

Hungary / Hongrie

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

In accordance with the Hungarian Criminal Procedure Code, if the European Court of Human Rights (ECHR) establishes the violation of the Convention for the Protection of Human Rights and Fundamental Freedoms, done at Rome, 4 November 1950 or one of its Amendments, in connection with a final decision of a criminal case, an application for review may be submitted, which the Prosecutor General lodges ex officio.

The performance of this task makes it necessary to continuously keep track the ECHR decisions.

Until now, decisions of the Court of Justice of the European Union have not demanded any application for extraordinary remedies, however, due to violation of EU law established by the Court, the case law was restructured and the Prosecution Service issued guidelines.

During its visit in 1994, the Council of Europe's European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) called on the Hungarian authorities to encourage regular visits and surveillance of places of detention within its territorial jurisdiction (CPT/ inf (96) 5).

Upon the call of the CPT, a circular was issued on the implementation of their recommendations for the Prosecution Service.

2. Based on your answer to the 1st question, what are the measures taken particularly for the practical independence of the prosecution services and individual prosecutors? Can you give examples?
3. Are these measures reflected in the law or in the prosecution policy or debate?
4. If yes, then were there any changes in the prosecution system as a consequence of such measures?

Answers to Questions 2-4. include the following:

The Group of States against Corruption (GRECO) have adopted its Compliance Report of Fourth Evaluation Round on Hungary, which made five recommendations concerning the Hungarian Prosecution Service. GRECO's evaluation report expressed its concern that the removal of cases from a prosecutor to another may pose a risk of corruption. Therefore, it addressed recommendation XV to the Prosecution Service suggesting "*that the removal of cases from subordinate prosecutors be guided by strict criteria and that such decisions are to be justified in writing*".

In accordance with GRECO's recommendation if a case in the field of criminal or non-criminal law is removed or reassigned from one prosecutor to another, a brief justification of the removal or reassignment shall be recorded among the documents of the case.

In its Opinion CDL-AD(2012)008 adopted at its 91st Plenary Session in 2012 the Venice Commission made remarks about disciplinary proceedings. The Venice Commission

concluded that disciplinary measures should not be decided only by the superior who is in a position of both accuser and judge. A prosecutorial council would be more appropriate for deciding disciplinary cases. The Venice Commission primarily deemed it necessary to refine disciplinary proceedings in that the fact-finding and decision-making roles during the proceedings should be separated.

Recommendation XVII of GRECO's fourth evaluation round report suggested that disciplinary proceedings in respect of prosecutors be handled outside the immediate hierarchical structure of the Prosecution Service and in a way that provides for enhanced accountability and transparency.

Accordingly, in order to safeguard adequate investigation of disciplinary breaches, it is compulsory for the person exercising disciplinary power to appoint a disciplinary commissioner in each disciplinary case.

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

The Constitution of Hungary (see: Fundamental Law of Hungary) guarantees the independence of the Hungarian Prosecution Service.

The Constitutional Court set forth criteria regarding the independence of the Hungarian Prosecution Service. Several decisions of the Constitutional Court dealt with the constitutional status of the Hungarian Prosecution Service. Case law of the European Court of Human Rights, opinions of the European Commission of Human Rights and the set of principles promoted by the "Rome Charter" of CCPE are also present in the case law of the Constitutional Court.

The case law of the Constitutional Court consistently declares that the Hungarian Prosecution Service is independent and is only subordinated to laws of Hungary. In a constitutional law sense the Prosecutor General of Hungary is not politically accountable to Parliament. The Prosecutor General is not subordinated to any other bodies, and in this way he/she is not subordinated to Parliament, either. It follows from all this that the Prosecution Service and the Prosecutor General shall abide by the Fundamental Law and other laws of Hungary.

The Constitutional Court ruled that the Prosecutor General heads the Prosecution Service, which is an organization subordinated to him/her, in a professional and not in a political sense.

As far as the case law of the Hungarian Supreme Court (i.e. The Curia) is concerned, this issue has been raised in connection with individual cases, with reference to the case law of the Constitutional Court.

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

The Prosecutor General and the Prosecution Service are independent, shall contribute to the administration of justice by exclusively enforcing the State's demand for punishment as public accuser.

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

The Prosecutor General and the Prosecution Service are independent. The Prosecutor General, however, shall report to Parliament annually on his or her activity.

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

Every level of the Prosecution Service has a prosecutors' council. The prosecutors' council shall state its opinion with respect to the appointment (promotion) and exemption of prosecutors, as well as with respect to any further issues on which the person exercising the employer's rights seeks its opinion or where consultation with the prosecutors' council is required under Act CLXVI of 2011 "on the Status of the Prosecutor General, Prosecutors and Other Prosecution Employees and the Prosecution Career" or by the Prosecutor General.

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

Members of the prosecutors' council are elected by an individual decision of the prosecutors' convention attended by all prosecutors of the respective prosecution office.

10. Who has the initiative of disciplinary proceedings?

A disciplinary proceeding is ordered by a person exercising disciplinary power. In practice, however, the direct superior or the superior of the person exercising disciplinary power may also initiate disciplinary proceedings to the person exercising disciplinary power if a disciplinary breach comes to the formers' knowledge. Nevertheless, it is compulsory to conduct a disciplinary proceeding only if a criminal proceeding for a deliberate crime has been instituted against a prosecutor, excluding proceedings instituted by a private prosecutor or a supplementary private prosecutor.

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

Prosecutors are appointed for three years for the first time, and afterwards, for an indefinite term. If a prosecutor appointed for a fixed term requests his/her appointment for an indefinite term and his/her actual time or working as a prosecutor exceeds 18 months, the person exercising the employer's rights shall evaluate the prosecutor. Considering the result of the evaluation and if finding the prosecutor suitable, the Prosecutor General shall appoint the prosecutor for an indefinite term effective as of the day following the expiry of the term of the first prosecution appointment. The work of prosecutors appointed for an indefinite term is also evaluated every 8 years, and if prosecutors are assessed as unsuitable, their employment shall be terminated.

In some exceptional cases a prosecutor's first appointment shall be for an indefinite term if, for example, prior to his/her appointment, the prosecutor worked earlier as a prosecutor, a judge of the Constitutional Court, a judge etc. or acquired outstanding theoretical legal expertise in the area of academic studies or education for at least three years.

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

Yes, several aspects show similarities, including the following, for example:

- rules and provisions concerning the secondment of prosecutors and judges;
- rules concerning the impartiality, independence and conflict of interest of prosecutors and judges;
- the definition of disciplinary breaches and the nature of disciplinary sanctions.

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

The Prosecutor General and the Prosecution Service are independent constitutional organs only subordinated to legislation. The Prosecutor General shall not be instructed either directly or indirectly to make or change an individual decision of a specific content. The rights and obligations of a prosecutor relating to prosecutorial activities shall be defined only in an Act of Parliament.

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

Superior prosecutors may issue instructions for subordinate prosecutors, reserve the right to take over any case from them, or may appoint another subordinate prosecutor to act in a given case. The Hungarian Prosecution Service is headed and directed by the Prosecutor General, and activities of the Hungarian Prosecution Service are regulated by orders which contain rules applicable only to the Hungarian Prosecution Service. The Prosecutor General and superior prosecutors may issue a set of internal rules for governing purposes in writing. When applying law it is important for prosecutors to present the same view or position and to promote the development of uniform practice of application of law. For this reason, superior prosecution offices issue numerous, generally applicable guidelines, which are always issued in writing. Prosecutors carry out their tasks and activities in subordination of the Prosecutor General; only the Prosecutor General and their superior prosecutors may issue instructions for them, and prosecutors shall comply with those instructions. Upon the prosecutor's request the instruction shall be committed to writing. Until this is done, the prosecutor is not obliged to comply with the instruction, unless it requires taking urgent measures.

The prosecutor shall refuse to comply with the instruction if, by complying therewith, he/she would commit a crime or a minor offence. The prosecutor may refuse to comply with an instruction if compliance therewith would directly and grossly endanger his/her life, health or physical state. If the prosecutor finds the instruction incompatible with law or his/her legal conviction, he/she may request his/her exemption in writing from handling the matter by explaining his legal reasoning. Such a request may not be refused; should that aforementioned occur, another prosecutor shall be entrusted with handling the matter, or the superior prosecutor may take the matter over into his/her own competence. If compliance with the instruction may cause unlawful damage or an infringement of rights relating to personality, and the prosecutor may foresee this, the prosecutor shall draw the attention of the person giving the instruction thereto.

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

Knowledge on the independence and impartiality of prosecutors is included in the basic training courses and in the trainees' training in the training system of the Prosecution Service, which is compulsory for all trainees of the Prosecution Service. The topic of the course titled *Basic knowledge of the prosecutor II* includes the materials of the lectures: "The prosecution service relationship; The fundamental rights and obligations of the prosecutor".

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

The judgement of the European Court of Justice in 2012 on lowering the retirement age and compulsory retirement of Hungarian judges, prosecutors and notaries was a leading news item in the domestic press. Similarly, the media closely follow up the decisions (judgements) of the Court of Justice of the European Union in connection with Polish justice. Ruling of the Court of Justice of the European Union that German prosecutors could not issue European arrest warrants has also appeared in the media. Decisions of the European Court of Human Rights on the imprisonment of Turkish judges, prosecutors and lawyers have received strong press coverage in Hungary as well.

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

In the Hungarian Prosecution Service, giving information on non-specific cases concerning the Prosecution Service as a whole falls within the competence of the Prosecutor General, the Deputy Prosecutors General, or based on a mandate, the spokesperson for the Office of the Prosecutor General. The Office of the Prosecutor General published the "Budapest Guidelines", the European Guidelines on Ethics and Conduct for Public Prosecutors, on the official website of the Prosecution Service. The Prosecutor General's Recommendation of 2014 on the Code of Ethics and Standards of Prosecutors' Professional Conduct was formed in accordance with the "Budapest Guidelines", Rec(2000)19 of the Council of Europe Committee of Ministers on the role of public prosecution in the criminal justice system and with Draft Opinion No 9 (2014) of the Workgroup of the Consultative Council of the European Prosecutors reviewing the Recommendation. The Prosecutor General's Recommendation is also available on the official website of the Prosecution Service.

MAIN QUESTION

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

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

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

European Case-law on the Independence of Courts and Tribunals, Judges and Prosecutors

I. ECtHR and CJEU case-law on courts, tribunals and judges

a) European Court of Human Rights (ECtHR)

Findlay v. the United Kingdom, 25 February 1997, §§ 73 and 77, Reports of Judgments and Decisions 1997-I (independence and impartiality are closely linked concepts; a binding decision which cannot be altered by a non-judicial authority)

Moiseyev v. Russia, no. 62936/00, §§ 175-185 9 October 2008 (no clear distinction between independence and objective impartiality; the procedure of appointing judges to sit on the bench in a particular case, composition of a court modified)

Parlov-Tkalčić v. Croatia, no. 24810/06, § 86, 22 December 2009 (independence generally relates to the structure of a tribunal; independence of a court president)

Clarke v. the United Kingdom (dec.), 23695/02, 25 August, 2005 (procedural safeguards to separate the judiciary from other powers, especially the executive)

Campbell and Fell v. the United Kingdom, 28 June 1984, §§ 78-79 and 81, Series A no. 80 (factors to consider are the manner of appointment of the members of the tribunal and the duration of their term of office, the existence of guarantees against outside pressures; appointment by the executive is no problem; appearance is not decisive)

Le Compte, Van Leuven and De Meyere v. Belgium, 23 June 1981, § 57, Series A no. 43 (legally qualified members of tribunal)

Maktouf and Damjanović v. Bosnia and Herzegovina [GC], nos. 2312/08 and 34179/08, §§ 4853, ECHR 2013 (international judges involved in national court proceedings)

Ringeisen v. Austria, 16 July 1971, § 95, Series A no. 13 (independence from the executive and the parties, land tribunal involving civil servants under statutory obligation to act independently)

Beaumartin v. France, 24 November 1994, § 38, Series A no. 296-B Beaumartin v. France, 24 November 1994, § 38, Series A no. 296-B (no instructions from the executive)

Sramek v. Austria, 22 October 1984, Series A no. 84; Zand v. Austria (dec.), no. 7360/76, 16 May 1977 (government's influence)

DRAFT - OVA a.s. v. Slovakia, no. 72493/10, §§ 80-86, 9 June 2015 (no interference with the final, binding judgment)

Henryk Urban and Ryszard Urban v. Poland, no. 23614/08, §§ 47-56, 30 November 2010 (guarantees against removal during term; correction role of the appeal court)

Fruni v. Slovakia, no. 8014/07, § 141, 21 June 2011 (doubts must be objectively justified)
Belilos v. Switzerland, 29 April 1988, §§ 66-67, Series A no. 132 (independence of a "Police Board", appearances must be objectively justified)

Miroshnik v. Ukraine, no. 75804/01, 27 November 2008 (Military tribunal where judges were appointed by the defendant Ministry of Defence, and were dependent financially on it)

Procola v. Luxembourg, 28 September 1995, Series A no. 326; Kleyn and Others v. the Netherlands [GC], nos. 39343/98 and 3 others, ECHR 2003-VI (mixed advisory and judicial roles) 190-194.

McGonnell v. the United Kingdom, no. 28488/95, ECHR 2000-II (mixed parliamentary and judicial functions)

Langborger v. Sweden, 22 June 1989, § 35, Series A no. 155 (interest of lay assessors)

Pullar v. the United Kingdom, 10 June 1996, § 32

Ninn-Hansen v. Denmark, 18 May 1999

Kyprianou v. Cyprus, no. 73797/01, § 118-121

Sacilor-Lormines v. France, no. 65411/01, § 59-63

Micallef v. Malta, no. 17056/06, § 93-99

Morice v. France, no. 29369/10, § 73-78

Thiam v. France 18 October 2018, § 77-82

Ramos Nunes de Carvalho e Sá v. Portugal, 6 November 2018, § 144-152 Guðmundur

Andri Ástráðsson v. Iceland, nr. 26374/18, 122-123.

Miracle Europe Kft. v. Hungary, 57774/13. nr. § 53. – 59.

ComÈme and others v. Belgium (32492/96, 32547/96, 32548/96, 33209/96 és 33210/96) – C. 120., 122.

Harabin v. Slovakia, § 133.

Oleksandr Volkov v. Ukraine, § 109.

Denisov v. Ukraine [GC], § 68–70.

b) Court of Justice of the European Union (CJEU)

1. ECJ judgments on the independency of judges, courts and tribunals

C-54/96. Dorsch Consult 35-36

C-407/98. Abrahamsson and Anderson 36-37

C-175/11. D. and A. 95-97

C-58/13. and C-59/13. Torresi 21-25

C-222/13. TDC 29-37

C-203/14. Consorci Sanitari del Maresme 19-21

C-503/15. Margarit Panicello 37-38

C-585/18., C-624/18. and C-625/18. A.K. and others 114-153 C-619/18. Commission v. Poland 42-59., 71-77., 108-112.

C-64/16, Associação Sindical dos Juizes Portugueses v. Tribunal de Contas, 27 February 2018, § 41-45 (independence of judges is essential to guarantee the right to effective judicial protection in the fields covered by EU law)

C-49/18. the High Court of Justice, Catalonia referred the question to the European Court of Justice is the salary reductions of judges infringe the general principle of judicial independence. Parts of the judgement concerning judicial independence: [61]-[74].

C-216/18 PPU, Minister for Justice and Equality (LM), 25 July 2018, § 51-78 (deficiencies in the system of justice) ECJ judgment on the independency of the judicial system

C-619/18, Commission v. Poland (newly-set retirement age for Polish Supreme Court judges)

C-24/92, Pierre Corbiau v. Administration des contributions, 30 March 1993, § 15 (third party decision-making)

C-506/04, Graham J. Wilson v. Ordre des avocats du barreau de Luxembourg, 19 September 2006, §§ 47-53 (aspects of independence)

C-103/97, Josef Köllensperger GmbH & Co. KG and Atzwanger AG v. Gemeindeverband Bezirkskrankenhaus Schwaz, 4 February 1999, § 21-25 (external pressure)

C-286/12, Comission v. Hungary (06 Nov 2012) national scheme requiring compulsory retirement of judges

C-192/18 Comission v. Poland (05 Nov 2019) – principles of the irremorability of judges and judicial independence (lowering of the retirement age of judges of the ordinary Polish courts)

2. ECJ judgments on the independency of prosecutors
C-508/18 and C-82/19 OG and PI 71-74

C-509/18. PF 46-57 In case C-509/18 the Court, however, considered the Lithuanian prosecutors independent, because their constitution grants total independence from executive powers.

Joint cases C-508/18. and C-82/19 of the European Court dealt with the independence of the German prosecutor's office. The Court found the said prosecutor's office not completely independent as even though it extremely rarely happens in practice, the prosecutor general may be given a direct order from the state government in any individual case. Therefore, so the court concluded, political influence on a particular case may not be completely excluded.

C-453/16 PPU (Özcelik), the Court also found the Hungarian prosecutor's office independent from the government.

C-551/15 Pula Parking paragraphs 45-50 and - In this case and in the cited case-law the Curia defines the difference between courts and public notaries and the judicial and notarial functions.

II. ECtHR Case-law on prosecutors

Priebke v. Italy (dec.), no. 48799/99, § 1b, 5 April 2001 (the prosecutor is a party to the criminal court proceedings and not a tribunal)

Daktaras v. Lithuania, no. 42095/98, §§ 44-45, ECHR 2000-X (no obligation for a prosecutor to be independent; statements by a prosecutor)

Craxi v. Italy, no. 34896/97, § 105, 5 December 2002 (statements by a prosecutor)

Khuzhin and Others v. Russia, no. 13470/02, §§ 95-96, 23 October 2008 (statements by highranking prosecution officials)

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

According to the Hungarian Fundamental Law, judges are independent and subject only to Acts, and cannot be instructed in relation to their judicial activities. With regard to the Prosecution Service, the Fundamental Law provides that the Prosecutor General and the Prosecution Service are independent.

Judges and lay judges are independent, and based on the relevant legal provisions they decide according to their own conviction, and the President of the National Office for the Judiciary is obliged to carry out the central functions of the administration of courts, while safeguarding the constitutional principle of independence of judges.

Judges are independent in the performance of their judicial duties and shall at the same time be granted immunity equal to the Members of the Parliament. The law also lays down rules on the conflict of interest of judges, excluding the possibility of being a member of a political party or being engaged in political activities at national or local level, and it also provides for broad bans on holding positions in business organisations.

In order to ensure the impartial enforcement of fundamental rights and obligations and the integrity of public life, and in order to prevent corruption, judges are required to file a financial disclosure statement, their remuneration is commensurate with the dignity of their profession and with the gravity of their responsibilities, thereby guaranteeing their independence.

The Prosecutor General may not, directly or indirectly, be instructed to make or alter any individual decision with a particular content. Similarly to the rules applying to judges the Hungarian Fundamental Law guarantees the Prosecutor General and prosecutors the same immunity as enjoyed by the Members of Parliament.

Prosecutors have to face strict ethical standards. Accordingly, prosecutors may not be members of any organization that engages in unlawful activity, they are obliged to declare bias in all matters of personal interest, and may not solicit or accept gifts, donations or other advantages in connection with their activities and must conduct themselves in private life in a manner that reflects the dignity of their profession.

As opposed to the independence of judges, Acts relating to the Prosecution Service reveal a significant difference as far as independence is concerned, stating that prosecutors are subordinate to the Prosecutor General and instructed only by the Prosecutor General and their superior prosecutors and, furthermore, when stating that prosecutors have to comply with the instructions of the Prosecutor General or their respective superior prosecutor.

The conflict of interest of prosecutors is determined by law in the same way as the conflict of interest of judges, and prosecutors are entitled to a remuneration according to the dignity of their profession and the gravity of their responsibility.

Prosecutors are also obliged to file a financial disclosure statement.

In conclusion, many guarantees of independence for both judges and prosecutors have been enshrined in the Fundamental Law and in the laws on their status. Many of these statutory guarantees, through immunity, rules concerning conflict of interest and remuneration, and the obligation of filing a financial disclosure statement, ensure the exercise of independence in the same way for prosecutors and judges. However, there is an essential difference in the content of the two professions' independence. While judges make their decisions only in accordance with the law and their own conscience, prosecutors perform their duties in a strict hierarchical structure, always following the instructions of the Prosecutor General and their superior prosecutor as well as the rules governing the execution of these instructions.

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

The Prosecutor General and the Prosecution Service are independent, shall contribute to the administration of justice by exclusively enforcing the State's demand for punishment as public accuser. The Hungarian Prosecution Service is headed and directed by the Prosecutor General. The Prosecutor General shall not be instructed either directly or indirectly to make or change an individual decision of a specific content.

The Prosecution Service supervises that investigation authorities conduct the preparatory proceedings and their investigations in compliance with provisions of law, and in the course of the criminal investigation it directs that part of the investigation which is carried out under a prosecutor's supervision. The Prosecution Service decides about requests seeking legal remedy that are submitted in the course of criminal proceedings and fall within its responsibilities.

The Prosecutor General may take over the investigation of crimes from any investigation authority and assign it to the competence of the Prosecution Service, and in the course of the prosecutorial investigation of cases and during preparatory proceedings he may involve the assistance of any investigation authority. In order to fight crime the Prosecution Service may propose coordinated measures to the investigation authorities and other concerned bodies. For purposes of secret information gathering the Prosecution Service may use tools that are subject and ones that are not subject to judicial authorization.

The Prosecution Service prosecutes criminal cases at trials and may make certain decisions with regard to the charges. Prior to court decisions it may make proposals in all issues relating to cases; it may exercise rights of appeal and legal remedy guaranteed by the Hungarian Criminal Procedure Code. The Prosecutor General may file petitions to the Curia (Supreme Court of Hungary) for review or for legality review against final decisions of courts delivered in criminal cases.

In addition, the Prosecution Service also exercises supervision over the legality of the execution of punishments.

Prosecutors exercise their discretionary power in an impartial, fair way, in compliance with the law and without any external influence.

Everyone shall ensure for prosecutors the unhindered exercise of their rights guaranteed by law. When prosecutors exercise the right to issue instructions, the instructed bodies shall comply with the instructions. When carrying out their tasks and exercising their power, prosecutors may have access to and consult procedural documents and records of courts and out of court bodies applying law without any restrictions. Prosecutors may request authorities and bodies to provide data and documents, and the requested authorities and bodies shall comply with prosecutors' requests. While taking prosecutorial actions, prosecutors may enter the areas and premises that are controlled by the bodies and persons affected by the procedural actions.

Prosecutors cooperate and interact with courts, investigation authorities and other bodies at national and international level to prosecute crimes in a fair and effective way, to prevent violations of law, to ensure legality and to protect human rights.

The principle of prosecutorial independence prevails in the cooperation, interaction and relation of the Prosecution Service with other actors of the criminal procedure.

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

The Prosecution Service carries out its tasks in a hierarchically structured organization which makes it possible to identify which prosecutorial employee is responsible for a particular decision. In other words, similarly to other prosecution services in Europe the Hungarian Prosecution Service has a hierarchical organization. In such organizations it is part of the general case management that superior prosecutors assign cases to prosecutors and remove cases from one prosecutor to another.

The right to lawful prosecutor, which would be similar to the right to lawful judge, is not a guaranteed right. Unlike in the case of courts, head prosecutors exercise the right to sign

and issue documents about final prosecutorial decisions, and they shall bear responsibility for them. Subordinated prosecutors only prepare these decisions. Head prosecutors bear the responsibility for the content of prosecutorial decisions and for ensuring the appropriate, lawful and timely operation of a particular organizational unit. In this way, it is a question of management who prepares a particular decision, because even in case of much workload, or when someone is on holiday or on sick leave, the continuity of case management shall be guaranteed. In addition to this, subordinated prosecutors may request that a case should be removed from a prosecutor to another at any time.

The Hungarian Criminal Procedure Code specifies cases when a prosecutor shall be excluded from a criminal procedure. These provisions shall also apply to the allocation, re-allocation of cases.

Formal written requirements are followed when cases are assigned to prosecutors, which are always recorded on and made part of case documents.

The electronic case management system operating in the Prosecution Service also separately documents the assignment of cases, thus the assignment of cases can be tracked and is transparent.

When a case is removed or re-allocated from a prosecutor to another, its reason must also be briefly recorded.

As far as the assignment and removal/re-allocation of cases are concerned, the laws in force and internal regulations, taking the hierarchical organization of the Prosecution Service into consideration, also comply with rule of law standards.

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

The Meeting of Head Prosecutors held by the Hungarian Prosecution Service on 3 December 2014 adopted the Recommendation of the Prosecutor General on the Code of Ethics and Standards of Prosecutors' Professional Conduct. The Code of Conduct was based on Recommendation (Rec (2000) 19) of the Committee of Ministers of the Council of Europe on the role of public prosecution in the criminal justice system and on the Draft Opinion of the Working Group of the CCPE-GT number 9 (2014) on European norms and principles concerning prosecutors and on the European Guidelines on the Ethics and Conduct of Public Prosecutors, the Budapest Guidelines (CPGE (2005) 05). The Recommendation on the Code of Ethics and Standards was published in issue No 12/LXII of the Prosecution Service Gazette.

The Recommendation on the Code of Ethics and Standards states, amongst its basic obligations, that public prosecutors are to carry out their duties at all times and under all circumstances, including their obligation to take action, in accordance with the relevant national and international law; they must perform their tasks impartially, consistently, effectively and in a timely manner. They must be aware that they act on behalf of the state and in the public interest; they must, within the framework of legislation, strive to strike a balance between the general interest of society and the interests and rights of individuals. Public prosecutors must always act according to professional rules, with fairness and utmost care, they have to perform their duties free from external influence, and without fear, bias (favour) and prejudice; they must not be influenced by individual or group interests or by pressure from the public opinion and the media.

According to ethical standards, public prosecutors must also take into account that during their procedures they should not only be impartial and consistent but they even have to show

these qualities by their conduct; they have to refrain from engaging in any political activity that is incompatible with the requirement of impartiality; they may exercise freedom of expression and the right to freedom of association in a manner that is compatible with their duties and which does not affect or does not appear to influence the independence or impartiality of the Prosecution Service. They must also deal with the media in a manner that is compatible with their office and their conduct must not compromise the independence and impartiality of the Prosecution Service.

According to the Recommendation on the Code of Ethics and Standards it cannot be allowed that prosecutors' own or their families' personal or financial interests, or their social or other relationships influence the official procedure of public prosecutors. In particular, public prosecutors should not act in cases in which they, their families or business associates have a private or financial interest, or they maintain private or financial relations or personal contacts with the persons involved in the case. Public prosecutors shall not undertake or commit themselves to any tasks or cases, nor shall they apply for any paid or unpaid functions or positions which are incompatible with their office or reduce their capacity to appropriately perform their own duties.

Public prosecutors in their private conduct shall not compromise the actual or the reasonably perceived integrity, fairness and impartiality of the Prosecution Service; they shall not use any information to which they have had access in the course of their employment to further unjustifiably their own private interests or those of others.

The Recommendation on the Code of Ethics and Standards prescribes that public prosecutors shall not accept any gifts, prizes, benefits, inducements or promises of these, concerning their office, furthermore, they have to refuse any privileges given or promised for third persons referring to them; in addition, they shall not engage in any activity that may endanger their integrity or fairness and, to the extent possible, avoid foreseeable life situations and manifestations that would cause them to seem to be in such a conduct.

The ethical standards reflect the principle of public prosecutors' independence in several respects.