falls on the quality, the urgency and the legality of their acts.

■ The inspections are usually conducted by a prosecutor or a specially selected team of prosecutors, serving in the respective prosecutor's office, which is superior to the prosecutor's office, in which the prosecutor, who is being checked upon, serves. The inspecting prosecutor(s) does (do) not always serve in the directly superior prosecutor's

²² Art. 132a of the Constitution

²³ Art. 54 of the JA.

²⁴ Such contradictions are resolved through interpretative acts, issued by the Supreme Court of Cassation, which contain rulings that are mandatory for the entire judiciary. It is also possible to resolve contradictions through methodical decrees, issued by the Prosecutor General, but only regarding the matters, which concern the work of the prosecution, not the practice of the courts.

²⁵ Art. 45, para 1, pp. 10-11 of the Appraisals Regulation, as well as part IV of the General Appraisal Form.

office. It is also possible that a prosecutor from the Supreme Prosecutor's Office of Cassation or the Appellate Prosecutor's Office would analyze the performance of a prosecutor from the Regional Prosecutor's Office²⁶, who stands not one, but two or three levels below within the system of the judiciary²⁷. In any case, such inspections are assigned by the respective administrative head of the inspecting prosecutor's office with a decree, which must explicitly contain the subject matter of the inspection. The inspection, as well as the revision, of the performance of a particular prosecutor or prosecutor's office does not aim to stand in for the regular instance control upon their acts and decrees. Nevertheless, the results of the inspection could potentially serve as an occasion for the superior prosecutors to exercise their controlling functions regarding the work of a lower ranking prosecutor *ex officio*. However, this is only possible if the respective acts or decrees have not already been the subject of a court ruling, regarding their legality.

■ Normally it is expected that the inspection would contain a detailed analysis of the particular circumstances, listed as its subject matter, as well as the performance of the prosecutor, regarding a particular case or a certain type of cases. The results of the inspection are reported to the respective head of office, who assigned it, so that they would be able to take administrative, organizational or disciplinary measures, if necessary; however, they don't have the power to resolve a particular case on the merits, if that case is within the competence of the inspected prosecutor. Therefore, every inspection ends with **a report to the respective head of office**, who assigned it, which contains ascertainments and suggestions as to whether or not there is a necessity to undertake any measures. The inspected prosecutor has the right to receive the report before it is presented to the respective head of office and to list his/her objections, if there are any. In case there are such objections, the prosecutor(s), conducting the inspection, is/are obliged to take them into account and resolve them.

■ Even though it is not explicitly stated in the General Appraisal Form, there is a legal obligation, which dictates that the results of the internal inspections within system of the Bulgarian Public Prosecutor's Office **must also be taken into account during the appraisal procedure** (similarly to the results of the inspections, conducted by the ISJC). According to the Appraisals Regulation²⁸, the acts and reports, concerning conducted revisions or inspections, which have been presented at the Inspectorate Sector by the Supreme Prosecutor's Office of Cassation (the ISSPOC), are a source of legitimate information about the performance of the respective prosecutor, who is being appraised. It is therefore mandatory that they be taken into consideration during the forming of the complex evaluation. In practice, the members of the AAC-APO could rely on such reports, even if they have not been presented to them by the ISSPOC. Often the AAC-APO obtain these reports as a result of the controlling functions of the Appellate or District Prosecutor's Offices.

■ The Bulgarian system for evaluation of the performance of the prosecutors – from the perspective of its normative regulation – is rather comprehensive and well developed, including its details. It relies on a variety of sources of information and combines quantitative and qualitative methods and criteria. The appraisal procedure, regulated in the JA, plays the central role while the other mechanisms are auxiliary and their implementation affects the outcome of the appraisal (evaluation) procedure. From the perspective of its practical implementation and final results, the use of this evaluation system seems to be time and energy consuming. There is still room for improvement – especially concerning the overcoming of the equalizing effect which is prerequisite for a fair treatment in every single case.

²⁶ The levels within the system of the Bulgarian Public Prosecution are as follows from the lowest to the highest: the Regional Prosecutor's Offices, the District Prosecutor's Offices, the Appellate Prosecutor's Offices and the Supreme Prosecutor's Office of Cassation. As it was already mentioned, all of them are overseen by the Prosecutor General.

²⁷ In the Supreme Prosecutor's Office of Cassation, within the Administrative Department, there is a special Inspectorate Sector. This Inspectorate is responsible on national scale for the internal control, revisions and inspections within the system of the prosecution. It also keeps an archive of the reports, concerning the already conducted revisions and inspections.

²⁸ Art. 45, para 1, p. 10 of the Appraisals Regulation.



1.1.8. Evaluation and performance appraisal of public prosecutors in France

In France, the 9100 serving magistrates (2400 prosecutors and 6700 judges) belong to a single body. After a highly selective national competitive examination (at the Master's level), future magistrates are trained for two and a half years in the same school, the *École Nationale de la Magistrature*. At the end of the exam, they choose their position according to their ranking, judge or prosecutor, on the list of vacant positions published by the Ministry of Justice. With the exception of disciplinary proceedings, magistrates will remain in office until their retirement (at the age of 65), successively holding positions as judges or prosecutors, progressing hierarchically according to their geographical or functional choices (principle of irremovability of judges and, in fact, of prosecutors) and their evaluations.

■ The Superior Council of the Judiciary has the competence to validate or not the transfer or promotion and selects the First President of the Supreme Court of Appeal, the judges of the Supreme Court and the presidents of the courts and tribunals.

■ In France, the assessment of the workload and activity of magistrates is an extremely elaborated process on which the organisation of posts in courts and the career development of judges and prosecutors are built. The assessment process is overall similar for judges and prosecutors but the specificity of the mission of public prosecutors imposes specific criteria.

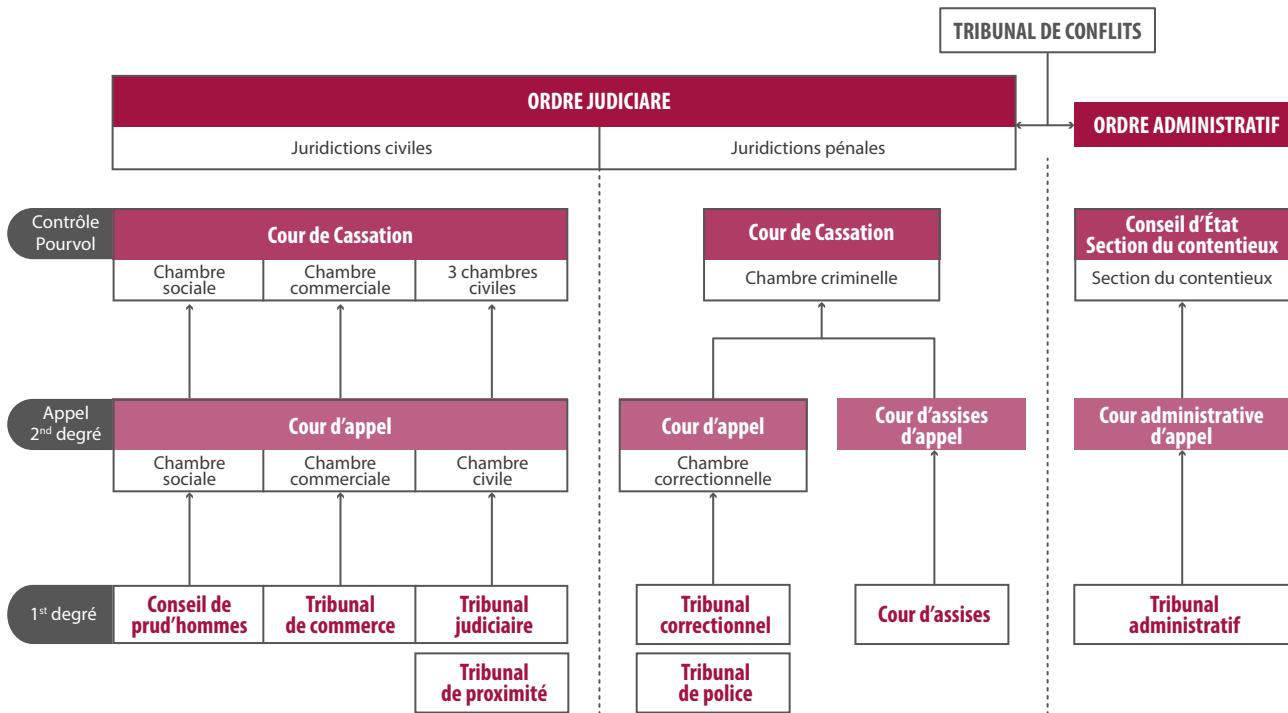
Evaluation of the activity of prosecutors in general

■ The evaluation of the workload of prosecutors has been a recurrent concern of the French Ministry of Justice in recent years. There are several reasons behind this:

- ▶ The first is that the comparison with the judicial systems of the 47 countries of the Council of Europe was unfavourable to French prosecutors: with 3 prosecutors per 100,000 inhabitants, France is far behind Germany (7/100,000h), Sweden (9/100,000h), and even Russia (23/100,000h) and many new prosecutor positions have been created in France in recent years. Even though the mission entrusted to the prosecutors differs from one country to another, French prosecutors have always considered that their assessment should be comparable to that of their counterparts in other European countries.

- Secondly, because the effort to identify an optimal way to evaluate the workload of prosecutors is of primary importance in the context of the management of prosecution services, in the framework of impact studies prior to the adoption of legislative or regulatory reforms, for the General Inspectorate of Justice (the IGJ) as a part of its control missions, for the professional assessment of magistrates, which includes the setting of individual objectives, and for the setting by the heads of court of the amount of the flexible bonus allocated to each magistrate.

Organization of the French judiciary



Source: French Ministry of Justice, [Justice / Portail / Organisation de la Justice](#)

Since 2012, meticulous work has been undertaken to identify the services expected of magistrates (inventory of the various missions), to quantify them at national and local level (quantitative indicators), and to evaluate, if possible, the corresponding “magistrate-time” with all the necessary weightings, linked to the difficulty of the procedure being examined.

The number of procedures of average importance that can be handled by each prosecutor (dismissal, alternative to prosecution, referral to the court, opening of a judicial investigation, etc.), was thus evaluated, as well as the preparation time for an “ordinary” criminal hearing...

Specific criteria have been developed for the most complex procedures, in particular those handled in the eight French specialized interregional jurisdictions (in matters of organized crime and economic and financial offenses (X cases per prosecutor, for example). The question of prosecutors’ activities in the civil field (guardianships, etc.) and in the commercial field (bankruptcies, etc.), which have long been underestimated, has also been taken into account.

The sub-directorate of finance and the sub-directorate of human resources of the judiciary of the Ministry of Justice are currently conducting further research to update these indicators and thus better measure the activity of judges.

An evaluation system, based on the weighting of judicial cases, is being developed and should promote, by the end of 2022, a better knowledge of the activity of courts and tribunals, but also a fairer allocation of resources between jurisdictions and within the services of the same jurisdiction.

■ This approach is in line with the recommendations of the Court of Auditors which, in December 2018, in a report entitled “Methodological approach to the costs of justice”, recommended that the ministry adopt “a weighting system based on a typology of cases inspired by foreign models” to “guarantee an efficient allocation of court resources and accurate knowledge of judicial activity”.

■ In a report published in June 2020, the Working Group on Judicial Time Management of the European Commission for the Efficiency of Justice (CEPEJ) took stock of this internal management system aimed at evaluating the “weight” of a judicial case, by detailing, through various methods, the judicial time required to process it. More recently, the Council of Europe, in a report, of July 2 2020, on the weighting of cases in judicial systems, also encouraged its member states, including France, to implement such a tool in order to reinforce the efficiency of justice. This tool allows for many advances, such as the objectification of budgetary requests made to the Parliament during the vote on public finance programming laws and finance laws (obtaining additional employment credits), or a more equitable allocation of magistrates to the country’s jurisdictions.

■ Work has therefore been undertaken to provide France with a structured system for evaluating the activity of the courts and tribunals, taking into account not only the number of cases brought before the courts but also their varying complexity via a weighting system established for each function.

■ In order to establish the values of the weighting table, the Ministry uses working meetings between peers and has therefore set up a working group composed of representatives of conferences of heads of courts and jurisdictions, professional associations of judges (examining magistrates, enforcement judges, juvenile judges, prosecutors, etc.), trade unions and the Ministry of Justice.

■ On the basis of the activity data in the possession of the Ministry, the members of the working group propose a reference value for a category of cases, the support activity being taken into account via a share of the overall activity (defined as a percentage) in the absence of available statistical indicators.

■ In order to test the relevance of these tables with the daily reality of practitioners, an experiment will be carried out within a panel of test jurisdictions to ensure the consistency of the weights of the tables and to make the necessary adjustments before final arbitration.

Legal basis and objectives of the individual evaluation of prosecutors

■ In the law for magistrates, judges and prosecutors (ordinance of December 22, 1958, modified by the law of March 23, 2019), a bienniality of this assessment is provided for:

“The professional activity of each magistrate is subject to an assessment every two years. An assessment shall be carried out in the event of a presentation for promotion and on the occasion of a candidacy for renewal of office”.

■ This assessment is preceded by the magistrate drawing up an activity report and an interview with the head of the court to which the magistrate is appointed or attached or with the head of the department where they perform their duties. The assessment of magistrates working on a temporary basis is preceded by an interview with the president of the court of justice to which they are assigned. The assessment is communicated in full to the magistrate concerned.

■ The authority carrying out the assessment takes into account the organizational and operational conditions of the department in which the magistrates perform their duties. In the case of heads of court, the assessment assesses, in addition to their judicial qualities, their ability to manage and lead a court.

■ Those who contest the assessment of their professional activity can refer the matter to the promotions committee. After hearing the magistrate’s observations and those of the authority that carried out the assessment, the promotion committee issues a reasoned opinion that is placed in the file of the magistrate concerned. A decree will set the conditions for the application of this Article.

■ The purpose of the assessment is to determine the professional value of the magistrate, to reflect his/her skills, his/her level of commitment and his/her ability to perform a given function.

■ For the magistrate concerned, the assessment is the ideal opportunity to assess his or her activity, to envisage developments in his or her professional practice and to assess himself or herself on a regular basis, in relation to his or her career development.

■ This evaluation every two years (or every year if the interested party is presented for registration on the promotion list several years in a row while waiting for the effective realization of this promotion), is thus extremely important for the development of the career of the prosecutor. Indeed, his or her career advancement and appointment to positions of responsibility a (head of a public prosecutor's office, member of a public prosecutor's office) will depend exclusively on these evaluations.

■ The Superior Council of the Judiciary, which must validate each proposal for appointment or promotion, has access to the entire administrative file of the prosecutor and thus to all his/her evaluations throughout his/her career.



1.1.9. Evaluation and performance appraisal of public prosecutors in Austria

The evaluation system for prosecution authorities in Austria is, in recent years, in progress moving away from the pre-existing individually oriented system to a practically fully structural and systematic approach that focuses on prosecutorial units and offices and not individuals. The final move was done in November 2018 with the publication of a *“Handbook for the internal audit of Prosecutorial authorities”* (Handbuch fuer die Revision der Staatsanwaltschaften), where there is detailed guidance on how to proceed to this measure (internal audit, in German Interne Revision, hereafter the IA). The IA is the instrument for the regular systematic evaluation of the prosecutorial authorities, whereas in case of emerging of specific problems and deficiencies the system of *“Revision”* (in German *Nachschau*) was developed, which also has a structural and not personal approach. The further text refers to the system of the IA.

Principles of the internal audit

■ According to the relevant provision the fundamental substantial principles for carrying out an IA are: trustfulness, objective approach, confidentiality and factuality. On the procedural side the relevant principles include

the absolute independence of the auditing agent, the full availability of the information, the possibility to use central justice related electronic systems, the obligation to carry out the IA in a way not disturbing the every-day function of the audited unit, the inclusion of the said unit, the result-oriented implementation of the IA, etc. Through the IA. the following goals should be achieved: upgrade of the function and the quality of the audited unit; securing perfect usage of the resources, human and technical; upgrading of the internal control-mechanisms, esp. the smooth co-operation of the judicial and administrative staff; the introduction of necessary functional reforms, and the enhancing of the staff's motivation. As a general rule, the IA should be described as a process, which is based on legal provisions, looks for effectiveness of the unit audited, economy of resources of any kind and which itself should be carried out in a smooth and effective way.

Types of the IA

■ There are 3 types of the IA, which do not contradict each other: a. The regular one, to be carried out in a period of 4 – 7 years; b. The extraordinary one, which must be justified on specific reasons; and c. The so-called "Follow-Up", a form guaranteeing the substantial success of the regular IA, controlling systematically, if the recommendations spelled out are really followed and materialized.

Fields and Checklists

■ The regular IA has always to refer to 6 central issues, being:

- ▶ Basic data
- ▶ Genuine legal issues
- ▶ Register and archives
- ▶ Infrastructure and technical inventory
- ▶ Internal administrative management
- ▶ Social appearance of the prosecutorial unit to the society.

■ Beside these obligatory fields of audit, additional points can be set following relevant advice of higher prosecutorial organs or if specific problematic issues of the unit to be audited have appeared. The control of the obligatory issues and any specific ones takes place following very accurately developed lists, so that the IA per se is taking place in an objective way understandable by all the participants.

Final consideration of the system

■ The Austrian system demonstrates a trend that moves away from the individualistic evaluation exercise that led to practically all prosecutors being considered excellent, towards a more systemic and structural form of evaluation. The new system is still novel, thus the time for its own evaluation has not yet come. Nevertheless, the fact that the IA-Reports so far have focused on recommendations and proposals for improvement and these are followed is an indication of the move towards self-reflection and development.

1.2. Types of evaluation and performance appraisal of public prosecutors

The overview presented in the previous section demonstrates, first, that professional evaluation of prosecutors is conducted, albeit in slightly different ways, in the majority of judicial systems scrutinised in this study. Performance appraisal is a part of the effort to improve the quality and efficiency of justice, upgrade the individual performance of prosecutors and determine promotions. In all the countries included in the research, with the exception of Spain and Austria where there is no regular performance inspection of prosecutors, some form of inspection/performance evaluation of public prosecutors is in place and this is explicitly consolidated in legislation. **The legislative consolidation of the evaluation process appears to be a fundamental premise of legality, fairness and transparency.**

Table 1: Existence of formal criteria for the evaluation/performance appraisal of public prosecutors.

Portugal	Spain	Germany	Greece	Hungary	Romania	Bulgaria	France	Austria
Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	No

Overall, **three main 'types' of professional evaluation - appraisal** are observed:

- a) First-time appraisals that take place after / upon appointment of new prosecutors
- b) Regular inspections of prosecutors in office, which take place at regular intervals
- c) Extraordinary inspections which are triggered by specific events.

■ First time appraisals (Portugal, Hungary, Romania, Bulgaria) aim to ascertain that newly appointed prosecutors are suitable for the profession and have the necessary knowledge and skills to exercise it according to high standards. This appraisal can play a critical role in identifying individuals who are obviously not fit for the specific profession but also to detect the way in which newly appointed prosecutors are adjusting to the reality of the profession and assess their needs in terms of knowledge and skills. This type of appraisal can serve an important educational/developmental function.

■ Regular professional appraisals aim to ascertain the quality of work of prosecutors and, where relevant, their suitability for promotion. Regular appraisals take place at different intervals, which range from an annual basis (Greece) to 2-6 years. Annual appraisals have been seen with criticism as they are considered too frequent to allow for sufficient depth in the work of the inspector.

■ Extraordinary appraisals are triggered by specific events, such as complaints, etc. and include inspections/appraisals outside the regular appraisal procedure.

1.3. Criteria for performance appraisal/evaluation

■ Performance appraisals are important from the perspective of quality and efficiency of justice but are also important for the career development of prosecutors. All the countries included in the study, with the exception of Spain and Austria, have formal evaluation criteria consolidated in the legislation and further specified in regulations. This is seen as an important element of fairness, transparency and objectivity of appraisal systems. This section focuses on the specific criteria and/or sub-criteria that are used for the evaluation of prosecutors in the countries included in the study.

■ In **Greece**, the law identifies five general criteria against which judges and prosecutors are inspected²⁹:

- a) Ethos, vigour and character,
- b) Scientific knowledge,
- c) Judgement and perception,
- d) Diligence, industriousness and professional (quantitative and qualitative) performance and

²⁹ Article 85

- e) Capacity to deliver justice, skills in laying out judgements, and in directing proceedings
- f) Conduct in the courtroom and social performance. When it comes to prosecutors, the criteria also include their capacity to deliver justice both pre-trial and in trial, capacity to issue proposals and orders and to express themselves orally.

■ These criteria are not further specified and detailed and this lack of specification, as well as the lack of common methodological guidance on their application leads to variable application by different inspectors.

■ In **Portugal**, the detailed criteria for the evaluation of public prosecutors and the definition of the degree of functional performance are laid down in the Statute of the Public Prosecution Service and in the Regulation on the Inspections of the Public Prosecution Service³⁰. Article 11 of the Regulation sets out a detailed list of parameters to be taken into account in the assessment of merit of prosecutors. The inspection focuses on three main elements: a) The capacity of the prosecutor to exercise their profession, b) Their technical preparation and c) Their adaptation to the service.

■ The *capacity to exercise the profession* is assessed by taking into consideration:

- a) Suitability and politeness;
- b) Impartiality and fairness
- c) Good sense, reasonability and sense of justice
- d) Normal relationship with the other judicial operators and procedural intervening parties;
- e) Functional cooperation with criminal police bodies and other supporting entities;
- f) Collaboration and contribution in the magistrates' training system;
- g) Presence and resourcefulness in attending to the public; and
- h) Simplification of procedural acts.

■ The assessment of the *technical and functional preparation* covers:

- a) Capacity and mode of performance of the function, namely efficiency of means, effectiveness of the decision and in obtaining consensus;
- b) Ability to gather and appraise factual matters and legal situations;
- c) Ability to synthesise and resolve issues, through clarity and simplicity of and argumentative discourse, by the practical and legal sense and by the weighting and knowledge revealed in decisions and other procedural interventions;
- d) Authorship of published legal works; and
- e) Relevant interventions in public events, namely at conferences and colloquia.

■ *Adaptation to the service* takes into consideration the following:

- a) Working conditions;
- b) Volume and complexity of the service;
- c) Productivity, efficiency and innovation;
- d) Organisation, management and method;
- e) Observance of the deadlines defined for the practice of procedural acts, considering the existing procedural volume and the means and resources available;
- f) Proficiency in the use of official procedural management platforms and other databases;
- g) Punctuality in complying with and attending the scheduled acts;
- h) Zeal and dedication; and
- i) Level of compliance with the objectives set.

³⁰ Regulamento n.º 13/2020, de 09 de Janeiro (versão actualizada) REGULAMENTO DOS PROCEDIMENTOS DE INSPEÇÃO DO MINISTÉRIO PÚBLICO

■ For magistrates with *management functions*, the following are taken into account:

- a) Leadership qualities;
- b) Efficiency in directing, coordinating, guiding and supervising the functions of the Public Prosecutor's Office;
- c) Level of hierarchical intervention of a statutory or procedural nature; and
- d) Initiative in the allocation of cases, namely when justified by the complexity or normal functioning of the service. Inspections also take into consideration the working conditions: the distribution and volume of service, the adequacy of the facilities where the service is provided, the operation of the service when it has a direct impact on their performance; the number of judicial magistrates with whom the inspected person works; the collaboration with criminal police bodies and other entities; the number of magistrates with whom the inspected magistrate works.
- e) The collaboration provided by the criminal police bodies and other bodies and entities; the number and proficiency of the public prosecutors under direct hierarchical dependence when the inspected is a leading magistrate.

■ In **Germany**, the basis for the evaluation is the profile of qualification (in German: "*Anforderungsprofil*") of the position the public prosecutor holds. The following main areas of skills and competences are subject to evaluation:

- a) Professional competence
- b) Personal competence
- c) Social competence
- d) Leadership competence.

■ Within these four competences, typically the following criteria are the basis for the evaluation of the public prosecutor (non-exhaustive list):

Professional competence

- ▶ Professional understanding of the job of a public prosecutor
- ▶ Ability to express one's thoughts clearly, concisely and understandably in oral and written form
- ▶ Decisiveness (this mostly means how quickly the prosecutor can make decisions and thus efficiently handle his/her cases not having unnecessary doubts and the ability to take fast and efficient actions)
- ▶ Awareness of duties and responsibilities
- ▶ Self-organisation
- ▶ Participation in working groups, coaching, preparation and writing of manuals, articles, publications, etc. (remark: extra tasks taken over by the public prosecutor are considered an additional asset since they indicate the prosecutor's personal engagement and professional commitment to the job)
- ▶ Appropriate behaviour in office (compliance)
- ▶ Knowledge of legislation, theory of law, methods of application of law, etc.
- ▶ Professional readiness for new tasks, for example, to change specialization or to work on additional tasks on a voluntary basis.

Personal competence

- ▶ Self-criticism
- ▶ Ability to be agile and to undertake initiative
- ▶ Discipline
- ▶ Ability to react quickly to changing circumstances of the case
- ▶ Commitment to professional development
- ▶ Operability
- ▶ Stress resistance and health status
- ▶ Leadership potential and leadership capacity.

Social competence

- ▶ Personal behaviour
- ▶ The relationship of the public prosecutor with colleagues, superiors and subordinates
- ▶ Communication skills
- ▶ Ability to manage conflicts.

Leadership competence

- ▶ Leadership potential and leadership capacity
- ▶ Role model and credibility
- ▶ Ability to lead cooperatively
- ▶ Ability to motivate employees
- ▶ Ability to manage conflict
- ▶ Persuasiveness
- ▶ Assertiveness
- ▶ Ability to lead meetings and negotiations
- ▶ Excellent planning skills
- ▶ Ability to deal with the media competently
- ▶ Ability and willingness to represent in public, to present judicial issues in speeches and addresses
- ▶ Ability to delegate appropriately.

■ In **Hungary**, a file examination forms the basis of performance evaluation and it is conducted between 12-8 months before the due date of the next regular evaluation. The file examination aims to reveal the prosecutor's practice in the application of substantive and procedural law while performing his/her duties in the last year preceding the file examination.

■ **Content of the file examination evaluation sheet.** The file examiner assesses the files managed by the examined prosecutor based on five criteria, each of them split into five grades on a 0-100 % scale:

1. Meeting deadlines (to what extent the prosecutor meets the deadlines set for each task):
 - a. Always or almost always meets the deadlines set for completing a task;
 - b. Usually meets the deadlines set for completing a task;
 - c. Repeatedly fails to meet deadlines set for completing a task;
 - d. Usually does not meet deadlines for completing a task;
 - e. Never or almost never meets the deadlines for completing a task.
2. Identifying legal problems relevant to the adjudication of cases and taking the necessary measures (ability to identify legal problems in the course of his/her work and to take the necessary measures):
 - a. In the course of his/her work, he/she always or almost always recognises the legal problems of cases and takes the necessary measures;
 - b. In the course of his/her work, he/she is usually well aware of the legal problems of cases and takes the necessary measures;
 - c. Repeatedly misidentifies the legal problems in the course of his/her work and takes wrong measures;
 - d. In the course of his/her work, he/she usually misjudges the legal problems and takes wrong measures;
 - e. tokom obavljanja posla nikada ili gotovo nikada ne prepoznaje pravne probleme.
3. Completeness of fact-finding (attention paid to the relevant facts to be established):
 - a. Always or almost always establishes the facts in their entirety;
 - b. Generally establishes the facts in their entirety;
 - c. More often than not, the facts are not fully established;
 - d. Does not usually establish the facts in their entirety;
 - e. Never or almost never establishes in their entirety.

4. Accuracy of legal qualifications (attention paid to the accuracy of legal qualifications):

- a. Always or almost always provides professional justification of the measures;
- b. Generally provides professional justification of the measures;
- c. More often than not, provides inappropriate justification of the measures;
- d. Generally provides inadequate justification of the measures;
- e. Always or almost always provides inadequate justification of the measures.

5. The professionalism of the reasoning of the measures (attention paid to the soundness of the measures taken, the facts of the reasoning and the persuasiveness of the legal argumentation):

- a. Always or almost always provides professional justification of the measures;
- b. Generally provides professional justification of the measures;
- c. More often than not, provides inappropriate justification of the measures;
- d. Generally provides inadequate justification of the measures;
- e. Always or almost always provides inadequate justification of the measures.

■ After evaluating all the criteria, the examiner calculates the arithmetic average and determines the final mark based on this percentage:

1. 100–91%: exceptional performance
2. 90–71%: good performance
3. 70–51%: adequate performance
4. 50–41%: below average performance
5. 40–0 %: unacceptable performance.

■ The examiner evaluates the work of the prosecutor based on the examined files in accordance with the evaluation sheet and determines the overall evaluation on the basis of the arithmetical average (0-100 %) of the evaluation for the 5 criteria of the evaluation sheet. The examiner also provides a descriptive evaluation, indicating the matters and questioned actions on which findings are based. The examiner may deviate from the arithmetic cumulative assessment by a maximum of 20 per cent, stating the reasons.

■ The prosecutor under examination may comment on the results of the assessment at the time of the evaluation or within fifteen days. The examiner assesses the comments within fifteen days and can amend their previous findings or assessment within this period. The examiner submits the results of the file examination (the evaluation sheet and descriptive evaluation) to the examined prosecutor and to the line manager of the examined prosecutor.

■ The result of the file examination is assessed by the general evaluator in conjunction with other facts and circumstances of the performance of the prosecutor to be taken into account in the evaluation.

■ While the file examination sheet focuses on some important aspects of the prosecutors' work and it can serve as the basis for a well justified opinion in relation to work performance, it might be considered to lack objectivity. Obviously, it is hard to identify fully objective and quantifiable criteria for evaluation, but the skills and a subjective opinion of the evaluator can also have a strong impact on the outcome. Furthermore, the selection of the examined cases can also influence both positively and negatively the result of the examination. Examining more complex cases can lead to a lower score, while choosing easier cases can lead to a higher score. The possibility of the examined prosecutor to suggest cases for evaluation usually works in favour of the evaluated. Unfortunately, there is no special weighing system in place to consider the different difficulties of the cases.

■ In Bulgaria, the appraisal of prosecutors is conducted using general criteria, which are common for all magistrates³¹, namely:

- ▶ Legal knowledge and practical skills, concerning its application;
- ▶ Analytical skills concerning facts having legal importance;
- ▶ Organizational skills, concerning the day-today work;
- ▶ Urgency of the acts and adherence to the disciplinary rules.

■ In order to make the evaluation procedure, based on these criteria easier there are certain reference grounds, upon which the gathering and comparison of data is carried out. Most of these reference grounds are regulated either by the JA or by the Appraisals Regulation³². They combine both quantitative and qualitative characteristics. A non-exhaustive list of the reference grounds (considering the limited volume of the present report) includes:

- ▶ Adherence to procedural terms;
- ▶ Number of annulled and number of upheld acts during control procedures;
- ▶ Results from inspections, conducted by the Inspectorate by the Supreme Judicial Council;
- ▶ Adequate, understandable and logical motivation of the issued acts;
- ▶ Previous disciplinary record or bonuses (rewards);
- ▶ Ascertainments, issued by the Ethical Committees.

■ Apart from the common criteria, using which all magistrates are appraised, there are certain specific criteria, which take into consideration the nature of the prosecutors' functions and role within the system of the judiciary, namely³³:

- ▶ Skills, concerning the planning and organization of the work, as a central and decisive figure in the pre-trial phase of the criminal procedure, respectively as a party, whose task is to represent the case for the prosecution during the trial phase;
- ▶ Adherence to the mandatory instructions, issued by a superior prosecutor;
- ▶ Ability to plan and tactically organize the work of the investigative officers during the pre-trial phase;
- ▶ Number and type of final court rulings, based on charges, pressed by the respective prosecutor; number and percentage of the upheld appeals and acts.

■ The Appraisals Regulation offers a number of even more specific **reference grounds**³⁴ upon which the gathering and comparison of data is to be carried out. They are needed in order to apply the specific appraisal criteria, mentioned above. Since these reference grounds are large in number, only the most important ones will be listed below:

- ▶ Urgency of the beginning of the investigation (when there are grounds for this) and adequacy in the management of the work of the investigative officers;
- ▶ Ability to react quickly and accordingly to situations in the courtroom;
- ▶ Ability to state and defend a position and to plead in front of the court in a clear, understandable and adequate manner;
- ▶ Ability to work in a team, while still being able to take independent and timely decisions in accordance with the law;
- ▶ Number and percentage of the issued acts in each specific field of work of the prosecution and the results of these acts.

³¹ Art. 198, para 1 of the JA.

³² Art. 198, para 2 of the JA, as well as Art. 22-26 of the Appraisals Regulation.

³³ Art. 199, para 2 of the JA.

³⁴ Art. 27 of the Appraisals Regulation.

■ All the above mentioned criteria, as well as most of the reference grounds, are also listed in the **General Appraisal Form**, which is an integral part of the Appraisals Regulation³⁵. This Form is filled in by the team that carries out the appraisal, with information that:

- ▶ Includes a thorough presentation of the career development of the subject;
- ▶ Systemizes the data and the percentages, measuring their performance;
- ▶ Suggests a particular evaluation mark for each of the criteria (both general and specific ones)
- ▶ Contains a general report, concerning the performance of the subject;
- ▶ Proposes a complex evaluation mark to the body, tasked with issuing the final result of the appraisal procedure.

■ The requirements above also determine the structure of the General Appraisal Form, which is excessively detailed and contains a total of nine parts³⁶.

■ In **Romania**, the meeting of professional competence and performance for judges and prosecutors is subject to an evaluation of efficiency, quality of activity and integrity, the obligation of continuous professional training and the completion of specialization courses that takes place every 3 years. In the case of judges and prosecutors appointed to management positions, the evaluation is also made on the manner of meeting the managerial attributions.

■ The *Regulation on the procedure for evaluating the professional activity of judges and prosecutors*, approved by the Romanian Superior Council of Magistracy³⁷, provides for the following Indicators for each of the criteria consolidated in legislation:

Indicators for evaluating professional performance for prosecutors

■ The *efficiency of the criminal investigation activity* carried out is assessed according to the following indicator: conducting the criminal investigation within a reasonable time, taking into account the complexity of the case and the volume of activity of the prosecutor. The indicator for evaluating the efficiency of the criminal investigation activity relates to the volume of activity of the prosecutor's office in the sector in which the prosecutor carries out his/her activity.

In assessing the complexity of the case, the following elements are considered:

- ▶ The difficulty of administering the evidence;
- ▶ The number of parties and witnesses;
- ▶ The number of crimes investigated;
- ▶ Their nature;
- ▶ The difficulty of the legal and factual issues to be resolved, connecting several causes as well as other specific relevant elements.

■ *The efficiency of the criminal investigation activity is assessed according to the following indicators:*

- ▶ The supervision and guidance of the police bodies in the criminal investigation activity, reflected in the periodic and rhythmic verification of the stage and quality of the criminal investigation acts performed by the police bodies and the follow-up of the fixed terms, as well as in taking the measures provided by Art. 303 para (3) of the Code of Criminal Procedure³⁸;
- ▶ Performing procedural acts and resolving cases within a reasonable time, depending on the complexity of the case and the volume of activity of the prosecutor.

³⁵ The General Appraisal Form exists as an Application of §6 of the Final Provisions of the Appraisals Regulation.

³⁶ Art. 70 of the Appraisals Regulation.

³⁷ http://legislatie.just.ro/Public/DetaliuDocumentAfis/1993317fbclid=IwAR3kXIVk9JfkmbHHyNEAfUJCI_SGI_E0JXE97MyuQ3QrM7_dzclw4zbwm2A

³⁸ Article 303. Provisions issued by the prosecutor

(3) In case of non-fulfillment or defective fulfillment, by the criminal investigation body, of the provisions given by the prosecutor, he may notify the head of the criminal investigation body, who has the obligation, within 3 days from the notification, to communicate to the prosecutor, the ordered measures, or may apply the sanction of the judicial fine for the judicial deviations provided in Art. 283 para (1) lit. a) or, as the case may be, para (4) lit. m) or may request the withdrawal of the approval provided in Art. 55 paras (4) and (5).

■ *The efficiency of the activity of participation in court hearings is assessed according to the following indicators:*

- ▶ Efficiency in motivating declared appeals, in compliance with legal and administrative deadlines.
- ▶ The operativeness of solving other work, specific to the judicial activity.

The efficiency of the activity carried out in other sectors is assessed according to the following indicator: the operativeness of solving the work, respecting the legal and administrative deadlines. The indicator for evaluating the efficiency of the activity carried out in other sectors shall relate to the volume of activity of the prosecutor in the evaluated period and to the volume of activity of the sector in which the prosecutor operates.

■ *The quality of the criminal investigation activity and of the criminal investigation supervision activity is assessed according to the following indicators:*

- ▶ Measures and solutions imputable to the prosecutor, on grounds of illegality existing at the time of taking the measure or ordering the solution by the prosecutor³⁹;
- ▶ The quality of writing and motivating the solutions, the ability to interpret the evidence, the quality of expression and the spirit of synthesis.

■ *The quality of the activity of participation in court hearings is measured by the following indicators:*

- ▶ Drawing up the hearing records and their permanent updating, exercising the active role in the court hearings and the quality of the conclusions presented in the court hearings;
- ▶ The quality of the drafting and motivation of the appeals, the accuracy of the legal reasoning and the rigor of the exposition of the facts;
- ▶ Appeals allowed to the parties on grounds of illegality, in cases where the prosecutor has not exercised the means of appeal, appeals not declared for reasons attributable to the prosecutor, withdrawn or rejected for reasons of illegality attributable to the prosecutor.

■ *The quality of work in other sectors is assessed according to the following indicators:*

- ▶ The quality of the documents drawn up, the accuracy of the reasoning and the rigor of the expression;
- ▶ Compliance with the provisions contained in laws, orders and regulations.

■ *The integrity of prosecutors is assessed according to the following indicators:*

- ▶ Number of violations of the Code of Ethics for Judges and Prosecutors, established by final decisions of the Section for Prosecutors of the Superior Council of Magistracy;
- ▶ Number of disciplinary sanctions remaining final during the assessment period; pronouncing against the evaluated prosecutor some solutions to waive the criminal investigation, to waive the application of the sentence, to postpone the application of the sentence or to convict, for which the Plenum of the Superior Council of Magistracy did not propose dismissal, under the law⁴⁰.

■ *The obligation of continuous professional training and the graduation of some specialization courses*

When analyzing the criterion of continuous professional training of prosecutors, the willingness to participate in continuing professional training programmes or other forms of professional development, participation in the professional education of prosecutors has to be considered.

³⁹ Article 13 a) of the Regulation on the procedure for evaluating the professional activity of judges and prosecutors, approved by the Romanian Superior Council of Magistracy.

⁴⁰ Art. 19 (1). The Regulation on the procedure for evaluating the professional activity of judges and prosecutors, approved by the Romanian Superior Council of Magistracy.

■ *Indicators of professional performance evaluation for prosecutors holding management positions*

The activity carried out by the prosecutors holding management positions is evaluated by the following indicators:

- ▶ Leadership and organizational skills;
- ▶ Control capacity;
- ▶ Decision-making capacity and responsibility;
- ▶ Behaviour and communication.

■ If the prosecutor is evaluated for both the executive and the management position, the evaluation report will award a single score to the criteria of “integrity” and “obligation of continuous professional training”.

■ In all the countries, with the exception of Spain, evaluation/performance appraisal is based on specific criteria which are, in principle, consolidated in legislation or regulation (or both). Different criteria are used and there is a notable difference in focus. Overall the criteria attempt to combine quantitative and qualitative approaches and attempt to capture three main elements:

- a. Professional performance of the prosecutor in quantitative and qualitative terms,
- b. Personality of the prosecutor and suitability for the post, and
- c. The ‘social’ aspects of their work, including their capacity to lead the investigation and cooperate with other actors of the criminal procedure.

■ Separate criteria are identified for those holding management positions (Germany, Portugal, Hungary, Romania, Bulgaria) in order to capture the distinct duties they have to perform in their positions. This is considered to be a positive development.

■ Quantitative criteria focus on the number of cases handled, the time spent on each case, the average time taken to handle a case, etc. Qualitative criteria attempt to capture the quality of analysis, including the capacity and skills of the prosecutor to deal with complex cases, to lead the proceedings and to effectively cooperate with the other actors of the criminal process. Romania takes into account continuous training and additional education while Greece, Portugal and Germany consider academic activities, such as publications, attendance at conferences, lectures, etc. as additional assets that indicate the prosecutor’s personal engagement and professional commitment to the job.

■ Quantitative criteria are increasingly aided by metrics and statistical data maintained by prosecution offices or other actors in the judicial systems. In Spain and Portugal, quantitative data is used to monitor the performance of prosecution offices and case flow and this input is used in order to plan the inspections due to take place within a certain period of time but also to identify issues of efficiency. Qualitative aspects of the work are more difficult to capture and rely more on information collected through scrutiny of samples of work and interaction with superiors and, on limited occasions, with the inspected party.

■ In **France**, the evaluation relies on general and specific criteria, the latter relevant to certain functions.

- ▶ With regard to **general criteria**, the evaluation focuses on the strength of character and self-control, the ability to listen and to exchange ideas, the sense of responsibility, the ability to make decisions, to organize and to meet deadlines, the ability to manage situations in emergency, work efficiency, the ability to adapt, the spirit of initiative, respect for those subject to trial, availability and professional commitment, the ability to implement the means necessary to achieve the objectives set, the quality of relations with other judges and staff, the quality of relations with other professions and institutions, the ability to exercise authority and represent the judicial institution.
- ▶ With regard to **legal/judicial criteria**, the following items are assessed: the extent of legal knowledge, the ability to use and update legal knowledge, the ability to analyze and synthesize, the quality of written and oral expression, and the mastery of new information and communication technologies.
- ▶ **Specific criteria** for prosecutors include the ability to manage a department, the ability to implement penal policies, the ability to be a part of the statutory hierarchical relationship, the ability to be a part of a team relationship, the ability to lead a project, and the ability to make a request and to debate in court.

■ For each of these criteria, the evaluator will choose a rating ranging from insufficient to exceptional, including satisfactory, very good, and excellent. If the prosecutor is a member of a specialized international court, the national financial prosecutor's office, or the national anti-terrorist prosecutor's office, the evaluation procedure will take the greatest possible account of the specific nature of the cases handled by them. The evaluator will analyze, in an objective and descriptive manner, the activity of the prosecutor over the period concerned, to assess their ability to master complex procedures, before formulating his or her final opinion. It is necessary to specify that the evaluation of the prosecutors will never refer to the result obtained at the hearing in terms of quantum of conviction. This is only because the prosecutor's freedom of speech at the hearing is enshrined in law, and the final decision by the trial court does not depend solely on the quality of the prosecutor's submissions.

■ During the interviews for taking up an office (which are compulsory for every new assignment), or during transfers to new departments, as well as during evaluation interviews, objectives may be set by the head of the public prosecutor's office or the public prosecutor: for example, a deadline for settling a particular overdue case, a fortiori if it is a particularly complex case; the processing of a stock of proceedings within a set time limit; the mobilization of the prosecutor on a specific hearing of several days or several weeks; the realization of a specific project or the organization of a service etc...

Portugal	Germany	Hungary	Spain	Greece
Capacity to exercise the profession	Professional competence	Meeting deadlines	N/A	Ethos, vigour and character,
Technical preparation	Personal competence	Identifying legal problems relevant to the adjudication of cases and taking the necessary measures		Scientific knowledge,
Adaptation to the service.	Social competence	Completeness of fact-finding		Judgement and perception,
	Leadership competence	Accuracy of legal qualifications		Diligence, industriousness and professional (quantitative and qualitative) performance, and
		Professionalism of the reasoning of the measures		Capacity to deliver justice, skills in laying out judgements, and in directing proceedings
				Conduct in particular in the courtroom and social performance.
				For prosecutors:
				► Capacity to deliver justice pre-trial and in trial;
				► Capacity to issue proposals and orders and capacity for oral expression.

Romania	Bulgaria	France	Austria
Effectiveness	<i>General criteria:</i>	General criteria	N/A
Quality of activity	▶ legal knowledge and practical skills, concerning its appliance;	Legal/juridical criteria	
Integrity	▶ analytical skills concerning facts having legal importance;	Specific criteria	
Obligation to undergo continuous training and to graduate specialization courses.	▶ organizational skills, concerning the day-today work;		
	▶ urgency of the acts and adherence to the disciplinary rules.		
	<i>Specific criteria:</i>		
	▶ Skills, concerning the planning and organization of the work		
	▶ Adherence to the mandatory instructions issued by a superior prosecutor;		
	▶ Ability to plan and tactically organize the work of the investigative officers during the pre-trial phase;		
	▶ Number and type of final court rulings, based on charges, pressed by the respective prosecutor; number and percentage of the upheld appeals and acts.		

Table 2: Formal criteria used in the professional appraisal of prosecutors

■ The **professional preparedness** and/or performance of prosecutors appears to lie at the heart of the inspection/ performance appraisal. However, both more and less prescriptive approaches are observed. In **Greece**, only general criteria are identified (for example, diligence, industriousness and professional performance, capacity to deliver justice, skills in laying our judgements) without further specification, a fact that is considered to lead to subjectivity of the inspections, lack of consistency and to significant variability in the way that the criteria are applied.

■ In **Portugal**, the related Regulations provide a detailed specification of the issues to be considered under each of the three main inspection criteria. At the other end of the spectrum, **Romania** has a very detailed set of indicators which are to be taken into account in the appraisal with a focus on the efficiency of the criminal investigation, participation in court hearings, other sectors, supervision of criminal investigation supervision activity, continuous professional training.

■ On the other hand, **Hungary** has a limited set of evaluation criteria with a specific focus on meeting deadlines, identifying legal problems, completeness of fact-finding, accuracy of legal qualifications and professionalism of the reasoning of the measures.

The full range of options offered by the systems examined in the study is presented in the following table.

Germany	Portugal	Greece
<p><i>Professional competence:</i></p> <ul style="list-style-type: none"> ▶ Professional understanding of the job as a public prosecutor ▶ Ability to express one's thoughts clearly, concisely and understandably in oral and written form ▶ Decisiveness (speed in making decisions and efficiently handling cases without unnecessary doubts and ability to take fast and efficient action) ▶ Awareness of duties and responsibilities ▶ Self-organisation ▶ Participation in working groups, coaching, preparation and writing of manuals, articles, publications, etc. ▶ Appropriate behaviour in office (compliance) ▶ Knowledge of legislation, theory of law, methods of application of law, etc. ▶ Professional readiness for new tasks, for example, to change specialization or to work on additional tasks on a voluntary basis 	<p><i>Technical and functional preparation:</i></p> <ul style="list-style-type: none"> ▶ Capacity and mode of performance of the function, namely efficiency of means, effectiveness of the decision and in obtaining consensus; ▶ Ability to gather and appraise factual matters and legal situations ▶ Ability to synthesise and resolve issues, through clarity and simplicity of and argumentative discourse, by the practical and legal sense and by the weighting and knowledge revealed in decisions and other procedural interventions; ▶ Authorship of published legal works; and ▶ Relevant interventions in public events, namely at conferences and colloquia. 	<p>Scientific knowledge</p> <p>Diligence, industriousness and professional (quantitative and qualitative) performance, and</p> <p>Capacity to deliver justice, skills in laying out judgements, and in directing proceedings</p> <p><i>Specifically for prosecutors:</i></p> <ul style="list-style-type: none"> ▶ Capacity to deliver justice pre-trial and in trial, ▶ Capacity to issue proposals and orders and to express themselves orally

Romania	Hungary	France
<p>Indicators for evaluating professional performance for prosecutors</p> <p><i>Indicators for efficiency of the criminal investigation:</i></p> <ul style="list-style-type: none"> ▶ Conducting the criminal investigation within a reasonable time ▶ Complexity of the case and the volume of activity of the prosecutor ▶ The indicator relates to the volume of activity of the prosecutor's office in the sector in which the prosecutor carries out his activity <p><i>The efficiency of the criminal investigation activity is assessed according to the following indicators:</i></p> <ul style="list-style-type: none"> ▶ The supervision and guidance of the police bodies in the criminal investigation activity, reflected in the periodic and rhythmic verification of the stage and quality of the criminal investigation acts performed by the police bodies and the follow-up of the fixed terms ▶ Performing procedural acts and resolving cases within a reasonable time, depending on the complexity of the case and the volume of activity of the prosecutor <p><i>Indicators for efficiency of the activity of participation in court hearings:</i></p> <ul style="list-style-type: none"> ▶ Efficiency in motivating declared appeals, in compliance with legal and administrative deadlines ▶ The operativeness of solving other work, specific to the judicial activity <p><i>Indicators for efficiency of activity in other sectors:</i></p> <ul style="list-style-type: none"> ▶ The operativeness of solving the work, respecting the legal and administrative deadlines ▶ The indicator for evaluating the efficiency of the activity carried out in other sectors shall relate to the volume of activity of the prosecutor in the evaluated period and to the volume of activity of the sector in which the prosecutor operates <p><i>Indicators for quality of the criminal investigation activity and of the criminal investigation supervision activity:</i></p> <ul style="list-style-type: none"> ▶ Measures and solutions imputable to the prosecutor, on grounds of illegality existing at the time of taking the measure or ordering the solution by the prosecutor ▶ The quality of writing and motivating the solutions, the ability to interpret the evidence, the quality of expression and the spirit of synthesis <p><i>Indicators for quality of the activity of participation in court hearings:</i></p> <ul style="list-style-type: none"> ▶ Drawing up the hearing records and their permanent updating, exercising the active role in the court hearings and the quality of the conclusions presented at the court hearings ▶ The quality of the drafting and motivation of the appeals, the accuracy of the legal reasoning and the rigor of the exposition of the facts ▶ Appeals allowed to the parties on grounds of illegality, in cases where the prosecutor has not exercised the means of appeal, appeals not declared for reasons attributable to the prosecutor, withdrawn or rejected for reasons of illegality attributable to the prosecutor <p><i>Indicators on quality of work in other sectors:</i></p> <ul style="list-style-type: none"> ▶ The quality of the documents drawn up, the accuracy of the reasoning and the rigor of the expression ▶ Compliance with the provisions contained in laws, orders and regulations <p><i>Indicator for the obligation of continuous professional training and the graduation of some specialization courses:</i></p> <ul style="list-style-type: none"> ▶ Willingness to participate in continuing professional training programmes or other forms of professional development and participation in the professional education of prosecutors 	<p>Meeting deadlines</p> <p>Identifying legal problems relevant to the adjudication of cases and taking the necessary measures :</p> <p>Completeness of fact-finding</p> <p>Accuracy of legal qualifications</p> <p>The professionalism of the reasoning of the measures</p>	<p><i>General criteria:</i></p> <ul style="list-style-type: none"> ▶ Strength of character and self-control ▶ Ability to listen ▶ Sense of responsibility ▶ Ability to make decisions ▶ meet deadlines ▶ manage situations in emergency ▶ Work efficiency ▶ Ability to adapt ▶ Respect for those subject to trial ▶ Availability and professional commitment ▶ Quality of relations with other judges and staff; ▶ The quality of relations with other professions and institutions ▶ Ability to exercise authority and represent the judicial institution <p><i>Legal/judicial criteria:</i></p> <ul style="list-style-type: none"> ▶ Legal knowledge ▶ Ability to analyze and synthesize ▶ Quality of written and oral expression ▶ Mastery of new information and communication technologies <p><i>Specific criteria:</i></p> <ul style="list-style-type: none"> ▶ Ability to manage a department ▶ Ability to implement penal policies ▶ Ability to be a part of the statutory hierarchical relationship ▶ Ability to be a part of a team relationship ▶ Ability to lead a project ▶ Ability to make a request and to debate in court

Table 3: Criteria related to professional competence/performance of prosecutors.

■ The second set of criteria attempts to capture the **personal features of the prosecutor**, their capacity to exercise the profession, their character and integrity. This is expressed as personal competence in **Germany**, capacity to exercise the profession in **Portugal**, ethos and character in **Greece** and integrity in **Romania**. These criteria consider the issues, such as discipline, ability to take initiatives, ability to adapt and react to stress (**Germany**), reasonability and sense of justice, relationship with the other judicial operators, presence and resourcefulness in public (**Portugal**) or violations of the Code of Ethics and disciplinary sanctions (**Romania**).

The detailed sub-criteria considered are included in the table below.

Germany	Portugal	Greece	Romania	Hungary	Spain	France
<p><i>Personal competence:</i></p> <ul style="list-style-type: none"> ▶ Self-criticism ▶ Ability to be agile and to undertake initiative ▶ Discipline ▶ Ability to react quickly to changing circumstances of the case ▶ Commitment to professional development ▶ Operability ▶ Stress resistance and health status ▶ Leadership potential and leadership capacity 	<p><i>Capacity to exercise the profession:</i></p> <ul style="list-style-type: none"> ▶ Suitability and politeness ▶ Impartiality ▶ Good sense, reasonability and sense of justice ▶ Normal relationship with the other judicial operators and procedural intervening parties; ▶ Functional cooperation with criminal police bodies and other supporting entities; ▶ Collaboration and contribution in the magistrates' training system; ▶ Presence and resourcefulness in public; and ▶ Simplification of procedural acts 	<p>Ethos, vigour and character</p>	<p><i>The integrity of prosecutors is assessed according to the following indicator:</i></p> <ul style="list-style-type: none"> ▶ Number of violations of the Code of Ethics for Judges and Prosecutors, established by final decisions of the Section for Prosecutors of the Superior Council of Magistracy ▶ Number of disciplinary sanctions remaining final during the assessment period ▶ Pronouncing against the evaluated prosecutor some solutions to waive the criminal investigation ▶ To waive the application of the sentence ▶ to postpone the application of the sentence or to convict, for which the Plenum of the Superior Council of Magistracy did not propose dismissal 	N/A	N/A	<p><i>General criteria:</i></p> <ul style="list-style-type: none"> ▶ Strength of character and self-control ▶ ability to listen ▶ Sense of responsibility ▶ Ability to make decisions ▶ Respect for those subject to trial ▶ Availability and professional commitment ▶ Quality of relations with other judges and staff ▶ The quality of relations with other professions and institutions ▶ Ability to exercise authority and represent the judicial institution <p><i>Specific criteria:</i></p> <ul style="list-style-type: none"> ▶ Ability to manage a department; ▶ Ability to be part of a team relationship

Table 4: Evaluation/performance appraisal criteria related to the person of the prosecutor.

Another set of criteria relates to the **'social' aspects of the work of the prosecutor** and their cooperation with the other actors of the criminal process. These are considered social competences in Germany, while Greece pays attention to conduct inside and outside the courtroom. Some of these aspects are also included under the criteria previously explored.

Germany	Portugal	Greece	Romania	Hungary	Spain	France	Austria
<p><i>Socijalne kompetencije:</i></p> <ul style="list-style-type: none"> ▶ Personal behaviour ▶ The relationship of the public prosecutor with colleagues, superiors and subordinates ▶ Communication skills ▶ Ability to manage conflicts 	<p><i>Adaptation to the service takes into consideration the following:</i></p> <ul style="list-style-type: none"> ▶ Working conditions ▶ Volume and complexity of the service ▶ Productivity, efficiency and innovation ▶ Organisation, management and method ▶ Observance of the deadlines defined for the practice of procedural acts, considering the existing procedural volume and the means and resources available ▶ Proficiency in the use of official procedural management platforms and other databases ▶ Punctuality in complying with and attending the scheduled acts ▶ Zeal and dedication and ▶ Level of compliance with the objectives set 	<p>Conduct in the courtroom</p> <p>Social conduct</p>	N/A	N/A	N/A	<p>Respect for those subject to trial</p> <p>Complaints can be made against prosecutors by citizens</p> <p>Quality of relations with other judges and staff</p> <p>Quality of relations with other professions and institutions</p> <p>Ability to exercise authority and represent the judicial institution</p> <p>Ability to manage a department</p> <p>Ability to be part of the statutory hierarchical relationship</p> <p>Ability to be part of a team relationship</p> <p>Ability to lead a project</p>	N/A

Table 5: Criteria related to the 'social' aspects of the work of the prosecutor

Another set of performance appraisal and evaluation criteria relates to prosecutors who exercise administrative/managerial duties. This is reflected in the performance appraisal systems in almost all the countries (Germany, Portugal, Romania, Hungary) with the exception of Greece. The important duties of those holding managerial positions within the prosecution require separate criteria that relate to leadership, administrative capacity, organisational skills. The detailed issues considered under this set of criteria are presented in the table below.

Germany	Portugal	Greece	Romania	Hungary	Spain	Bulgaria	Austria	France
Leadership potential and leadership capacity	Leadership qualities	N/A	Indicators of professional performance evaluation for prosecutors holding management positions	Yes	No	Yes	N/A	N/A
Role model and credibility	Efficiency in directing, coordinating, guiding and supervising the functions of the Public Prosecutor's Office Level of hierarchical intervention of a statutory or procedural nature and Initiative in the allocation of cases, namely when justified by the complexity or normal functioning of the service		<i>The activity carried out by the prosecutors holding management positions is evaluated by the following indicators:</i>					
Ability to lead cooperatively			► Leadership and organizational skills					
Ability to motivate employees			► Control capacity					
Ability to manage conflict			► Decision-making capacity and responsibility					
Persuasiveness			► Behaviour and communication					
Assertiveness			If the prosecutor is evaluated for both the executive and the management position, the evaluation report will award a single score to the criteria of "integrity" and "obligation of continuous professional training"					
Ability to lead meetings and negotiations								
Excellent planning skills								
Ability to deal with the media competently								
Ability and willingness to represent in public, to present judicial issues in speeches and addresses								
Ability to delegate appropriately								

Table 6: Criteria for professional appraisal of prosecutors with managerial/administrative duties

1.4. Data collection methods for performance appraisal of prosecutors

Performance appraisal is a sensitive issue, especially for functions as unique as those performed by judges and prosecutors. The judicial profession has intricacies that need to be reflected both in the criteria used for appraisal purposes and also with regard to the method and ways in which data and information can be collected to provide input into an objective appraisal. This section presents the experience of the countries included in the study.

In **Portugal**, the inspector can collect information on all aspects of the inspection through biographical and disciplinary records, information and data in the possession of authorities, files, books and reports and documents, statistics on procedural movement, strategic objectives of the district, department or service and visits to the court, service or department premises. The inspection can also use a) Information provided by the superiors of the inspected person in relation to the way in which they perform their functions b) Work presented by the inspected party, up to a maximum of ten, c) A curricular note by the inspected party describing their career, activities, achievements, training, etc, and d) A memorandum drawn up by the inspected party covering the period of time that is inspected.

In **Greece**, inspectors are expected to examine the entirety of the work of the judges and prosecutors and the legal and factual parts of the cases as well as responses to the arguments of the parties. They can conduct every necessary investigation and research, have personal contact with the inspected persons and request the opinion of their superiors where they serve. Inspectors are expected to control decisions on postponement of cases and assess whether these might lead to disciplinary offences. The inspected party can propose a number of cases to be taken into account in the inspection.

In **Hungary**, the examiner selects at least five cases per case type or group of cases, totalling thirty cases managed by the prosecutor in the last year and completed before ordering the file examination. The examiner obtains:

- ▶ Files (in-house files and investigation files as necessary) of the selected cases;
- ▶ Findings and statements of the audits specifically evaluating the work of the investigator,
- ▶ Statistics relating to the caseload and case closures of the prosecutor; and
- ▶ Statistics on time management of the prosecutor under examination.

■ The investigated prosecutor may request a file review of up to 5 additional cases of his/her choice. The number of examined cases may be reduced if the prosecutor has previously been rated higher than eligible and the examined files do not hint to lower evaluation. The number of cases examined shall not be less than fifteen. The file examination shall also include cases in which a funded complaint or objection was made during the period under examination based on erroneous professional position or omission. If the investigator deems it necessary, they may consult the investigated prosecutor and their superior. The investigated prosecutor can also apply for being heard.

■ In **Bulgaria**, the appraisal is expected to guarantee objectivity, equal treatment and a just career growth in accordance with the respective prosecutor's professional qualities. In order to respond to these requirements, the appraisal procedure is based on objective and comparable (including statistical) data, which is labelled as reference grounds⁴¹ and includes a combination of **quantitative and qualitative methods**⁴².

■ **The quantitative method** primarily includes the comparison of basic statistic data about the number and type of solved cases and issued acts by the respective prosecutor during the analyzed period. In spite of the fact that these are simply numbers, they are divided into more than 50 categories, which cover all the possible aspects of a prosecutor's work⁴³. Taking into consideration the specialization of the prosecutor, as well as the respective level, on which they serve, their work is not expected to be so diverse, as to fall within all the possible categories. However, it is clear that the intent is to systemize and analyze the statistical data with regard to the type, content and presumed complexity of each respective case or act.

■ **The qualitative methods**, on the other hand, could be presented as a combination of different sub-methods.

⁴¹ Chapter IV of the Appraisals Regulation..

⁴² Chapter V of the Appraisals Regulation.

⁴³ They are listed in Art. 40 of the Appraisals Regulation.

■ First of all, there is the **qualitative evaluation in the narrow sense of the phrase**⁴⁴. It analyzes the relative percentage of acts, which gives a general idea of the legality of the acts, the success rate of the accusations and the adequacy of the decisions, made by the evaluated prosecutor. Thus, for instance, the law specifically dictates that there must be a comparison between:

- ▶ The percentage of acts, annulled *ex officio*, by a superior prosecutor, or by the court, in relation to the total number of appealed or inspected acts;
- ▶ The percentage of acquittals in relation to the total number of persons charged with a criminal accusation;
- ▶ The percentage of appeals, issued by the respective prosecutor, which have been upheld by the upper court, in relation to the total number of issued appeals.

■ Secondly, the qualitative methods include the evaluation of a prosecutor's performance, done **firsthand by the official who carries out the appraisal**⁴⁵, as well as the firsthand **analysis of legitimate official reports, concerning the work of the subject of the appraisal**⁴⁶. The idea behind these methods is to guarantee the inclusion of *vis-à-vis* impression and other official sources as a part of the data, upon which the appraisal is based. These other official sources primarily include the reports, issued by other officials, who have the right to carry out inspections and revisions, concerning the performance of the respective prosecutor, or contain data about his/her qualifications – such as the Inspectorate of the Supreme Judicial Council, the superior prosecutor's offices, the Ethic Committees, the National Institute of Justice, etc.

■ This overview shows **that most countries aim to collect quantitative and qualitative material as sources of information for appraisals**. Quantitative information includes statistical and other data on case flows. With the advancement of the use of IT in judicial systems, quantitative aspects of the work of prosecution officers and case flow are becoming increasingly more accessible. However, qualitative aspects of judicial work are more difficult to capture in an objective way. This places important emphasis a) On the skills, capacity and experience of those conducting the inspections/performance appraisal, and b) The material and information on which they will base their appraisal.

■ With regard to the latter, the study reveals that, in the countries included in the study, there appears to be a heavy reliance on written materials including smaller or larger samples of cases, including cases proposed by the inspected party, and information collected from superiors or other actors in the criminal procedure working with the prosecutor under inspection. Less emphasis is placed on interaction with the inspected party through interviews or discussions. Interviews with the inspected parties, although formally provided for, do not appear to be a regular data collection method for appraisal purposes. The same can be said on the monitoring of performance of inspected parties in court, which is not often relied upon as a source of information for the appraisal. More innovative and reflective aspects identified include, for example, in the case of Romania, the requirement for self-evaluation of the inspected party. This is a good way for the inspected party to bring forward information but also to demonstrate their ability for self-criticism and reflection and to highlight individualised challenges that they might be facing in their work.

■ To conclude, performance appraisals of prosecutors are in practice rather formal and rigid, relying on rigid procedures, strict criteria and written materials. While this is by no means a negative thing, it does not appear to capitalise on the benefits of more open and reflective aspects of appraisals as a tool to promote the professional development of prosecutors, including through self-evaluation, and to emphasise the benefits of feedback, dialogue with peers and the transfer of knowledge from more experienced peers.

■ In France, every year, a circular is issued from the Directorate of Judicial Services of the Ministry of Justice to remind the heads of the evaluating courts of the requirements of this evaluation procedure, drawing their attention to the need to use the term "exceptional" only in an extremely restrictive manner. A model of the evaluation forms is attached to this note.

■ Prosecutors individually fill in a **report describing their activities** during the reference year or two to which the evaluation relates. This description is both quantitative and qualitative, and allows to highlight the prosecutor's professional environment, the constraints to which they have been subjected (vacancies, registry problems, etc.), but

⁴⁴ Part II of Chapter V of the Appraisals Regulation (Art. 42).

⁴⁵ Art. 44 of the Appraisals Regulation.

⁴⁶ Art. 45 of the Appraisals Regulation.

also the specificity of the procedures handled, which have required several days or even weeks of processing, in order to draft an indictment at the end of a judicial investigation, or a criminal hearing that has lasted several days or even weeks.

■ In the description of their activity, prosecutors will need to quantify the number of procedures handled, the number in which they have been led to support the accusation. It is obvious that, for cases of particular difficulty, such as very complex economic or financial cases, organized crime, etc., the evaluation of the weight of each case in each procedure will be assessed objectively by the member of the public prosecutor's office and submitted to the control of the evaluator (number of volumes of the file, number of accused persons, length of the hearing, etc.).

■ The missions assigned to the public prosecutor in civil and commercial matters will justify a specific description, especially because they are often under-valued or under-estimated by the evaluators.

■ This exhaustive description of the activity will be discussed during the **evaluation interview**, which is undoubtedly the high point of this procedure. During this interview, which is conducted in the public prosecutor's offices by the head of the public prosecutor's office, and in the public prosecutor's office by the public prosecutor themselves (who will draw up an exhaustive report on this interview), the conditions under which the magistrate concerned carries out his/her duties will be discussed, as well as the quantitative and qualitative assessment of the activities carried out since the last assessment, the quantitative and qualitative objectives, the training courses followed and desired, the duties or responsibilities envisaged for the future...

■ Then the head of the prosecution service will write the proposed assessments (comments on the activity report, skills deployed, potential identified, etc.) and analytical assessments (qualifiers chosen for each heading). The final assessment will be drawn up by the public prosecutor, after having gathered any observations from the magistrate concerned. If necessary, the magistrate may appeal against this assessment to the promotion committee, which is made up of elected representatives of the various grades of magistrates (about ten appeals per year).

■ This assessment form and its appendices will be filed in the magistrate's personal administrative file, kept at the Ministry of Justice, which can be accessed remotely and dematerialised at any time by the magistrate concerned, and of course by the *Conseil supérieur de la magistrature*.

1.5. The result and the consequences of professional appraisal/evaluation

Performance appraisal is a purposive exercise that results in the ‘classification’ of the work of the prosecutor. How are prosecutors classified as a result of their professional appraisal? And what are the consequences of this appraisal, if any?

Most countries included in the study use a qualitative classification of the work of prosecutors ranging from three to five grades (excellent to unsatisfactory). This classification needs to be fully justified by the content of the individualised appraisal report. In **Hungary**, appraisal results in a quantitative mark while, in **Bulgaria**, the final (qualitative) grade results from an algorithm and mathematical formula provided for in the legislation. All the countries appear to use standardised templates for appraisal reports.

Germany	Portugal	Greece	Romania
<p>The evaluation statement must contain a grade:</p> <ul style="list-style-type: none"> ▶ Excellent ▶ Considerably above average ▶ Above average ▶ Mediocre ▶ Below average <p>Except for the top grade, it is also permissible to indicate intermediate levels within these grades to stress certain ranges.</p>	<p>Classifications:</p> <ul style="list-style-type: none"> ▶ Very Good ▶ Good with Distinction ▶ Good ▶ Satisfactory ▶ Mediocre <p>The first two are merit classifications and are justified by exceptional performance qualitatively and quantitatively or clearly above of the average and sustained over time; special qualities of research, initiative and/or innovation; special management, organizational and methodological qualities, unusual speed, productivity and efficiency in the execution of the service, without prejudice to quality; service in order and on time, or with justified delays when particularly voluminous or complex; adequate use of simplified and consensual instruments in proceedings.</p>	<p>Four stage grading:</p> <ul style="list-style-type: none"> ▶ Excellent ▶ Very good ▶ Good and ▶ Insufficient <p>On ethos:</p> <ul style="list-style-type: none"> ▶ Adequate ▶ Not adequate 	<p>Rating as:</p> <ul style="list-style-type: none"> ▶ Very good ▶ Good ▶ Satisfactory or ▶ Unsatisfactory

Hungary	Bulgaria	France	Austria
<p>Assessment on the basis of five grades on a 0-100 % scale. The arithmetic average determines the final mark:</p> <ul style="list-style-type: none"> ▶ 100–91%: exceptional performance ▶ 90–71%: good performance ▶ 70–51%: adequate performance ▶ 50–41%: performance below average ▶ 40–0%: unacceptable performance 	<p>The complex evaluation mark can be positive or negative.</p> <p>The positive mark has the following three grades:</p> <ul style="list-style-type: none"> ▶ Very good ▶ Good ▶ Satisfactory <p>The algorithm that leads to the evaluation mark is regulated in Chapter VIII of the Appraisals Regulation</p> <p>The complex evaluation mark is an automated sequence of the grade scale, used for the numerical evaluation. Each of the many criteria is evaluated with a numerical mark and each has a different importance towards the final result, which is calculated through the use of a mathematical formula, common for all the appraisals.</p>	<p>The evaluator will choose a rating ranging from insufficient to exceptional, including satisfactory, very good, and excellent.</p>	<p>N/A</p>

Table 7 Ratings resulting from appraisals

■ Appraisals are important as a professional development tool for prosecutors but they also have broader consequences related to promotion, career development and, often, pay.

■ For one matter, appraisals of newly appointed prosecutors bear consequences for their career, especially when these are not good. To name one example, in **Portugal**, the first performance assessment concludes with a positive or negative evaluation of performance, proposing, in the case of a negative evaluation, specific corrective measures. A positive evaluation demonstrates adequate compliance with the duties of the post. This will be further taken up and, if the inspected person does not improve, might result in their discharge.

■ Regular appraisals are connected to or play a role in promotions, with minor exceptions. In Germany, Portugal and Romania, for example, highest merit appraisals are a prerequisite for presenting a candidature for specialised positions or promotions. However, this raises an important issue with regard to the **credibility and the objectivity of the appraisals**. For example, in **Greece**, the majority of those inspected are rated excellent or very good and end up being promoted on the basis of seniority rather than merit. In **Bulgaria**, a review of more than 10 randomly selected and publicly available sessions of the PC-SJC from 2019-2021⁴⁷, including decisions concerning the appraisal

⁴⁷ <http://www.vss.justice.bg/page/view/10203>

procedures for (more than a hundred) prosecutors reveals that, in most of the cases, the appraisal has ended with the highest possible complex evaluation mark – „Very good“. There has not been a single case, in which the PC-SJC issued a negative evaluation mark. No such case (in the past three years) has become known through publicly announced information either. In summary, the analysis of the randomly selected protocols shows that positive evaluation marks, different from „Very good“, are a relative rarity (under 10% of the reviewed cases). Appraisals are meant to play an important role but this presupposes that they are objective and reflective of the reality, rather than a superficial and light touch approach governed by the principles of collegiality.

■ Negative appraisals also have important consequences for the career of the prosecutor. To name one example, in **Romania**, prosecutors who receive a rating as “unsatisfactory” or “satisfactory” for two consecutive evaluations, have to attend special courses during three to six months at the National Institute of Magistracy and take a final exam. Prosecutors whose performance is considered “unsatisfactory” for two consecutive evaluations, or who have not succeeded in the mentioned examination are released from office for professional incapacity.

■ In **France**, the objective of the evaluation of public prosecutors serves multiple purposes: to offer to prosecutors means to progress in competence and expertise, to support them to assume more important responsibilities later on, and to provide to the services of the Ministry of Justice in charge of the proposals of appointment or promotion, and the Superior Council of the Judiciary, objective and reliable information to make the best choice among the candidates for a position, especially with regard to specialized functions (economic and financial, terrorism, organized crime...)

Germany	Portugal	Greece	Romania	Hungary	Spain	Bulgaria	France	Austria
<p>If the evaluation is carried out in view of a desired promotion, the final evaluation statement must also contain a prognosis of the candidate's eligibility for the desired position:</p> <ul style="list-style-type: none"> ▶ Excellently suited ▶ Very well suited ▶ Well suited ▶ Suited ▶ Not suited 	<p>As a result of the inspection, classifications can be awarded and these play a role for promotions and applications to specialised posts and, in combination with seniority, on the level of pay of the prosecutors in the long term</p>	<p>Yes - Reports conclude on whether one is worthy of promotion to the next grade</p>	<p>All promotions take place through exam</p> <p>But only prosecutors rated “very good” in the last evaluation may attend a promotion exam for a position in the immediately superior prosecutor's office</p>	<p>Yes</p>	<p>Yes</p>	<p>Yes</p>	<p>Yes</p>	<p>Yes</p>

Table 8 Connection of performance appraisals to promotions

1.6. Bodies and procedures for the evaluation and performance appraisal of prosecutors

Evaluation and performance appraisal within the judiciary are sensitive issues. Beyond the criteria and the process that can ensure fairness and transparency, it is also important to ensure that the bodies involved in this process have safeguards of objectivity, specialisation and expertise to conduct the specialised tasks of appraising the performance of prosecutors. The quality of appraisal and evaluation depends, to an important extent, on the bodies and the individuals involved in conducting it.

■ The countries included in this study demonstrate a broad array of options with regard to the organisation and the allocation of competencies to bodies in relation to performance appraisals for prosecutors.

■ One model relates to the **conducting of appraisals by permanent bodies/authorities**, whose mandate includes conducting inspections.

■ In **Portugal**, the body responsible for inspecting prosecutors is the Inspection of the Public Prosecution Service provided for in the Estatuto do Ministério Público⁴⁸. The **Inspectorate of Public Prosecutions** is attached to the Supreme Judicial Council of the Public Prosecutor's Office and exercises functions of assessment, auditing and inspection of the operation of the bodies of the Public Prosecutor's Office and of the respective secretariats and assessment of the merit and discipline of public prosecutors. Its mandate includes, among others the duty to:

- ▶ Inspect and assess the activity and functioning of the bodies of the Public Prosecutor's Office and respective secretariats;
- ▶ Inspect the activity of Public Prosecutors with a view to knowing their performance and assessing their merit by the competent bodies
- ▶ Directing and instructing disciplinary proceedings, as well as investigations, inquiries and other procedures initiated in the bodies of the Public Prosecution Service and respective secretariats
- ▶ Propose the application of preventive suspension, formulating charges in disciplinary proceedings and proposing the opening of proceedings in the other procedural forms
- ▶ Carry out inspections as determined by the Prosecutor General in the exercise of the powers provided for in Article 19(2)(l) and others provided for by law
- ▶ Identify measures to improve the operation of the Prosecutor's Office, including good practices in procedural management, specific training needs and technological support solutions, providing the Attorney General's Office with elements for improving and standardizing procedures
- ▶ Provide the Superior Council of the Public Prosecutor's Office, through the Attorney General, with information on the status, needs and deficiencies of the services, to enable it to take measures in areas within its competence or to propose to the member of the Government responsible for the area of justice the measures that require the intervention of the Government
- ▶ Communicate to the Superior Council of the Public Prosecution Service, through the Prosecutor-General, all situations of apparent incapacity or disability, or unsuitability for service by public prosecutors.

■ The Inspectorate of Public Prosecutions is composed of public prosecutors. The Inspectorate is comprised of inspectors specialized in specific areas and inspections are carried out by inspectors who have performed effective functions in the areas of jurisdiction under inspection.

■ Inspections aim to collect information about the service and merit of public prosecutors, as well as inquiries and disciplinary proceedings, may not be carried out by inspectors of a lower rank or seniority than those under inspection. If there is no Inspector under the conditions referred to in the preceding paragraph, the Superior Council of the Public Prosecutor's Office may appoint, with its consent, a Deputy Prosecutor-General, even if retired. Inspectors are assisted by inspection secretaries. At any stage of the procedure, the Prosecutor-General may designate experts to provide technical collaboration as may be necessary during the course of the inspection.

⁴⁸ Lei n.º 68/2019, Estatuto do Ministério Público, Diário da República n.º 163/2019, Série I de 2019-08-27, Consolidado, Subsecção II, Articles 39 – 42.

■ The Superior Council of the Public Prosecutor's Office appoints a coordinating inspector to coordinate the inspection service. Tasks include:

- ▶ Collaboration in the preparation of the annual plan of inspections;
- ▶ Presenting, to the Superior Council of the Public Prosecutor's Office, annually, through the Attorney General, a report on the activity of the Inspectorate
- ▶ Presenting, to the High Council of the Public Prosecutor's Office, through the Attorney General, proposals for improving the Inspectorate and its regulations, as well as proposals for training inspectors and magistrates of the Public Prosecutor's Office
- ▶ Ensuring coordination with the inspection services of the Supreme Judicial Council and the Council of Justice officials
- ▶ Proposing, to the Superior Council of the Public Prosecutor's Office, through the Attorney General, measures aimed at standardizing inspection and evaluation criteria
- ▶ Proposing, through the Attorney General, appropriate measures for the systematic processing of management indicators and other relevant information on the activity of the Public Prosecutor's Office to the High Council of the Public Prosecutor's Office.

■ In **Spain**, the General Prosecutor's Office comprises the Prosecution Inspection Bureau⁴⁹. Even though individualised evaluations are not conducted in the Spanish system, the Prosecution Inspection Bureau is a permanent body within the General Prosecutor's Office that performs tasks that can be classified into four main areas:

- ▶ Inspection tasks before any prosecutorial bodies. This inspection work includes the Public Prosecutor's Offices of the Autonomous Communities, which in turn carry out activities of the same nature with respect to the prosecutorial bodies of the autonomous territory.
- ▶ Manages, to a significant extent, the professional status of prosecutors, whose governmental life sometimes presents particularly controversial aspects, by reporting on claims that sometimes end up before the Attorney General of the State and other times before the Ministry of Justice.
- ▶ Has disciplinary powers, since it is the responsibility of the Inspection Bureau to hear complaints that may be filed against prosecutors. The Bureau formulates the proposals for the opening of disciplinary proceedings to the State Prosecutor General.
- ▶ Is a support body of the Prosecutorial Council, to which it provides the background information and reports necessary to document and substantiate many of its proposals, keeping custody of the Council's documentation and archives⁵⁰

■ Inspection visits to prosecutor's offices are one of the instruments that allow for a better understanding of the functioning of the prosecutor's offices and the activities carried out by the prosecutors who are part of them:

- ▶ The regularity of their operation and of specialized sections, including territorial sections
- ▶ The application of the legal system and jurisprudence in the procedures that the prosecutors report or dictate
- ▶ Compliance with unitary criteria in the application of the rules: according to the Instructions, Circulars and Consultations of the State Attorney General's Office
- ▶ The knowledge of the general practices of dispatch of proceedings of any nature.
- ▶ The general activity carried out by the Prosecutor's Office and its different services, as well as the particular activity of the prosecutors that comprise them.
- ▶ Examination of the prosecutor's intervention in specific proceedings of any nature.
- ▶ The supervisory activity of the prosecutors.
- ▶ The activity carried out by collaborating personnel.
- ▶ The examination of disciplinary complaint procedures within the competence of the chief prosecutors

⁴⁹General Prosecution Office, The Prosecution Service. Organic Statute, 2009, <https://www.fiscal.es/documents/20142/147455/Spanish+Law+on+Prosecutors.pdf/d9362d59-1d2f-9659-349b-a4fe61ef5b7c?version=1.1>

⁵⁰ Internal Regulations of the Council of September 20, 1983 (supplementary provision).

- ▶ The state of the facilities, material means and registration systems, manual or computerized, of the prosecutor's offices.
- ▶ The organization of the internal administrative services and the secretariat.

■ In accordance with the Action Plan submitted by the Prosecutorial Inspection to the Prosecutorial Council (Art. 14 of the EOMF), during 2019, a total of 14 ordinary inspection visits were made to prosecutor's offices⁵¹.

■ The Organic Statute of the Public Prosecutor's Office provides that a Permanent Evaluation Section will be created in the Public Prosecutor's Inspectorate, for the purpose of centralizing all information on the merits and capacity of prosecutors, with the aim of supporting the Prosecutorial Council when informing the different proposals for discretionary appointments in the prosecutorial career (Art. 13. 2). In turn, the Chief Prosecutor Inspector is an ex officio member of the Prosecutorial Council, thus participating in its deliberations and decision making.

■ The Prosecution Inspection Bureau is headed by a chief prosecutor inspector and staffed by a deputy chief Prosecutor Inspector and a specified number of Prosecutor Inspectors. It conducts its activities under permanent delegation from the General Prosecutor, without prejudice to the control incumbent upon all other chief prosecutors. Such control entails routine inspections by each chief regional prosecutor in the Prosecutor's Offices within his/her jurisdiction.

The second option includes allocating the mandate to inspect to immediate superiors of those inspected.

■ In **Germany**, the immediate superior of the public prosecutor (in German: "*unmittelbarer Dienstvorgesetzter* = "*Leitender Oberstaatsanwalt*" – the leading senior prosecutor), who is at the same time the head of office, is tasked to evaluate all public prosecutors working in his/her office. In order to achieve uniform standards in practice, criteria for point values and ratings are usually set in advance, as well as percentages for top ratings within the individual salary levels (the so-called orientation framework) through prior coordination of all evaluators with the public prosecutor's offices and the Ministry of Justice.

■ Similarly, in **Hungary**, the file examination is carried out by a prosecutor of a higher prosecutorial office working in the same field as the subject of the evaluation. The evaluation is ordered by the head of the higher prosecutorial office of the head of the responsible unit of the General Prosecutor's Office, the duration of the file examination cannot exceed 60 days.

■ In **France**, the authority in charge of the evaluation of prosecutors is defined in the Decree of 7 January 2013, as amended by the Decree of 30 August 2019. The evaluation is conducted:

1° By the first president of the court of appeal or the president of the higher court of appeal for the magistrates of the court of first instance within their jurisdiction;

2° By the public prosecutor at the court of appeal or the public prosecutor at the higher court of appeal for the magistrates of the public prosecutor's office within their jurisdiction;

3° By the first president of the Court of Cassation for the referendary advisors and the auditors at the Court of Cassation;

3° bis By the public prosecutor at the Court of Cassation for the referendary attorneys general at the Court of Cassation;

4° By the director or the head of department for magistrates of the central administration of the Ministry of Justice working in their department or service;

5° By the first president or the public prosecutor for magistrates in charge of a general secretariat at the Court of Cassation or in a court of appeal;

6° By the first president of the court of appeal or the public prosecutor of the said court for magistrates in charge of a general secretariat in a judicial court within the jurisdiction of the court of appeal;

⁵¹ Fiscalía, Annual report 2019, point 5.6.1, https://www.fiscal.es/memorias/memoria2020/FISCALIA_SITE/index.html

■ For public prosecutors, it is therefore the General Public Prosecutor in charge of conducting the evaluation. In practice, the heads of each public prosecutor's office propose an evaluation, conduct the interview, and submit this "pre-assessment" to the public prosecutor who will draw up the final evaluation.

The third option relates to the set up of specific bodies/commissions/boards which are responsible for the appraisal.

■ In **Bulgaria**, the appraisal procedure aims to assist the SJC in exercising its constitutional functions in regard to the appointing, career growth, transferring, removing from office, enacting disciplinary sanctions and organizing the qualification of the members of the judiciary. Concerning the prosecutors in particular, the final decision as to the results of the appraisal is within the competence of the SJC's **Prosecutor College (the PC-SJC)**⁵². Međutim, put ka konačnoj oceni podrazumeva obiman prethodan rad i sprovođenje procedure koja podrazumeva i neke druge institucije, koje se u tome dodatno angažuju. Procedura takođe dopušta da onaj čiji se rad vrednuje izrazi svoje stanovište zato što ima pravo da iznosi primedbe i da izjavljuje žalbu na odluku PC-SJC pred Vrhovnim upravnim sudom.

■ The appraisal of prosecutors is carried out with the assistance of the **Auxiliary Appraisal Commissions of the Appellate Prosecutor's Offices (the AAC-APO)**⁵³. The members of the AAC-APO are elected by assemblies of all the members of the respective Appellate Prosecutor's Office (there is a total of seven such offices in Bulgaria) and the members of the District Prosecutor's Offices in the respective appellate region. It is required for the members of the AAC-APO to be prosecutors, serving on an appellate level, who:

- ▶ Possess high professional and ethical qualities;
- ▶ Have a high mark („Good“ or „Very good“) as a result of their own most recent appraisal;
- ▶ Have received tenure;
- ▶ Have not received disciplinary sanctions during the last five years (the most lenient ones are not an obstacle).

■ The members of the AAC-APO serve in this capacity for a term of two years and can be elected for no more than two consecutive terms. In practice, these are the officials, who conduct the biggest part of the appraisal procedure. They are the ones who gather, inspect, analyze and compare the required data, fill the General Appraisal Form and propose a complex evaluation mark to the PC-SJC.

■ The participation of auxiliary officials does not forbid/prevent the PC-SJC from gathering and analyzing data as a basis for the complex evaluation through its own officials. These officials form the **Commission of Appraisals and Competitions by the Prosecutor College (the CAC-PC)**. The CAC-PC includes members of the PC-SJC⁵⁴, as well as high-ranking prosecutors and investigative magistrates, elected for a one-year term, who are not serving as administrative heads at this particular time⁵⁵. Precisely the CAC-PC is the institution, which receives the proposal for a complex evaluation mark, reported by the AAC-APO. The CAC-PC nevertheless has the right to inspect clerk documents, to gather and analyze acts and decrees, issued by the subject of the appraisal, to conduct hearings of the subject and to gather all other relevant data, before issuing its final decision. In practice, though, most often the decisions of the CAC-PC are based entirely on the reports and suggestions of the AAC-APO.

■ After the end of the appraisals procedure, the CAC-PC proposes a complex evaluation of the performance of the respective prosecutor. This evaluation has to contain explicit motivation and could also include recommendations to the subject, if there are such. The CAC-PC reports the complex evaluation to the subject, who in turn has the right to make a written objection, addressed to the PC-SJC.

■ No matter whether there is an objection, or not, only **the PC-SJC** is the body, which issues the final evaluation by either accepting the proposal of the CAC-PC, or independently issuing a new evaluation. The PC-SJC also has the right to return the case to the CAC-PC, if it reaches the conclusion that there are factual errors, inconsistencies or deficiencies within the proposal.

■ When the PC-SJC issues a decision on the merits (in other words, in every procedure, excluding those, when the case is returned to the CAC-PC), this decision could be appealed in front of the **Supreme Administrative Court**. The ruling of this court is final and in any case puts an end to the appraisal procedure. Such developments are rarely seen in practice.

⁵² Art. 205 of the JA.

⁵³ Art. 204 of the JA.

⁵⁴ Who are also members of the SJC in general.

⁵⁵ Art. 37 of the JA.

■ In **Romania**, the leading authorities, involved in the evaluation of prosecutors, are the **Prosecutorial Council, the Prosecutor General Office and superior prosecutors**⁵⁶. The criteria applied in the evaluation process are generally related to professional knowledge, workload management, ethics and case outcomes in trials⁵⁷.

■ The evaluation of judges and prosecutors is made by commissions constituted by decision of the Superior Council of Magistracy, **separately for judges and prosecutors, formed as follows:**

- ▶ For the prosecutors from the Prosecutor's Office attached to the High Court of Cassation and Justice, from the head of the section, directorate / service, 2 prosecutors appointed by the management board and an alternate member;
- ▶ For the prosecutors advisers of the Prosecutor General of the Prosecutor's Office attached to the High Court of Cassation and Justice, from the Prosecutor General of the Prosecutor's Office attached to the High Court of Cassation and Justice, 2 prosecutors appointed by the management board and an alternate member;
- ▶ For the prosecutors from the National Anticorruption Directorate, from the chief prosecutor of the directorate, 2 prosecutors appointed by the management board and an alternate member;
- ▶ For the prosecutors from the Directorate for the Investigation of Organized Crime and Terrorism, from the General Prosecutor of the Prosecutor's Office attached to the High Court of Cassation and Justice, the Chief Prosecutor of the Directorate, 2 prosecutors appointed by the management colleges and an alternate member.

■ The assessment is performed by the **Boards for Evaluation**, which are set up by the Superior Council of Magistracy. The Boards are composed of the head of the prosecutor's office/section/directorate and two prosecutors designated by the leading board of the prosecution unit. The respective Board for Evaluation prepares a file for each prosecutor containing statistical data on his/her work and efficiency, a *self-evaluation* and an evaluation report, which can rate the prosecutor's activity "very good", "good", "satisfactory" or "unsatisfactory". An interview might take place when requested by the prosecutor or considered necessary by the Board. The evaluated prosecutor can access the file and make remarks and comments, after which the Board issues the final appraisal. According to Art. 40 of the Law no. 303/2004, prosecutors who disagree on the ratings awarded may lodge a complaint before the prosecutors' section of the Superior Council of Magistracy. The decision rendered by the section may be appealed before the Plenum.

■ Romania's prosecutors who receive "unsatisfactory" rating, as well as those who receive "satisfactory" rating for two consecutive evaluations, have to attend special courses during three to six months at the National Institute of Magistracy and take the final exam. Prosecutors whose performance is considered "unsatisfactory" for two consecutive evaluations, or who have not succeeded in the mentioned examination, are released from office for professional incapacity by the President of Romania, on the proposal of the Superior Council of Magistracy. Only prosecutors who are rated "very good" in the last evaluation may attend a promotion exam for a position in the immediately superior prosecutor's office.

■ In **Greece**, an **Inspection Council** is set up for each branch of justice. The mandate of the Inspection Council is to supervise the inspection and the inspectors, who are determined by ballot on an annual basis⁵⁸.

■ The Inspection Council is composed of a Deputy Chairperson of the Supreme Court, a supreme court judge and a deputy prosecutor of the Supreme court. The Chair of the Inspection Council is relieved of all other duties during their term, with minor exceptions. Members of the Inspection Council and their deputies are selected by ballot by the plenum of the Supreme Court. A different ballot is drawn for the members of the Inspection Council, the inspectors of civil and penal courts and the inspectors for prosecutions. Those who served as inspectors or members of the inspection council in the last 2 years cannot be reappointed. The results of the ballot are notified to the Ministry of Justice, Transparency and Human rights. The mandate of the members of the Inspection Council is annual (the 16th of September – the 15th of September of the next year).

■ The members of the Inspection service are not relieved of other duties. The inspection Council can a) Order

⁵⁶ <https://www.oecd.org/corruption/acn/The-Independence-of-Prosecutors-in-Eastern-Europe-Central-Asia-and-Asia-Pacific.pdf>

⁵⁷ The procedure for the appraisal is set forth in the Regulation on the Evaluation of the Professional Activity of Judges and Prosecutors, approved by Decision no. 676/04.10.2007 of the Superior Council of Magistracy.

⁵⁸ The Code on the Organisation of Courts and the Status of Judges, Part III, Inspection of courts and judges, Chapter IET, Civil and Criminal Courts.

extraordinary inspection or complementary inspection, b) Decide on appeals from inspected persons, c) Collect inspection reports and prepare a special report with proposals and observations, d) Describe the situation in courts, prosecutions and secretariats and propose measures for their improved operation in a report to the Minister of Justice.

■ For inspection purposes, courts are divided into 9 districts and inspectors are responsible to inspect judges/prosecutors serving in courts of first instance and courts of appeal in each district. At the seat of the largest appeal court of each district, an Inspection Secretariat Bureau is established.

■ Inspections are conducted by:

- ▶ The supreme court judges and deputy prosecutors of the supreme court for courts of appeal, courts of first instance and related prosecutions
- ▶ The president of the court of appeal and the prosecutor of the court of appeal of the district and the presidents and prosecutors of the court of appeal nominated by them in courts of the peace and special misdemeanour courts
- ▶ The presidents of the courts of appeal and the prosecutors of the court of appeal of the related district and the presidents and prosecutors of the courts of first instance for the secretariats of the above courts and prosecution offices.

■ Inspectors are assisted by deputy inspectors with the grade of the President of appeal court or prosecutor of the court of appeal. They are appointed by a decision of the Supreme Judicial Council for each judicial district. Their duties are specified by a joint decision of the Chair of the Inspection Council and the competent inspector. Their mandate coincides with that of the inspectors. Inspectors and deputy inspectors for the duration of their mandate are relieved of all other services, except participation in the plenaries of their courts.

■ Presidents of the courts of appeal inspect courts of first instance, courts of the peace and misdemeanour courts. The prosecutors of the courts of the appeal of the (inspection) district inspect the prosecutions of the district, misdemeanour courts with regard to their investigative work. In courts and prosecutions where more presidents are serving, the one directing the court or the prosecution leads the inspection or nominates those who will conduct it.

■ The duties of Inspectors⁵⁹ include:

- ▶ Inspection of all courts of their district and prosecutions
- ▶ Conduct complementary or extraordinary inspections of all courts, prosecutions or judge/prosecutor following an order from the Minister of Justice or the supervisor of the inspection
- ▶ Propose disciplinary action against all inspected persons according to the provisions in force
- ▶ Examine written reports from the administrative board of the competent Bar Association and order extraordinary inspections. They can invite members of the Board of the Bar to hear their opinion on points related to the good function of the courts and prosecutions.

■ Extraordinary or complementary inspections can be conducted anytime upon order of the president of the supreme court and the prosecutors of the supreme court.

■ The main feature of the Greek inspection system is the lack of permanent structures and the lack of specialisation of those coordinating, supervising and conducting the inspection.

■ In Austria, the organisational arrangements for the IA lie in the hands of a deputy prosecutor of the 2nd instance Court/Court of Appeal (in Austria there are 16 Courts of the 1st Instance/Landesgerichte with relevant Prosecution Offices; 4 Courts of the 2nd instance/Appeal/Oberlandesgerichte with relevant Prosecution Offices; and the Supreme Court with the "General Prosecution Office-the GPO"). They have to build a relevant inspection/audit team to carry out the audit. The Team should include other prosecutors of various ranges, who, however, do not belong to the audited Prosecutorial Office.

■ At the beginning of each year, the GPO arranges a programme of the IAs of the year, the relevant schedules of all the 2nd instance courts, including the names of the members of the IA-Teams, which are sent to the Ministry.

⁵⁹ Article 48 of the Code on the Organisation of Courts and Status of Judges.

■ The IA must be announced to the unit in question six weeks before it takes place at the latest. Till the substantial carrying out of the IA, the Team is gathering whichever information possible to facilitate the audit. Additionally, the checklists, adapted to the very audit, must be sent to the said unit. Once at the place of audit, the Team must have an introductory discussion with all the representatives of the unit to be involved in the further audit measures. After mutual understanding is established herewith, the concrete steps of the audit are carried out based upon the thorough lists pre-sent. Beyond that a whole and detailed catalogue of measures is foreseen in the relevant regulation, guaranteeing the success of the audit *per se* but also of the maintaining of the functionality of the unit/prosecutorial office during the undertaking of the various inspecting measures and activities. At the end of the audit, another closing discussion has to take place in the same composition as the starting one. Here the main findings of the overall action should be presented in an interactive way, meaning asking for the relevant positioning of the representatives of the audited unit, what, by justified arguments, can lead to a revision of the findings. Once back the Auditing Team must compose a relevant Report, following a meticulously developed template. Grosso modo the Report should include a descriptive part with tables and their exact explanation, then a more evaluating part and finally a compilation of the findings and the recommendations/ameliorative proposals. Every member of the Team composes his/her part of the Report, the Leader brings the parts together and is in general responsible for the overall Report. The finalized Report has to be sent to the audited unit if it differs significantly from the results of the closing discussion.

■ The central IA entity has to send the signed report to the Prosecutor's Office audited six months after the starting of the action at the latest. As the document is confidential, it is sent only to the Chair(wo)man of the said unit and of the Prosecutorial authority of the 2nd instance, being responsible for the unit. If the recommendations and the proposals refer to a specific department, subunit, etc., the relevant part of the Report must be sent to them, too.

■ The regular IA is closed by follow-up activities, which should control the efforts of the unit audited to comply with the recommendations and proposals of the Report.

■ When it comes to the bodies/authorities involved in inspections, different models are observed in the countries included in the study. Five points emerge as critical factors related to performance appraisals.

■ First, a common feature in all the countries included in the study is the fact that **performance appraisal of prosecutors is conducted by peers of superior grade**. No 'externals' are involved in any step of the process. No deviation from this practice could be considered to be acceptable and in compliance with the independence of the judiciary.

■ The second point that is addressed in different ways in the systems examined relates to the choice of **bodies involved in the performance appraisal**. In some countries, appraisals are conducted by the superiors in the hierarchy, or superiors in terms of grades which are elected or randomly selected. In other countries, inspections are conducted by 'permanent' bodies, the inspectorates, who have the mandate, among others, to inspect the performance of prosecutors and prosecution offices as a whole. The former option has the advantage of proximity of the inspector and the inspected person and the possibility to have a holistic view of their capacity and performance. The disadvantage is that, unless those conducting the appraisal have a very good methodological guidance and training in this respect, there might be challenges to the objectivity of the appraisal given the inevitable personal relations within the service. The second model appears to offer more guarantees for objectivity especially if inspectors are selected and trained and are offered appropriate methodological tools to conduct the appraisals. Additionally, the second option appears to facilitate the joint coordination of inspections and their supervision and can potentially eliminate discrepancies created by different applications of the related criteria.

■ The third point, which appears to be of primary importance independently of the way in which appraisals are organised, relate to **the selection of inspectors/evaluators/appraisers and their training**. Performance appraisal is a specialised and sensitive task that requires individuals with specialised knowledge, skills and motivation and collective experience that can be shared and transferred among colleagues. In **Portugal**, competitive selection of inspectors (through application for the position by qualified prosecutors) is considered to attract to the task the individuals who have the required interest, skills and motivation. Further, by serving a mandate of several years, rather than a very short one (1 or 2 years), inspectors have the opportunity to deepen their experience and methods. In **Germany**, where appraisals are conducted by line managers, training is offered to them to ensure the uniformity and coordination of the appraisal. In the countries with non-permanent inspection structures, like Greece, where inspectors are randomly selected by ballot, the lack of experience, skills, interest and specialisation of inspectors is identified as an important flaw in the operation of the inspection system as it currently stands. Random selection ensures objectivity but is weak from the perspective of skills and motivation. Purposive selection, where individuals can apply for the post and serve there for a number of years, ensures motivation, specialised skills and experience. Combined with adequate training and methodological tools and guidance on how to conduct the inspections, this can ensure appraisals of the highest objectivity and quality.

■ Another issue relates to the **specialisation of inspectors in specific areas of inspection**. This is important with regard to the quality of inspections and the ability of inspectors to capture in an objective and in-depth way the capacity and features of the performance of their colleagues. Ensuring that inspectors/appraisers are specialised in the field they inspect allows them to go into more depth but also transfer knowledge and expertise to their junior colleagues, especially if the more reflective- discursive elements of the inspection are emphasised. Senior inspectors can discuss with younger colleagues their cases, exchange views and learn from their guidance and experience.

■ Last but not least, in all the countries there is a fixed mandate of those involved in/ or exercising appraisal tasks. In Spain, the introduction of a maximum total term of ten years for the position of a Prosecutor Inspector was one of the important innovations in the Statute of the Prosecution Office justified by the need to guarantee renewability in a body that plays such an essential role in disciplinary matters, avoid challenges to effectiveness and efficiency and remain consistent with related practice in other technical bodies of a similar nature, such as the general Council of the Judiciary's Inspection Bureau.

2. Criteria related to case complexity in evaluation and performance appraisal systems for public prosecutors

The aim of professional appraisal and evaluation is to capture, in an objective and representative way, the key features of the performance of prosecutors. The need for a balance between quantitative criteria (number of cases, speed of addressing them) is well established. However, when it comes to qualitative criteria, how can these capture – and introduce in the assessment - factors like the complexity of the cases handled?

— This is a complex question that cannot be addressed in its entirety in the present study. What this section aims to do is to examine the different ways in which the complexity of cases is taken into account in the performance appraisal of prosecutors in the systems examined. Specific issues that will be explored include the extent to which complexity is explicitly integrated in the appraisal criteria, the ways in which this can be captured and its weight in the overall evaluation.

2.1. Use of criteria on case complexity in evaluation and performance appraisal systems and their application in practice

The emphasis on efficiency and judicial performance, linked to the broader discussions about judicial backlog and delays in the delivery of justice, have triggered an increased focus on the quantitative performance of individual judges and prosecutors and the collective performance of courts, prosecutorial offices and the judicial system. However, it is no novelty to say that quantitative aspects alone can never be representative of the quality of judicial work, which is much more complex and might rely on a number of variables including the complexity of cases handled. The question remains: how can this factor be captured in performance appraisal and evaluation?

— In **Germany**, the allocation of cases to individual public prosecutors is based on a business distribution plan (in German: *“Geschäftsverteilung”*), which provides for a specific responsibility for each prosecutor in a specific area. In other words, the public prosecutor can only receive cases which fall into one of the case categories foreseen in the business distribution plan for them. This is a fundamental principle which in general applies to public prosecutors and judges alike. For judges this principle is stricter since it implements the constitutional requirement, namely the right to one’s lawful judge (in German: *“Recht auf den gesetzlichen Richter”*)⁶⁰ and it also applies to public prosecutors. Međutim, budući da javni tužioci u Nemačkoj podležu hijerarhijskom sistemu pa su samim tim dužni da poštuju uputstva svojih nadređenih, to načelo nije toliko striktno. Zato, iako se u suštini to retko primenjuje u praksi, teorijski je moguće da u slučaju nekog javnog tužioca njegov nadređeni ostvari svoje pravo da izda uputstvo (*Weisungsrecht*) i poveri predmet na način koji nije u skladu sa utvrđenim planom raspodele predmeta. Kada je reč o sudijama, to je strogo zabranjeno jer bi se time prekršio Ustav.

⁶⁰ In Germany, this right is regulated in Article 101, Paragraph 1, Clause 2 of the Basic Law (in German: *“das Grundgesetz”*) and in Section 16 of the Courts Constitution Act (in German: *“Gerichtsverfassungsgesetz”*). It means that everyone has the right to a pre-determined and subsequently verifiable determination of which judge is responsible for which case. This is to prevent exceptional courts set up in violation of the legal reservation from influencing the result of a specific procedure (Section 101 (1), the first sentence, the GG).

■ As said, the public prosecutor receives cases in accordance with the predefined case distribution plan. This means that they receive cases of a certain category and also of a certain complexity. The complexity of the cases that a public prosecutor handles is an essential criterion in their assessment as it proves their ability to quickly grasp the essentials even in difficult and complex proceedings and to work towards a comprehensive clarification of the facts and the correct application of the law, taking into account the principle of legality.

■ The mere assignment of the individual public prosecutor within the framework of the business distribution plan to a certain difficult and complex case category (e.g. cybercrime, organized crime, money laundering) is per se already considered a proof of qualification. Newcomers and “simple” public prosecutors with little professional experience are not entrusted with these kinds of proceedings. Such positions are considered “promotion positions” which can only be held by public prosecutors as group leaders or senior public prosecutors (higher ranks with higher salaries). To reach such a position the public prosecutor must have successfully passed an evaluation in which they have been explicitly rated as highly suited for this position. Therefore, the evaluation, and thus the promotion of a public prosecutor to such a position as a result of the evaluation, decides who processes complex procedures. It is obvious that the variety of case categories that exist, i.e. from murder and manslaughter to cybercrime, gives the evaluator a wide leeway as to who they consider the best investigator for certain complex types of crime.

■ To conclude, the complexity of the cases is playing, will and must play, a role in professional appraisal and is an essential criterion. It should also be mentioned that the complexity of the cases a public prosecutor processes is also important for the determination of the public prosecutor’s workload. The workload in practice depends on the number of cases and their complexity or the time required for them (expressed by the so-called “base number”).

■ The base number is the expression of the difficulty / complexity of a certain case category calculated and expressed in the number of minutes that on average is needed for reviewing a case in a specific case category. The base number for each case category is calculated and defined by a complex system called PebbSy (pronounced: “Pebbsi”). The PebbSy system has been in use for around 20 years. Thanks to this system, all case categories that occur in the courts and the public prosecutor’s offices have been assessed in terms of their difficulty (due to the time required for them) as part of a very complex nationwide research and follow-up research. As a result, considering a large procedural database, it was determined across the federal countries how many minutes are required on average for processing a certain type of procedure (i.e. a certain type of case).

■ All incoming cases are divided into one of these categories upon receipt and multiplied by the respective base number (= required working minutes) and extrapolated every quarter for a whole year. This ultimately shows how many staff a prosecution office needs to carry out its tasks. The respective personnel overview is then continuously adjusted from year to year if necessary. The workload for each full-time employee should be around **100,000 minutes a year** for a full workload. This value varies somewhat from year to year. If there are major deviations within a year, the distribution of responsibilities will be adjusted.

■ In **Austria**, an interesting system is applied to determine ‘major cases’ (Grossverfahren) even though this does not directly apply to the appraisal of prosecutors.

■ The issue of facing perplex, important, difficult, in general “major” cases, whereupon specific procedural measures should be undertaken, is always a challenging topic in every national legislation. The answer to it by the Austrian legislator is a pretty exhaustive one. It refers only to the relevant cases in Criminal Law and it is clearly said that the categorization of a case as a “major” one has no influence whatever to the evaluation/Internal Audit of the prosecutorial office charged with the case. Only the prosecutors personally involved in such cases in a very successful way may have a financial benefit at the end of the year.

■ “Major” cases are divided into five categories/types, four of them already specified and the fifth one as an “opting out”, meaning: allowing the system being flexible in accepting a “major” case even if the case strictu sensu does not belong to one of the previous four categories. The types of a “major” case orient themselves to the fulfilling, quantitatively and qualitatively, of some specific criteria, balanced according to their importance and severity, which are:

- ▶ Quantity of crimes of a case
- ▶ Quantity of the file (documents and other material to be studied)
- ▶ Possible amount of compensation (divided in cases above 800.000 Euros and above 5Mio Euros)
- ▶ Number of the persons involved in the procedure (victims, witnesses, etc.), also here with the differentiation above 50 and above 250.

- ▶ Number of the judicial measures against human rights ordered (arrest, wiretapping, etc.; classified as above 50 and 250); and
- ▶ Number of the persons accused (classified as above 10 and 50).

■ Further on other criteria can be taken into consideration for the classification, such as, e.g. the necessity of cooperation among various Prosecutors' Offices, need to undertake measures of international mutual legal assistance, etc.

■ According to the type of classification (A, B, C, D or E/opting-in), various special procedural measures can be used, such as specific central IT-support, hiring of specific experts, strengthening the responsible prosecutorial unit with further human resources necessary, building of prosecutorial Teams and dividing the work among the members, support and advice to lower prosecutors by senior colleagues, excluding the prosecutors involved in a "major" case from further duties, etc.

■ As already mentioned, the classification of a case as "major" has no impact upon the Internal Audit of the prosecutorial unit involved. Statistical data on usage of the provisions (Decree/Erlas of 14. June 2013 about the definition of "major" criminal cases) on "major" cases/Grossverfahren indicates that much less than 1% of the overall caseload is categorized as such.

■ In **Bulgaria**, the qualitative evaluation in the narrow sense, mentioned above, explicitly requires that two important criteria be taken into account: the legal and factual complexity of the cases and the workload of the respective prosecutor during the inspected period⁶¹. These two circumstances are mandatorily mentioned in the General Appraisal Form.

■ Secondly, the qualitative evaluation – again through the criterion of the cases' complexity – is also applied through the method of first hand inspection and personal impression. The team that carries out the appraisal is required to take into account both the number and the specificity of the cases, administered and solved by the subject of the evaluation⁶². In particular, the appraisal team is obliged to inspect the urgency, legality and quality of work on at least 10 cases, given to them by the respective prosecutor, and at least 10 other cases, selected randomly. Usually, the first group includes complicated cases, on which the prosecutors themselves believe to have done a good job and thus aim to show the best of their work. Thus, almost every appraisal procedure somewhat naturally takes into consideration the performance of the subject on cases with a high level of complexity.

■ The method of analyzing legitimate official reports on the performance of the respective prosecutor also has its connection to the qualitative evaluation. These reports typically include ascertainment by the controlling instances or institutions, records of disciplinary breaches and sanctions, as well as bonuses, evaluations, given by other agencies or institutions, working in partnership with the prosecutor's office, etc.

■ In **Romania**, an intricate set of indicators are specified with regard the specific elements of the criminal investigation that should be captured in the professional appraisal. Within these, there is the specific reference to the complexity of the case and the volume of activity of the prosecutor. In assessing the complexity of the case, the following elements are considered:

- ▶ The difficulty of administering the evidence;
- ▶ The number of parties and witnesses;
- ▶ The number of crimes investigated;
- ▶ Their nature;
- ▶ The difficulty of the legal and factual issues to be resolved; connecting several causes as well as other specific relevant elements.

■ In **Portugal**, the evaluation criterion '**Adaptation to the service**' takes into consideration, among others, the volume and complexity of the service. However, it is one among many criteria. It was noted that one factor that enables inspectors to take into account the complexity of cases is their specialisation. Given that they are experts in the specific area, it is possible for them to both grasp and evaluate the complexity of cases handled by the inspected person.

⁶¹ Art. 42, par. 1 of the Appraisals Regulation.

⁶² Art. 44, par. 2 of the Appraisals Regulation.

■ In **Greece**, the complexity of cases is not an explicit criterion taken into account in the appraisal. The inspector can take this into account through the cases that the inspected person can propose for consideration, through the resume and the profile that the inspected prosecutor can bring forward to the inspector highlighting the type of cases addressed but also through the type of cases addressed.

■ In **Spain**, although there is no formal appraisal of prosecutors, the complexity of cases is a factor that can bear an impact on the productivity bonuses added to the remuneration of prosecutors. Specifically, there is a salary complement linked to productivity, the annual amount of which is fixed by the Ministry of Justice and the Prosecutor General. This bonus is allocated as a total amount to prosecutorial offices and its disbursement is linked to the achievement of the set objectives of the Office as proven by the statistical data made available every month. The productivity bonus is considered every six months and the Chief of the Prosecution Office has the discretion to distribute this to the prosecutors in every office, depending on the extent to which they have exceeded the normal workload. This directly refers to the cases handled, the nature and complexity of which are linked to specific points. For example, a 'normal' trial would get 10 points, while a trial with a jury would get 40 points, etc. This is a way to take into account the complexity of cases in relation to productivity.

■ The Law 15/2003⁶³ provides that that the members of the prosecutorial career are entitled to receive - beyond their normal remuneration - a variable complement, intended to remunerate extraordinary performance and activity (Article 13 para 2). The overall amount of this allowance may not exceed the percentage of the rest of the remuneration established by the General State Budget.

■ This variable complement is linked to the fulfilment of annual objectives (the Royal Decree 432/2004)⁶⁴ determined by the Prosecutor General upon proposal of the Public Prosecution Inspection Bureau. Objectives correspond to:

- a) Special dedication in the exercise of functions.
- b) Functions that involve repeated travel outside the headquarters of the public prosecutor's office where services are provided
- c) Assumption of greater workloads or the handling of matters of special complexity or transcendence
- d) Speed in the processing of cases.

The individual performance or extraordinary activity of every prosecutor is assessed as a contribution to the fulfilment of the objectives of the prosecutor's offices.

Quantification and procedure for the assignment of remuneration

■ The Ministry of Justice communicates to the Prosecutor General the budgetary credit destined to the payment of the variable complement and informs the Prosecutor General of the individual amounts that can be received, which can be between 5 – 10% percent of fixed remuneration.

■ The Ministry of Justice authorizes the distribution to the prosecutor's offices taking into account, among other circumstances, the workload of each prosecutor's office in accordance with the number of jurisdictional bodies existing in the respective territory, the order to which they belong, their location and the number of proceedings processed, in proportion to the number of prosecutors making up the staff of the prosecutor's office. The amounts assigned are communicated to prosecutor's offices and it is the responsibility of each Chief Prosecutor, at the end of each semester, to make a provisional proposal for the individual amounts to be received by the prosecutors.

■ When a prosecutor, for causes attributable to them, is found to have a manifestly or abnormally low performance in relation to the indicated objectives, they receive the fixed remuneration corresponding to the immediately following six-month period, reduced by five percent, subject to a contradictory proceeding to be resolved by the Prosecutor General, the result of which is communicated to the Ministry of Justice.

■ The Inspector Prosecutor reports annually to the Prosecutorial Council on the proposals made and the fulfilment of the objectives.

⁶³ Ley 15/2003, de 26 de mayo, reguladora del régimen retributivo de las carreras judicial y fiscal, <https://www.boe.es/buscar/act.php?id=BOE-A-2003-10524>

⁶⁴ Real Decreto 432/2004, de 12 de marzo, por el que se regula el complemento variable por objetivos de los miembros de la carrera fiscal.

■ The Head of the Prosecutorial Office is the one who decides if the normal workload has been exceeded and they make the decisions on how the productivity bonus will be distributed. Further, another way of highlighting the complexity of cases is for the prosecutor to include them in their resume and CV, especially for cases that have received public attention.

■ This solution presents some interesting behavioural features by offering motivation for the handling of complex cases, breaks down complex cases into specific elements and integrates these into the pay system with a small – but important - complement. However, it also has discretionary elements, since the Head of the Office has the discretion to allocate these amounts.

■ In **France**, a flexible bonus is updated each year by the head of the court of appeal, in the case of prosecutors by the public prosecutor, to each member of the public prosecutor's office in their jurisdiction. This bonus, which varies from 0 to 15% of the basic remuneration, is awarded according to the investment effectively made by the prosecutor concerned. Although the granting of this bonus is not directly linked to the biennial evaluation, it is obvious that it must be consistent with the content of this evaluation.

2.2. Analysis of options

Complexity is not easy to address in relation to judicial cases and the work of public prosecutors. For one matter, complexity might be a factor associated with a specific type of cases, for example, corruption or cyber crime cases. On the other hand, complexity can be an inherent feature of specific cases, depending on the nature of the legal problems involved, the nature of the crime, the vulnerability of witnesses or victims, the number of witnesses, among several others.

■ The first aspect of complexity, namely the complex nature of specific cases, which is not entirely the focus of this study, is addressed in many jurisdictions through the **specialisation** of prosecutors dealing with specific subject matters. The specialization of prosecutors can enable them to decide cases at an accelerated pace and with improved quality of decisions, given that they possess specialised knowledge and expertise. Creating specialised bodies of prosecutors that handle cases on corruption, economic crime, domestic violence, among several others, is a way to ensure that those dealing with these cases have the skills, specialised knowledge and experience to deal with them in the best possible way. Specialisation in the work of prosecutors can also concern specific areas of law. Several countries report systems of specialisation of prosecutors that seems to address complexity quite adequately within specific areas of law.

■ When it comes to professional appraisals, four approaches are identified in the countries included in the study: firstly, where complexity is taken into account as a specific appraisal criterion (Bulgaria, Romania, Portugal); secondly, where complexity is not an explicit appraisal criterion (Greece); thirdly, where the complexity of cases is taken into account from a workload perspective and, fourthly, where complexity is seen as a productivity factor addressed/compensated through remuneration and pay (Spain, France).

■ In the first approach, **complexity is a specific appraisal** criterion that appraisers/evaluators will have to look into and collect data on. It is difficult to assess to what extent appraisers can detect the complexity of cases on their own or whether they rely for this on the self-evaluation of the evaluated person or specific cases brought forward by them. It is also not sufficiently clear how the handling of complex cases affects the assessment of the appraisers, whether it leads to higher gradings, whether it is taken into account in tandem with other criteria or whether it is used to balance out, for example, the time required to handle the case or the smaller number of cases compared to other prosecutors. The countries examined did not report a specific way of weighing this criterion within the assessment or a specific weight attributed to this criterion. Although not explicitly presented to lead to different or higher marks, this is one of the factors that is taken into account by the appraiser when formulating their assessment.

■ In the second approach, **complexity is not an explicit criterion**, but it can nevertheless play a role in the appraisal through the appraiser. In Greece, where no criterion of complexity is in place, it is reported that the inspected prosecutors always bring forward a sample of cases that they consider to be 'good' from a quality perspective and to include complex cases in this sample. However, the disadvantage of this approach is that since it is not a clear criterion, inspectors might not engage in a specific assessment of the complexity of cases.

■ The third approach looks at **complexity as a workload factor**. In Germany, where an elaborate workload assessment system is in place, different types of cases are broken down into specific workload and time factors. The advantage of this approach is the effort to 'quantify' complexity and integrate it as a factor both in the distribution of cases, in the workload but also in the statistics and the appraisal system. Further, its advantage is the fact that it is based on thorough research data, which means that it might be well positioned to capture 'standard' complex cases. The disadvantage of this approach might lie with cases which are complex beyond the normal measure. Similarly, in Austria, the labelling of major cases is important from a workload perspective although not directly associated with professional appraisal.

■ The fourth approach takes into account **complexity as a productivity factor** and addresses it through remuneration complements. In Spain, where this practice was reported, formal appraisals do not take place, but productivity is assessed continuously on a monthly, six-monthly and annual basis for Prosecution Offices and complements to the salary can be added for work that exceeds the normal workload and presents specific features, e.g. jury trials, etc. This approach has the advantage of 'breaking down' complexity into specific elements and 'rewarding' them. Seen from a behavioural perspective, it offers incentives or rewards for complex work. However, given that the allocation of this productivity bonus is dependent upon the discretion of the Head of the Prosecutorial Office, it would be interesting to explore, in practice, whether it is used to reward excess work or whether it is distributed in a collegial way to all the prosecutors in the office. Similarly, in France, productivity bonuses are linked to performance.

■ Taking complexity into account in performance appraisals is a question related to the fairness of the appraisal but it is also an important indicator of whether those inspected have the capacity, willingness or skills to handle more demanding cases. In other words, it might be indicative of the capacity or suitability of specific prosecutors for positions of increased responsibility or specialisation. As such, complexity in conjunction with other criteria can be a useful criterion for determining promotions.

■ Issues raised with regard to the **identification and 'measurement' of complexity** relate to ways in which to collect information. Apart from the reliance on statistics or quantitative information, which can provide some information in that respect, complexity can then only be assessed on an individualised case by case basis and through reference to specific cases. The countries examined did not report any innovative ways to identify complex cases, apart from relying on the inspected person to report them or through the use of statistical data or random samples.

■ Another important issue is the **weighing of complexity** in the process of performance appraisal. The countries examined did not report specific weighing criteria for the complexity of cases even where it is an explicit criterion of the appraisal. What this entails is that the appraiser is the 'filter' for all this information and the way in which this will be reflected in their final assessment/grade.

3. Findings and recommendations

3.1. Findings and recommendations on the performance appraisal of the work of public prosecutors

1. In the majority of the countries, formal appraisal systems for prosecutors are in place. All important aspects of appraisal (periodicity, criteria, procedure) are consolidated in the legislation to ensure the legality, fairness and transparency of the appraisal system.
2. Different 'types' of professional evaluation - appraisal include:
 - ▶ First-time appraisals for new prosecutors,
 - ▶ Regular inspections of prosecutors in office, which take place at regular intervals between 1-6 years, and
 - ▶ Extraordinary inspections triggered by specific events.
3. Evaluation/performance appraisal systems are based on specific criteria which are consolidated in the legislation or regulation (or both) and are often elaborated in considerable detail.
4. The appraisal criteria balance quantitative and qualitative approaches and evolve around three main elements:
 - ▶ Professional performance of the prosecutor in quantitative and qualitative terms,
 - ▶ Personality of the prosecutor and suitability for the post, and
 - ▶ The 'social' aspects of prosecutorial work, including the capacity to lead the investigation and cooperate with other actors of the criminal procedure.Separate criteria apply to those holding management positions.
5. Appraisals rely on quantitative and qualitative sources of information, including statistical and other data on case flows and written materials including smaller or larger samples of cases handled by the evaluated person.
6. The appraiser has an important role in leading the inspection process, while the inspected/evaluated prosecutor is more passive.
7. Appraisals result in qualitative classification of the work of prosecutors ranging from three to five grades (excellent to unsatisfactory). The result of appraisals has broader consequences related to promotion and career development.
8. Appraisals are conducted by peers of superior rank. These might be positioned within:
 - ▶ Permanent bodies/authorities, whose mandate includes conducting inspections (Public Prosecution Inspectorate – Portugal)
 - ▶ Be the immediate superiors of those inspected (Germany – Hungary) or
 - ▶ Be randomly selected as members of appraisal bodies/commissions/boards with a specific mandate (Greece, Romania, Bulgaria).

Overall, performance appraisals of prosecutors are formal and rigid. While this might be necessary, reflective, self-evaluative and peer learning aspects of the appraisal seem to be underdeveloped and can be strengthened.

Recommendations include the following:

1. To strengthen the role of the evaluated prosecutor in their professional appraisal/evaluation

The role of those subject to the evaluation appears to be rather passive in most of the jurisdictions included in the study. This fact alone makes the evaluation a one-sided rather than an interactive process that can promote peer learning and promote professional development.

Interesting elements identified that can be used to strengthen the role of the evaluated prosecutors include self-evaluation reports that form part of the appraisal file or are the starting point of the appraisal. This allows the interested party to reflect on their achievements, present them in a comprehensive way but also report on the specific circumstances within which these took place. It also allows the evaluated person to propose sample cases, to highlight specific complex cases they handled or to highlight other achievements that demonstrate their special skills and capabilities. However, it primarily strengthens the self-reflective elements of the process. If evaluation is a tool for professional development, then the evaluated person should have an active role in it.

It is recommended to strengthen the role of the inspected prosecutors in their appraisal by involving them more actively. It is recommended to make self-evaluation and give to an interview between the appraiser and the evaluated prosecutor a more central role in the appraisal procedure.

2. To strengthen the 'interactive' elements of the professional appraisal /evaluation

The study reveals that appraisals tend to be rather 'dry' and to mostly rely on numbers and written proof of work. While this input and sources of information are important, they can only offer a part of the broader picture. Again, for evaluation to be a professional development and peer learning tool, it needs to be an interactive process, a professional dialogue between the evaluated person and senior colleagues. This can allow the evaluators to get a more representative picture of the individual, their strengths and weaknesses, and allows the evaluated person to get constructive feedback on their work.

It is hereby recommended to strengthen the interaction between the appraiser and the evaluated prosecutor especially through:

- a. An interview/discussion focussing on the work of the evaluated person, their challenges, needs or discussion on specific cases they have handled
- b. Attendance in sample trials to evidence the performance of the prosecutor and collect first-hand information on the performance, the personality and the social conduct of the evaluated person.

3. To strengthen the reflective elements of appraisal and its potential for professional development

The experience recorded in the study depicts appraisals as a strenuous exercise for all the parties involved. Inspectors/appraisers are collecting information and potentially challenging the work of their colleagues, while those inspected are under pressure to 'prove' themselves and defend their work and performance. Appraisal does not seem to be an opportunity for reflection on one's work and experience, needs, challenges and professional goals. For appraisal to be a meaningful exercise, it is important to strengthen its reflective elements and to be an opportunity for those evaluated to take a holistic look at their work and consider what they need to further evolve professionally. This can be achieved through self-evaluation but also through a less formalised exchange with the appraiser on the basis of their work, the cases they have handled, their decisions, etc. Emphasising or highlighting the educational and developmental role of the appraisal, instead of its disciplinary role, can lead to improved outcomes in the medium and long term.

4. To strengthen the peer learning and transfer of knowledge aspects of the appraisal

Appraisals within the judiciary are conducted by senior peers. This creates an excellent opportunity for peer learning and exchange, for discussing one's work with senior colleagues, for getting feedback and learning from the appraisal process. The peer learning and knowledge transfer potential of appraisals can be jeopardised by the rigidity of the appraisal process and the lack of personalised interaction between the two main actors (the appraiser and the person appraised). However, this appears to be a very important function of sophisticated appraisal systems and it is recommended to strengthen it through a closer cooperation between the senior appraiser and the inspected prosecutor through discussion and feedback on different aspects of their work.

5. To invest in the careful selection of evaluators/appraisers and their training

The relationship between the appraiser and the person appraised is one of authority. The appraiser is the 'key' to the appraisal and their personality, knowledge, skills, motivation and willingness are of paramount importance for the effectiveness of the process. This means that it is important to ensure that all the senior judges who conduct appraisals are carefully selected, have the required motivation, capacity and knowledge and are offered specialised training and methodological guidance and tools that can facilitate the meaningful appraisal of their colleagues. This could be achieved if the role of inspector/appraiser were a specific position for which those interested would have to apply. Appraisers should also be coordinated and supervised to ensure that they exercise this function effectively.

3.2. Recommendations on ways to make the complexity of cases a variable in appraisal systems

1. The complexity of cases is an important issue in the judicial work and in the work of public prosecutors and it is fair to ensure that it is given due consideration in the appraisal process. However, complexity is difficult to capture in objective and representative ways.

2. The experience recorded in the study shows four main approaches to addressing complexity in professional appraisals of prosecutors:

- ▶ As a specific appraisal criterion
- ▶ As an indirect appraisal criterion
- ▶ As a workload factor, and
- ▶ As a productivity factor addressed/compensated through remuneration and pay.

3. Each approach has advantages and disadvantages but none suggests an undisputable solution as to the best way to integrate complexity in professional appraisal systems.

4. Specific issues related to the complexity of cases as an appraisal criterion evolve around the best ways to identify and 'measure' complexity and the best ways to weigh complexity against the other appraisal criteria.

■ Recommendations on how to better assess the complexity of cases within appraisal systems include the following:

1. **Include complexity in the assessment criteria**

It is recommended to include complexity as an explicit criterion in the appraisal criteria. This can only add to the sophistication of the appraisal system and enhance its fairness.

2. **Include the complexity of cases as a specific aspect of self-assessment**

With regard to methods to identify or detect the complexity of cases, it is recommended to make this a specific item of the self-evaluation of the appraised prosecutor. This will allow them to refer to complex cases they have handled, to indicate the degree of complexity but also to place this within the broader context of their work in the period covered by the appraisal.

3. **Discuss specific cases as an indicator of complexity**

Another way to detect complexity of cases and to make this an element of the appraisal is to make it the subject of a discussion between the appraiser and the appraised prosecutor. It could be a focused discussion on a specific complex case that the latter has handled, which could form the subject of discussion and peer review by the appraiser. This could allow the appraiser to form a first-hand opinion on the capacity of the prosecutor to grasp complex issues and deal with them.

4. **Assess complexity through the specialisation of appraisers/evaluators**

Another way to take complexity into account in appraisal systems is through the appraisers themselves. They are the ones who are asked to 'filter' information in order to come up with an appraisal. Ensuring that appraisers are specialised in the field they are inspecting is a good way to ensure that they can detect complexity but also that they can assess the responses of the appraised prosecutor.



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