

MECHANISMS FOR HARMONISATION OF PROSECUTORIAL PRACTICE AND PREVENTION OF CONFLICTING CASE LAW



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MECHANISMS FOR HARMONISATION OF PROSECUTORIAL PRACTICE AND PREVENTION OF CONFLICTING CASE LAW

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*Mehanizmi za harmonizaciju
tužilačke prakse i sprečavanje
konfliktne sudske prakse*

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EXECUTIVE SUMMARY

The study 'Mechanisms for harmonisation of prosecutorial practice and prevention of conflicting case law' was commissioned by the Council of Europe to the Themistocles and Dimitris Tsatsos Foundation – Centre for European Constitutional Law (CECL) in under the joint EU/CoE project "Support for implementation of the judicial reform in Serbia".

■ The objective of the consultancy was to

- ▶ analyse mechanism for harmonization of prosecutorial practice and prevention of conflicting caselaw across six to eight CoE Member States with the emphasis on organized crime and high corruption cases and the use of IT tools;
- ▶ Submit a short report with recommendations on methods to improve mechanism for harmonization of prosecutorial practice and prevention of conflicting caselaw in selected CoE member states based on relevant Council of Europe and EU standards

■ The study was implemented through case studies from eight member states of the Council of Europe. The countries covered include Austria, Greece, Slovenia, Portugal, Romania, Bulgaria, Spain and France. The case studies were selected to represent different legal systems and different types of prosecutorial systems.

■ The information for the country case studies was collected through desktop research, literature review, review of legislation and (online) interviews with prosecutors and experts from most of the selected jurisdictions (with the exception of Spain and France). The case studies are short and non-exhaustive. Instead, they focus and prioritise the features that are unique and relevant to the topic of the study.

■ The main findings of the study are the following:

■ 'General' mechanisms that can improve the uniform application of the law and the harmonisation of prosecutorial practice include:

- ▶ Instructions
- ▶ Opinions
- ▶ Guidelines
- ▶ Practices for monitoring the application of the law
- ▶ Internal working methods of the prosecution
- ▶ Access to databases and IT tools
- ▶ Dissemination
- ▶ Training and networking

■ Mechanisms for resolving conflicts of case law, the case studies revealed the existence of:

- ▶ 'Corrective' remedies to unify case law that intervene after a conflict is detected
- ▶ Remedies to prevent conflict of case law through preliminary questions when there is lack of clarity on the case law or practice
- ▶ Mechanisms to monitor or report divergent case law were also identified both in a bottom – up and top-down direction.

■ Mechanisms to unify the application of the law in specialized areas include:

- ▶ Specialised units or prosecution services
- ▶ Specialized prosecutors with specific knowledge and expertise.
- ▶ Guidelines on the application of the law
- ▶ The involvement of the specialized prosecutors in all cases which they either handle or direct
- ▶ Joint teams
- ▶ Access to expertise and support
- ▶ Training and networking

■ The present report has the following structure:

- ▶ Chapter 1 outlines the theoretical background of the study in relation to the separation of powers, the autonomy and independence of prosecutors and the need for uniform application of the law
- ▶ Chapter 2 examines functions and mechanisms created to ensure the harmonization of prosecutorial practice and the unification of case law in nine member states of the Council of Europe: Austria, Greece, Slovenia, Portugal, Romania, Bulgaria, Spain and France. Each country study includes a brief organization of the prosecutorial system, mechanisms related to the harmonization of prosecutorial practice and the unification of case law in general and in particular in relation to corruption and organized crime
- ▶ Chapter 3 analyses the comparative experience, identifies the main mechanisms for harmonization of prosecutorial practice and unification of case law and discussed potential advantages and disadvantages and includes the conclusions of the study

■ The research was conducted by Dr. Maria Mousmouti, Executive Director of the Centre for European Constitutional Law and Associate Research Fellow at the Institute of Advanced Legal Studies of the University of London in the period from November 2021 to March 2023.

The views expressed in the paper, as well as factual or other errors and mistakes, remain of the author alone.

Chapter I:

Between prosecutorial autonomy and independence and the uniform application of the law

Prosecutors have an important role in upholding the rule of law¹ and are in the front line of addressing criminality and particular ominous crimes. The tasks assigned to them vary significantly within legal systems² in many respects, from the basis for prosecutions, their role in investigations and in the criminal trial, their role in controlling the legality of investigations or in the enforcement of sentences, among others³. Despite the different approaches, it is a common fact in all legal orders that the mission of prosecutors is demanding, difficult and requires professionalism, courage, balance, and determination.

The independence and autonomy of prosecutors are corollary to the independence of the judiciary. Prosecutors are -and must be- free from external and internal unlawful interference in the exercise of their duties and are not subjected to any pressure or unlawful influence of any kind. Independence applies to the prosecution service, its bodies, and to individual prosecutors⁴.

■ Independence however does not mean that prosecutors do what they want. Prosecutions are hierarchical organisations and individual prosecutors are subject to a hierarchy whose task is to ensure the proper functioning of the service as a whole and ensure coherence, consistency, and uniformity of action in the administration of justice and in the application of the law. Prosecution services are complex public organisations and their legal, organisational, and technical framework play an important role in their potential to fulfil their mission with the highest quality and efficiency.

■ There is a delicate balance to be achieved between the freedom of prosecutors from any influence or pressure, hierarchical control, and the need to ensure that the law is applied uniformly and consistently from the numerous serving prosecutors in their jurisdictions. Prosecutions are staffed by a big number of prosecutors, who have to make numerous decisions on organizational, practical and substantive issues in the cases they handle. How can that be achieved? What mechanisms are in place? How do legal systems ensure that prosecutors have sufficient information and guidance to follow compatible methodologies, especially in complex and specialized areas? Harmonising prosecutorial practice is a challenge common to most legal systems.

■ A related, yet not similar, challenge has to do with the unification of case law and the prevention of conflicting case law. The unity of the jurisprudence is an objective for any legal system. Yet case law refers to the resolution of concrete cases by the courts and the consequent application and interpretation of the law by them. Contradictory decisions on identical matters do not only create instability and challenge legal certainty but also prevent practitioners from implementing the law in a foreseeable way. Unity of case law confers trust in the legal system, coherence and promotes legal certainty and stability. What mechanisms and remedies are in place to ensure the unification of case law and the prevention of conflicting case law?

■ The general questions highlighted above are accentuated when it comes to specific areas dealing with especially complex and serious crimes like corruption, terrorism, or organized crime⁵. Prosecutors are in the first line of response to bring these crimes in courts and to this aim they need independence, flexibility, guidance and means to address their complex tasks.

1 The Rome Charter, <https://rm.coe.int/168074738b>

2 CoE, Report on the independence and impartiality of the prosecution services in the Council of Europe member States (2019 edition), <https://rm.coe.int/ccpe-report-2019-en/16809e0d3a>

3 See CONSULTATIVE COUNCIL OF EUROPEAN PROSECUTORS (CCPE) Opinion No. 13(2018) of the CCPE: «Independence, accountability and ethics of prosecutors», <https://rm.coe.int/opinion-14-ccpe-en/168099399f> and <https://rm.coe.int/opinion-13-ccpe-2018-2e-independence-accountability-and-ethics-of-pros/1680907e9d>

4 Ibid.

5 CONSULTATIVE COUNCIL OF EUROPEAN PROSECUTORS (CCPE) Opinion No. 14 (2019) of the CCPE: «The role of prosecutors in fighting corruption and related economic and financial crime»

■ The challenges involved in handling complex or serious crimes include the need for specific expertise and knowledge, knowledge and experience in special investigation techniques, specialized skills, for example in economic analysis or in the use of tools and means including modern information technologies, skills to deal with voluminous files, procedural skills to protect vulnerable witnesses or whistle-blowers, complex proceedings concerning the freezing, seizure, confiscation and recovery of criminal assets but also soft skills to deal with stress, pressure, voluminous files and avoid professional burn out⁶. The challenge of impartiality, professionalism and uniform application of the law becomes an even more complex challenge in these areas.

Objectives and scope of the study

■ The objective of the consultancy was to

- ▶ analyse mechanism for harmonization of prosecutorial practice and prevention of conflicting caselaw across six to eight CoE Member States with the emphasis on organized crime and high corruption cases and the use of IT tools;
- ▶ submit a short report with recommendations on methods to improve mechanism for harmonization of prosecutorial practice and prevention of conflicting caselaw in selected CoE member states based on relevant Council of Europe and EU standards

■ The study was conducted from November 2022 to March 2023 and addressed the following research questions:

■ The study explored the following issues in a comparative perspective:

- ▶ Ways to harmonise prosecutorial practice within different prosecutorial systems
- ▶ Measures / solutions to ensure harmonization of judicial practice and to prevent conflicting case law
- ▶ Ways to harmonise prosecutorial practice in organized crime and corruption cases
- ▶ Soft tools used to support the harmonization of prosecutorial practice (Guidance / information, IT tools, learning mechanisms, capacity building etc).

Method of the study

■ The study responds to the research questions by examining and comparing the experience of eight member states of the Council of Europe. The country case studies cover Austria, Greece, Slovenia, Portugal, Romania, Bulgaria, Spain and France. The case studies were selected to represent different legal systems and different types of prosecutorial systems.

■ The case studies rely on information and data collected in different ways and from a variety of sources: desktop research, literature review, review of legislation and interviews with prosecutors and experts from most of the selected jurisdictions (with the exception of Spain and France).

■ Interviews were conducted with experts from six (out of the eight) countries covered in this study. The author would like to thank (in alphabetical order)

- ▶ Galina Andreeva-Mincheva, Deputy district Attorney, Prosecutor's Office, Plovdiv
- ▶ Susana Figueirdo, Senior Public Prosecutor, Trainer at the School of Magistrates, former member of the Specialised Prosecution Unit for Corruption and of the DCIAP (Portugal),
- ▶ George Virgil Gavrilă, Prosecutor, International Cooperation Service, Directorate for Investigating Organized Crime and Terrorism (DIICOT), Romania,
- ▶ Mag. Cornelia Koller, Deputy Head of the Prosecutor's office in Graz, President of the Association of Austrian Public Prosecutors,
- ▶ Mag. Maja Veber Šajn, Senior State Prosecutor, Supreme State Prosecutor's Office, Slovenia,
- ▶ Prosecutor Apostolos Tzamalīs, Acting Head of the Public Prosecution of the Court of First Instance of Larissa,

⁶ CCPE Opinion No. 10(2015) on the role of prosecutors in criminal investigations, in particular when special investigation techniques are being used,

Interviews were conducted online and used the following interview guide:

- ▶ Please explain briefly how the prosecutorial system is organized in your country.
- ▶ How are organized crime and corruption cases addressed within the prosecutorial system? For example, are they handled by special bodies of prosecutors, specially trained prosecutors or in other ways?
- ▶ To what extent the harmonization of prosecutorial practice and the harmonization of case law are issues of concern? Please give examples of cases where this has been an issue.
- ▶ What measures / solutions are/have been adopted in your jurisdiction to ensure harmonization of judicial practice and to prevent conflicting case law? Please explain and give examples
- ▶ How is harmonization of practice promoted in the field of organized crime and corruption?
- ▶ How is conflicting case law prevented in these fields?
- ▶ Are particular tools used to support the harmonization of prosecutorial practice?
 - ▶ Guidance / information
 - ▶ IT tools (data bases etc)
 - ▶ Learning mechanisms
 - ▶ Capacity building
 - ▶ Other tools?
- ▶ How are guidelines or knowledge on recommended practice disseminated within the profession?
- ▶ In your view, what works well in your system in relation to harmonization of prosecutorial practice and prevention of conflicting case law? What is in your opinion best practice?
- ▶ What does not work? What could be done better?
- ▶ Other comments/ideas/suggestions

The case studies are short and non-exhaustive. Their focus is on the questions explored and they do not offer a complete overview of the situation in the respective countries.

Structure of the study

The study is structured as follows:

- ▶ Chapter 1 outlines the theoretical background of the study in relation to the separation of powers, the autonomy and independence of prosecutors and the need for uniform application of the law
- ▶ Chapter 2 examines functions and mechanisms related to the harmonization of prosecutorial practice and the unification of case law in nine member states of the Council of Europe: Austria, Greece, Slovenia, Portugal, Romania, Bulgaria, Spain and France. Each country study includes a brief organization of the prosecutorial system, mechanisms related to the harmonization of prosecutorial practice and the unification of case law in general and in particular in relation to corruption and organized crime
- ▶ Chapter 3 analyses the comparative experience, identifies the main mechanisms for harmonization of prosecutorial practice and unification of case law and discussed potential advantages and disadvantages and includes the conclusions of the study.

Chapter II:

Mechanisms and practices to harmonize prosecutorial practice and case law – the experience of Council of Europe member states

This chapter examines case studies from eight different legal systems to identify mechanisms related to the harmonization of prosecutorial practice and the unification of case law.

The countries examined include Austria, Greece, Slovenia, Portugal, Romania, Bulgaria, Spain, and France. The information on each country is based on desktop research, review of legislation and other sources and interviews with prosecutors and experts from each country. Each country study is structured as follows: it starts with a brief presentation of the organization of the prosecutorial system; it explores mechanisms related to the harmonization of prosecutorial practice and the unification of case law; and then it explores mechanisms in place in relation to corruption and organized crime.

AUSTRIA⁷

Organisation of the prosecutorial system

Austria's judicial system comprises the Federal Ministry of Justice, the ordinary courts, the public prosecutor's offices, the prisons, and the probation services. Public prosecutors investigate and indict acts that are subject to court punishment. Following the Reform of 2008 public prosecutors were included in Austria's Federal Constitution as "organs of the courts of law" (Article 90a B-VG).

■ All 16 Regional Courts with jurisdiction over criminal matters have a public prosecutors' office. There is a Senior Public Prosecutors' Office (Oberstaatsanwaltschaft) at every Higher Regional Court and a Procurator General's Office (Generalprokuratur) at the Supreme Court. In addition, a central "Office of Public Prosecutors for the Prosecution of Corruption (Korruptionsstaatsanwaltschaft/KStA)"⁸ with jurisdiction all over Austria to address offences of corruption and economic crime.

■ The Senior Public Prosecutors' Offices and the Procurator General's Office directly report to the Federal Minister of Justice. The Procurator General's Office has no right to give instructions to Senior Public Prosecutors or public prosecutors.

■ Public prosecutor's offices (Staatsanwaltschaften) are separate from the courts with the role to safeguard the public interest in the administration of criminal justice. They are in charge of criminal investigation proceedings, and they are responsible for filing and presenting the indictment in criminal proceedings.

■ Senior public prosecutor's offices are hierarchically superior to public prosecutor's offices and are established at the Higher Regional Courts. They are responsible for supervising all public prosecutor's offices in their district and are directly subordinate to the Federal Minister for Justice.

⁷ The information in this chapter relies on the country page of e-justice, https://e-justice.europa.eu/29/EN/types_of_legal_professions?AUSTRIA&member=1#tocHeader2; EJN, <https://www.ejn-crimjust.europa.eu/ejn2021/ContentDetail/EN/5/2>; https://e-justice.europa.eu/16/EN/national_justice_systems?AUSTRIA&member=1, the web site of the WKSTA <https://www.justiz.gv.at/wksta/wirtschafts-und-korruptionsstaatsanwaltschaft.312.de.html>, the Procurator General and the Ministry of Justice, the public collection of judgements: <https://www.ris.bka.gv.at/Jus/> and an interview with Mag. Cornelia Koller, Deputy Head of the Prosecutor's office in Graz, President of the Association of Austrian Public Prosecutors.

⁸ Section 2a of the Austrian Act on the Public Prosecution (Staatsanwaltschaftsgesetz/StAG).

■ The Procurator General's Office is the highest instance of public prosecutor's offices in Austria and is positioned outside the prosecution system. The Procurator General reports directly to the Federal Minister of Justice and does not have the right to issue any instructions to public prosecutors or present indictments. Instead, it supports the Supreme Court and is authorised to lodge appeals for nullity to ensure that the law is upheld in criminal matters in which the parties have no (further) possibility of appeal. The Procurator General's Office performs an important function as a custodian of the law that it preserves the unity of the law and ensures legal certainty in criminal law matters. The PG has five key functions: a) participation in nullity proceedings⁹, b) appeal to preserve the integrity of the law (Wahrungsbeschwerde), c) re-hearing of criminal proceedings¹⁰, d) extraordinary reopening of the case, e) disciplinary proceedings¹¹ and f) decisions on competence¹².

Functions related to the harmonization of prosecutorial practice and the unification of case law

■ In Austria, the following mechanisms are in place to harmonize prosecutorial practice and unify case law:

a) The mandate of the Procurator General to make an appeal to preserve the integrity of the law

■ As already mentioned, the Procurator General's Office is the custodian of the law with the responsibility to preserve the integrity of the law. Within this function, the Procurator General has the mandate to exercise an appeal to preserve the integrity of the law (Wahrungsbeschwerde):

■ This power allows them to file a nullity appeal against decisions of the criminal courts to preserve the integrity of the law, based on an infringement or incorrect application of the law, and against any unlawful ruling or measure by a criminal court and to urge the Supreme Court to adjudicate the case to constitute an infringement of the law¹³.

■ The main purpose of this appeal, which is not subject to time limit is to ensure uniformity and correctness of the application of the law with the aim of preventing the same infringements in the future and promoting further development of criminal law. Thus, the appeal to preserve the integrity of the law is instrumental in fostering a well-functioning administration of justice. In many cases it also provides recourse for individuals wrongly condemned, accused persons unlawfully disadvantaged by the criminal court etc.

■ This option of applying the appeal was amended in 2011 to reach beyond rulings and measures by the courts and include measures taken by the criminal investigation police and the public prosecutor's offices. Any other processes of the public prosecutor's offices are not subject to a review by means of a appeal to preserve the integrity of the law.

■ The appeal to preserve the integrity of the law only addresses errors related to the correct application of the law, whereas findings related to the facts of the case cannot be challenged by a nullity appeal.

■ The public prosecutor's offices ex officio submit cases in which they consider an appeal is necessary to the senior public prosecutor's offices. The latter decide whether the cases are to be forwarded to the Office of the Procurator General. In all other respects, anyone is entitled to file an appeal for annulment in order to uphold the law (23 par. 2).

9 The Prosecutor General's Office prepares comments on nullity appeals against decisions of criminal courts. When the Procurator General arrives at the conclusion that a nullity appeal is required in a public hearing before the Supreme Court, it renders a written statement ("croquis"), expressing its position on all the questions raised in the appeal and submits its opinion on the correct application of the law.

10 Sec. 363 a of the Austrian Code of Criminal Procedure (StPO) and Sec. 362 para. 1 no. 2 stop.

11 Pln addition, the Procurator General participates in disciplinary proceedings against judges, notaries, lawyers, candidate lawyers and members of the Administrative Court, as well as members or substitute members of the Constitutional Court in the case of impeachment proceedings. In many of those cases, the Procurator General's Office issues extensive statements commenting on the questions raised in the legal remedies, and by expressing its opinion contributes to the correct application of the law.

12 Pursuant to sec. 28 StPO, the Procurator General's Office rules on competence disputes of the public prosecutor's offices in preliminary criminal proceedings and may (ex-officio or upon application) transfer proceedings from one public prosecutor's office to another. In cases where competence of the Public Prosecutor's Office cannot be derived from the statutory provisions governing local competence for certain legal matters (sec. 25 para. 1 to 3 StPO), the Procurator General's Office will decide which Public Prosecutor's Office is responsible for conducting the preliminary criminal proceedings (sec. 25 para. 4 StPO).

13 Sec. 23 of the Austrian Code of Criminal Procedure reads (own translation): § 23. (1) The Office of the Procurator General may, ex officio or on behalf of the Federal Minister of Justice, file an appeal for annulment to uphold the law against judgments of the criminal courts that are based on a violation or incorrect application of the law, as well as against any unlawful decision or proceeding of a criminal court, even after the decision has become final and if the persons entitled have not availed themselves of an appeal or legal remedy within the statutory period. (1a) At the suggestion of the commissioner for legal protection, the Office of the Procurator General may file an appeal for annulment to uphold the law against the unlawful execution of a coercive measure by the criminal investigation department or the unlawful order of a coercive measure as well as a decision of the public prosecutor's office on the termination of the investigation proceedings, if the persons entitled to file an appeal have not filed such an appeal or if such an entitled person could not be identified.

b) Instructions within the prosecutorial system

Public prosecutor's offices are separate, but not independent, judicial authorities. They have a hierarchical structure and are bound by the instructions of the senior public prosecutor's offices and of the Federal Minister for Justice.

Public prosecutors are bound by the instructions of their superior bodies. There are precise statutory rules governing the right to issue instructions. Instructions from a senior public prosecutor's office or from the Federal Minister for Justice can be issued only in written form and must be accompanied by a statement of reasons. Moreover, instructions received have to be recorded in the criminal case file. Before issuing an instruction, the Federal Minister must consult the *Weisungsrat* (advisory council on instructions). The Federal Minister for Justice bears ministerial responsibility and is thus accountable to and obliged to provide information to the Parliament¹⁴.

Public prosecutors who think that an instruction is unlawful must inform their superiors. In that case and whenever a written instruction is required, superiors have to give or repeat the instruction in writing; otherwise it shall be deemed withdrawn. Public prosecutors have their own statutory staff representation.

c) Opinions issued by the *Weisungsrat*

The *Weisungsrat* is an advisory council within the structure of the Procurator General's Office with respect to the instructions issued by the Minister of Justice¹⁵. The *Weisungsrat* is chaired by the Procurator General and its mandate is to advise the Federal Minister of Justice:

- ▶ In cases involving an instruction on how to proceed in a specific case.
- ▶ In criminal cases against the highest-levels of the executive branch (art. 19 of the Austrian Federal Constitution Act, members of the Constitutional Court, the Administrative Court, the Supreme Court and the Procurator General.
- ▶ In cases where the Federal Minister of Justice considers it a necessity due to the extraordinary interest of the public in a criminal case, in particular in cases of repeated and superregional media reporting or repeated public criticism of the course of action taken by the Public Prosecutor's Office or the criminal investigation police or for reasons of partiality.

In cases like these, the Federal Minister of Justice submits to the *Weisungsrat* the Public Prosecutor's report on its intended course of action (sec. 8 para. 1 StAG), the opinion of the Senior Public Prosecutor's Office and a draft of its proposal on how to proceed including the reasons.

The Procurator General convenes a session of the *Weisungsrat* without delay, which includes in addition to the Procurator General as the Chairperson, two more members with specific know-how and long-term experience in the field of criminal law and criminal procedure law. Sessions and votes of the *Weisungsrat* take place in closed chambers. Its members are bound to confidentiality, act independently in exercising their office and are not bound by any instructions.

The *Weisungsrat* submits a written opinion on the proposal by the Federal Minister of Justice. In case the Federal Minister of Justice eventually does not uphold the opinion of the *Weisungsrat*, they are required to publish this opinion together with the reasons for not upholding it in the report to be submitted to the National Council and Federal Council.

In cases where the *Weisungsrat* is involved and instructions to terminate preliminary criminal proceedings are subsequently issued, the Public Prosecutor's Office must inform the Legal Protection Commissioner, who has the right to submit an application to continue with the preliminary criminal proceedings.

d) Guidance issued by the specialized units of the MoJ dealing with criminal law

The Federal Ministry of Justice leads the justice system and ensures the personal and functional conditions for the operation of the courts, public prosecution offices, penal institutions, among others. An important duty is to ensure that the judges, public prosecutors, officials, court officers can fulfil their duties and are offered help by the ministry when necessary. Furthermore, the ministry is responsible for the operative and strategic direction of the execution of sentences and measures¹⁶.

¹⁴ Ministry of Justice, Legal professions in Austria, 2018

¹⁵ (*Weisungsrat*; §§ 29b f StAG)

¹⁶ The Austrian Judicial System, 2018

■ The Federal Ministry of Justice is divided into specialized sections and units, including a dedicated Criminal Law Section. This Section and its subsections have as their mandate general matters of substantive criminal law, measures to promote the application of legislation and specific Acts, the expert opinion on drafts of laws, ordinances and decrees and they serve as contact points for anti-corruption matters relevant to criminal law, among others.

■ The Ministry of Justice can provide general guidance on the implementation of the law to promote its uniform application. There are open communication channels with prosecutors and prosecutors offices to report cases where inconsistencies in practice or case law are noted. Prosecutors serve in the section, so they are in communication and organize regular meeting with their colleagues. Communication and guidance from the Federal Ministry are reported to be quite effective in identifying potential problematic issues and resolving them in a timely manner.

■ The Section also has the task to monitor case law. For example, during the pandemic, it was monitoring cases on notifiable diseases and raised awareness to ensure that these were considered by prosecutors working on similar cases.

► Other tools

Other tools used in the Austrian justice system that play a role in ensuring the uniformity of case law and the harmonization of prosecutorial practice include:

- professional meetings taking place within the prosecution but also between prosecutors and the Ministry of Justice
- the availability of a public collection of judgements (<https://www.ris.bka.gv.at/Jus/>) that is constantly updated and accessible to all prosecutors for use in their work
- an effective internal dissemination system whereby prosecutors receive emails and notifications on important decisions or key issues
- the intranet where information is circulated and stored, but also important information is sent by email
- intensive professional training seminars offered to prosecutors around the country

Harmonization of prosecutorial practice in relation to corruption and organized crime

To address the increasing incidents of corruption and organized crime, Austria established a specialized agency with country wide jurisdiction to deal with these offences. The central “Office of Public Prosecutors for the Prosecution of Corruption (Korruptionsstaatsanwaltschaft/KStA)”¹⁷ was established to prosecute corruption, breaches of official duties punishable by law and related offences and to perform key functions in the area of judicial assistance and cooperation in the EU for such offences. The Office was re-named as “Central Office of Public Prosecutors for the Prosecution of Business Offences and Corruption (Wirtschafts- und Korruptionsstaatsanwaltschaft/WKStA) and its competencies were extended in 2011¹⁸.

■ The jurisdiction of the Public Prosecutor’s Office for Combatting Economic Crime and Corruption¹⁹ extends to the entire country and to malfeasance by civil servants and economic crimes involving amounts in excess of EUR 5 000 000. Also falling within its competence are financial crimes involving amounts of more than EUR 5 000 000, aggravated cases of social fraud, aggravated bankruptcy offences, and offences under the Law on Public Limited Companies or the Law on Private Limited Companies committed at correspondingly large undertakings (with a share capital of at least EUR 5 000 000 or more than 2 000 employees).

■ The WKStA has the possibility to “opt-in” to proceedings. In the case of corruption offences and abuse of office, there must be a special public interest in the significance of the offence to be solved or in the person of the suspect. In the case of economic offences, special knowledge of economic life or experience with such proceedings must appear necessary for the WKStA to be able to take over a case of economic offences from the competent public prosecutor’s office and refer it to it.

■ The WKStA is staffed by approximately 40 prosecutors with specialized knowledge and experience. It also employs experts from the financial, economic and IT sectors to support the work of prosecutors. Prosecutors work in groups or teams and this practice is reported to ensure higher quality in decision making but also to harmonise the practice followed in related or similar cases.

¹⁷ Član 2a austrijskog Zakona o javnom tužilaštvu (Staatsanwaltschaftsgesetz/StAG)). Savezni zakon je donet 23. decembra 2010. godine kao Savezni glasnik zakona I br. 108/2010.

¹⁸ Strafrechtliches Kompetenzpaket/sKp) (BGBl. I br. 108/2010)

¹⁹ <https://www.justiz.gv.at/wksta/wirtschafts-und-korruptionsstaatsanwaltschaft.312.de.html>

Analysis

■ In Austria, an important role for the unification of case law and the harmonization of practice lies on the Ministry of Justice, the Procurator General and the hierarchical structure of the profession and the instructions issued by superior prosecutorial bodies.

■ The Ministry of Justice plays an active role through its specialized criminal law section and its open communication and 'dialogue' with prosecutorial offices around the country. This allows to identify challenging issues or conflicting cases or divergence in practice in a timely manner and devise the best solution for each case. General guidance on the application of the law is a useful tool to harmonise deviating practices, when spotted.

■ The Procurator General, as an actor that is not part of the strict hierarchy of the prosecutorial offices, plays an important role in the unification of case law through their mandate to initiate a ruling in the interest of the law, a tool that is used very often and is reported to have an important impact in the coherence of the Austrian legal system.

■ On the other hand, instructions from the hierarchy, although a possibility, are not often used in practice and divergences in practice are addressed in other ways through team work, meetings with the competent section of the MoJ, open channels for all prosecutors to report problems or challenges in practice or case law and a good dissemination system through an intranet, internal communications and a public collection of case law.

■ In the field of corruption and organized crime, uniformity and harmonised practice are promoted through centralization and specialization, namely the handling of specific offences by a specialized prosecutorial office with expert prosecutors and additional external expertise and prosecutors working in teams.

GREECE²⁰

Organisation of the prosecutorial system

■ In Greece, the Public Prosecutor's Office is a judicial authority, which is independent of the courts and the executive. Public prosecutor's offices (eisangelíes) belong to the «judicial branch» of government and participate in the administration of justice. Public prosecutors (eisangeleís) enjoy operational and personal independence.

■ The prosecution acts uniformly and indivisibly and has as mission the observance of the law, the protection of the citizen and the preservation of public order²¹. According to the Constitution, Prosecutors are appointed for life and enjoy the same guarantees of independence as judges.

■ Prosecutors are headed by the Prosecutor of the Supreme Court and are linked by a relationship of hierarchical dependence. The Prosecutor of the Supreme Court is deputized by the Deputy Prosecutor. Other levels of hierarchy include the prosecutors of the Court of Appeal and the Prosecutors of the Court of First instance.

■ Prosecutors must carry out the orders of their superiors. However, in the performance of their duties and the expression of their opinions, they act without constraint, in obedience to the law and their conscience.

■ The local jurisdiction of the public prosecutor's office coincides with that of the court in which it operates. In every court, with the exception of misdemeanour courts, there is a public prosecutor's office, whose mandate includes:

- ▶ carrying out preliminary investigations;
- ▶ initiating criminal proceedings;
- ▶ questioning persons involved in a case;
- ▶ supervising law enforcement authorities for crime prevention and prosecution;
- ▶ submitting proposals to judicial councils and courts;
- ▶ lodging appeals;
- ▶ supervising prisons; and any other responsibilities laid down by law.

²⁰ The information in this chapter relies on a review of legislation and an interview with Prosecutor Apostolos Tzamalís, Acting Head of the Public Prosecution of the Court of First Instance of Larissa.

²¹ Law 4938/2022 (OG A' 109/06.06.2022) Code of Organisation of Courts and the Status of Judicial Officials and other provisions, Chapter VI, article 28.

Functions related to the harmonization of prosecutorial practice and the unification of case law

In Greece, the key mechanism for the harmonization of prosecutorial practice are the instructions and opinions issued by prosecutors at different levels and by the Prosecutor of the Court of Cassation. By law, prosecutors have the right to issue orders, general instructions and recommendations relating to the performance of their duties. The Prosecutor of the Supreme Court can issue orders, instructions and recommendations to all prosecutors in the country²².

■ The Prosecutor of Appeals and the Prosecutor of First Instance can issue orders, instructions and recommendations to prosecutors, investigating officers, notaries, public prosecution officials, registrars and other public officials within the district of the Prosecutor of Appeals and the Prosecutor of First Instance, respectively.

■ Prosecutors can give opinions on legal matters that have not been brought before the courts when they are asked questions arising during the performance of their duties by prosecutors or lower rank or judicial officers within their jurisdiction or state services concerning the interpretation and application of criminal law²³.

■ The Prosecutor of the Supreme Court can also give opinions on legal issues of general interest. Legal opinions have to concern legal issues and to be of general interest. Opinions are uploaded in the Supreme Court Prosecutor's web page and are accessible to all. Examples of opinions include:

- ▶ An Opinion on the service of instruction of payment to debtors of unknown domicile ([2/2023](#), issued on 3/2/2023);
- ▶ An Opinion on the interpretation of Law N. 5002/2022 ([Opinion 1/2023](#), issued on 10/1/2023). The latter opinion raised severe criticism within the legal world as it was considered that it was inappropriate for the prosecutor to express an interpretative opinion while an open case was being handled by an Independent Authority.
- ▶ Circulars concern for example the bribery of foreign officials ([Circular 4/2023](#), 18/1/2023), appeals on detention conditions and fair trial – application of the new provision of article 6A of the penitentiary Code in the light of the case law of the European Court of Human Rights, the investigation report on labour accidents ([Circular 2/2023](#), 9/1/2023) or instructions to avoid seminar breaches of the ECHR based on the case *Torosian vs Greece* ([Circular 1/2023](#), 3/1/2023).

■ Other tools

Training is also reported to be an effective way for the harmonisation of practice for all prosecutors (specialised or not). The Greek School of Judges organises seminars and workshops for sitting judges and prosecutors on different topics, inviting as speakers practitioners and experts specialised on the topic at hand.

Harmonization of prosecutorial practice in relation to corruption and organized crime

On issues of corruption and organized crime, Greece created in 2011²⁴ the position of a specialized Prosecutor for Financial Crime. The institution was redesigned in 2019 as 'Prosecutors with Special Duties'²⁵ to include a Prosecutor of Financial Crime and a Prosecutor on Corruption Crimes. In 2020²⁶ it was changed it again to "Prosecutors of Economic Crime", including both previous positions.

■ The Explanatory Memorandum of the latest law commented on the fact that the existence of two different prosecutors with special functions was not justified. The rationale of the assigned competencies (the prosecutor of economic crimes had a competence determined by the nature of the offences, while the competence of the prosecutor of corruption crimes was determined by the status of the alleged perpetrators) and the uncoordinated

22 Law 4938/2022 (OG A' 109/06.06.2022) Code of Organisation of Courts and the Status of Judicial Officials and other provisions, Chapter VI, article 29.

23 Article 28, Law 4938/2022 (OG A' 109/06.06.2022)

24 Article 17A added to Law 2523/2997

25 Law 4620/2019

26 Article 53 para. 1 of Law 4745/2020

territorial scope of their mandate (the prosecutor for economic crimes have a mandate throughout the territory, while the prosecutor for corruption crimes is competent within the territorial district of the court of appeal where they are assigned) led to an unjustified division of competences and an ineffective handling of cases. The 'new' economic crime prosecutors combine the powers of both special prosecutors and ensures a uniform approach to the cases falling within their mandate.

■ In essence, this means that all cases falling under the mandate of the special prosecutor are handled by them. The jurisdiction of the Prosecutor of Economic Crime extends throughout the whole territory²⁷. Their duties include the supervision, guidance and coordination of the actions of officials involved in preliminary investigation.

Information on all cases and directing the investigation

■ *The Prosecutor of Economic Crime is informed of all complaints and information regarding crimes within their jurisdiction, and evaluates and investigates such information.* For the investigation of cases within their jurisdiction, the Prosecutor of Economic Crime can order the preliminary examination or preliminary investigation to be conducted.

■ The case file formed after the completion of the preliminary examination or pre-trial investigation is forwarded to the local prosecutors responsible for criminal prosecution, with an order for criminal prosecution. With the consent of the supervising Deputy Prosecutor of the Supreme Court, the Prosecutor of Economic Crime can order a preliminary investigation to be carried out by the locally competent prosecutor of first instance and be informed in writing of its progress once concluded.

Access to information and data

■ The specialized prosecutors have access to any information or data relating to or useful for the performance of their work, not subject to the restrictions of the legislation on tax, banking, stock exchange and any other type of confidentiality and to any type of records²⁸ of a public authority or organisation that holds and processes personal data.

■ Prosecutors for economic crime, subject to the principle of proportionality they have privileged access to information or data useful for the performance of their work, not subject to specific legislative restrictions and have the possibility, by reasoned order, to freeze bank accounts, the contents of bank vaults and assets in general (movable and immovable property).

Support units and expert support

■ For the administrative and secretarial support of the Financial Crime Prosecutor and the prosecutors an Office of the Financial Crime Prosecutor is established at the Ministry of Finance and is headed by the Financial Crime Prosecutor.

■ A service unit of the Office of the Financial Crime Prosecutor is established by decision of the Minister of Finance at the Regional Directorate of Central Macedonia.

■ Prosecutors of economic crime are supported in their work by experts deemed necessary for the conduct of the preliminary investigation. These experts are appointed by the head of the prosecutor of the Economic Crime Division from the public, and exceptionally, the private sector.

Specialized prosecutors

■ A Financial Crime Department is established at the Athens Court of Appeal Prosecutor's Office²⁹. It is staffed by four prosecutors or assistant prosecutors of appeals appointed for a term of three years and an equal number of deputies. Prosecutors of Economic Crime perform their duties on a full-time and exclusive basis, while their deputies

²⁷ Article 34, Code of Criminal Procedure

²⁸ Article 36, Code of Criminal Procedure

²⁹ Code of Penal Procedure, Chapter II, Article 33.

perform their duties on a part-time basis. The work of the Department is assisted by at least eight prosecutors or deputy prosecutors of first instance. The work of the economic crime prosecutors is supervised and coordinated by the Head of the Department.

■ The duties of prosecutors for economic crime³⁰ include conducting or ordering preliminary investigation to establish whether a major criminal offence has been committed. The offences are explicitly prescribed in the law³¹.

■ The Chief Public Prosecutor of the Economic Crime Division supervises, directs and coordinates the actions of the general prosecutors.

■ The Chief Prosecutor of the Economic Crime Department is informed of all complaints or information received by the services concerning crimes within their jurisdiction. They evaluate and investigate such information, prioritising cases that seriously damage the interests of the state and the European Union and resolving issues of conflict of jurisdiction between the prosecutors of the Economic Crime Department and the European Union. They are responsible for the investigation of cases that are of serious concern to the interests of the Greek State and the European Union.

■ Prosecutors are obliged to complete the preliminary investigation within six (6) months after the case file is received, unless more time is needed. The Head of the Economic Crime Division is competent to assess the requirements in term of time and can appoint another prosecutor to handle the case, if delays are considered unjustified. At the end of the preliminary investigation, the prosecutor for economic crime either orders the competent prosecutor of first instance to initiate criminal proceedings or to file the case.

Analysis

Within the Greek judicial system, the main mechanism for the harmonization prosecutorial practice in general are the instructions, opinions and circulars that can be issued at different levels of the prosecution service and by the Prosecutor of the Court of Cassation (Areios Pagos).

■ Opinions and circulars cannot concern ongoing cases and need to focus on issues of application of the law. This tool is often used.

■ When it comes to corruption and organized crime, centralization and specialization are the main methods used to harmonise practice. The specialized prosecutors are mandatorily informed of all crimes falling under their mandate and can decide to direct the preliminary investigations or order a locally competent prosecutor to conduct them and inform them. This addresses fragmentation and diverging practices and allows a holistic view of a very complex set of offences. At the same time, the cooperation between the Prosecutor and the local prosecutors for the actual conduct of the investigation allows vertical cooperation.

■ The prosecutors have specialized knowledge and experience and can share their views and challenges with the service, allowing for peer learning and a harmonization of practice.

■ Another important asset is the fact that specialized prosecutors have privileged access to data bases and this is another factor that allows them to effectively prosecute complex crimes or crimes that might seem unrelated to each other.

³⁰ Article 35 Code of Criminal Procedure.

³¹ Felonies committed by Ministers or Deputy Ministers and not covered by the provisions of par. 1 of Article 86 of the Constitution, as well as the misdemeanours committed by Ministers and Deputy Ministers or Vice-Ministers of State, in the exercise of their duties or benefiting from their status, Members of Parliament, Members of the European Parliament representing Greece, Secretaries General and Special Secretaries of the Government, governors, deputy governors or chairmen of boards of directors or managing directors etc.

Organisation of the prosecutorial system

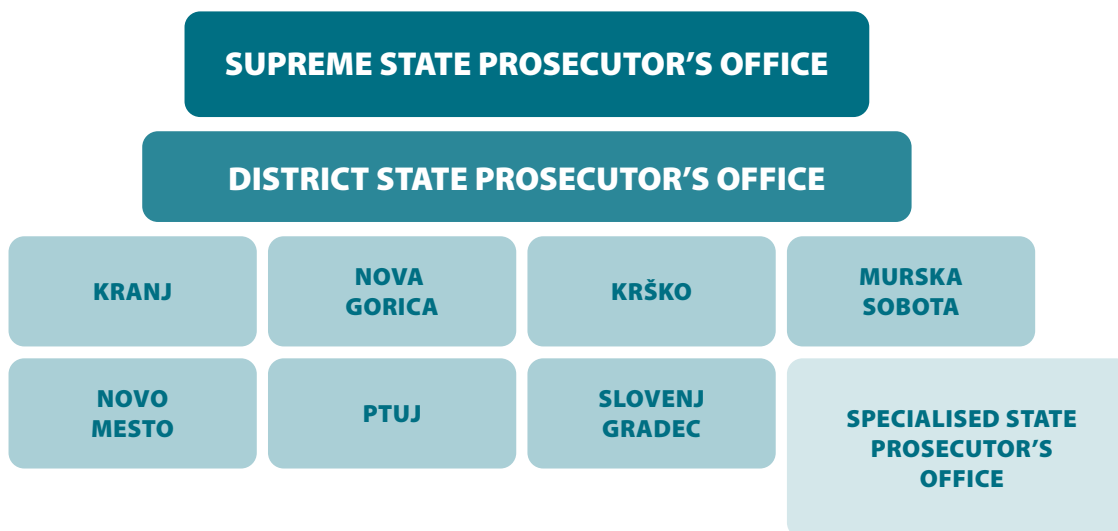
In Slovenia state prosecutors (državni tožilci) file and present criminal charges³³. The State Prosecutor's Office is an independent and autonomous state body (sui generis) within the Ministry of Justice, which heads the prosecution. Their powers and organisation are laid down in the State Prosecutor's Office Act and the Criminal Procedure Act.

State prosecutors are independent and autonomous officers of state and their position is permanent. They perform their tasks pursuant to the Constitution and the law and their functions include filing and presenting criminal charges.

The functions of the state prosecutor in criminal proceedings include the study of a criminal complaint, the adoption of measures to detect criminal offences, identifying perpetrators, directing pre-trial procedure (special investigative techniques), requesting judicial investigation, bearing the burden of proof and ensuring that factual situations are correctly established, file and present an indictment before the competent court, file appeal and extraordinary legal remedy against final legal ruling.

The prosecution service is organized in the following way:

- ▶ Office of the State Prosecutor General of the Republic of Slovenia – Supreme State Prosecutor's Office
- ▶ 11 District State Prosecutor's Offices
- ▶ Specialised State Prosecutor's Office
- ▶ State Prosecutorial Council



Source: presentation by Mag. Maja Veber Šajn

The Supreme State Prosecutor's Office is the highest ranking prosecutor's office in the country. Within the SSPO there are supreme state prosecutors and higher state prosecutors and state prosecutors on temporary or part-time assignment. Higher state prosecutors represent appeals in appeal proceedings before higher courts. In proceedings with extraordinary remedies in the field of criminal law and in the field of civil and administrative affairs, supreme state prosecutors appear before the Supreme Court of the Republic of Slovenia.

³² This section relies on information from the State Public Prosecutors Office of Slovenia, an interview and information with Mag. Maja Veber Šajn, Senior State Prosecutor, Supreme State Prosecutor's Office, Slovenia, information from the data base <http://pisrs.si/Pis.web/pregledPredpisa?id=ZAKO362>

³³ Article 135 of the Constitution of the Republic of Slovenia <http://pisrs.si/Pis.web/pregledPredpisa?id=ZAKO362>

■ The Supreme State Prosecutor's Office is organised into:

- ▶ three departments (the criminal law department, the civil and administrative affairs department and the training and expert supervision department, and
- ▶ the Expert Information Centre, whose tasks include providing expert assistance in the area of taxation, financial, accounting and other disciplines required for the efficient performance of state prosecutors and ensuring the development, unity and operation of information support for the functioning of state prosecutors' offices.

■ The most complex criminal acts, the prosecution of which requires special organisation and competences of state prosecutors and the highest levels of performance, are dealt with by the Specialised State Prosecutor's Office of the Republic of Slovenia.

Functions related to the harmonization of prosecutorial practice and unification of case law

■ In Slovenia, the following mechanisms have been identified for the harmonization of practice:

General instructions on uniform application of the law

■ State prosecutors are independent state functionaries and cannot be given instructions or orders for their work in a specific criminal case. General instructions on the conduct of state prosecutors relating to uniform application of the law and to guide and ensure the uniformity of prosecution policy are permitted and they can be issued by the State Prosecutor General or the Head of a district state prosecutor's office.

■ Examples include a General Instruction on negotiating and proposing sanctions in the event of a guilty plea and plea agreements, a Policy on the detection and management of corruption risks and exposures of public prosecutors' offices³⁴ or General Instruction on the conditions for deciding in cases of disproportionality between the minor importance of the offence and the consequences that would be caused by a criminal prosecution^{35 36}.

a) Request for the protection of legality

■ Supreme state prosecutors can file a request for the protection of legality against appellate court decisions in litigious, non-contentious and other civil court proceedings. This extraordinary judicial remedy must be used for the protection of the public interest, which can be determined only by the Supreme State Prosecutor. The parties to the proceedings cannot file requests for the protection of legality.

b) Guidance issued by the organizational structure of the Specialised State Prosecutor's Office

■ The Supreme State Prosecutor's Office is led by the State Prosecutor General and covers the whole territory of the country. It is the seat of the Supreme State Prosecutors. Senior, district and local prosecutors can be assigned to the Supreme State Prosecutor's Office to perform complex professional tasks. The Supreme State Prosecutor's Office also carries out coordination and training activities.

■ The State Prosecutor's Office of the Republic of Slovenia (SSPO) is organised into five departments:

- ▶ Criminal Affairs Department
- ▶ Civil and Administrative Affairs Department
- ▶ Department for Organization and Development of Management
- ▶ Training and Supervision Department
- ▶ Centre of Expertise and IT

³⁴ [SN-priznanje krivde-spremembe-ČISTOPIS-popravek.pdf \(dt-rs.si\)](#)

³⁵ [Microsoft Word - nesorazmernost.doc \(dt-rs.si\)](#)

³⁶ See <https://www.dt-rs.si/zakonodaja>

■ The Criminal Affairs Department works in the field of criminal offences, adopts initiatives on legal and practical issues of law enforcement, considers applications, monitors case law and publishes reviews of major decisions and positions and other duties.

■ In the treatment of criminal offences, the SSPO can file requirements for the protection of legality in criminal cases, handle cases where a request for the protection of legality is filed by a convict or accused and address issues that have been assigned to the SSPO. In misdemeanours, the department deals with initiatives for filing a request for the protection of legality and if this is accepted the filing of the request.

■ Another important competence concerns legal and practical issues of law enforcement. In that area, the Criminal Affairs Department receives proposals to deal with legal and practical questions from both the police and state prosecutors. These questions are answered by the state prosecutor to whom a case is assigned, or by a departmental college. *The college adopts legal opinions that have the nature of advice but are not binding.* The Criminal Affairs Department also deals with applications that need to be assessed in terms of criminal law. Most of these are applications assigned to be dealt with by the competent authorities.

Monitoring or case law

■ Last but not least, *the SSPO also monitors case law and publishes reviews.* The Criminal Affairs Department monitors case law on criminal offences and misdemeanours and regularly publishes reviews of major decisions and positions on this basis. In the same way, it publishes and updates expert opinions.

■ The Department for the organisation and development of management is responsible for improving the governance and management of state prosecutor's offices. Namely, it analyses existing practices of state prosecutors' offices and offers advice to improve efficiency of their operations, disseminates and encourages the introduction of good practice in prosecutorial administration and modern methods of management and operation and oversees the timely operations of state prosecutor's offices.

Training

■ The Training and Supervision Department supervises the work of local, district and senior state prosecutors. This function includes general expert inspections of work. With its findings it is responsible for eliminating deficiencies and errors and for transferring good practice. The Department also organises and leads professional training for state prosecutors. Annual 'prosecutorial education days' are organised twice a year and are important for networking and enhancing knowledge.

IT tools and support

■ The Centre of Expertise and IT provides information and communication support for the effective functioning of the state prosecutor's office and externally (with the police, courts) and in the international field. It cooperates with the Criminal Affairs Department and the Training and Supervision Department in recording and dealing with legal problems of an expert nature and participates in issuing a Joint Annual Report on the operations of state prosecutors' offices, the organisation of Intranet of the state prosecutor's office and the newsletters of the prosecutor's office.

Harmonization of prosecutorial practice in relation to corruption and organized crime

In Slovenia, like in many other countries, there are increased levels of economic crime, which is difficult to investigate and prosecute. The response to this trend came through the establishment of a Specialised State Prosecutor's Office (SSPO) in 2011. This evolved from the former Group of State Prosecutors for the Prosecution of Organised Crime, which was a special organisational unit within the Office of the State Prosecutor General with jurisdiction over the entire territory of the state. The line of work remained the same but before the cases were assigned by the Prosecutor General while in the current system the criminal offences that fall under its mandate are listed in the law. Additional developments include the establishment of National Bureau of Investigation within the Police (2010) and specialised departments within the judiciary (2011).

■ The Specialised State Prosecutor's Office³⁷ is responsible for prosecuting criminal activities in organised traditional and economic crime, terrorism, corruption and other criminal activities requiring detection and prosecution by specially organised and trained state prosecutors. The Department for the Investigation and Prosecution of Officials with Special Authorisations³⁸ is an independent organisational unit within the Specialised State Prosecutor's Office that deals with the prosecution of criminal offences committed by police officials, officials in internal affairs agencies with police powers etc.

■ The Specialised State Prosecutor's Office is organisationally and functionally separate from the Office of the State Prosecutor General and has the status of a District State Prosecutor's Office with territorial jurisdiction over the entire Slovenian territory. Its subject matter is determined by law and covers the most serious criminal offences, whose prosecution needs special organisation and qualifications, namely organised crime (slavery and human trafficking, drug trafficking, terrorism, financing terrorism), economic crimes (subject to punishment of five years or more of imprisonment), corruption crimes, money laundering.

Exclusive competence to direct investigations

■ The SSPO has exclusive competence for directing the investigation, filing and representing the motions for temporary securing and seizure of property of illegal origin\- jurisdiction on the entire territory of the Republic of Slovenia.

Team work

■ The SSPO operates under the principle of teamwork. This means that when dealing with particular matters it brings together the knowledge, qualifications and experience of its members in specific legal fields.

Specialised prosecutors

■ The prosecutorial service at the SSPO is performed by appointed or seconded state prosecutors. The head of the SSPO can propose that a state prosecutor from a District State Prosecutor's Office is assigned to the SSPO to participate in the team that deals with a particular case. For this, the length of prosecutorial service, the evaluation and professional experience in the area of the case are considered.

■ The SSPO has a thematic internal organization with Departments focusing on different types of crime:

- ▶ Department for corruption crime
- ▶ Department for economic crime
- ▶ Department for organized crime
- ▶ Civil Financial Department
- ▶ Complaints Department

³⁷ Law on the Public Prosecutor's Office (ZDT-1) (Official Gazette of the RS, No 58/11, as amended and supplemented) Criminal Procedure Act, Official Journal of the RS, No 32/12, as amended and supplemented

³⁸ <https://www.dt-rs.si/zakonodaja>

■ In addition to the Specialised Department and the Civil and Financial Department, the Specialised State Prosecutor's Office is organised in another three organisational units: the General Crime Department, the Economic Crime Department, and the Economic Corruption department.

Joint investigation teams

■ In cases of complex criminal offences, in particular in the fields of the economy, corruption and organised crime, which are the subject of pre-trial proceedings and which require the long-term, targeted action of several bodies and institutions referred to in the preceding paragraph, the head of the competent public prosecutor's office may, ex officio or at the written initiative of the police, with the agreement of the heads of the individual bodies and institutions referred to in the preceding paragraph, set up a specialised investigative team³⁹.

■ The specialised investigation team is headed and directed by the competent public prosecutor. The establishment of a specialised investigation team, its composition, tasks and method of operation are decided by the head of the competent public prosecutor's office by written order.

Analysis

■ In Slovenia, the harmonisation of prosecutorial practice and the uniformity of case law are achieved mainly through the use of general Instructions on the application of the law, guidance issued by the departments within the SSPO, the monitoring of case law from the SSPO, training and access to IT tools and support and the possibility to form joint investigations teams.

■ There is also the possibility to file a request for the protection of legality for the unification of case law.

■ In the field of corruption and organized crime, Slovenia has a specialized body within the General Prosecutors Office, the SSPO. The SSPO and its specialized departments monitor the situation in collaboration with prosecutorial offices and identify appropriate courses of action, issue guidance and identify necessary action for the harmonisation of practice. The SSPO also has the possibility to set up joint investigation teams.

³⁹ Article 160a

PORTUGAL⁴⁰

Organisation of the prosecutorial system

In Portugal, public prosecutors⁴¹ 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 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 pertain 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 Law 68/2019 of 27th August, amended by Law 2/2020 of 31st March.

■ In Portugal, autonomy and impartiality are fundamental values of the activity of the Public Prosecution Service. The Public Prosecution Service represents the State, defend the interests determined by law, participates in the execution of the criminal policy, exercises criminal action guided by the principle of legality, and defends democratic legality, under the terms of the Constitution, the present Statute and the Law.

■ The Public Prosecutor's Office enjoys autonomy from other central, regional and local government bodies. The autonomy of the Public Prosecutor's Office is characterised by its binding criteria of legality and objectivity and the exclusive submission of Public Prosecutors to the directives, orders and instructions provided for in the law⁴².

■ The Public Prosecutor's Office (*Ministério Público*) represents the State, carries out prosecutions, defends the rule of law and the interests determined by law⁴³.

■ The prosecutorial hierarchy is the following:

- ▶ Prosecutor-General (*Procurador-Geral da República*);
- ▶ Vice-Prosecutor-General (*Procurador-Geral da República*);
- ▶ Deputy Prosecutor-General (*Procurador-Geral Adjunto*);
- ▶ District Prosecutor (*Procurador da República*);
- ▶ Deputy District Prosecutor (*Procurador da República Adjunto*).

■ The Prosecutor-General's Office is the highest body in the Public Prosecution Service and is presided over by the Prosecutor-General. It also comprises the High Council of the Public Prosecution Service, the Consultative Council, official legal advisers and support services.

■ The Public Prosecution Service is composed of:

- ▶ The Attorney General's Office
- ▶ Regional Attorneys General
- ▶ District public prosecutor's offices and administrative and tax public prosecutor's offices.

⁴⁰ This section relies on information from the e—justice country page, the www.ministeriopublico.pt, and the legislation referenced there, [procuradoria geral de la republica \(PGR SITE\)](#), [Regional prosecutors website \(REGIONAL PGR SITE\)](#) and an interview with Susana Figueirido, Senior Public Prosecutor, Trainer at the School of Magistrates, former member of the Specialised Prosecution Unit for Corruption and of the DCIAP (Portugal).

⁴¹ www.ministeriopublico.pt

⁴² Article 3, Lei 68/2019 - [PUBLIC PROSECUTION STATUTE LAW](#)

⁴³ Article 4, Lei 68/2019 - PUBLIC PROSECUTION STATUTE LAW; see also <https://en.ministeriopublico.pt/en/organogramamp/en>

Functions related to the harmonization of prosecutorial practice and the unification of case law

In Portugal, the following mechanisms have been identified for the harmonization of practice:

Guidelines of the Prosecutor General

■ The Prosecutor-General can issue guidelines to ensure the control of legality in criminal prevention measures under the responsibility of the Public Prosecutor's Office, namely as regards the date of commencement, the communication giving rise to it, the processing and recording of the information gathered, the time limit and respective extensions, and the date on which the procedure is closed or the knowledge of the commission of a crime and the corresponding opening of an investigation⁴⁴.

■ The Prosecutor General can also issue Directives. One example is Circular 10/99 that creates an obligation to communicate all corruption cases to the DCIAP.

Strategic planning and management

■ The coordinating prosecutors of the 23 "*Procuradorias da República*" have to inform the Prosecutor-General's Office, in their annual reports, of the general quality of the activity performed by the Public Prosecution, as evaluated by the Public Prosecutors themselves and the general public, pointing out, whenever necessary, measures to improve it.

■ Every three years, the Prosecutor-General's Office defines strategic objectives in four major areas: priority areas of intervention, quality of performance, procedural promptness and organisational quality.

■ On the basis of these objectives, annual strategic objectives are defined in July. Every department of the Public Prosecution Service must accordingly define on an annual basis projects and local procedural objectives which are then submitted for approval to the Prosecutor-General's Office.

Extraordinary appeals for case law

■ One mechanism to ensure the uniformity of case law is an appeal for case law⁴⁵. The appeal⁴⁶ can be exercised when in the field of the same legislation, the Supreme Court of Justice passes two judgements which, in relation to the same question of law, offer opposite solutions. The judgement handed down last can be appealed before the Court of Criminal Appeals. An appeal is also admissible when a court passes judgement which is in opposition to another court of the same or a different grade or of the Supreme Court of Justice, and an ordinary appeal shall not be admissible, unless the orientation adopted in that judgement is in accordance with the jurisprudence previously established by the Supreme Court of Justice.

■ Judgements are deemed to have been rendered in the field of the same legislation when, during their delivery, no legislative change has occurred that directly or indirectly interferes with the resolution of the question of law in dispute. This applies only to judgments that have become final and unappealable may be invoked as grounds for the appeal. The appeal can be filed by the defendant, the assistant or the civil parties and is mandatory for the Prosecuting Counsel.

Information Technologies and Systems Department

■ The Department of Technologies and Information Systems operates under the authority of the Prosecutor General's Office and is responsible for the coordination and management of the information systems and technologies of the Public Prosecution Service (Articles 15/3 and 53/1 of the Statute of the Public Prosecution Service/EMP).

⁴⁴ Article 11 Procedures of the Public Prosecution Service

⁴⁵ Article 437° of the Criminal Procedural Code of Portugal

⁴⁶ Extraordinary Appeals and appeals for case law.

Informal networks of prosecutors

■ This informal mechanism is reported to have played an important role in the harmonization of practice especially with prosecutors from different regional offices. It is considered a good mechanism for peer learning, exchange of information and practice and experience sharing.

Access to website, cases and thematic databases

■ Access to case law, latest decisions are reported as an important measure for the harmonisation of practice. Central and regional databases are in existence.

Harmonization of prosecutorial practice in relation to corruption and organized crime

■ In Portugal, major challenges in addressing complex forms of crime include the need for specialization inside the Public Prosecution Service, but also the need to share information and good practice and understand the constant changes occurring in terrorist and organised crime groups and in their modus operandi⁴⁷.

Specialised prosecutorial unit

■ DCIAP se bavi predmetima organizovanog kriminala i terorizma⁴⁸, which is a Department within the Prosecutor-General's Office that centralizes these cases and has competence all over the Portuguese territory. This specialization facilitates prosecutorial work in this area. When it comes to corruption offences, the MENAC (Anti-Corruption National Mechanism) is an independent administrative body competent for preventing corruption⁴⁹.

■ The competence of DCIAP include the coordination and direction of the investigation of specific crimes (Article 58), including terrorist organisation and terrorism; trafficking in persons and criminal association for trafficking; money laundering and terrorist financing; corruption, undue receipt of advantage, traffic of influence, economic participation in business, as well as prevarication punishable by a sentence of more than two years; economic-financial offences committed in an organised manner, namely through the use of computer technology, among several others.

Directing investigations

■ The Central Department of Investigation and Prosecution carries out prevention, investigation and coordination actions. Being a centralized service it plays a role in harmonizing practice. When it comes to prevention, it receives and analyses notifications of operations which may constitute laundering or financing of terrorism.

■ The Central Department of Investigation and Prosecution directs the investigation and prosecution with regard to specific crimes⁵⁰, kada se kriminalna aktivnost dogodi u oblastima koje pripadaju različitim sudskim okruzima. Takođe, kada krivična dela sa manifestovanom težinom, složenošću ili teritorijalnom rasprostranjenošću kriminalne aktivnosti opravdavaju koncentrisani smer istrage.

■ The Central Department of Investigation and Prosecution coordinates the direction of the investigation of the following crimes and its functions include the analysis of the nature and trends of criminality and the results

⁴⁷ See Portugal's response to the questionnaire
<https://rm.coe.int/consultative-council-of-european-prosecutors-ccpe-questionnaire-for-th/1680723584>

⁴⁸ Central Department of Investigation (DCIAP), Lei 68/2019 - PUBLIC PROSECUTION STATUTE LAW, available at:
https://www.pgdlisboa.pt/leis/lei_print_articulado.php?tabela=leis&artigo_id=&nid=3119&nversao=&tabela=leis

⁴⁹ <https://dre.pt/dre/detalhe/decreto-lei/109-e-2021-175659840>

⁵⁰ Against peace and humanity; Terrorist organization and terrorism; Against State security, with the exception of electoral crimes; Trafficking in narcotics, psychotropic substances and precursors, except in the case of situations of direct distribution to the consumer, and criminal association for trafficking; Money laundering; Corruption, embezzlement and economic participation in business; Malicious insolvency; Harmful administration in a public sector economic unit; Fraud in obtaining or diverting a subsidy, grant or credit; Economic and financial offences committed in an organized manner, namely through the use of computer technology; Economic-financial infractions with an international or transnational dimension.

obtained in the respective prevention, detection and control; and the identification of work methodologies and coordination with other departments and services, with a view to strengthening the simplification, rationality and effectiveness of procedures.

■ DCIAP directs the investigation and prosecutes these crimes in cases of manifest gravity or special complexity of the crime, due to the number of defendants or offended persons, its highly organized nature or the difficulties of the investigation, provided that it occurs in judicial districts belonging to different regional prosecution offices.

■ DCIAP is also responsible for directing the investigation and prosecuting when, in relation to clearly serious crimes, the particular complexity or territorial dispersion of the criminal activity justifies the concentrated direction of the investigation. DCIAP is also responsible to promote or undertake preventive actions with regard to a) money laundering and financing of terrorism; b) corruption, c) harmful administration in a public sector economic unit; d) fraud in subsidies, grants or credits; e) economic-financial offences committed in an organised manner, namely through the use of computer technology; and economic-financial infringements with an international or transnational dimension.

The coordination functions of DCIAP

■ These functions include:

- ▶ a) analysis of the nature and trends of criminality and the results obtained in its prevention, detection and control;
- ▶ b) Identifying work methodologies with a view to strengthening the simplification, rationality and efficiency of the procedures.

■ In the exercise of coordination functions⁵¹, the Department's Director can coordinate with regional DIAPs and Public Prosecutor's Offices, cooperate with other bodies and structures of the Public Prosecutor's Office, propose to the Prosecutor-General directives, instructions and service orders for the standardization, simplification, rationality and efficiency of the intervention of the Public Prosecution Service.

Specialized units within Regional DIAP

■ The Regional Criminal Investigation and Prosecution Departments⁵² are based in the district where the regional public prosecutor's office has its seat, and direct the investigation and prosecution of violent, economic-financial, highly organised or particularly complex crimes.

■ Within the regional DIAPs, investigating teams and mission units can be created to address specific areas of the department's activity.

■ The Regional Criminal Investigation and Prosecution Departments⁵³ direct the investigation and prosecute crimes in their jurisdiction and lead the investigation and prosecute when the complexity or territorial dispersion of the criminal activity in relation to clearly serious crimes justifies a concentrated direction of the investigation.

■ The regional Prosecutor-General can assign competence to the Regional Prosecutor's Office of the district to conduct the investigation and prosecute less complex and serious crimes.

Issuance of guidelines

■ The Head of DCIAP, a Deputy Prosecutor-General, can establish generic guidelines on methods for directing the investigation that are suitable for achieving its purpose⁵⁴, within a reasonable period of time and create investigation teams and mission units to carry out the department's activities.

51 Article 59 Lei 68/2019 - [PUBLIC PROSECUTION STATUTE LAW](#)

52 Article 70 Lei 68/2019 - [PUBLIC PROSECUTION STATUTE LAW](#)

53 Article 71 Lei 68/2019 - [PUBLIC PROSECUTION STATUTE LAW](#)

54 Article 59 Lei 68/2019 - [PUBLIC PROSECUTION STATUTE LAW](#)

Analysis

■ In Portugal, the key mechanisms for the harmonization of prosecutorial practice relate to the mandate of the Prosecutor General to issue general guidelines and Directives on general issues. Other tools include the annual reports and monitoring indicators from all prosecutorial offices, access to information technologies and data bases, possibilities for informal networks of prosecutors to exchange experience and the possibility for joint teams.

■ The unification of case law can be addressed through an extraordinary appeal for case law before the Supreme Court.

■ When it comes to corruption and organized crime, a Specialised prosecutorial unit (CDIAP) within the prosecution and the regional prosecution offices is competent to address them. DCIAL directs all investigations for the crimes falling within its mandate and coordinates action on these topics, including through the issuance of guidelines and methodological guidance.

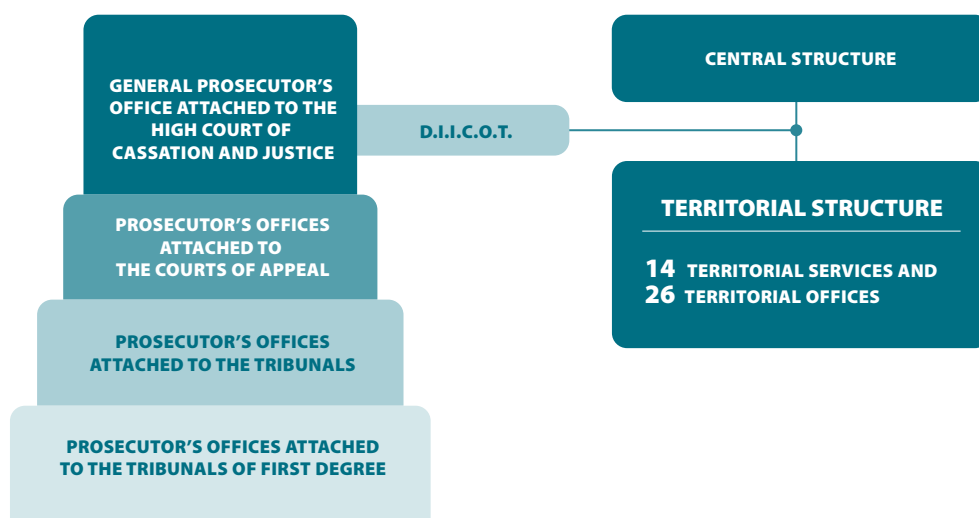
ROMANIA⁵⁵

Organisation of the prosecutorial system

■ In Romania, the Public Ministry represents the general interests of society and defends the rule of law and the citizens' rights and freedoms. Public Prosecutor's Offices operates next to courts of law, and they run and supervise the criminal inquiry activity of the criminal police, under the terms of the law.

■ Public prosecutors carry out their activity according to the principles of lawfulness, impartiality, and hierarchic control, under the authority of the Minister of Justice, according to the Constitution. Public prosecutors exercise their powers in compliance with the law, respect and protect human dignity, and defend human rights. The Public Prosecutor's Offices are independent in their relationship with the courts of law and the other public authorities.

Structure of the prosecutorial system in Romania



Source: www.diicot.ro

⁵⁵ This section relies on information from the English presentation of DIICOT available at www.diicot.ro, the Code of criminal procedure, and the laws on DIICOT and NAD and an interview with George Virgil Gavrila, Prosecutor, International Cooperation Service, Directorate for Investigating Organized Crime and Terrorism (DIICOT), Romania.

■ Prosecutors have a statute of magistrates and are part of the judicial power. According to the *Law on the statute of judges and prosecutors*, prosecutors enjoy stability and they are independent, under the law. The guarantor of the independence of justice is the Superior Council of Magistracy⁵⁶.

■ The Romanian Public Prosecution Service includes:

- ▶ prosecutor's offices attached to district courts (176)
- ▶ prosecutor's offices attached to tribunals (42) and to the Children's and Family Tribunal (1)
- ▶ prosecutor's offices attached to courts of appeal (15).

■ The institutional hierarchy of prosecutor's offices is as follows:

- ▶ The highest body is the Prosecutor's Office attached to the High Court of Cassation and Justice (Prosecutor-General's Office), headed by the Prosecutor-General of Romania. This body coordinates the activities of the prosecutor's offices attached to the 15 courts of appeal.
- ▶ The prosecutor's offices attached to courts of appeal coordinate the activities of the prosecutor's offices attached to the 43 tribunals (including the special tribunal for children and family matters). Each of them is administered by a head prosecutor.
- ▶ The prosecutors' offices attached to tribunals coordinate the activities of the offices attached to the 176 functioning district courts, each of which is headed by a first prosecutor.
- ▶ The prosecutors' offices attached to the 176 functioning district courts represent the first (lowest) level of the hierarchy and are headed by first prosecutors.

■ Two separate specialised structures operate within the Prosecutor's Office attached to the High Court of Cassation and Justice. They are:

- ▶ The National Anticorruption Directorate (DNA), responsible for investigating and prosecuting corruption. It is headed by a chief prosecutor.
- ▶ The Directorate for Investigating Organised Crime and Terrorism (DIICOT), responsible for investigating and prosecuting organised crime and terrorism. It is headed by a chief prosecutor acting under the coordination of the Prosecutor-General of Romania.

■ Criminal proceedings for criminal offences committed by military personnel are carried out by military prosecutor's offices, which have the legal status of military entities. They are attached to military tribunals, the Bucharest Military Tribunal or the Bucharest Military Court of Appeal.

■ Prosecutors act in compliance with the principles of legality, impartiality and hierarchical control. They act in accordance with the law, to observe and protect human dignity, and defend the rights of individuals.

■ Prosecutors at each prosecutor's office report to the head of that office, who in turn reports to the head of the hierarchically superior prosecutor's office.

■ The control exercised by the Prosecutor-General of the Prosecutor's Office attached to the High Court of Cassation and Justice, the chief prosecutor of the National Anticorruption Directorate and the head prosecutor of the prosecutor's office attached to the court of appeal over prosecutors under their authority is performed either directly or through designated prosecutors.

■ Whenever deemed necessary, ex officio or at the request of the CSM, the Minister for Justice can exercise control over prosecutors through prosecutors designated by the Prosecutor-General of Romania, the Chief Prosecutor of the DNA, or the Minister him/herself, in order to check:

- ▶ The prosecutors' managerial efficiency;
- ▶ prosecutors' performance and accomplishment of tasks; and
- ▶ the quality of prosecutors' professional relations with citizens and other persons involved in activities carried out by prosecutor's offices.

⁵⁶ See Romanian answers to the Questionnaire for the preparation of Opinion no. 11 of CCPE "Quality and efficiency of the work of prosecutors, including as regards the fight against organized crime and terrorism" available at: <https://rm.coe.int/romanian-answers-to-the-questionnaire-for-the-preparation-of-opinion-n/1680723585>

■ Neither the range of measures prosecutors can take during criminal proceedings nor the corresponding decisions are checked. The Minister for Justice can ask the Prosecutor-General of Romania or, where appropriate, the Chief Prosecutor of the DNA, to report on the activities of prosecutor's offices and can issue instructions on the measures to be taken in order to prevent and combat crime effectively.

■ The Prosecutor's Office attached to the High Court of Cassation and Justice submits annual activity reports to the Superior Council of Magistrates and the Minister for Justice, who in turn present their conclusions on the report to the Romanian Parliament.

Functions related to the harmonization of prosecutorial practice and the unification of case law

Romanian law includes two important mechanisms for the unification of case law. These include an ex post mechanism a) the referral in the interest of the law and an ex-ante mechanism b) a preliminary ruling to settle legal issues.

■ The first mechanism is needed to ensure the unity in interpretation and law applicability by all courts, when different settlements are granted for the same legal matter. The second mechanism aims to unify divergent judicial practices. These mechanisms apply both in criminal⁵⁷ and civil procedure⁵⁸.

Appeal in the interest of the law⁵⁹

■ The Prosecutor General of the Prosecutor's Office attached to the High Court of Review and Justice (ex officio or on request of the Minister of Justice), the management board of the High Court of Review and Justice or the management boards of the Courts of Appeals and the Romanian Ombudsman have a duty to ask the High Court of Review and Justice to issue a ruling on legal issues settled differently by the courts of law. This motion is possible in order to ensure the uniform interpretation and application of the law by all courts of law (article 471 Code of Criminal Procedure).

■ The motion must comprise the different solutions for the legal issue and their grounds, including related case law, the opinions expressed in the doctrine and the proposed solution

■ The appeal in the interest of the law is admitted only if evidence is filed according to which the legal issues had been settled differently in final court rulings⁶⁰.

■ The appeal in the interest of the law is tried by a judicial panel made up of the Chief Justice of the High Court of Review and Justice, or the Deputy Chief Justice, the presidents of the chambers, 14 judges of the chamber competent to try the legal issue, and 2 judges from the other chambers. The Chief Justice presides the judicial panel⁶¹. When the legal issue is of interest for two or several chambers of the High Court of Review and Justice, the Chief Justice determines the chambers from which justices are to be selected for the judicial panel.

■ When the referral is received, the president of the judicial panel appoints a justice from the competent chamber to act as rapporteur. When the legal issue is of interest for two or several chambers, 3 justices are appointed. The president of the judicial panel can ask recognized experts for written opinions.

■ The report comprises the different solutions given to the legal issue, the case law of the Constitutional Court, the High Court of Review and Justice, the European Court for Human Rights, the European Union Court of Justice, the opinion of the consulted experts and the doctrine in this matter. At the same time, the judge-rapporteur develops and provides reasons for the proposed solution. The session of the judicial panel is convened no later than 20 days before its taking place. Justices receive a copy of the report and proposed solution. All justices on the panel shall

57 Chapter VI Provisions ensuring uniform case law, Code of Criminal Procedure.

58 <https://blr.flaw.uniba.sk/index.php/BLR/article/view/227/195>;

59 Section 1, articles 471-477, Code of Criminal Procedure

60 Article 472 (Admissibility requirements), Code of Criminal Procedure.

61 Article 473 (Court proceedings in the case of an appeal in the interest of the law), Code of Criminal Procedure.

take part in the session. The Prosecutor General of the Prosecutor's Office attached to the High Court of Review and Justice or the prosecutor appointed by the former, the justice appointed by the management board of the High Court of Review and Justice, the Courts of Appeals or the Romanian Ombudsman or their representative come before the judicial panel to make the case of the appeal in the interest of the law.

■ The appeal in the interest of the law is tried no later than 3 months from the date when the referral is filed to court. The solution needs to be adopted with at least two-thirds of the number of judges making up the panel. Abstentions are not allowed. The decision regarding the motion of appeal in the interest of the law is issued in the interest of the law alone and bears effects neither on the examined court rulings, nor on the situation of the parties to those court proceedings. The reasons for this decision are published no later than 30 days since the decision, which is published no later than 15 days since the writing, in the Romanian Official Journal. The settlement of the legal issues is binding for courts as of the date of the publication of the decision in the Romanian Official Journal, Part I⁶².

■ The effects of the decision cease when the legal provision that caused the settled legal issue is repealed, found unconstitutional or amended, except for the case when it features in new regulation⁶³.

Referral to the High Court of Review and Justice for a preliminary ruling to settle legal issues

■ The referral concerns legal issue whose clarification is paramount for the settlement on the merits of a case and about which the High Court of Review and Justice has not issued any previous decision and which is not the subject of a pending appeal in the interest of the law. In this case, the competent court can apply to the High Court of Review and Justice for a ruling to settle, in principle, the legal issue referred to it⁶⁴.

■ The decision of the judicial panel settles the legal issues in a manner binding for courts as of the date of the publication of the decision in the Romanian Official Journal⁶⁵. The effects of the decision cease when the legal provision that caused the settled legal issue is repealed, found unconstitutional or amended, except for the case when it subsists in the new regulation⁶⁶.

Work meetings and trainings

■ The Public Ministry organizes work meetings, conferences, seminars on a regular basis, prosecutors being invited to participate in training courses. The Prosecutor's Office attached to the High Court of Cassation and Justice (POHCCJ) elaborates, with the support and involvement of prosecutors at all levels guides, manuals, syntheses of legal issues, study notes, guidance lines etc. They are disseminated to all prosecution units, including by publication on the website of the Public Ministry.

Guidance

■ Under the new Internal Regulations for public prosecutor's offices of August 2014 a new structure under the subordination of the prosecutor general was set up and became operational: the Service of Guidance and Control. Its responsibilities include centralization, analysis of data and information from coordination and control actions, identification of deficiencies, issuance of recommendations meant to remedy them⁶⁷. On the other hand, guidelines issued by the Prosecutor General are not a very common tool.

Access to data bases and case law

■ All prosecutors are granted access to a commercial database that is fully updated in terms of legislation, case law, legal articles etc.

62 Article 474 Code of Criminal Procedure.

63 Article 474[^]1 Code of Criminal Procedure.

64 Article 475 Code of Criminal Procedure.

65 Article 476 Code of Criminal Procedure.

66 Article 477 (The contents and effects of the court ruling) and article 477 [^]1 (the effects of the decision cease or change), Code of Criminal Procedure.

67 Romanian answers to the Questionnaire for the preparation of Opinion no. 11 of CCPE "Quality and efficiency of the work of prosecutors, including as regards the fight against organized crime and terrorism"

Harmonization of prosecutorial practice in relation to corruption and organized crime

Organised crime is addressed through a specialised directorate of the Prosecutor's Office attached to the High Court of Cassation and Justice, the **Directorate for the Investigation of Organized Crime and Terrorism (DIICOT)**. This was set up in 2004 as an autonomous structure, with its own judicial personality and its own budget.

Specialised prosecutorial body

■ The DIICOT is the sole structure of the Public Ministry competent and specialized in the fight against and investigation of the offences of organized crime and terrorism, and it aims at dismantling the organized, border and cross-border criminal groups.

■ DIICOT has its own budget, the funds which it benefits from being distinctly outlined in the budget of the Prosecutor's Office attached to the High Court of Cassation and Justice.

■ DIICOT has a central structure in Bucharest, 15 territorial services and 27 territorial bureaus, covering all counties. The central structure has services specialized in investigating the main types of offenses the organized criminal phenomenon consists of.

Specialised prosecutors and expert staff

■ Prosecutors serving in DIICOT are appointed by order of the prosecutor general following approval of the Superior Council of Magistracy following a demanding selection process. DIICOT has a team of specialists, experts in processing and turning to account information from fields such as economy, banking, customs, information technology, and other fields as well.

Directing the investigation

■ The criminal investigation in the cases falling under the competence of the DIICOT is mandatorily conducted by the prosecutor. The judicial police officers and agents conduct only actions of criminal investigation ordered by the DIICOT prosecutors, under their close coordination and direct control. The judicial police officers and agents who carry out their activity under the coordination of DIICOT prosecutors are nominally appointed by the Ministry of Administration and Interior.

■ DIICOT works within the Prosecutor's Office attached to the High Court of Review and Justice, as a specialized body in the fight against organized crime and terrorism.

■ DIICOT is led by a chief prosecutor, assisted by two deputy chief prosecutors. Within the central structure, services, offices and departments are established, and directed by chief prosecutors. By order of the chief prosecutor of DIICOT, territorial services are established within the territorial area of the Prosecutor's Offices attached to the Courts of Appeal and they are directed by chief prosecutors.

■ The jurisdiction of the Service for Combating Organized Crime covers the entire spectrum of criminal offenses in the domain of trafficking in human beings and migrant smuggling, counterfeiting and forgery including currency counterfeiting, and crimes committed using various forms of violence or intended to facilitate commission of such offenses using violence.

■ Prosecutors in this Service are in charge of the investigation in the cases assigned to them, directly coordinate and control criminal investigation activities performed by police officers and warrant officers who are assigned to perform criminal investigation work in specific cases, file requests with the courts to get warrants and other legal orders and take cases to court on charges in their jurisdiction; they also lead, supervise and control technical activities in the criminal investigation as performed by specialists in economic, financial, banking, customs, cyber and other forms of investigations, as appointed to work with the Department for the Investigation of Organized Crime Offenses and Terrorism.

Multidisciplinary work in teams

■ The full spectrum of criminal investigation and prosecution work done by prosecutors with the Service is very complex and requires a multidisciplinary approach as it focuses on identifying and tracking the entire criminal group so as to dismantle the string points of the network, irrespective of whether they are domestic or have international connections. One crucial goal of the criminal investigation work of the prosecutors of the Service for the Prevention and Combating of Organized Crime is identifying, locating and evaluating the financial and other assets and valuables acquired illegally by the members of the criminal groups. Evidence of the illegal source of such assets must be brought in the criminal case so as to secure eventual forfeiture of such assets by the court.

■ The Service for Combating Economic and Financial Crime that operates under DIICOT has jurisdiction to perform the criminal investigations for a series of violations pertaining to collecting budget revenue; the assets of individuals/legal entities, affecting the confidence of investors or potential investors in the normal operation of the capital market, commercial relationships between open market operators, social relations that from and develop in the uniform non-discriminatory implementation of the Romanian Customs regulations etc.

■ Work groups are also set up which should monitor essential issues linked to the activity of prosecutors or draft proposals in relation to aspects they are interested in.

Weekly internal meetings

■ Weekly meetings are also organised within DIICOT with all prosecutors of the Directorate to discuss judgements and active cases and discuss options and solutions for their handling. This informal mechanism is said to have an important impact on the harmonisation of practice.

Dissemination of information

■ An effective dissemination mechanism is set in place, sending notifications to all judges and prosecutors on new cases, judgements on appeals on the interest of the law. These are also included in legal data bases and are mentioned in the Codes.

Training

■ The National Institute of Magistracy is responsible for initial and continuous training and organises on a monthly basis training seminars for the unification of practice.

Analysis

Romania has interesting practices especially in the unification of case law, with two legal mechanisms of preliminary and ex post appeals to address legal issues. These solutions are used quite often and appear to have an important impact in the unification of case law.

■ In terms of harmonization of prosecutorial practice, this is ensured through work meetings and trainings, the issuance of guidance by a specialized department of the supreme prosecutors' office and access to information about latest cases.

■ In terms of practice for organized crime, a specialized department is in place DIICOT with a cross country mandate and another one DNA dealing with corruption. These specialized bodies are manned with specialised prosecutors and additional expert staff, work in a multidisciplinary way and through joint teams. Harmonisation of practice is achieved because DIICOT prosecutors direct the investigations. With regard to soft practices, internal weekly meetings, good channels to disseminate information, access to data and training are available.

Organisation of the prosecutorial system

The Prosecutor's Office of the Republic of Bulgaria is a legal entity financed by the state budget with a seat in Sofia. The public prosecution service in Bulgaria consists of the Prosecutor-General, the Supreme Cassation Prosecutor's Office, the Supreme Administrative Prosecutor's Office, the National Investigation Service, the appeal prosecutors' offices, the Military Appeal Prosecutor's Office, the provincial prosecutors' offices, the provincial military prosecutors' offices and the district prosecutors' offices. At the moment there are 5 Prosecutor's Offices of Appeal; 29 District Prosecutor's Offices; 36 Regional Prosecutor's Offices.

■ Within the structure of the provincial prosecutors' offices, there are provincial investigation departments. The provincial prosecutors' offices have administrative departments whose prosecutors take part in the proceedings of administrative cases.

■ The public prosecution service is a unified and centralised structure. All prosecutors and investigators are subordinate to the Prosecutor-General. Each prosecutor reports to the respective superior prosecutor, and all prosecutors and investigators are subordinate to the administrative head of the respective prosecutor's office. Military prosecutors and investigators are independent of the military authorities in the performance of their duties.

■ The Prosecutor-General is appointed (and removed) by the President of the Republic of Bulgaria, upon proposal from the [Supreme Judicial Council](#) for a period of seven years, and is not eligible for a second term.

■ The Prosecutor-General heads the Prosecutor's Office and issues instructions and guidance on the activities of the public prosecution service; together with ministry managers and State institutions, they set up specialised inter-departmental units to assist in investigations under the procedural guidance of a prosecutor appointed for this purpose. The Prosecutor-General can refer matters to the Constitutional Court.

■ Prosecutors lead an investigation. All acts and deeds of a prosecutor's office are open to appeal before the superior prosecutors' office, unless they are subject to judicial review. A superior prosecutor can perform any actions falling within the mandate of subordinate prosecutors and can suspend or revoke their decisions in writing in cases specified by law.

■ In the performance of their duties, prosecutors are independent and act in accordance with legislation. They base their decisions on the law and on the evidence gathered in each case and are guided by their conscience and inner conviction.

■ Investigative bodies include the National Investigation Service (NSIS), the provincial investigation departments at the provincial prosecutors' offices. In each District Prosecutor's Office an Investigation Service is attached. Under the Judiciary Act, Prosecutors and investigators from Investigation Services attached to Prosecutor's Offices have the status of magistrates (judges and prosecutors).

■ The National Investigation Service is headed by the Prosecutor-General, either directly or through the Service's Director. The Director of the National Investigation Service is responsible for the administrative and organisational management of the investigators and staff and provides methodological guidance to investigators from the provincial investigations services of the provincial prosecutors' offices.

■ The provincial investigation departments at the provincial prosecutors' offices are staffed by investigators. These investigators undertake investigations into cases assigned to them and act under the direction and supervision of a public prosecutor. Orders issued by investigators in the course of an investigation are binding on all state bodies, legal entities and citizens.

⁶⁸ Information in this section is retrieved from the the e-justice country page, website of the [Public Prosecutor's Office of the Republic of Bulgaria](#), the response to the questionnaire at: <https://rm.coe.int/consultative-council-of-european-prosecutors-ccpe-/16807224d7>, information from the Bulgarian Penal code and Criminal Procedural Code available at: <https://lex.bg/bg/laws/ldoc/1589654529> and <https://lex.bg/bg/laws/ldoc/2135512224> and an interview with Ms Galina Andreeva-Mincheva, Deputy district Attorney, Prosecutor's Office, Plovdiv.

Functions related to the harmonization of prosecutorial practice and the unification of case law

■ The following mechanisms for the harmonisation of prosecutorial practice in Bulgaria were identified:

Instructions and guidelines

■ Instructions and guidelines appear to be an often-used mechanism to harmonise prosecutorial practice. Binding instructions within the hierarchy include individual cases, but general guidelines issued by the Prosecutor General. These address issues of more general concern and are not mandatory. They cannot relate to a specific case.

■ It is interesting how these are generated in a bottom-up way making use of the information compiled in the Annual report and building on identified needs or discrepancies in practice.

Possibility of prosecutors to ask for guidance from the General Prosecutors' Office

■ In open cases, when prosecutors note different practices and are unsure on what is the best course to follow they have the possibility, after the hierarchy is exhausted, to ask for guidance from the prosecutor of the court of cassation. An example of guidance requested concerns the competencies of prosecutors.

Interpretative decisions from the Supreme Court of Cassation

■ In Bulgaria, there is the possibility, in case of divergent case law to ask for a decision from an interpretative decision. This is determined in a general meeting of the criminal pane of the supreme court of cassation. It is provided for in the Judiciary Act. This remedy is used and it is common to have 5-6 cases per year.

Methodological guidance from the National Investigation Service

■ The National Investigation service often publishes methodological guidance for different types of crime to assist prosecutors in their work and harmonise practice. This is published on the intranet and is made available to all prosecutors but is not mandatory.

Annual Report on the application of the law

■ An interesting practice in Bulgaria, with an impact in the harmonisation of prosecutorial practice, is the Annual Report on the application of the law.

■ Every year by 30 April the Prosecutor General submits to the Supreme Judicial Council a Report on the application of the Law and on the activities of the Prosecution Office and the investigating bodies. The report is to be adopted by the SJC and presented in Parliament⁶⁹.

■ The Annual report includes analysis of various activities of the PO, evaluation measures, proposals and strategic priorities. This influences the focus of the work for the next period.

■ For example: After setting the priority on the organised crime and corruption the appellate prosecutors and the head of the specialized appellate prosecution office provide the Prosecutor General with summarized information on the investigations of the relevant district. In those reports similar analysis on the work of prosecutors is carried out and findings about the problems identified and possible solutions are presented.

■ The Supreme Cassation Prosecution analyses and summarizes the practice of courts and prosecutors' offices, prepares and drafts methodological guidelines and instructions. After their approval by the Prosecutor General they are made available for all prosecutors.

⁶⁹ [European e-Justice Portal - Types of legal professions \(europa.eu\)](https://e-justice.europa.eu)

Training

■ Based on the needs of the service, Prosecution Office develops every year an internal training program, which is deployed in addition to the training offered by the National Institute of Justice.

■ Training is also offered at national level by the National Institute of Justice and the Supreme Prosecutors' Office of the Court of Cassation. Prosecutors also participate in international trainings organised by the EJTN or other networks and institutions. These training at theoretical but allow for discussions and interaction between peers and are considered to be very effective. At local level, interactive trainings and discussions are also organised.

Networking

■ Prosecutors do not have an official forum through which to interact, but informal networking is possible through training and through official routes. This is useful to discuss practices, identify gaps and harmonise potential solutions.

IT sistemi

■ When it comes to IT systems, there is a centralised system in place through which every prosecutor can check pending/open cases. Through this they can see who is handling a case and contact colleagues and also identify potential links between cases.

Access to case law

■ The availability of case law through web-based platforms is an important working tool for prosecutors. Official access is granted to all prosecutors.

Harmonization of prosecutorial practice in relation to corruption and organized crime

With an amendment to the Criminal Procedure Code in 2011 a Specialized Prosecutor's Office was set up, assigned to hear cases of crimes committed by organized criminal groups and specific crimes associated with such groups. With new amendments to the same Code in 2015, the Specialized Prosecutor's Office was assigned to deal with all cases related to terrorism and financing of terrorism.

■ From 2012 to 27/07/2022 all organized crime and most of corruption cases were addressed to Specialized Prosecutors Office (SPO) in Sofia. The SPO was conducting investigations into organized crime, terrorism, high profile corruption cases and connected crimes, and was involved in JITs set up to investigate these crimes. The investigations were carried out by investigators in the investigation department of the Specialized Prosecutor's Office.

■ In 2015 additional provisions in the Penal Code relating to terrorism were adopted, including the criminalization of border crossing with the purpose to participate in the commission of a terrorist activity.

■ On 14th April 2022, the Bulgarian Parliament passed a Law amending the Judicial Act according to which the Specialized Prosecutors Office (SPO) was abolished and stopped working as of 27 July 2022. The competences of the SPO were transferred to ordinary District and Regional Prosecutors' Offices in Sofia and other regional offices. Now, all organized crime and most of corruption cases are addressed to District Prosecutor's Offices. Specialised teams inside the District Prosecutor's Offices deal with the most complicated cases including organized crime and corruption.

■ On corruption issues the Commission for Combatting Corruption is a specialized authority dealing with corruption issues. Prosecutors interact with them in relation to corruption crimes. There is also an obligation for mutual notification on pending or new corruption cases. The Commission can also issue guidelines for specific crimes and they are under the obligation to issue guidelines in specific cases, for example with regard to the interaction with financial intelligence.

■ The prosecutor general also compiles a "corruption catalogue", an internal document or list with information on crimes that need to be monitored. This is circulated and made available to all prosecutors.

Analysis

■ In Bulgaria, the harmonisation of prosecutorial practice is achieved through the possibility to issue instructions and guidelines through the hierarchy of the prosecution service, the possibility for prosecutors to ask for guidance from the General Prosecutors' Office, methodological guidance from the National Investigation Service and soft tools like to annual Report on the application of the law through which information on diverging practice or problems can be identified, training, informal networking and access to IT systems and case law.

■ The unification of case law is achieved through interpretative decisions from the Supreme Court of Cassation.

■ When it comes to corruption and organized crime, the previous specialized structures were abolished at the end of 2022 and now the competence lies with specialized units under regional and district prosecution offices. This reform is very recent and as such its effectiveness is not easy to assess.

Organisation of the prosecutorial system

The Public Prosecutor's Office (*Ministerio Fiscal*) is a constitutionally important body with its own legal personality and functional autonomy within the judiciary. It exercises its functions through its own structures, in accordance with the principles of unity of action and hierarchical subordination, and subject in all cases to the principles of legality and impartiality.

Article 124 of the Spanish Constitution of 1978 states that the Public Prosecutor's Office 'without prejudice to functions entrusted to other bodies, has the task of promoting the operation of justice in defence of the rule of law, citizens' rights, and the public interest as safeguarded by the law, whether ex officio or at the request of interested parties, as well as that of protecting the independence of the courts and securing before them the satisfaction of social interest'. Its functions include:

- ▶ ensuring that the judicial function is performed effectively in accordance with the laws and within the stipulated time limits through the necessary actions, appeal procedures and other measures;
- ▶ acting in the criminal process by ensuring that the judicial authority takes the appropriate precautionary measures and carries out investigations aimed at establishing the facts;
- ▶ acting in civil proceedings specified by law that affect the public interest or the interests of minors, the disabled or the underprivileged until the normal representation mechanisms are provided;
- ▶ performing the functions assigned to them by the relevant legislation in cases involving the criminal liability of minors, in order to serve the best interests of the minor.

There is a single Prosecution Service for the entire country⁷¹. Public prosecutors are civil servants selected by a competitive examination and they come under the Prosecutor General's Office and the respective Public Prosecutor's Offices of the autonomous communities. The territorial organization of the Prosecution Service comprises⁷²:

- ▶ The Prosecutor General
- ▶ The Prosecution Council
- ▶ The Board of High Prosecutors
- ▶ The Board of Chief Regional Prosecutors
- ▶ The Prosecutor's Office at the Supreme Court
- ▶ The Prosecutor's Office at the Constitutional Court
- ▶ The Prosecutor's Office at the National Court
- ▶ The Special Prosecutor's Offices
- ▶ The Prosecutor's Office at the Court of Auditors,
- ▶ The Armed Forces Prosecutor's Office
- ▶ The Regional Prosecutor's Offices.
- ▶ The Provincial Prosecutor's Offices
- ▶ The Area Prosecutor's Offices.

The Prosecutor General heads the Prosecution Service and is vested with nation-wide powers of representation. They are responsible for issuing orders or instructions regarding the service, its internal operation, general management and inspection. Chief Regional Prosecutors act in their respective Autonomous Community and represent the Prosecution Service there.

Chief Provincial Prosecutors are hierarchically subordinate to Chief Regional Prosecutors and form part of the Regional Boards of Chief Prosecutors. Chief Area Prosecutors will be hierarchically subordinate to Chief Provincial Prosecutors.

⁷⁰ This section relies on information from https://e-justice.europa.eu/29/EN/types_of_legal_professions?SPAIN&member=1,Home-Fiscal.es. The Organic Statute of the Prosecution Service available at: <https://www.fiscal.es/documents/20142/147455/Spanish+Law+on+Prosecutors.pdf/d9362d59-1d2f-9659-349b-a4fe61ef5b7c?version=1.1>

⁷¹ Article 22 Organic Statute of the Prosecution Service

⁷² Article 12 Organic Statute of the Prosecution Service

■ In any activity performed by a prosecutor their superiors can, by means of a substantiated resolution, assume a case personally or appoint another prosecutor. Disagreements are settled by their hierarchical superior. Notice of such changes must be served to the Prosecution Council, which may express its opinion⁷³.

Functions related to the harmonization of prosecutorial practice and the unification of case law

■ In Spain, the following mechanisms have been identified that have an impact on the harmonization of prosecutorial practice.

Issuance of general or specific orders and guidance

■ The Prosecutor General can issue general or specific orders and instructions to subordinates relating to the service and the performance of their duties. When these instructions concern matters that directly affect any member of the government, the Prosecutor General must first consult the Board of High Prosecutors. Members of the Prosecution Service report important matters relevant to their work to the Prosecutor General. The orders, instructions and communications are conveyed through the hierarchy, unless urgency calls for more direct arrangements⁷⁴. Prosecutors who receive an order or instruction regarding the performance of their duties with respect to specific matters must abide with it in their written opinions, but in oral proceedings are free to act as they believe best serves the cause of justice.

■ The Prosecutor General can summon any member of the Prosecution Service into his presence to directly receive reports or issue instructions. The Prosecutor General may designate any of the members of the Prosecution Service to conduct a specific case in any of the courts where the Service is legally authorised to intervene, after consulting the Prosecution Council⁷⁵.

■ Prosecutors receiving an order or instruction that they believe to be unlawful or inappropriate will inform their Chief Prosecutor in a substantiated report. When the order or instruction was issued by the Chief Prosecutor, who deems the reasons unsatisfactory, he/she will submit the question to the Prosecutions Board and, based on its ruling, either reconsider or reconfirm the initial order. If the order was issued by a superior, the report will be submitted there. If the reasons given are found to be unacceptable, he/she will consult the respective Board of Prosecutors and proceed as described above. If the order was issued by the Prosecutor General, he/she will act after consulting the Board of High Prosecutors⁷⁶. If superiors confirm their instructions, this will take the form of a substantiated brief.

Organisation of coordination meetings

■ To standardize criteria, study matters of special importance or complexity or establish positions on prosecutions service-related subjects, the Prosecutor's Offices hold periodic meetings of all of members.⁷⁷

■ Decisions in these meetings are reached by majority and raised to position status. The Chief Prosecutor's opinion will prevail, but if it is contrary to the majority opinion, the Chief Prosecutor must submit both to their hierarchical superior. The Chief Prosecutor's opinion will be enforceable until the hierarchical superior's decision is issued.

■ Similar meetings are held at the level of the Supreme Court in division and organizational subdivisions meetings. Meetings of the Board of High Prosecutors will be convened to report on Division statistics and to deal with issues that may affect the organization of the general services.

■ Chief Provincial Prosecutors can convene the coordination meetings to deal with issues relating to service management and coordination. To maintain unified criteria or establish positions on subjects relating to their duties, Chief Regional Prosecutors can convene meetings of the Regional Board of Prosecutors, whose membership includes all the Chief Provincial Prosecutors in the autonomous community.

73 Article 23 Organic Statute of the Prosecution Service

74 Article 25 Organic Statute of the Prosecution Service

75 Article 26 Organic Statute of the Prosecution Service

76 Article 27 Organic Statute of the Prosecution Service

77 Article 24 Organic Statute of the Prosecution Service

■ Boards of Prosecutors can hold regular or special meetings. Regular meetings are held at least once every six months. Special meetings are convened to discuss issues that are urgent or too complex to relegate to a regular meeting of the Board.

Harmonization of prosecutorial practice in relation to corruption and organized crime

■ In Spain there are a number of Special Prosecution Offices, including the Anti-Drug Prosecutor's Office and the Anti-Corruption and Organised Crime Prosecutor's Office⁷⁸.

Specialised offices

■ The Anti-Corruption Prosecutor's Office investigates and hears cases of economic or other crimes committed by public officials in the exercise of their duties related to the phenomenon of corruption. It also takes on the investigation of economic crimes committed by organised groups, unless they fall under the specific jurisdiction of the Anti-Drug Office or the Prosecutor's Office of the National High Court.

■ The Special Prosecutor's Office against Corruption and Organised Crime conduct enquiries and participate directly in criminal proceedings, where the events involved are deemed by the Prosecutor General to be of particular significance, with respect to:

- ▶ a) Tax and social security fraud, contraband;
- ▶ b) Perversion of justice;
- ▶ c) Abuse or undue use of insider information.
- ▶ d) Embezzlement of public funds.
- ▶ e) Fraud and extortion.
- ▶ f) Influence peddling.
- ▶ g) Bribery.
- ▶ h) Negotiation forbidden to public officials.
- ▶ i) Defrauding.
- ▶ j) Bankruptcy involving criminal negligence or malpractice.
- ▶ k) Alteration of prices in public tendering and auctions.
- ▶ l) Offences against intellectual or industrial property, the market or consumers.
- ▶ m) Corporate offences.
- ▶ n) Money laundering and behaviour involving dealing in stolen goods, except where involving illegal drug trafficking or terrorism, in which case the proceedings must be conducted by other Special Prosecutor's Offices.
- ▶ o) Corruption in international trade transactions.
- ▶ p) Private sector corruption.
- ▶ q) Offences related to the preceding.
- ▶ r) The investigation of all manner of legal business, transactions or movement of goods, securities or capital, financial flows or assets that appear to be related to activities conducted by organised criminal rings or financed with earnings from criminal activities, and offences that are related to or determine such activities. Where such business or transactions involve illegal drug trafficking or terrorism, however, the respective proceedings must be conducted by the Prosecutor's Offices against Illegal Drug Trafficking or at the National Court, as appropriate.

⁷⁸ <https://www.fiscal.es/fiscal%C3%ADas-especiales>

Specialized prosecutors

■ The Special Prosecutor's Office against Corruption and Organised Crime was composed in 2022 of a Chief Prosecutor, a Deputy Prosecutor and 19 prosecutors. Another 8 prosecutors were seconded there. The staff of the Office was increased by Royal Decree 255/2019. Currently the staff includes one Chief Prosecutor, one Deputy Prosecutor and 27 prosecutors.

Support units

■ One of the unique features of the Anti-Corruption Prosecutor's Office, and probably the one that gives it the greatest investigative capacity, is the existence of Support Units - of the Agencia Estatal de Administración Tributaria (AEAT) and the Intervención General de la Administración del Estado (IGAE) - and of the Police Attached Units - National Police and Civil Guard.

■ The Support Unit of the Agencia Estatal de Administración Tributaria (AEAT) provides advice in the financial, accounting and tax fields and, in general terms, in the economic field. It is currently made up of twelve people belonging to the State Tax Administration Agency.

IT Tools

■ With regard to material and IT resources, in November 2020 the FORTUNY digital justice project was initiated. This introduced technological modernisation in the Public Prosecutor's Office. In July 2021, the GEISER (Integrated Management of Registration Services) registration tool was installed in the Public Prosecutor's Office registry. The application works on the basis that the documentation is received and transmitted in digital format, allowing the exchange of records in electronic form with other bodies in a secure manner⁷⁹. This reduces paperwork and increases efficiency. This tool is unrelated to the procedural communications that take place between the Public Prosecutor's Office and judicial bodies.

Analysis

■ In Spain, the harmonization of prosecutorial practice is achieved through the issuance of general or specific orders and guidance within the hierarchy and from the Prosecutor General and through the specific provisions for coordination meetings among different groups or sub-groups of prosecutors in order to settle specific issues.

■ When it comes to corruption and organized crime, specialized prosecution bodies are in operation, staffed by specialized prosecutors and with access to specialized experts and support units and IT Tools.

⁷⁹ Memoria 2022, <https://www.fiscal.es/documents/20142/183863/Memoria+2022+-+Fiscal%C3%ADa+contra+la+Corrupci%C3%B3n+y+la+Criminalidad+Organizada.pdf/2cf70ddd-4dfe-a29f-f64a-ee1c375bc552?t=1663584122022>

FRANCE

Organisation of the prosecutorial system

In the French judicial system, the public prosecutor's office is the authority that prosecutes offences and represents the interests of society before all courts of law. The general organization of the Public Prosecutors Office is governed by three principles:

- ▶ subordination to the chain of command: The public prosecutors are under the supervision and control of their superiors and under the authority of the minister of justice.
- ▶ indivisibility of the prosecution service: The public prosecutors act in the name of the prosecution service as a whole. As a consequence, the members of the Public Prosecutors Office can replace each other at any point.
- ▶ unchallengeable legitimacy of public prosecutors: The legitimacy of the public prosecutor cannot be challenged because they defend the interests of society as a whole and applies the policy defined by the government

■ The prosecutor exercises public action by prosecuting, intervening during the trial as a principal party and is active both during the investigation phase and during the trial phase. The prosecutors of the *parquet* act in the interests of society, which they represent in seeking that the law be applied.

■ In France, the Minister of Justice conducts the criminal justice policy determined by the government⁸⁰. The prosecutorial system (*parquet*) is a hierarchical pyramid under the authority of the Minister of Justice. The Minister ensures that this policy is applied consistently throughout the country and to this end can give general instructions to the law officers of the State Counsel's Office regarding criminal justice policy.

■ There is a prosecutorial office at each regional court (*tribunal de grande instance*), headed by a *procureur de la République*. The prosecutor of the republic (*procureur*) manages the office, distributes tasks and departments to deputy prosecutors (*procureurs adjoints*), vice prosecutors.

■ Public prosecutors are represented at the level of all criminal courts⁸¹ and can make written submissions in accordance with the instructions given to them. They can also make any oral observations they consider appropriate for the good of justice⁸².

■ The prosecution is regarded as an indivisible unit: an assistant does not need authority from a superior to act, and all of his or her acts bind the State Counsel's Office as a whole.

The functions of the prosecution concern the enforcement of criminal law. It directs investigations, and takes all steps necessary to prosecute offences, or sees to it that steps are taken to do so. It has discretion to decide what action should be taken in criminal cases (e.g. initiating a preliminary judicial inquiry, committing a matter for trial in court, or discontinuing proceedings). It appears at the court hearing and can make oral submissions. The State Counsel's Office also ensures that sentences are enforced. The State Counsel's Office is also responsible for protecting minors at risk, and it has certain civil, administrative and commercial functions.

The prosecutor service of the court of cassation (*parquet général*) differs from other public prosecutor's offices in that it is not hierarchical and does not prosecute. The public prosecutor's office of the Court of Cassation has a specific role to 'issue opinions in the interest of the law and the common good. It informs the Court on the scope of the decision to be taken'⁸³. In this sense, the public prosecutor acts as a defender of the law and acts as an interface between the Court and civil society.

■ The public prosecutor and the advocates-general in the court of cassation are independent from the Minister of Justice and the advocates-general are not subordinate to the public prosecutor, who cannot give them instructions.

80 Article 30 of the Code of Criminal Procedure

81 Article 32, Code of Criminal Procedure

82 Article 33, Code of Criminal Procedure

83 Article L432-1 of the Code of Judicial Organization

■ Finally, the public prosecutor participates in the management of the judiciary and its discipline. He is a member of the board of directors of the École nationale de la magistrature and, since 2008, he chairs the panel of the Conseil supérieur de la magistrature responsible for prosecutors.

■ The main role of the Office of the Prosecutor is to guarantee the consistency of the interpretation of the law and to ensure its conformity according to the intention of the legislation with the public interest and with the public order. He also has to ensure the unity of the case law inside the Court of Cassation as well as inside the other courts⁸⁴.

Functions related to the harmonization of prosecutorial practice and the unification of case law

Circulars and guidance from the Ministry of Justice

■ The Minister of Justice is responsible for the conduct of the penal policy of the government. It is their responsibility to specify, by means of general instructions, the main guidelines to ensure its consistency and effectiveness throughout the country.

■ Through circulars⁸⁵ the Ministry of Justice sets the priorities of the policy in the field of justice and addresses general instructions. For example, the Circular of March 2012 (relative aux instructions générales de politique pénale NOR : JUSD1207067C)⁸⁶ provides general instructions on criminal policy. It sets the priorities for criminal penal policy that require special attention from the public prosecutors.

■ Circulars are issued on a broad range of issues for example from the execution of penalties, to specific offences, to more detailed issues. Circulars are published in the supplementary official bulletin and address general topics of application of criminal law. The public prosecutors at the courts of appeal can adapt these guidelines and harmonise the criminal policy of the public prosecutors' offices in their jurisdiction.

■ Following a reform in 2013⁸⁷, the law explicitly prohibits the Minister of Justice from issuing instructions to public prosecutors in individual cases. This reform aims to safeguard citizens rights against any interference by the executive in the conduct of criminal proceedings.

■ The Ministry of Justice issues also practical guides on a number of issues addressing the general application of the law. For example, a recent guide focused on the protection order. This practical guide is intended for all those involved in the fight against domestic violence. It aims to raise awareness of the protection order system, to provide solutions to difficulties regularly encountered in the field, and to encourage wider use of this civil system. A recent updated edition explains the implementation of a mobile electronic anti-seizure device⁸⁸. Similar guides are issued on a number of issues, for example restorative justice⁸⁹, intimate partner violence⁹⁰, among several others. These guides are often the result of a collective effort by the competent directorates of the Ministry of Justice and are available at the webpage of the Ministry of Justice.

Instructions within the hierarchy

■ The Public Prosecutor's Office carries out the public action and request the application of the law, in compliance with the principle of impartiality⁹¹. The Procureurs Généraux (court of appeal) can give instructions to their inferiors, the Procureurs de la République, regarding the general functioning of their offices and the policy of their jurisdiction but also the decisions to take in a particular case, if deemed necessary, for example to initiate proceedings or

⁸⁴ https://www.justice.gouv.fr/art_pix/french_legal_system.pdf

⁸⁵ <http://www.justice.gouv.fr/recherche.html>

⁸⁶ http://www.textes.justice.gouv.fr/art_pix/JUSD1207067C.pdf

⁸⁷ <http://www.justice.gouv.fr/justice-penale-11330/comprendre-la-reforme-du-parquet-28640.html>

⁸⁸ <http://www.justice.gouv.fr/publications-10047/guides-professionnels-10048/guide-pratique-de-lordonnance-de-protection-nouvelle-edition-33138.html>

⁸⁹ <http://www.justice.gouv.fr/publications-10047/guides-professionnels-10048/guide-methodologique-de-la-justice-restaurative-33606.html>

⁹⁰ <http://www.justice.gouv.fr/publications-10047/guides-professionnels-10048/guide-de-laction-publique-sur-les-violences-au-sein-du-couple-11955.html>

⁹¹ Article 31, Code of Criminal Procedure

to refer to the competent court⁹². The public prosecutor has authority over all officers of the office within their jurisdiction⁹³ including the agents of the police that have been placed in their supervision⁹⁴. Instructions are written. The Procureurs Généraux report directly to the minister of justice.

■ The public prosecutor at the court of appeal⁹⁵ represents the public prosecutor's office before the court of appeal. They lead and coordinate the action of the public prosecutors and they specify and, if necessary, adapt the general instructions of the Minister of Justice to the specific context of the jurisdiction and evaluates their application by the public prosecutors⁹⁶.

■ The prosecutor of the republic⁹⁷ implements the criminal policy and leads and coordinates the judicial component of the crime prevention policy within their jurisdiction, in accordance with the national guidelines. As part of their powers to direct the judicial police, the public prosecutor can issue general or specific instructions to investigators. They control the legality of the means used, the proportionality of investigative acts with regard to the nature and seriousness of the facts, the direction given to the investigation and the quality of the latter.

Opinions of the Procureur General

■ The Public Prosecutor issues opinions in the interest of the law and the common good. They have a specific role to 'issue opinions in the interest of the law and the common good. It informs the Court on the scope of the decision to be taken⁹⁸. The General public prosecutor is the defender of the law and must act as an interface between the Court and civil society.

Harmonization of prosecutorial practice in relation to corruption and organized crime

■ In the field of corruption and organized crime, the National Financial Prosecutor's Office (PNF) was created in 2013⁹⁹. This development was prompted by the "Cahuzac affair", in which a minister in charge of the budget was implicated and then convicted for tax fraud and tax laundering, but it also responds to the recommendations of the Organisation for Economic Co-operation and Development (OECD), which invited France, to intensify its actions to fight international corruption. The establishment of this new structure is part of a more general public policy of transparency and the fight against fraud and dishonesty.

At more or less the same time, the High Authority for the Transparency of Public Life (HATVP)¹⁰⁰ was established to monitor the declarations of interest and assets of elected representatives and senior officials, the Central Office for Combating Corruption and Financial and Tax Offences (OCLCFF), a judicial investigation service specializing in tax fraud and breaches of probity and the French Anti-Corruption Agency (AFA)¹⁰¹. This is a specialised prosecutor's office whose action is targeted at the most complex criminal investigations in the field of economic and financial crime.

■ The French National Financial Prosecutor's Office (*Parquet National Financier* - PNF)¹⁰² started its activity on 1 February 2014. The PNF has national jurisdiction and can deal with all acts within its jurisdiction committed in metropolitan France and in the overseas territories and departments. It may also, under certain conditions, deal with offences committed abroad. It is an autonomous prosecution service. Magistrates and prosecutors serving there are specialised in economic and financial matters.

92 Article 36, Code of Criminal Procedure

93 Article 37, Code of Criminal Procedure

94 Article 38, Code of Criminal Procedure

95 Articles 34 to 38, Code of Criminal Procedure

96 Article 35, Code of Criminal Procedure

97 Articles 39 to 44-1, Code of Criminal Procedure

98 Article L432-1 of the Code of Judicial Organisation.

See also <https://www.courdecassation.fr/presentation-du-parquet-general-de-la-cour-de-cassation>

99 Law n° 2013-1117 of 6 December 2013. ([loi n°2013-1117 du 6 décembre 2013](#))

100 Law No. 2013-907 of 11 October 2013. [loi n°2013-907 du 11 octobre 2013](#) on tax fraud and serious financial crime and by Organic Law n°2013-1115 of 6 December 2013. ([loi organique n°2013-1115 du 6 décembre 2013](#)) on the Financial Prosecutor.

101 The French National Financial Prosecutor's Office (Parquet National Financier - PNF) by Law n°2016-191 of 9 December 2016. [loi n°2016-191 du 9 décembre 2016](#)

102 <https://www.tribunal-de-paris.justice.fr/75/actualites-mensuelles-parquet-national-financier>
https://www.tribunal-de-paris.justice.fr/sites/default/files/2021-02/PNF-brochure_A5_2201.pdf

Specialised prosecutorial body

■ The PNF is specialised in dealing with the most complex economic and financial crimes¹⁰³. Its field of competence covers 4 categories of offences:

- ▶ Offences against public finances (complex tax fraud, tax fraud committed in an organised gang, highly complex VAT fraud and laundering of the above-mentioned offences)
- ▶ Offences against probity (offences of corruption, influence peddling, illegal interest taking, camouflage, concussion, favouritism, misappropriation of public funds, illicit obtaining of votes in electoral matters, etc.)
- ▶ Violations of the proper functioning of financial markets (insider trading, price or index manipulation, dissemination of false or misleading information)
- ▶ Since the entry into force of the law of 24 December 2020, the PNF's jurisdiction has been extended to include offences against the free play of competition (offences of unlawful agreement and abuse of dominant position)

■ The PNF has concurrent jurisdiction with other territorial prosecutors' offices and specialised courts in matters of public finance, probity and competition offences. This means that it is not the only one that can be seized of these types of offences, even when they are highly complex. In the area of financial market offences, it has exclusive jurisdiction, which means that the PNF is the only judicial authority competent to investigate and prosecute such offences¹⁰⁴.

Guidelines

■ In the exercise of its function, the PNF often publishes guidelines on the offences falling under its mandate. For example, it recently published new Guidelines on public interest judicial agreements [on its website](#). The Guidelines, intended for economic entities and foreign judicial authorities, aim to improve predictability and legal certainty of this judicial settlement/ The PNF notably specifies the conditions for entering into negotiations and sets out the details of the calculation of the public interest fine.

■ Further, the guidelines clarify issues related to the confidentiality of communications, the calculation of the public interest fine, facts discovered subsequently etc. The Guidelines reflect evolutions in the practice of the PNF and set out foreseeable developments.

■ Another circular¹⁰⁵ sets guidelines on the criminal policy in fiscal fraud within the context of the latest legislative reforms. It complements previous circulars. The circular addresses the issue on the fight against fiscal fraud and the mobilisation of all jurisdictions, including specialised and non-specialised ones.

Automated national registry of judicial proceedings

■ Another tool that can be linked to the effort to harmonise prosecutorial practice is the automated national registry of judicial proceedings. This is provided for by law¹⁰⁶ and it is an automated application, placed under the control of a magistrate, containing nominative information relating to complaints and denunciations received by public prosecutors or examining magistrates and to the action taken on them. This is intended to facilitate the management and monitoring of judicial proceedings by the competent courts, the information of victims and mutual knowledge between the courts of proceedings concerning the same facts or involving the same persons, in particular in order to avoid duplicate proceedings. This application also aims to use the information collected for statistical research purposes.

¹⁰³ Article 705 of the Code of Criminal Procedure.

¹⁰⁴ <https://www.actu-juridique.fr/droit-penal/focus-sur-le-role-du-pnf-dans-la-lutte-contre-la-grande-delinquance-fiscale/>. See also <https://www.simmons-simmons.com/en/publications/cld8w76xn004cu7l0et0aym5i/french-financial-prosecutors-released-new-guidelines-regarding-cjip>

¹⁰⁵ Circulaire: CRIM »2021 » - 10 / G3 – 04/10/2021 N/REF : DP 2021/F/0122/FC4 TITRE : Circulaire relative à la lutte contre la fraude fiscale <http://www.justice.gouv.fr/bo/2021/20211029/JUSD212978C.pdf>

¹⁰⁶ Section 5, Article 48-1: The automated national registry of judicial proceedings

■ The data recorded in the automated national registry includes:

- ▶ The date, place and legal classification of the facts;
- ▶ Where known, the surname, first names, date and place of birth or company name of the accused and victims;
- ▶ Information relating to decisions on public action, the course of the investigation, the trial procedure and the methods of enforcing sentences;
- ▶ Information relating to the judicial situation of the accused, prosecuted or convicted person during the proceedings

■ The information contained in the automated national registry is kept for a period of ten years from the last recorded update or, if longer, for a period equal to the period of prescription of the public prosecution or, where a conviction has been handed down, the period of prescription of the sentence.

■ The information relating to the procedures followed by each court of first and second instance are recorded under the responsibility of the public prosecutor or the judges exercising criminal functions of the court with territorial jurisdiction, by the court clerks or the authorised persons assisting these judges.

■ This information is directly accessible, for the sole purpose of processing offences or proceedings before them, by public prosecutors and judges performing criminal duties in all courts, their clerks or authorised persons assisting them. They are also directly accessible to the registry agents of the single reception service for litigants and to magistrates entrusted by a legislative or regulatory provision with the supervision of criminal investigation files, the national automated genetic fingerprint file and the automated fingerprint file, as well as to authorised persons assisting them.

■ Except in the case of non-nominative data used for statistical purposes, the information contained in the automated national register is accessible only to the judicial authorities.

Analysis

■ In France, the harmonisation of prosecutorial practice is mainly addressed through the mandate of the hierarchy to provide instructions and guidelines on the application of the law and the methodology to be applied. Circulars, both on general and specific issues, such as corruption and organized crime, are an important tool to unify practice.

■ In the field of corruption and organized crime in particular, there is a specialized prosecution in place, the PNF, that deals with financial crime and is staffed by specialized magistrates. However, the PNF has concurrent competence with other prosecutions, which makes the need to harmonize practice is ever present.

■ To this aim, guidelines are regularly issued by the PNF on issues of organized crime, financial crime but also issues of application of the law.

■ Other tools include a database with information on ongoing investigations and crimes to be used for the support of judicial authorities. This is provided for in law.

Chapter III:

Comparative analysis and conclusions

The country case studies presented in the previous chapter, although not exhaustive, indicate a relatively wide range of mechanisms and tools that are used in practice to ensure that prosecutors across a jurisdiction have common guidance on how to apply the law or on methods and tools for their work, that diverging prosecutorial practice is identified and addressed and that case law is unified where necessary.

The case studies also revealed a range of interesting approaches to the harmonization of prosecutorial practice in specialized fields like corruption and organised crime or other serious and complex crimes.

■ This chapter will take a closer look at these mechanisms and tools in a comparative perspective attempting to identify their usefulness, advantages and disadvantages and potential challenges associated with them.

■ The chapter will first address 'generic' mechanisms and tools that aim or have the effect of harmonising prosecutorial practice. These mechanisms are tagged as 'generic' because they are not specific to one area of law but have a more or less horizontal applicability. Then, mechanisms specifically aiming to unify case law will be addressed. Last but not least, the chapter will analyse harmonization mechanisms that are specific to the field of corruption, organized and other serious crime. It must be said that the categorization presented above is not doctrinal but only a practical approach to organize and synthesise the findings in a manageable way. It is obvious that there are overlaps and interaction between all mechanisms and remedies.

Mechanisms for the harmonisation of prosecutorial practice and the unification of case law

Harmonisation of prosecutorial practice

The case studies reveal a number of mechanisms, of distinct nature and texture, that are used and can have an impact in the harmonization of prosecutorial practice. The table below offers an overview of the mechanisms identified:

Table 1: Mechanisms for the harmonization of prosecutorial practice

Tool/country	Austria	Greece	Slovenia	Portugal	Romania	Bulgaria	Spain	France
Instructions	Instructions	Orders and instructions				Instructions	Orders and instructions	Instructions
Opinions	Weisungsrat	Opinions of the Chief Prosecutor	Criminal Dpt of Supreme State Prosecutors Office					Opinions in the interest of the law (GP)
Guidelines	Guidelines by specialized units of MoJ	Circulars of the Chief Prosecutor	General guidelines (GP)	Guidelines (GP)		Methodological guidance by National Investigation service		Circulars and Guidance from MoJ
Monitoring of application of the law			Criminal Affairs Dpt of Supreme State Prosecutors office – monitors	Annual reports		Annual report on the application of the law		
Working methods	Professional meetings		Specialized investigation teams (JITs)		Work meetings/ Team work groups		Coordination meetings	
Access to databases	Public collection of case law		Important decisions and summaries		Access to data bases			
IT tools			Case management system				IT Tools	IT system
Dissemination	Webpage Dissemination practices – Intranet				Dissemination			
Training	Specialised training	Training	Training		Training	Training		
Networking			Informal networking					

The main mechanisms identified are discussed below.

Hierarchical instructions and orders

Most prosecution services have a hierarchical structure. This means that relationships between the different layers of the hierarchy determine to an extent the course of action and that superiors have the legal possibility not just to direct but also to influence the action of their subordinates.

Instructions are common in prosecutorial systems. They are a useful tool for offering guidance and harmonizing prosecutorial practice, when the need arises. Instructions need to be in accordance with the law, be fully transparent and not interfere with the independence and autonomy of prosecutors.

In all country case studies examined, the possibility to issue instructions or orders by prosecutors directing an investigation or by their superior is clearly consolidated in legislation and is an undisputed feature of the work of the prosecution. It is a rule of the game but it also has an impact on the harmonization of prosecutorial practice, given that senior prosecutors in principle have more experience than their colleagues who are lower in the hierarchy or supervise more cases so they can be aware of divergent practices or of the need to promote more uniform approaches.

Binding instructions and orders are a consequence of the hierarchical organization of the prosecution but they are (or might be) in tension with the independence and autonomy of individual prosecutors. To this aim, what is critical is that these relationships should be governed by clear and unambiguous rules¹⁰⁷ and that remedies should be in place to allow divergent opinions. It is therefore important to ensure that instructions and orders are written and that there is the possibility, when these are considered unlawful, to act against them or at least express a divergent opinion.

Guidelines/circulars

Another effective mechanism for the uniform application of the law and the harmonization of prosecutorial practice, that exists in all the countries studied, is the possibility to issue general guidance, recommendations or circulars. The terminology used differs (guidelines or circulars being common terms used) but essentially is chosen to indicate that these are guidelines, which are not mandatory, of general nature and relate to the application of the law in general and not to individual cases. All countries allow one or more bodies (more on this below) that can issue general instructions on priorities of prosecutorial activities as they result from the law, the development of international co-operation or requirements relating to the organisation of the service. Clear guidelines are an effective way to achieve consistency and fairness when taking discretionary decisions within the prosecution process and in court, should be issued¹⁰⁸.

Principles and guidelines on issues internal to the exercise of the profession such as time management, methodology issues or co-operation with other actors of the justice administration system can ensure a smooth and uniform process, facilitate the exercise of the profession by new prosecutors and ensure a minimum level of uniformity in internal procedures¹⁰⁹.

The bodies that can issue such guidelines differ in the case studies examined. In some countries (Austria, France) guidelines on criminal policy of specific areas of legislation are issued by the Ministry of Justice, as the executive body in charge of criminal policy. Specialized departments within the Ministry issue general directions on specific areas of law. In France, prosecutors have the possibility to further adapt and specify these guidelines for their jurisdiction, if and when needed. In other jurisdictions, like Slovenia, Greece, Bulgaria, Romania, this function lies with the body heading the prosecution service (prosecutor general or equivalent). Within the prosecutorial service, in a top down way, general guidance can be issued to facilitate the work of prosecutors and ensure uniformity in practice. These guidelines are often informed by reports or data indicating gaps or diverging practices or lack of clear directions as to how specific provisions should be applied. In relation to the previous ones, these guidelines are often more specific and detailed to the extent that they address issues of concern to the prosecutorial body. However, guidance from the executive when the prosecution is considered part of the judicial system might be problematic from the perspective of separation of powers. In countries where prosecution is part of the executive this is not an issue.

¹⁰⁷ See also the Rome Statute, point XIV.

¹⁰⁸ See also the Rome Statute point XVII.

¹⁰⁹ See Consultative Council of European Prosecutors (CCPE), Opinion No. 11 (2016).

■ The nature of these guidelines can vary, but in principle they are general, touch upon legal issues of broader concern and must be in the interest of the uniform application of the law. For example, in Slovenia circulars/guidelines were issued on plea bargaining, in Greece on measures to implement the provisions on hate crime. In Portugal guidelines imposed an obligation on all prosecutors to communicate corruption crimes that fall under their mandate to DIAP. In countries with a National Investigation Service, like Portugal and Bulgaria, methodological guidelines can be issued. So while the topics and subjects of these guidelines can differ, they can only relate to general issues of application of the law and can never address an open case or investigation.

■ Provided that the general nature of guidelines is respected, they are an effective mechanism to promote the uniform application of the law and harmonise prosecutorial practice. Specific and detailed guidance or methodological directions are useful for younger prosecutors or more senior ones who are coming across a specific crime for the first time. They can save them time, bring to their attention specific information and offer some structure in their approach. On the other hand, it is not rare that seemingly general guidelines might be masking an attempt to intervene in a specific case. This is difficult to detect but it is a fine line that should not be crossed.

Opinions

■ Opinions are different to the previous two mechanisms in that they are not mandatory and are offered as an interpretation of the law in specific cases. In several countries the head of the prosecutorial services has this possibility. Opinions can be triggered in a bottom-up way, for example by a prosecutorial service or a prosecutor that asks for specific guidance on how to proceed, or in a top down way by addressing open or challenging issues.

■ In Austria, there is a specific advisory council within the structure of the Procurator General's Office, the Weisungsrat, whose role is to provide solicited advice to the Ministry of Justice on how to proceed in specific cases. The opinion of the Weisungsrat is not binding but goes hand in hand with publicity and justification requirements. If the Ministry does not uphold it, they are obliged to publish it and to explain the reasons why it was not followed.

Monitoring the application of the law and prosecutorial practice

■ Although not an obvious matter when discussing prosecutorial practice, practices aimed to monitor the application of law appear to have an impact especially on the possibility to identify divergent practices and the need for a harmonized approach and to put in motion the required mechanisms.

■ The issue was raised by several informants and different solutions were revealed by the case studies. In countries where the Ministry of Justice leads the justice system, the competent departments (departments of criminal affairs or similar) have a role in monitoring practice and case law. In Austria, Section 5 of the Ministry of Justice works closely with prosecutors to identify challenges and generate appropriate solutions. In Slovenia, a similar role is played by the Criminal Department of the Supreme State Prosecutors Office that monitors practice and case law and is in contact with prosecution services around the country. In Portugal, annual reports of the prosecution offices, used mainly for purposes of monitoring, management and evaluation of efficiency, are also useful for the identification of problem areas. In the same direction, in Bulgaria, annual reports on the application of the law provide valuable information on challenges arising in prosecutorial practice. The entity that collects and processes these reports has the opportunity to see the 'bigger picture' and identify problematic issues beyond individual offices.

■ This is a useful managerial tool to collect information in a bottom-up way and to process it in order to inform the strategic and operational priorities of the prosecutorial offices or the service as a whole.

Working methods within the prosecution

■ An important mechanism to impact the harmonization of prosecutorial practice and the uniform application of the law relates to the internal working methods of the prosecution services. The case studies, and the informants, revealed two key issues: a) the importance of regular (eg weekly) professional work meetings involving prosecutors of distinct rank to discuss cases and b) the possibility to form joint or specialized investigation teams for the prosecution of specific crimes. In Austria for example, the importance of regular work meetings was highlighted, same as in Portugal. In Spain, there is a specific legislative provision regarding coordination meetings allowing prosecutors at different ranks and geographical entities to come together to standardize criteria, study matters of special importance or complexity.

Internal working practices within the service where information and experience can circulate and discussions can take place within peers is an informal, yet invaluable mechanism to take into account also other views and opinions on ones' case.

On the other hand, the possibility to form joint team, when this is deemed necessary, offers the possibility to use additional or specialized expertise and to use the experience of others in decision making.

Training - networking – peer learning

Training is another important mechanism to address the uniform application of the law and the harmonization of prosecutorial practice. All informants stressed the importance of different kinds of training, from international training, to intra—service training, to national or local training. It should be stressed however that the power of training lies primarily in its possibility to facilitate peer learning, enable discussions between colleagues with similar or diverging experience and facilitate networking. Many interesting practices were reported from seminars at national level in the dedicated judicial academies, to monthly trainings specifically on the harmonisation of practice (Romania), to prosecutorial days (Slovenia), but also the internal mechanisms for peer learning and communication with colleagues who have related experience.

Access to data bases and support tools

The work of prosecutors requires courage, professionalism and good knowledge of the law. Although there is no substitute for the intellectual qualities of a good prosecutor, it is of great importance that prosecutors have the necessary and appropriate means, including the use of modern technologies, to exercise effectively their mission¹¹⁰. Access to databases with updated legislation and comprehensive collections of case law are paramount for their work. However, informants also mentioned the importance of internal case management systems that can assist prosecutors in their work or help them find links to colleagues or cases with similarities to the ones they are dealing with.

¹¹⁰ See also the Rome Statute point XVIII.

Unification of case law

■ The unification of case law is a different matter to that of harmonization of prosecutorial practice. Case law is based on judicial decisions and concerns unique disputes resolved by courts using the concrete facts of a case and applying the law in the specific circumstances. Case law is an important source of more or less binding guidance for all legal practitioners, especially judges and prosecutors.

■ It is not rare however that court decisions decide or interpret differently matters of the law. In those cases, conflicting case law creates insecurity and jeopardises legal certainty. Legal orders often have mechanisms in place to address such occurrences. In these cases the remedies available are exclusively legal remedies that involve the courts or special formations of courts to resolve the conflict and offer a definite solution to the legal conflict created. An overview of the solutions identified in the case studies is included in the table below:

Table 2: Remedies to resolve conflict of case law and /or unify case law

Austria	Greece	Slovenia	Portugal	Romania	Bulgaria	Spain	France
Prosecutor general appeal to preserve the integrity of the law	N/A	Request for the protection of legality to the Supreme Court (Supreme State Prosecutor)	Appeal for case law	Appeal in the interest of the law	Request for interpretation decision		
				Referral for preliminary ruling to settle legal issues			

‘Corrective’ remedies to unify case law

■ The case studies pointed to the availability of remedies to resolve identified conflicts of case law. These remedies enable a body, usually the Chief Prosecutor (or other entities in the legal system), to initiate a request to resolve such conflicts. Given that a conflict of case law involves the courts, they have to be the ones that resolve the conflict. In that sense, the prosecutors (or other legal practitioners) can only put in motion the required judicial mechanisms. Specific formations of courts or of the supreme court are prescribed to resolve in a definite manner the conflict. Romania is an interesting example as the legislative provisions are very detailed and prescriptive. These ‘corrective’ mechanisms are useful and necessary for legal orders. Experience shows however that they are used to a different extent. In Austria for example, it is reported as a remedy that is often used. In other countries, such as Portugal or Slovenia it is an extraordinary legal remedy that takes a long time to be put in motion and to deliver results.

Remedies to prevent conflict of case law

■ The flip side of the corrective remedies are the preventive ones. These appear to be rare, at least in their pure form. Romania has a clear procedure for an ex-ante resolution of conflicts of case law through the possibility for a preliminary ruling. This is a procedure that involves the courts and can influence the development of case law.

A related, but not identical, possibility that is encountered in other systems is the possibility to request opinions or instructions from superior bodies or from the Chief Prosecutor in cases where there is uncertainty with regard to the appropriate course of action.

Mechanisms to report divergent case law

■ An interesting question related to the issue of conflicting case law concerns the existence of mechanisms or methods to report or record divergent or conflicting case law. In that regard, the case studies point into two directions: bottom-up solutions, where individual prosecutors or prosecutors’ offices can report such conflicts or top-down solutions where the office of the chief prosecutor or the Ministry of Justice (depending on the allocation of competencies) monitors case law and identifies such cases. Combinations of the two approaches are also possible and welcome as they allow for multiple sources in the effort to identify diverging case law.

Analysis of the comparative experience in harmonisation of prosecutorial practice and unification of case law in corruption and organized crime

■ This study explored the harmonization of prosecutorial practice also in relation to specific serious crimes, including corruption and organized crime. While it is obvious that the general mechanisms identified in the previous chapters apply also to specialized areas and crimes, the question is raised whether other mechanisms are in place to ensure uniform application of the law and harmonised practice in these fields.

■ It is important to note that serious or complex crimes raise a number of challenges from the perspective of prosecution related to the specialized knowledge that is required, the complex nature of the crimes and their sophisticated nature which might be difficult to identify or trace, the need to use specialized investigation techniques or tools, but also the need to work under extreme pressure, with voluminous and complex files. The overview of practices identified in the case studies is presented in the table below:

Table 3: Practices for harmonization of prosecutorial practice in corruption and organised crime

Country/ Mechanism	Austria	Greece	Slovenia	Portugal	Romania	Bulgaria	Spain	France
Specialised bodies	Special Public Prosecutors for the Prosecution of Economic Crime and Corruption	Prosecutors of Economic Crime	Specialised State Prosecutors Office (within SSPO)	Central Dept of Investigation Criminal Dept of DIAP Regional DIAPs	DIICOT	District and Regional Prosecutors' offices (specialized units)	Anti corruption and Organised Crime Prosecutors Office	Financial Prosecutors Office (PNF)
Specializes prosecutors	Specialized prosecutors				Specialized prosecutors		Specializes prosecutor	Concurrent jurisdiction
Guidelines				General guidelines				Guidelines
Directing the case		Direct all cases	Exclusive direction of the investigation	Coordination and direction of investigation of specific crimes	Direct investigations			
Joint work	Work in teams	Can involve local prosecutions under their guidance	Joint investigation teams / Team work	Investigation teams				
Access to data		Privileged access to data						
Access to expertise and support	External experts	Experts Support - Financial Crime Dpr at Athens Court of Appeal Prosecutors Office			Support by specialists		Support units	

Specialisation

■ In almost all case studies examined, the solution of specialized prosecutorial bodies or specialized prosecutorial units is the main response to the challenges of addressing serious forms of crime. In Austria, Greece, Slovenia, Romania, Spain and France, special bodies are in charge of specific serious crimes. The type of crimes that fall under their mandate differs but is determined by law. In some cases, thresholds of severity are identified (Romania, Austria), above which the crimes are dealt with directly with the specialized or centralized offices or otherwise by regional or non-specialized units.

■ The specialized bodies have exclusive or concurrent jurisdiction meaning that they either handle all cases on the specific crimes or handle the most serious ones or direct the cases with the cooperation of the territorially competent prosecutorial authorities. In Portugal and Bulgaria there are no specialized prosecutorial units. Instead, complex crimes are dealt by the National Investigation Service (Portugal) or by district and regional prosecutorial offices. In both cases, within these non-specialized structures specialized teams or units of prosecutors are in place.

■ So in terms of organisational solutions, one option is the establishment of central authorities with prosecutorial competencies in the investigation of this type of crime or decentralised but specialised prosecution offices – or at least specialised units within those offices. Concentrating the investigation and prosecution in special units appears to have a positive impact on the harmonization of prosecutorial practice and the uniform application of the law, ensures professionalism both in the use of special investigative techniques but also in the communication and cooperation with other stakeholders.

■ Specialization is an internationally recognised practice for responding to the specific forms of crime more effectively, especially organised crime. Specialization is also an effective solution for the harmonization of practice and uniform application of the law, given that those handling the cases are a team with specialized knowledge and experience and access to all necessary resources.

Guidelines

■ Even when specialized prosecutorial offices are in place, the issuance of guidelines on specific topics can improve harmonized practice, especially in cases of concurrent jurisdiction or regional organization of the specialized prosecution offices.

The involvement of the specialized prosecutors in all cases which they either handle or direct

■ In several countries, there is an obligation (by law or informal) to report or notify a case that falls under the jurisdiction of a specialized prosecutorial body to them. An interesting practice, especially when concurrent jurisdiction is in place, is to ensure that specialized prosecutors are aware of the cases and either provide directions to their colleagues who handle them (especially if they are not specialized) or they handle them themselves. This can have an important impact on the uniform application of complex legislation and complex crimes.

Joint working methods

■ Complex cases might require more than just good case management. The formation of teams of prosecutors or multidisciplinary teams in particularly complex and sensitive cases, especially when this involves individuals with distinct levels of experience and different areas of expertise is a solution that can promote the uniform application of the law and the harmonization of practice. A common weakness in investigations occurs when information is not shared in a timely manner. Joint teams or joint investigations can address this problem. Multidisciplinary teams can ensure access to the necessary expertise. Joint work teams or joint investigation teams can also assist in the optimal use of special investigative tools, including special investigation techniques and adequate technologies.

Training and networking

■ All case studies and all informants raised the importance of training for the uniform application of the law. On the one hand, the professional requirements for specialized prosecutors are particularly high and this creates a need for regular in service training offering access to advanced knowledge and designed to respond to their specific needs.

■ However, training should be complemented by informal peer learning and networking on the job and in the workplace, for example meetings and round tables with other institutions, officials and experts. Networking and peer learning can not only increase the knowledge of prosecutors but also allow them to access the right people at the right moment, when something needs to be asked or clarified. Several informants stressed the importance of networking and of open prosecutorial systems where one could access the knowledge and expertise required at particular times.

■ Last but not least, training should also include soft skills to enhance to capacity of prosecutors in stress management, case management, critical thinking, memory training and other relevant supports.

Dissemination of information and practice

■ Another important aspect for harmonized practice is access to current knowledge and case law. Many informants mentioned the importance of having access to case law and the most recent case law. Dissemination of case law and practice, or particular cases, is important. Effective internal dissemination practices, through the intranet, through emails or through forums were reported. Centralised departments in the Ministry of Justice or the Chief Prosecutors office are often in charge of this important function. Heads of prosecution services/offices can play a role in promoting the use of such management tools and for sharing the knowledge of best practices within their offices.

Access to expert support

■ The prevention, investigation and prosecution of complex crimes like corruption and organized crime are often of a multidisciplinary nature. Effective prosecution might require abilities in reading and understanding balance sheets, understanding IT, working with complex software, etc. Another key aspect which was reported as important in many case studies related to the access to expert bodies, specialized units or experts for investigations in serious crimes. This allows prosecutors to have access to expert knowledge beyond their own disciplinary limits, access and process larger volumes of information and make more informed decisions with regard to the application of the law.

Conclusions

■ The impartiality of prosecutors is paramount for the rule of law and to this aim it is important that prosecutors can perform their functions with maximum independence, free from undue influences, inducements, pressures, threats or interference.

■ The uniform application of the law and the harmonization of prosecutorial practice is a challenge in all legal systems, one related to the extensive legislative regulation of criminal activity but also the finite resources and capacities of judicial and prosecutorial systems.

■ The present study, by exploring the experience of eight council of Europe member states, detected some interesting mechanisms that can help enhance the effort towards the uniform application of the law, the resolution of conflicts of case law and the harmonized practice within the prosecutorial profession.

■ ‘General’ mechanisms that can improve the uniform application of the law and the harmonisation of prosecutorial practice include:

- ▶ Instructions
- ▶ Opinions
- ▶ Guidelines
- ▶ Practices for monitoring the application of the law
- ▶ Internal working methods of the prosecution
- ▶ Access to databases and IT tools
- ▶ Dissemination
- ▶ Training and networking

■ Guidelines for prosecutors setting out in general terms the principles which should guide the initiation and conduct of prosecutions, factors to be taken into account at different stages of a prosecution can be very useful in harmonizing practice. In addition, prosecution services should determine indicators and follow-up mechanisms. However, access to case law, the availability of training and peer learning and internal working methods that allow discussion and coordination are important for the overall operation of the prosecutorial system.

■ When it comes to mechanisms for resolving conflicts of case law, the case studies revealed the existence of

- ▶ ‘Corrective’ remedies to unify case law that intervene after a conflict is detected
- ▶ Remedies to prevent conflict of case law through preliminary questions when there is lack of clarity on the case law or practice

■ Mechanisms to monitor or report divergent case law were also identified both in a bottom – up and top-down direction.

■ Last but not least, uniformity of practice in specialized areas seems to go hand in hand with specialised units or prosecution services and specialized prosecutors with specific knowledge and expertise. Beyond specialization, practices and mechanisms that promote uniform application of the law and harmonization of practice include:

- ▶ The issuance of guidelines
- ▶ The involvement of the specialized prosecutors in all cases which they either handle or direct
- ▶ Joint teams
- ▶ Access to data
- ▶ Access to expertise and support

SOURCES

- ▶ CoE, The Rome Charter, <https://rm.coe.int/168074738b>.
- ▶ CoE, Report on the independence and impartiality of the prosecution services in the Council of Europe member States (2019 edition), <https://rm.coe.int/ccpe-report-2019-en/16809e0d3a>
- ▶ CCPE Opinion No. 10 (2015) on the role of prosecutors in criminal investigations, in particular when special investigation techniques are being used,
- ▶ CONSULTATIVE COUNCIL OF EUROPEAN PROSECUTORS (CCPE) Opinion No. 13 (2018) of the CCPE: «Independence, accountability and ethics of prosecutors», <https://rm.coe.int/opinion-14-ccpe-en/168099399f>
- ▶ CONSULTATIVE COUNCIL OF EUROPEAN PROSECUTORS (CCPE) Opinion No. 14 (2019) of the CCPE: «The role of prosecutors in fighting corruption and related economic and financial crime»
- ▶ [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2010\)040-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2010)040-e)

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