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BEST EUROPEAN PRACTICES IN MEASURING THE PERFORMANCE OF THE PUBLIC PROSECUTORS

IN HUNGARY, FRANCE, UNITED KINGDOM, DENMARK, CROATIA AND MACEDONIA

- COMPARATIVE ANALYSIS -

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Content

LIST OF ABBREVIATIONS 8

EXECUTIVE SUMMARY 11

1. INTRODUCTION 15

1.1 THE IMPORTANCE OF MEASURING THE PERFORMANCE OF THE PROSECUTORIAL SYSTEMS 15

1.2 METHODOLOGY 16

1.3 RESEARCH TEAM 17

2. MEASURING THE PERFORMANCE OF PUBLIC PROSECUTORS IN HUNGARY 18

2.1 Historic Background and Development of Justice Sector Reforms 18

2.2 How Hungary measures the performance of public prosecutors and in the justice sector generally 20

2.3 The Level of Cooperation between Public Prosecutors and Other State Institutions in the Process of Justice Sector Reforms 22

2.4 The Methodology and Outcome of Measuring Prosecutorial Performance 27

2.5 Positive and Negative Aspects of the System for Measuring the Performance of Public Prosecutors 28

2.6 Hungary: Conclusions and Recommendations 29

3. MEASURING THE PERFORMANCE OF PUBLIC PROSECUTORS IN FRANCE 30

3.1 Historic Background and Development of Justice Sector Reforms 30

3.2 How France measures the performance of public prosecutors and in the justice sector generally 34

3.3 The Level of Cooperation between Public Prosecutors and Other State Institutions in the Process of Justice Sector Reforms 40

3.4 The Methodology and Outcome of Measuring Prosecutorial Performance 42

3.5 Positive and Negative Aspects of the System for Measuring the Performance of Public Prosecutors 42

3.6 France: Conclusions and Recommendations 43

4. MEASURING THE PERFORMANCE OF PUBLIC PROSECUTORS IN UNITED KINGDOM 45

4.1 Overview of the historic background and development of the criminal justice sector reforms with particular focus on prosecution 45

4.2 How United Kingdom measures the performance of public prosecutors and in the justice sector generally 51

4.3 The Level of Cooperation between Public Prosecutors and Other State Institutions in the Process of Justice Sector Reforms 57

4.4 The Methodology and Outcome of Measuring Prosecutorial Performance 60

4.5 Positive and Negative Aspects of the System for Measuring the Performance of Public Prosecutors 61

4.6 United Kingdom: Conclusions and Recommendations 62

5. MEASURING THE PERFORMANCE OF PUBLIC PROSECUTORS IN DENMARK 64

5.1 Historic Background and Development of Justice sector and prosecution reforms 64

5.2 System for Measuring the Performance of Public Prosecutors 69

5.3 Practice of Monitoring and Evaluating Performance in the Justice Sector 71

5.4 Cooperation between Public Prosecutors in Judicial Reform 72

5.5 Methodology and Outcome of Measuring Prosecutorial Performance 75

5.6 Positive and negative aspects of the system for measuring performance 79

5.7 Denmark: Conclusions and recommendations 81

6. MEASURING THE PERFORMANCE OF PUBLIC PROSECUTORS IN CROATIA 83

6.1 Historic background and development of the public prosecution service in Croatia 83

6.2 Current Trends and Developments in Croatia 86

6.3 How Croatia measures the performance of public prosecutors and in the justice sector generally 90

6.4 The Level of Cooperation between Public Prosecutors and Other State Institutions in the Process of Justice Sector Reforms 93

6.5 The Methodology and Outcome of Measuring Prosecutorial Performance 96

6.6 Positive and Negative Aspects of the System for Measuring the Performance of Public Prosecutors 96

6.7 Croatia: Conclusions and Recommendations 97

7. MEASURING THE PERFORMANCE OF PUBLIC PROSECUTORS IN MACEDONIA 99

7.1. Legal Framework on the Position, Organization and Competencies of the Public Prosecutor's 99

7.2 Strategic Documents Regarding the Position of the Public Prosecutor's Office 104

7.3. Parameters for measuring the performance of the Public Prosecutor's Office 106

7.4. Relevant Aspects Related to the Performance of the Public Prosecutor's Office 109

7.5. Further Strategic Steps for the Reform of the Public Prosecution Office 112

7.6 Macedonia: Conclusions and Recommendations 115

8. INTERNATIONAL INSTRUMENTS AND STANDARDS FOR MEASURING THE PERFORMANCE OF PUBLIC PROSECUTORS 116

8.1 European instruments 117

8.2 International instruments 120

9. FINAL CONCLUSIONS AND RECOMMENDATIONS 124

List of Abbreviations

ACA Europe - Association of the Councils of State and Supreme Administrative Jurisdictions of the EU

AJPP - Academy for Judges and Public Prosecutors

BPPO - Basic Public Prosecutor's Office

CLRA - Center for Legal Research and Analysis

CCP - Chief Crown Prosecutor

CPS - Crown Prosecution Service

CQS - Casework Quality Standards

CPs - Crown Prosecutors

CCPs - Chief Crown Prosecutors

CJB - Criminal Justice Board

CJU - Criminal Justice Unit

CPP - Council of Public Prosecutors

DPP - Director of Public Prosecutions

DORH - Public Prosecution of the Republic of Croatia

EU - European Union

ECtHR - European Court of Human Rights

ECHR - European Convention on Human Rights

GGF - Good Governance Fund

HMCPSI - Her Majesty's Crown Prosecution Service Inspectorate

HPPO - Higher Public Prosecutor's Office

IQA - Individual Quality Assessment

PwC - PricewaterhouseCoopers

PPO - Public Prosecutor's Office

PP - Public prosecutors

PPS - Public Prosecution Service

PAC - House of Commons Committee of Public Accounts

LCJB - Local Criminal Justice Board

LPPO - Law on Public Prosecutor's Office

MoJ - Ministry of Justice
MPs - Members of Parliament
MOI - Ministry of Interior
NPC - National Prosecutorial Council
NAO - National Audit Office
NPSJC - Network of the Presidents of the Supreme Judicial Courts of the EU
NPC - National Prosecutorial Council
RM - Republic of Macedonia
ROLI - Rule of Law Index
SCPs - Senior Crown Prosecutors
SPPO - Special Public Prosecutor's Office
SFRY - The Socialist Federal Republic of Yugoslavia
UK - United Kingdom
USKOK - Office for the Suppression of Corruption and organized Crime
UN - United Nations
VFM - Value for Money
WB - World Bank
WJP - World Justice Project

“Justice delayed is justice denied”

William Ewart Gladstone
Former Prime Minister of the United Kingdom

Executive Summary

The comparative legal analysis on measuring the performance of public prosecutors in Hungary, France, United Kingdom, Denmark, Croatia and Macedonia is one of the key outputs within the project "Design of a performance indicator matrix for the Public Prosecutor's Office" implemented by the Center for legal research and analysis and PwC Macedonia funded by UK aid from the UK government. The project aims to support the Macedonian prosecutorial system in its efforts to increase its independence, transparency and efficiency, through development and implementation of performance indicator monitoring matrix (Prosecutors' Indicators Matrix - PIM) for the prosecutorial system. The delivery of this project will support the implementation of strategic objectives defined in the Strategy for Reform of the Judicial System 2017-2022, as well as the priorities of the Government described in the Programme of the Government of the Republic of Macedonia 2017-2020.

The main purpose of the comparative legal analysis is two-folded:

1. To provide an insight in the justice sector reforms conducted in UK and selected EU member states with a particular focus on the processes and experiences in measuring the performances of the public prosecutors;

2. To identify the best European and international practices and standards for evaluation of the performance of the prosecutorial systems and their possible applicability in the Macedonian context;

The comparative legal analysis has the goal of attaining the following research objectives:

- To provide overview of each country's historic background and development of the justice sector reform, with a particular focus on prosecution;

- To determine how each of the selected country measure the performance of the public prosecutors;

- To analyse established practice of monitoring and evaluating performance in the justice sector in each of the selected countries;

- To assess the level of cooperation between public prosecutors and various state institutions and the role they play in the process of justice sector reform;

- To identify the methodology of and the outcome of measuring prosecutorial performance in each country;

- To identify the positive and negative aspects of each country's system for measuring the performance of public prosecutors;

- To determine the current available and reliable international tools developed for evaluating the performance of the public prosecutors;

- To analyse whether these European and international practices and standards for evaluation of the performance could be applicable in the Macedonian context;

- Finally, to provide conclusions and recommendations;

The comparative legal analysis is contemplating several perspectives: it considers significantly the criminal justice systems measurement mechanisms available in Europe, and in other organizations and institutions globally, as well as looks into the specifics of each of the selected countries, with different and unique historic background, finding out more about the best strategies they have individually succeeded to implement during the evaluation particularly of their prosecutorial systems. The following are the key findings in respect of the analysed European countries:

Hungary provides a helpful model of a clearly independent Prosecution Service, set up to operate entirely independently from political power and with a clear, independent head prosecutor. However, the legislation governing the status of prosecutors is extremely rigid in some respects and hard to change, which may leave that Prosecutor General with too little flexibility when it comes to evaluating the performance of staff. At the same time, the Prosecutor General has a high level of power – similar to that of a chief executive able to exercise authority, such as appointments, promotions, and discipline, through rigid line-management relationships.

France is unlikely to be seen as a good model for prosecution services in other countries. There are two main reasons for this, one theoretical and one practical. The theoretical problem with France's system is that prosecutors are not independent from political power. The various systems for evaluating prosecutors have been developed in the context of that fundamental

problem. The practical problem is that reports from recent years paint a dire picture of a prosecution service in crisis.

On the other hand, the prosecution system of UK provides a clear model set up to operate entirely independently from political power with an independent Head prosecutor (the Director of Public Prosecutions - DPP) overseen by the indirect ministerial accountability provided by the ‘superintendence’ of the Attorney General. The system is a clear example of an independent public prosecution agency that could be applied elsewhere.

When it comes to Denmark, it may be concluded that the reform of the Danish prosecution services, concurrently with the reform of court and police systems, have led to much simplified structure for the prosecution services, and also has provided an impetus for focus on quality and productivity enhancement. The Danish system for evaluation of public prosecutor’s performance is focused on quality and objectively measuring productivity.

In Croatia, still prevails the public perception that the Public Prosecution is not immune of political influence. The novelties re the election of the Prosecutor General through a transparent procedure provide hope for election of an independent person who will exercise the competencies skilfully, professionally and without political pressure. This will certainly reflect on the system for future evaluation of the public prosecutor’s performance.

Finally, in the case of Macedonia, the analysis point towards conclusion that currently there is no relevant methodology or system in place for objective monitoring, measurement and evaluation of the performance of the public prosecution. Such system would be not only helpful in assessing the current performance within the prosecutorial system but it will also identify its needs and weaknesses, measure the results of implemented initiatives and reforms and incentivise better performance in the future.

The study shows that different countries have applied different models of reforms and enforced various mechanisms of measuring the outcomes of these monitoring of performance initiatives. There isn’t one perfect model that could be applied in all countries as many factors influence the successfulness of the various measures undertaken to improve just one or more aspects of the criminal justice system. In addition, the study shows that the development of an objective and reliable national tool for measuring the performance of the prosecutorial system is a complex process. It requires the participation and cooperation of many components of the system, including the prosecutors, prosecutorial staff, courts, police, lawyers and other relevant parties within the legal community. Experience shows that

such instruments cannot be successfully developed without the active inclusion and commitment of these key stakeholders from the early stages of development of the performance monitoring and evaluation system.

Furthermore, the study shows that in most cases criminal justice evaluation programmes and instruments have been developed by Governments for the purposes of planning and monitoring the criminal justice system's performance, establishing political impartiality may prove to be quite challenging. One essential obligation of a national criminal justice programme for monitoring and measuring performance is hence public accountability. In addition, the study concludes that while many European prosecutorial systems lack capacities and other resources for measuring their performance and they require support at certain stage, the ownership of this process should unquestionably be theirs. Finally, the study assesses that once objective and reliable national tool for measuring the performance of the prosecutorial system has been established and in place, the greatest substantive challenge of a criminal justice statistics system is to foster the evolution of its outputs in response to the most pressing needs of data users. These actions require capacity building measures focused on the key stakeholders within the criminal justice system.

1. Introduction

1.1 The importance of measuring the performance of the prosecutorial systems

It is common phrase in legal doctrine and in legal soft law, that 'the public prosecutors' play a key role in the criminal justice system'.[1] Some criminal law scholars tends to focus on prosecutors' function as the 'gatekeeper to the courtroom', their 'screening' or 'filtering function' and their role as the criminal process 'engine' or 'dynamo'.[2] These terms, although superficial, are quite accurate because they emphasis the major role of prosecutors in both the investigation – or pre-trial -phase and the trial phase of criminal proceedings.

The public prosecutors represent dominant force in adversarial systems of criminal procedure, and obviously the dominant force in legal systems based on a strict separation of powers to initiate investigation and further prosecution, between courts and the public prosecution services. It is quite obvious in a modern and democratic society that such an important criminal law institution, and all its representatives, should be governed by the rule of law. Not only in this strict sense of this old and broad phrase; namely that there exist an accessible, clear and consistent legal framework setting and regulating powers. But also for the reasons such as the legitimacy of the public prosecution authority, public trust, the prosecution against the arbitrary use of power and – not least – to guarantee the prosecution's ability to perform its core functions and obligations towards human rights, it is crucial that there exists legal norms and principles as a constrain upon the public prosecutor's behavior and conduct within criminal law enforcement. Such principle is the principle of objectivity, which includes several aspects of the prosecutor's functions in criminal procedure. The public prosecutor's duty, when it comes to the performance of its functions, it is often formulated as a requirement that the prosecution should be objective and

[1] See, among others, "European Guidelines on ethics and conduct for public prosecutors, adopted by the Conference of Prosecutor General of Europe on 31, May 2015, with reference to Council of Europe Rec (2000)19 on the Role of Public Prosecution in the Criminal Justice System.

[2] See Tak, Methods of Diversion Used by the Prosecution Services in The Netherlands and Other Western European Countries, UNAFEI Annual report

take unbiased position at all stages of the criminal proceedings. Impartiality and objectivity is generally emphasized as a core point in the principle of prosecutors' objectivity. In short, both the prosecutor's own professional ideals and the public's expectations imply a requirement that prosecutors should act objectively, independently and conscientiously.[3]

Hence, one of the most crucial steps in evaluating their performance against the set standards and principals is the existence or development of practical and objective systems of evaluation of prosecutor's performance, a task which is of paramount importance for getting a true image of the state of play in certain prosecutorial systems as well as improving the public trust in the overall justice system.

1.2 Methodology

Throughout the process of producing this comparative legal analysis, the expert team used a combined analytical-synthetic approach regarding the collection of data, documentation, and analysis. During the selection of the 5 European countries, the experts applied the case study method in analysing the justice sector reform processes in the United Kingdom, the "older" EU member countries (France, Denmark), representative of newer EU member countries (Hungary), representative of the newest EU members (Croatia) as well as Macedonia as an EU candidate country. The comparative method was applied in determining European and international tools for measuring the performance of the prosecutorial systems. The comparative and case study methods contribute to a wider perspective and closer insight into the justice sector reforms with a particular focus on the public prosecution, initiated as a result of countries' specific needs and developments in their justice systems as well as provides information of the strengths, the weaknesses and the obstacles that different countries have faced during the planning and the evaluation of their prosecutorial systems. The historical method was used for providing overview of each country's historic background and development of the justice sector reform, with a particular focus on prosecution. In

[1] See "Some Aspects of and Perspectives on the Public Prosecutor's Objectivity according to ECtHR Case Law" by Gert Johan Kjelby, Bergen Journal of Criminal Law and Criminal Justice, Volume 3, issue 1, 2015

analysing how each of the selected country measure the performance of the public prosecutors as well as the determining the established practice of monitoring and evaluating performance in the respective justice sectors, applied was the descriptive method.

1.3 Research team

The comparative legal analysis was conducted by a team of international and national legal experts with practical experience in criminal justice systems of the selected countries. The research team was consisted of the following experts: Gordana Lazetic, Professor of Criminal Procedure at the Faculty of law “Iustinianus Primus” – University of St. “Cyril and Methodius” in Skopje, Peter Gjørtler, former High Court Judge, practicing Lawyer in Denmark and Lecturer at University of Copenhagen and Riga Graduate School of Law, Adam Weiss, Managing Director of the European Roma Rights Centre in Budapest and former Legal Director of the AIRE Centre in London, Anica Tomshic Stojkovska, Legal Affairs Advisor to the Ombudswoman in Croatia, Maja Kalanoska, Legal expert and Associate Lawyer at Chambers of A. Jafar Ltd in London – UK and Zarko ALeksov, Programme Team Leader. The assessment team was supported by Elena Georgievska, Programme Manager, as well as other researchers from PwC Macedonia.

2.Measuring the Performance of Public Prosecutors in Hungary

2.1 Historic background and development of justice sector reforms

In an extensive history available on its website,[4] Hungary's Prosecution Service traces its origins to 1774, when a crown prosecutor was appointed. The history of the service follows Hungary's own tumultuous history through the subsequent centuries, including the introduction of a French-style prosecution system during the Austro-Hungarian Empire and the disgraceful role of prosecutors in show trials that took place, particularly during the 1950s.

Hungary emerged from socialism in 1989 with the passage of a provisional constitution that remained in force until 2011. The Constitution (before and after 2011) explicitly provides for a position of Prosecutor General to head the Prosecution Service. Some aspects of this role have remained consistent in Hungary since the transition from socialism happened in 1989. In particular, the Prosecutor General is, according to all versions of the Constitution in force since the transition began:

- unable to be a member of a political party (nor may other prosecutors);
- nominated by the President and confirmed by a two-thirds majority vote of Parliament; and
- required to submit an annual report to Parliament.

In the run up to EU accession (which happened on 1 May 2004), Hungary gave increased powers to the prosecution service, as part of an overhaul of the Code of Criminal Procedure which came into force in 2003. Changes were introduced in 2009 to allow prosecutors to deal with complaints made against investigating authorities (e.g. the police). The changes

[4] The history is available (in Hungarian) at http://ugyeszseg.hu/fooldal/ugyeszseg-tortenete/.

also formalised relations between prosecutors and investigators, giving prosecutors enhanced powers to manage investigations.

The 2011 Constitution changed the name of the country from "the Republic of Hungary" to "Hungary" and was intended to finalise the transition to democracy. In 2013 the Constitution underwent major, controversial amendments. The text concerning the Prosecution Service changed. In the 1989 Constitution, the Prosecution Service was given the lofty role of "ensur[ing] the protection of the rights of the natural person, legal persons and unincorporated organizations, maintain[ing] constitutional order and... prosecut[ing] to the full extent of the law any act which violates or endangers the security and independence of the country".[5] In the 2011 re-write this became "contribute to the administration of justice by enforcing the State's demand for punishment. Prosecution services shall prosecute offences, take action against any other unlawful act or omission, and shall promote the prevention of unlawful act".[6] This was praised by the Venice Commission, which noted that prosecutors do not have a general remit to protect human rights.[7] In 2013, the constitutional text was changed to emphasise that the Prosecution Service is "independent".[8] The Prosecutor General serves a term of nine years (it was previously six) and, unlike other prosecutors, the Prosecutor General may serve beyond retirement age. Laws about the Prosecution Service must be passed by a two-thirds majority in Hungary's single-chamber Parliament. This is the same majority needed for amendments to the Constitution, meaning that (in theory) changes to the legislation governing public prosecutions in Hungary should be difficult. In practice, Hungary's governing party currently enjoys a two-thirds majority in Parliament, making changes easier, at least for now. In 2011, Parliament passed two pieces of legislation by a two-thirds majority governing the Prosecution Service. The first piece of legislation concerning the establishment of the Prosecution Service[9] stresses its independence, including its budgetary independence. The legislation also

[5] A full English translation of the 1989 Constitution is available at https://en.wikisource.org/wiki/Constitution_of_the_Republic_of_Hungary_(1989).
[6] A full English translation of the original text of the 2011 Constitution is available at https://www.constituteproject.org/constitution/Hungary_2011.pdf.
[7] CDL-AD(2011)016, Opinion on the New Constitution of Hungary, para.111, available at https://lapa.princeton.edu/hosteddocs/hungary/venice%20commission%20hungarian%20constitution.pdf.
[8] A full English translation of the Constitution, as amended in 2013, is available at https://www.constituteproject.org/constitution/Hungary_2013.pdf?lang=en.

sets out various requirements for prosecutors as to their ethical obligations (e.g. a prohibition on accepting gifts and maintaining professional conduct even in their private lives).

The second piece of legislation,[10] governing the status of prosecutors, provides more detailed rules for the selection of prosecutors and the evaluation of their performance. Many of these provisions are discussed below as they relate to evaluation. The legislation as a whole reads much like a bespoke labour code for prosecutors, dealing with fairly precise employment issues that it is surprising to see in legislation that has a quasi-constitutional status.

2.2 How Hungary measures the performance of public prosecutors and in the justice sector generally

The legislation introduced in 2011 concerning the status of prosecutors provides extremely detailed information about how prosecutors are selected and evaluated. In terms of selection, responsibility for choosing prosecutors rests with the Prosecutor General, although the Prosecutor General receives an opinion from the Prosecutors' Council, which is a body elected by and from among the prosecutors. The Prosecutor General is not required to follow the Council's advice. The 2011 legislation also provides for the assessment of the work of prosecutors. Every prosecutor receives an assessment before the end of her service if she has a fixed-term appointment, or, in the case of those with an indefinite term, within three years of appointment and then every eight years thereafter. Any prosecutor can request more frequent assessments, and an exceptional assessment may be conducted if circumstances come to light making it appropriate. The evaluation must be based on verifiable facts. The legislation specifically sets out the range of marks that prosecutors may be given in the course of their evaluations:

[9] Act CLXIII of 2011; a translation into English prepared by the Venice Commission is available at http://www.venice.coe.int/WebForms/documents/default.aspx?pdffile=CDL-REF(2012)015-e.

[10] Act CLXIV of 2011; a translation into English prepared by the Venice Commission is available at http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF(2012)016-e.

a. excellent, suitable for promotion;
b. excellent and fully eligible;
c. eligible;
d. eligible; subsequent assessment required; or
e. ineligible;

The 2011 legislation also provides for disciplinary proceedings against prosecutors. The procedures are described in painstaking detail. It is, in essence, a process carried out by the prosecutor's line manager, with the possibility of an appeal to the Prosecutor General and a further appeal to a court. The criteria for disciplinary action are vague: according to the law, prosecutors are liable to discipline for "culpably violating their official obligations" or "curtailing or jeopardising the prestige of their profession with their lifestyle or conduct".[11]

Collective evaluation of the work of the Prosecution Service is provided for in the Constitution directly, through the obligation on the Prosecutor General to submit an annual report to Parliament. These reports usually run to about 90 pages (including charts and tables) and seem to take a long time to compile: they are usually delivered more than six months after the end of the year. The 2016 report was not delivered until the end of September 2017, and the 2017 report had still not been delivered as of mid-July 2018.

With some minor variations, the reports[12] tend to cover the following issues:

- the organisation of the Prosecution Service;
- prosecutors' activities in the field of criminal law;
- prosecutors' activities outside the field of criminal law;
- the Prosecutor General's activities;
- international relations and activities of the Prosecution Service;
- human resources;
- communication activities;

[11] The Venice Commission criticised these criteria for lack of specificity. CLD-AD(2012)008, Opinion, para.72, available at http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2012)008-e.

[12] The list of reports dating back to 2009 is available at http://ugyeszseg.hu/kozerdeku-adatok/orszaggyulesi-beszamolo/, including English-language excerpts for those dating back to 2011.

- information technology;
- financial matters;
- prosecutors' research activities and the National Institute of Criminology.

The reports feature extensive quantitative data about cases, including not only about the performance of the Prosecution Service, but also of the courts (particularly the criminal courts). The reports suggest that the Prosecution Service takes international cooperation particularly seriously and is attentive to the case law of the European Court of Human Rights. The information about human resources is also very data-driven, focusing on the number of prosecutors, shortages, salaries, and the number of cases of disciplinary proceedings (which usually runs at about 20 per year, out of a prosecutorial corps of around 2,000 people). One interesting aspect of the most recent reports is that they list all of the written and oral questions that Members of Parliament sent to the Prosecution Service over the course of the year (but not the answers – these are posted on the Prosecution Service's website as they are produced). What is most striking about these questions (which tend to number between 50 and 100 a year) is that they are exclusively posed by opposition MPs, indicating that ruling party MPs does not seek to hold the Prosecution Service to account in this way.

Apart from the annual reports to Parliament, the Prosecution Service also publishes detailed statistical reports on an annual basis, placed on its website.

The Prosecution Service also features an active news section on its website, with articles and videos that appear aimed at the general public.

2.3 The level of cooperation between public prosecutors and other state Institutions in the process of justice sector reforms

Since 1981 (i.e. almost a decade before the transition to democracy), the Prosecutor General's Office and the Supreme Court of Hungary have been located in the same building (an early twenty-century Budapest palace previously used for government ministries). The close connections go beyond the symbolism of real estate: prosecutors in Hungary have an

unusually high level of access to the judiciary, bordering on encroachment. In particular, the 2011 legislation allows the Prosecutor General to attend plenary meetings of the Kúria in an advisory capacity.[13] This gives the Prosecutor General access to a pivotal forum for reflection within Hungary's justice sector. The Kúria itself though does not seem to see it this way. In its 2013 medium-term strategy document, the Kúria downplayed relations with the Prosecutor General, focusing mainly on the fact that sharing such an old building with the Prosecutor General made the Kúria's work difficult. (There are plans for the Kúria to move to a different building.) The strategy document also states that *"The law does not presently exclude the possibility that the Prosecutor General and the Representative of the Bar Association should receive an invitation to the Court's plenary meetings"*, and goes on to say that such invitations should only be made when relevant questions are being discussed.[14]

The Prosecutor General has another power that is unusual in a comparative-law context: the Prosecutor General can trigger a "uniformity procedure", in which the Kúria clarifies an uncertain point of law. This is not a power to deal with judicial reform as such, but rather to ask the Kúria to clarify points of law, particularly those which have given rise to splits among the lower courts. The Kúria invited the Prosecutor General to draft an introduction[15] to the Kúria's 2016 "yearbook" (annual report). The Prosecutor General focused heavily on the uniformity procedure and its historical roots, taking the opportunity to describe the judiciary and the prosecution as "the two main State actors of the justice system". As the Prosecutor General put it: *"This rule-of-law and guarantee function is carried out jointly by the prosecution services and the Curia through consultations between them, in particular during uniformity proceedings"*.

The Prosecution Service's strong connection with the judiciary seems less likely to have an influence over judicial reform, and more likely to influence the interpretation of the law itself, especially as the Prosecutor General can trigger uniformity proceedings before the Kúria to clarify a point of law.

[13] This was also criticised by the Venice Commission. CLD-AD(2012)008 (cited above), para.28.
[14] The strategy document, published in 2013, is available (in Hungarian) at http://kuria-birosag.hu/sites/default/files/allamiprojekt/kuria_imprimaturahoz.pdf. The translation of this sentence was done by the author of this paper.
[15] The document is available in English at http://www.kuria-birosag.hu/sites/default/files/yearbook/yearbook_2016_foreword_peter_polt.pdf.

The Prosecution Service seems more likely to be able to influence judicial reform through its institutional influence within Parliament. In addition to having an annual reporting obligation to parliament, the 2011 legislation also gives the Prosecutor General the right to attend Parliament in an advisory capacity. There are no indications, however, from the Prosecution Service's reports to Parliament or from materials from the Parliament that this power has been used to influence judicial reform; the main interactions with Parliament seem to be answering individual MPs' questions and making requests to lift immunity for MPs and others in certain criminal cases. As mentioned earlier, the Prosecution Service's annual reports to Parliament are replete with statistics about the work of the courts, particularly the criminal courts. This provides the Prosecution Service with a unique opportunity to showcase problems with the judicial system which might require reform. It is unclear, for example, to what extent the Prosecution Service influenced the 1997 reforms that led to the introduction of a fourth instance below the Kúria, which was designed to relieve the Kúria's workload, but that is the kind of reform on which the Prosecution Service would be well-placed to advise.

Under the system that has emerged from the 2011 Constitution and its 2013 amendments, the most powerful actor in the judiciary and in terms of justice reforms in particular is the President of the National Office of the Judiciary, whose activities are overseen by the National Judicial Council. There is no clear evidence that these bodies interact with the Prosecution Service in relation to judicial reform. Instead, based on the annual reports of the National Office of the Judiciary, it seems that their main cooperation is in the area of trainings, thematic meetings, and in maintaining buildings for the use of the Prosecution Service. Only one member of the National Council of the Judiciary has worked as a prosecutor, and the current President of the National Office of the Judiciary (who is the only person to have held the office since it was introduced) was previously a judge, not a prosecutor.

For a time, the Prosecutor General and the President of the National Office of the Judiciary had a potentially overlapping and otherwise problematic power to deal with overworked courts: under transitional provisions that accompanied the 2011 Constitution, the Prosecutor General could, in order to ensure a trial within a reasonable time, order that a criminal case be transferred to another court with the same jurisdiction;[16] the President

[16] This was provided for under Article 11 § 4 of transitional provisions accompanying the 2011 Constitution.

of the National Office of the Judiciary had the same power, but for all courts,[17] and, under the terms of the transitional provisions, the President of the National Office of the Judiciary seems to have had priority over the Prosecutor General. These powers were ostensibly granted to ensure the proper functioning of the judiciary and to balance the caseloads of the courts, and so in that sense had an indirect influence on judicial reform. In the end, these powers were highly criticised by the Venice Commission and were eventually withdrawn.[18]

In some of the biggest legal reforms in recent years, having a significant impact on the judiciary, there is no indication that the Prosecution Service played any role. In 2013 Hungary introduce a new Civil Code which created various new roles for the Prosecution Service in civil matters. According to the Prosecution Service's annual reports, it is not clear that the Prosecution Service played a significant role in these reforms.

Hungary has struggled with undue length of proceedings in civil and criminal cases in recent years, giving rise to judgments of the European Court of Human Rights and an enhanced supervision procedure before the Committee of Ministers of the Council of Europe. Hungary announced to the Committee of Ministers early in 2018[19] that a new Code of Civil Procedure entered into force on 1 January 2018 and a new Code of Criminal Procedure would enter into force on 1 July 2018, both designed to speed up legal proceedings.[20] Even more recently, Hungary informed the Committee of Ministers that a bill is being drafted concerning compensation for undue length of proceedings. The Prosecution Service appears to have been heavily involved in the Code of Criminal Procedure. According to the Prosecution Service's 2016 report:

> *In connection with the preparation of the legal text of the new Criminal Procedure Code, the Minister of Justice appointed a prosecutor as state commissioner for the strategic direction of this task and another prosecutor as head of department to be in charge. Another five prosecutors were working under the direction of the two prosecutors. The preparation of the text of the new*

[17] This was included in Article 11 § 3 of the same transitional provisions mentioned in the previous note, as well as in legislation.
[18] See CLD-AD(2012)008 (cited above), paras.83-84.
[19] DH-DD(2018)161, available at http://hudoc.exec.coe.int/eng?i=DH-DD(2018)161E.
[20] DH-DD(2018)689, available at http://hudoc.exec.coe.int/eng?i=DH-DD(2018)689E.

Criminal Procedure Code was designated as a key task for 2016.[21]

The European Court of Human Rights has found Hungary in violation of the European Convention various times over the past few years in other matters that directly and indirectly implicate the Prosecution Service and judicial reforms. The way these judgments have been or are being executed gives some indication of how prosecutors cooperate with other State entities to bring about justice sector reform.

- **Lack of effective investigations into ill-treatment.** Hungary was able to satisfy the Committee of Ministers of the Council of Europe that sufficient general measures had been taken through an approach that involved prosecutors and the Parliament: the Prosecution Service translated the relevant judgment and circulated it among prosecutors, while Parliament amended the law, requiring prosecutors to give reasons for their appeal decisions concerning whether to open an investigation and opening up the possibility of private prosecutions.[22] This matter was dealt with under the pre-2011 constitutional regime.

- **Lack of effective investigations into police brutality.** In these cases, which are still under supervision, the prosecution seems strangely absent from the execution process. Documents submitted to the Committee of Ministers focus on efforts to ensure that police change their conduct, without giving any indication about what is being done to ensure that prosecutors uphold their obligation to conduct effective investigations into police brutality.[23]

- **Whole-life sentences with inadequate provisions for review.** This remains a live issue, with a new case recently communicated against Hungary.[24] The reports Hungary has submitted to the

[21] This text is based on the English translation of the report available at http://ugyeszseg.hu/pdf/ogy_besz/ogy_beszamolo_2016_eng.pdf (with some corrections made by the author of this paper).
[22] See Resolution CM/ResDH(2011)297, available at http://hudoc.echr.coe.int/eng?i=001-108555.
[23] There have been two reports so far from the Hungarian Government, one submitted in 2013 (DH-DD(2013)930, available at https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016804a4405) and one from 2018 (DH-DD(2018)701, available at http://hudoc.exec.coe.int/eng?i=DH-DD(2018)161E. https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016808c33b1).
[24] Á.K. and I.K. v Hungary, application number 35530/16, statement of facts available at http://hudoc.echr.coe.int/eng?i=001-183697.

Committee of Ministers do not indicate any involvement by the Prosecution Service in the execution process.[25]

- **Failure to provide protection through the witness protection programme.** There is a case still under supervision which the Hungarian authorities treat as isolated. There is no indication that the Prosecution Service is at all involved in its implementation.[26]

It may be that the Prosecution Service is involved behind the scenes.

2.4 The methodology and outcome of measuring prosecutorial performance

Hungary's Parliament has put in place a fairly prescriptive system for the evaluation of individual prosecutors' performances, with a system of marks that can be given and focused on whether prosecutors are eligible for promotion. The system is cemented in legislation that would require two-thirds of Parliament to change (the same as for a constitutional amendment). The legislation also puts in place a fairly rigid procedure for discipline, although with vague criteria as to what amounts to act liable to trigger disciplinary action. At the individual level, the system seems to be workable, although the only evidence for this is from the Prosecution Service's own reports.

In terms of evaluating the Prosecution Service as a whole, the main mechanism is the constitutionally mandated report the Prosecutor General must submit to Parliament every year. The report is heavily data-driven, focusing on statistical analysis. It does not appear to attract much response from Parliament.

Opposition (but never, it seems, ruling party) MPs frequently ask questions of the Prosecution Service, which attract written replies. This is a more informal and sporadic method of evaluating the Prosecution Service, focused on individual cases.

[25] The full list of documents about the execution of these judgments can be found at http://hudoc.exec.coe.int/eng?i=004-10897. It is quite rightly being treated as a matter of legislation, but there is no indication of what role the Prosecution Service, if any, is playing in finding a legislative solution.
[26] See DH-DD(2016)661, available at http://hudoc.exec.coe.int/eng?i=DH-DD(2016)661E.

The outcomes of these various methods are not particularly clear. The annual reports are thorough but leave the impression of being a formality, and little information is available about the outcomes of evaluations of individual prosecutors. Perhaps this is natural, given the strong independence of the role of the Prosecution Service and the Prosecutor General in particular.

2.5 Positive and negative aspects of the system for measuring the performance of public prosecutors

The constitutional requirement for an annual report is clearly a positive measure, as it creates a binding and very public obligation on the Prosecutor General to account for the work of the Prosecution Service. The pattern of fairly long reports with extensive statistical data has set a good precedent which it would be hard for future Prosecutors General to abandon. The lack of a clear deadline for these reports and the fact that they are submitted as late as September of the following year is unhelpful, and suggests a lack of rigour from Parliament in demanding the reports. Indeed, there seems to be a lack of feedback from Parliament on the reports overall, and very little feedback to the Prosecution Service in general, apart from questions from opposition MPs. This suggests a lack of scrutiny by ruling party MPs.

The system for measuring individual performance has some weaknesses. It seems closely tied to promotions. The grading system is set out in a law that essentially has constitutional status, which seems odd, and perhaps does not leave the Prosecutor General with enough flexibility. Indeed, the 2011 legislation on the status of prosecutors reads like a labour law (or even a collective-bargaining agreement) for the Prosecution Service, dealing with minute details in a legislative text that is as difficult to change as the Constitution. This may leave the nominally independent Prosecutor General with a lack of flexibility to monitor individual prosecutors’ performances. The disciplinary system rather resembles an ordinary workplace disciplinary procedure, conducted by line managers with an appeal to the “boss” (albeit, after that, to a court as well). This may not be in line with the particular status of prosecutors in Hungary’s (or any) constitutional order.

2.6 Hungary: Conclusions and recommendations

Hungary provides a helpful model of a clearly independent Prosecution Service, set up to operate entirely independently from political power and with a clear, independent head prosecutor (the Prosecutor General). It is, in some ways, an extreme example, as the Prosecutor General must be selected with a two-thirds majority of the single-chamber Parliament, and all laws concerning the Prosecution Service must also have such a majority, putting them on the same level as the Constitution itself. The independence of Hungary’s Prosecutor General is reinforced by a long, nine-year term and the fact that the person may serve past retirement age. So even if a single political party has sufficient seats to select a Prosecutor General without securing cross-party approval, that Prosecutor General will serve through at least two general elections (which happen every four years in Hungary).

While the model is helpful, there are some aspects of it that go too far. The legislation governing the status of prosecutors is extremely rigid in some respects and hard to change, which may leave that Prosecutor General with too little flexibility when it comes to evaluating the performance of staff. At the same time, the Prosecutor General has a high level of power – similar to that of a chief executive able to exercise authority, such as appointments, promotions, and discipline, through rigid line-management relationships. More use could be made of the councils that exist within the Prosecution Service to assure a more collective, collegial approach.

3.Measuring the Performance of Public Prosecutors in France

3.1 Historic background and development of justice sector reforms

The role of the prosecutor in France dates to the Middle Ages. In a 2006 speech, a high-level prosecutor traced the function back to a royal decree of 23 March 1303.[27]

Prosecutors in France are considered "magistrates" (specifically, "magistrates of the prosecution" or, less formally, "standing magistrates"); they are distinguished from judges (who are called "magistrates of the seat"). Those with the title "Prosecutor of the Republic" are attached to the high court (tribunal de grand instance, which is the first instance court for civil and criminal matters), while those attached to a court of appeal or the Court of Cassation (France's highest court in civil and criminal matters) are called "General Prosecutors" and are hierarchically superior. At the top of this hierarchy is the Minister of Justice (also known in France as the Guardian of the Seals). In the information provided by the French State to the general public,[28] prosecutors are identified as serving five functions: taking criminal cases, based on the appropriateness of doing so and in accordance with the Government's criminal policy; executing criminal sanctions; signalling and preventing danger to children; intervening in certain civil proceedings, as foreseen by the law and in order to defend public order; and taking part in local public policy related to security and the prevention of crime.

The role of prosecutors was not specifically mentioned in the original text of the Constitution of the Fifth Republic (which dates to 1958). The status of prosecutors and other magistrates (i.e. judges) is regulated in an ordinance of 22 December 1958 which is an organic – or basic – law. The text in the ordinance setting out the role of prosecutors is brief: "Prosecutors are under the direction and control of their hierarchical superiors and under

[27] The speech can be found here: https://www.courdecassation.fr/formation_br_4/2006_55/jean_louis_8472.html?idprec=8470.
[28] This information can be found here: http://www.vie-publique.fr/decouverte-institutions/justice/personnel-judiciaire/magistrats/qu-est-ce-que-parquet.html.

the authority of the Guardian of the Seals, the Minister of Justice. At hearings, they are free to speak".[29] The ordinance put in place a system of competitive examinations for admission to an academy for magistrates and minimum requirements to be accepted (e.g. a law degree, French citizenship), all under the authority of the Minister of Justice. Appointments were to be made by the President of the Republic based on nominations by the Minister of Justice. Nominations for judges were to be made after receiving the opinion of the Higher Council of the Judiciary, as provided for explicitly in the Constitution (Article 65); nothing similar was put in place for prosecutors.

This structure for selecting prosecutors has largely remained in place: a hierarchical system with entrance via competitive examinations overseen by the Minister of Justice and selection and promotion by the President with the Minister of Justice's approval. The system has become somewhat more complex over the years, ensuring that those selected and promoted have shown particular skills through their performance on exams and in their work.

The selection of prosecutors has also been made somewhat more like the selection of judges. This coincided with a change to the Constitution in 1993. At that time, Article 65 of the Constitution was amended, introducing the position of prosecutor into the text for the first time. That article concerns the Higher Council of the Judiciary, which already existed and was already involved in the selection of judges (see above). For the first time, this institution was separated into two bodies, one responsible for judges and the other for prosecutors. The body responsible for prosecutors was to give its opinion on the nomination of prosecutors (except for high-level prosecutors selected by the Committee of Ministers) and to give its opinion on disciplinary sanctions for prosecutors. This brought the process for selecting prosecutors closer to that for selecting judges, with one important difference: the Higher Council of the Judiciary can only give its opinion about nominations of prosecutors. Things are different for judges: with some judicial posts the Council has the sole power to nominate, and for all other judicial posts it approves nominations made by the President. The selection process for prosecutors is therefore more directly controlled by the President and the Minister of Justice.

[29] Les magistrats du parquet sont placés sous la direction et le contrôle de leurs chefs hiérarchiques et sous l'autorité du garde des sceaux, ministre de la justice. A l'audience, leur parole est libre.

President Nicolas Sarkozy ran for office in 2007 on a platform that included a promise of major constitutional reforms. After the election, a "Committee of reflection and proposal on the modernisation and rebalancing of the institutions of the Fifth Republic" was convened. After three months, they delivered their wide-ranging report, titled "A More Democratic Fifth Republic".[30] They suggested introducing certain new rights to citizens, including a right to a more open justice system that would be more protective of individual freedoms. They contemplated but ultimately rejected the idea of introducing a new post: "Prosecutor General of the Nation". The 600-or-so words that the report dedicates to this issue are worth considering, as they sum up the debates that have existed and still exist in France concerning the role of prosecutors:[31]

Establish a Prosecutor General of the Nation?

As imagined for several years at different levels of the judicial hierarchy, the creation of a post of Prosecutor General of the Nation would pursue a twofold objective: reinforce the consistency of the prosecution so that the law is applied in an equal manner across the whole of the national territory; and relieve the Guardian of the Seals [the Minister of Justice] of the task of sending written "individual instructions" to prosecutors to be placed on the case file, a task whose very existence fuels suspicion about the independence of these prosecutors – who are magistrates – from political power.

No one can deny that the links between political power and the prosecution are the subject of a constant debate, and the division of responsibilities between the Minister of Justice and the Prosecutors of the Republic is not set out in a clear and efficient way.

In principle the Minister, who exercises hierarchical authority over the prosecutors, has the power to give instructions as to general criminal policy. But he can also give the General Prosecutors individual instructions moving them to initiate certain prosecutions. Since 1994, these instructions must be in writing and included in the case file. The Code of Criminal Procedure does not explicitly indicate that the Ministry may give instructions not to prosecute, although it does not prohibit this either.

[30] The report is available in French at https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000467267.
[31] Translated by the author of this paper.

Inasmuch as the legislative scheme is not clear, it undoubtedly falls on us to ask how we can assure citizens that the law will be applied in an equal manner for all. The establishment of a Prosecutor General of the Nation would, according to the idea's proponents, achieve this goal by reinforcing the independence of the prosecution from political power. Placed at the top of the hierarchy, the Prosecutor General of the Nation would truly be in charge of the enforcement of law on the entire territory; the position would be statutorily independent from the Minister of Justice and prosecutors would answer to this person alone; proposed by the Government, the nomination would be submitted to Parliament and approved by the President of the Republic.

The Committee was sensitive to the advantages that the creation of an authority of this kind would be likely to bring to the workings of justice. But the Committee has been no less sensitive to the practical and theoretical disadvantages that could result from this. In this light, the Committee noted that the Prosecutor General of the Nation would exercise authority of such a nature and length as to inevitably place the holder in a delicate position in relation to the Government. If we accept that the Government would remain, in any event, responsible before Parliament for framing and carrying out the overall parameters of criminal policy, a Prosecutor General of the Nation could be required to implement, following a change of government or majority, a criminal policy different from that for whose implementation she or he was chosen. What would be that person's authority, then?

Above all, it seemed to the Committee that the Minister of Justice would see her/his role so reduced as to increase the risk of criminal policy escaping the control of the representatives of the nation and threatening the unity of the judiciary. The Committee is committed to the hierarchical power of the Minister of Justice over prosecutors, which seems to the Committee to correspond to the French conception of the prosecution to the extent that the exercise of this power by a member of the Government, answerable to Parliament, provides the guarantee of democratic control over the criminal policy conducted by the executive branch; and so the Committee did not accept the proposal that was put to it. The Committee has, as a result, chosen not to recommend to the President of the Republic to begin the process of creating a Prosecutor General of the Nation.

This passage sums up the major criticism of the prosecution in France as of 2007, and the unsuccessful attempt to rebalance the system by creating a single, non-political post leading prosecutions.

The result is that the organisation of the prosecution and the system for selecting prosecutors did not change fundamentally amidst the major institutional reforms that accompanied the 2008 amendments to France’s Constitution.

Some steps were nonetheless taken to deal with the concerns about political interference in prosecutions. On 25 July 2013 a law was passed which prohibits the Minister of Justice from issuing instructions in individual cases. Prosecutors now enjoy full authority about when to use their powers. The Minister of Justice remains responsible for directing the Government’s policies on crime, including issuing general instructions to prosecutors.

At the end of 2016, legislation was passed that was designed to modernise France’s justice system, as part of a project meant to introduce a system of justice fit for the 21st century. Part of that legislative package involved amendments to the ordonnance of 22 December 1958, which governs the selection of prosecutors (and other magistrates). One of the changes is that certain high-level prosecutors are no longer selected by the Committee of Ministers, but rather using the ordinary (and more transparent) system for all prosecutors. The 2016 amendments to the ordonnance brought in other changes discussed below in relation to the measurement of performance.

3.2 How France measures the performance of public prosecutors and in the justice sector generally

There are two institutional means for individual prosecutors’ conduct to be investigated and sanctioned:

1. Disciplinary proceedings by the Higher Council of the Judiciary.
2. An investigation by the Inspectorate General of Justice.

The body of the Higher Council of the Judiciary dealing with prosecutors has a mandate, explicitly mentioned in the Constitution, to give its opinion on disciplinary measures concerning prosecutors. The Council can be seized of disciplinary proceedings against a prosecutor by the Minister of Justice, by certain higher judges or prosecutors and, since 2008, by individual litigants who have a complaint. The procedure is governed by the ordonnance of 22 December 1958, as amended. Disciplinary hearings are usually public but can be made private. When it comes to judges, the Higher Council

of the Judiciary has the power to issue sanctions, but when it comes to prosecutors, the body can only issue an opinion; the ultimate decision to sanction a prosecutor must come from the Minister of Justice, following receipt of the opinion given by the Council. All of the decisions concerning judges and prosecutors are available online,[32] dating back to the 1950s. The names of the prosecutors or judges concerned are redacted in the version published on the website. It is possible for the Minister of Justice to prohibit a prosecutor from exercising her/his functions temporarily if there are facts that appear likely to give rise to a disciplinary sanction, after consulting the Council; prosecutors can ask the Council to give its opinion on such a decision, and the Council must give its opinion urgently.

On 1 January 2017, several agencies were merged to create the Inspectorate General of Justice (“the IGJ”). This agency, like its main predecessor, the Inspectorate General of Judicial Services (“the IGJS”), exists within the Ministry of Justice and has the power to inspect, study, verify, advise on, and evaluate France’s prosecutors and every other aspect of France’s judicial system. Like its predecessor, the IGJ lacks its own website or other trappings of an independent institutional identity; its work seems to consist of ad hoc reports made at the request of the Minister of Justice. There is no place where the agency’s reports are publicly collected, but a search on the general website, “La Documentation Française” (where all of France’s public documentation is made available) yields reports based on a search of the agency’s name. Since the founding of the IGJ in 2017, there have been only four reports co-authored by the agency, all of them of an ad hoc nature.

The fact that the system of prosecution in France is known for its rigid hierarchy and system of promotions means that the system of advancement itself (notably from the lower-level “Prosecutor of the Republic” at high court level position to the higher “General Prosecutor” role at court of appeal level) provides opportunities for prosecutors to have their performance evaluated, outside the context of accusations of misconduct.

In terms of evaluating prosecution as a whole in France, raw numerical data is available from the Ministry of Justice’s website about the activities of the courts in France. It is possible to select any year from 2004 to 2013 and receive information about various bodies, including prosecutors before

[32] They can be found in French at: http://www.conseil-superieur-magistrature.fr/missions/discipline.

the high court.[33] There are also reports available for later years.[34] There is also a service called "Infostat Justice", which publishes thematic statistical papers on a regular basis dealing with different themes.[35] The Infostat Justice reports are also purely quantitative and the themes vary, meaning that they do not guarantee any comparison over time. Many of the papers deal with the activity of prosecutors and the justice system in general.

In terms of qualitative evaluation of the overall work of the public prosecution service, there does not appear to be a systemic practice. While the IGJ could in theory play this role, it does not appear to carry out regular inspections of any aspect of the justice system. Its functions are more ad hoc and reactive.

As part of France's recent attempts to reform the judiciary, and in reaction to a perception among actors in the system that the prosecution is overwhelmed, there have been some ad hoc attempts to evaluate the prosecution. These appear sporadic and do not show much sign of continuity. For example, in 2012 a report was published by a working group on the functioning of the prosecution.[36] The report dealt mainly with the increased workload of prosecutors in the light of certain changes to criminal law. The report was published on Ministry of Justice notepaper, but does not appear on the public information site of the French State ("La Documentation Française"), instead appearing on the website of one of the unions of magistrates. It is not clear who wrote the report (which also does not appear to have been copy-edited). The report concluded by recommending that the Ministry develop of tools to evaluate the work of prosecutors.

In November 2013, a "Commission on the Modernisation of Public Prosecutions", composed of 45 members (including judges, prosecutors, lawyers, court staff, academics, and police), delivered a 126-page report entitled "Rebuilding the Prosecution".[37] Commissioned by the Minister of Justice, and published in a clear and accessible format (on the "La Documentation Française" website and the website of the Ministry of

[33] The search engine can be found at http://www.justice.gouv.fr/statistiques.html.
[34] Reports can be downloaded at http://www.justice.gouv.fr/statistiques-10054/.
[35] The portal for Infostat Justice can be found at http://www.justice.gouv.fr/statistiques-10054/infostats-justice-10057/.
[36] The report is only available at https://www.union-syndicale-magistrats.org/web2/themes/fr/userfiles/fichier/publication/rapports/2012/rapport_gt_parquet_mars2012.pdf (the website of France's largest union of magistrates).
[37] The report is available at http://www.justice.gouv.fr/publication/rapport_JLNadal_refonder_ministere_public.pdf.

Justice), it paints a damning picture of the challenges facing prosecutors. The report describes a prosecution service in crisis, qualifying this mainly as an "identity crisis" about the role of prosecutors in France. The report highlights the enormous gap between the meagre resources available to prosecutors and the tasks they face. The report is an excellent example of cooperation among a wide range of actors connected to the work of prosecutors, and, given that they only had a few months to work and were a large group, they came up with an impressive report. There were 67 concrete suggestions, grouped in 10 wide subject areas:

1. **Guarantee the statutory independence of public prosecutors.** The main suggestion here is to elevate prosecutors to the same constitutional status as judges, in terms of their appointment and discipline, taking them out from under the authority of the Minister of Justice.

2. **Situate public prosecution in a larger territorial framework.** This is essentially about lining up the territorial division of prosecutors' work with that of the courts and of the French administration generally.

3. **Give public prosecutors resources commensurate with their role.** This suggestion deals with the apparently widely-accepted view that the responsibility of prosecutors has increased, but there has been no increase in the resources available to them.

4. **Make criminal policy meaningful and legible again.** This suggestion focused on dealing with criminal policy's appearance of being out of control, with a proliferation of laws and a lack of vision.

5. **Reaffirm the essential mission of public prosecutors.** This suggestion focused on re-centring the action of public prosecutors on individual cases.

6. **Reinforce the authority of public prosecutors over judicial police.** These suggestions deal with ensuring that prosecutors have sufficient discretion to choose the means of pursuing investigations.

7. **Rethink the process of investigations.** The Commission made proposals for amending the Code of Criminal Procedure to include more

rights for the defence and a restriction on the obligation for prosecutors to deal with cases "in real time".

8. Move towards getting a handle on the costs of criminal justice. In order to deal with costs, the Commission proposed more budgetary impact assessments of proposed changes to criminal policy and greater awareness-raising among actors in the system as to the system's costs.

9. Modernise the organisation and the leadership of prosecutors' offices. The suggestion was to introduce organigrammes and clear job descriptions, to make roles within the prosecution service clearer.

10. Restore the attractiveness of public prosecutors' duties. This is about raising morale among overworked prosecutors.

There is little indication that the report's suggestions resulted in changes.

Separately, and again in a less accessible format (only available via the website of the magistrates' union and not copy-edited), in 2014 the Ministry of Justice produced a short report[38] on the development of a series of indicators for measuring the workload of magistrates (including judges and prosecutors). This appears to be related to the 2012 report mentioned above. The report indicates that the working group was made up of representatives of the IGSJ, practitioners, and representatives of the magistrates' unions, and was headed by a high-level judge and a high-level prosecutor. The group split into two sub-groups, one focused on judges and the other on prosecutors. According to the report:[39]

> *The prosecutors' sub-group identified five areas concerning first-instance judicial activities: criminal (except for minors), civil (except for minors), commercial, execution of sanctions, and minors (civil and criminal). It defined quantitative indicators and ratios for prosecutors dealing with minors (civil and criminal), for commercial prosecutors, for criminal prosecutors (except for minors), for civil prosecutors*

[38] The report is only available at https://www.union-syndicale-magistrats.org/web2/themes/fr/userfiles/fichier/publication/2014/gt_ctm24Juin14.pdf (the website of France's largest union of magistrates).
[39] Translated by the author of this paper.

> *(except for minors), and for prosecutors dealing with the execution of sanctions. It will pursue its work in meetings dealing with the activity of prosecutors before the high court, duty prosecutors, and the prosecutors before the appeal courts.*

The website of the magistrates' union then links to some charts which set out the indicators for judges and prosecutors, part of what appears to be a preliminary exercise. The one-page chart[40] for prosecutors before the high court listed various quantitative indicators among the five areas, including number of cases opened, the number closed, and alternatives to prosecution used. The chart is only partly filled in. In other words, it does not seem that this work was finished or, if it was, it was not made public except partially by the magistrates' union that participated in it.

Another one-off report was published in 2011 by the Ministry of Justice about the execution of sentences, which also discussed the work of prosecutors.[41] In 2015, the largest union of magistrates published a report meant to alert the authorities to how overworked magistrates (including prosecutors) are. The report was entitled "Suffering at Work Among Magistrates".[42]

What is set out above in relation to monitoring and evaluation of prosecutors holds true for the justice system as a whole: there is good quantitative data on the work of France's courts, but qualitative evaluations are ad hoc and inconsistent. There is a clear political commitment to delivering a modern justice system as part of a modern State. But there are few clear ways of measuring whether that is happening in practice.

Two interesting developments in the monitoring and evaluation of the work of public prosecutors were introduced with legislation passed at the end of 2016 as part of the attempt to create a justice system fit for the 21st century.

- General Prosecutors (i.e. those attached to courts of appeal) must, within six months of taking office, "define the objectives of their

[40] A scan is available at https://www.union-syndicale-magistrats.org/web2/themes/fr/userfiles/fichier/publication/2015/charge_travail_parquet.pdf.
[41] The report is available at http://www.justice.gouv.fr/art_pix/rapport_sap_20110630_SAP.pdf.
[42] The report is available at http://www.union-syndicale-magistrats.org/web/upload_fich/publication/livre_blanc_2015/livre_blanc_soufffance.pdf#page=1&zoom=auto,-215,842.

activity". These prosecutors must also publish a report every two years of their activities. Here is the wording of the legislation:[43]

During the first six months after taking office, the General Prosecutor, subject to those provisions relating to the determination of criminal policy, shall define the objectives of her/his activity, taking account, in particular, of the reports on the functioning of her/his office and of the offices under her/his jurisdiction which may have been compiled by the Inspectorate General of Justice and by its predecessor or by the Prosecutors of the Republic under her/his jurisdiction. The General Prosecutor shall compile, every two years, a report of her/his activities and the work of the public prosecutors under her/his jurisdiction as well as of the administration of judicial services under her/his jurisdiction. The General Prosecutor shall take account, when compiling this report, of the reports of the Inspectorate General of Justice that have been compiled since the General Prosecutor took office. These materials shall be placed on the prosecutor's file.

These biennial reports do not seem to be publicly available (although a full two years have not yet passed since the law was approved so it may be that none exist yet) and it is unclear how they are or will be evaluated.

- Prosecutors (and judges) are required, within two months of taking office, to deliver an exhaustive, exact, and sincere declaration of their interests to their hierarchical superior and, when doing so, to have an "ethics interview" with that superior, in order to examine any conflicts of interest. An "ethics college" was also established to deal with ethical issues that arise. This creates a clear, rigorous system for vetting conflicts of interest. There is a list of what constitutes an "interest". When their interests change, prosecutors (and judges) are required to update their declaration, giving rise to another interview.

3.3 The level of cooperation between public prosecutors and other state Institutions in the process of justice sector reforms

There does not appear to be systematic cooperation between public prosecutors and other actors in justice sector reforms. However, when ad

[43] Translated by the author of this paper. This provision is found in Article 38-1 of the Ordonnance of 22 December 1958, as amended in 2016.

hoc opportunities arise under the aegis of the Ministry of Justice to evaluate the justice system in general and the prosecution in particular, actors show an impressive ability to come together quickly to produce comprehensive analysis of the system. The 2013 report mentioned above is a particularly strong example. Public prosecutors worked alongside judges, academics, lawyers, police, and others to develop a persuasive indictment of the crisis facing prosecutors in France and a series of prescriptions which could cure it. Sadly, it seems that this was largely a theoretical exercise.

The existence of magistrates' unions in France (which prosecutors, as "standing magistrates", can join) also provides an institutional platform for prosecutors to engage with other actors.

One other point is worth mentioning. The High Council of the Judiciary, as mentioned earlier, is made up of two bodies, one responsible for judges and the other for prosecutors. The Constitution explicitly requires that the body responsible for judges include one prosecutor, and that the body responsible for prosecutors include one judge. This ensures a structural level of cooperation in the tasks of these bodies (dealing with nominations for judges or prosecutors and with discipline). Another interesting feature is that when the body responsible for prosecutors is holding disciplinary proceedings, the prosecutor who belongs to the body responsible for judges joins them, and vice versa. Article 65 of the Constitution also includes a provision for a plenary meetings of the Higher Council of the Judiciary:

> *The High Council of the Judiciary shall meet in plenary section to reply to the requests for opinions made by the President of the Republic in application of article 64. It shall also express its opinion in plenary section, on questions concerning the deontology [ethics] of judges or on any question concerning the operation of justice which is referred to it by the Minister of Justice. The plenary section comprises three of the five judges mentioned in the second paragraph, three of the five prosecutors mentioned in the third paragraph as well as the Conseiller d'État, the barrister and the six qualified, prominent citizens referred to in the second paragraph. It is presided over by the Chief President of the Cour de cassation who may be substituted by the Chief Public Prosecutor of this court.*[44]

[44] This translation is taken from the English translation available on the website of France's Constitutional Council, available at http://www.conseil-constitutionnel.fr/conseil-constitutionnel/english/constitution/constitution-of-4-october-1958.25742.html#TitleVIII. The word "ethics" was added by the author of this paper for clarification.

These plenary opinions are quite rare; only seven appear on the Council's website,[45] the earliest in 2011 and the latest in 2014. They were mostly in response to requests from the Minister of Justice for an opinion about cases that attracted media attention. This provision nonetheless ensures that prosecutors who are members of the Council have an opportunity to inform the President of the Republic or the Minister of Justice on matters of important judicial reform. Since 2015, the Council has also put out press releases[46] in response to attacks on the judiciary, including, notably, in response to comments President François Hollande reportedly made (and did not deny making) calling the judiciary "an institution of cowardice" where people "get lost" and "play at virtue"; the Council's brief and unanimous reaction was scathing. Given their status as magistrates, prosecutors presumably feel targeted by these attacks, and the prosecutors who are members of the Council presumably contribute to these responses.

3.4 The methodology and outcome of measuring prosecutorial performance

The methodology of measuring individual prosecutorial performance seems to be based on a fairly rigid civil service system of exams and promotions. There is also a formal system in place for dealing with disciplinary problems which, interestingly, has been opened up in recent years to complaints from litigants affected by what they view as inappropriate prosecutorial conduct. At a more general level, the performance of the prosecution service is measured largely through numbers, with little qualitative evaluation. Any qualitative evaluation that does exist is in response to a perceived crisis. It is hard to see what the outcome of those evaluations is; some do not appear to have been completed, while the major 2013 report seems to be sitting on a shelf, unimplemented.

3.5 Positive and negative aspects of the system for measuring the performance of public prosecutors

The main criticism of France's prosecution is that it is not independent from political power: prosecutors are ultimately answerable to the Minister

[45] They can be found (in French) at http://www.conseil-superieur-magistrature.fr/publications/avis-et-communiques/avis_de_la_formation_pleniere.
[46] They can be found (in French) at http://www.conseil-superieur-magistrature.fr/publications/avis-et-communiques/communiques_du_conseil.

of Justice, without any mediating “top prosecutor” figure. This impacts on the measurement of performance as well. While there is clearly a highly developed, professional system for measuring and rewarding the performance of individual prosecutors through a rigid, hierarchical system, there is no politically independent institution for measuring the performance of the prosecution service as a whole. The Inspectorate General of Justice could play this role if it had any independence, but it does not.

France provides a useful reference point for countries that have a similar system, that is, where there is no top prosecutor and prosecutors are ultimately answerable to the Minister of Justice. In particular, recent legislation to the effect that the Minister of Justice must not give instructions to initiate or end individual prosecutions provides a useful limitation on how the Minister’s power can be curtailed. The obligation on higher prosecutors (“General Prosecutors”) to define their objectives soon after taking office and to produce biennial reports on their activity creates a framework for prosecutors to report on their own accomplishments, against their own goals.

France also has what is likely to be one of the most formalistic frameworks for guarding against conflicts of interest among prosecutors, involving extensive, prescriptive declarations of interests and (likely to be fairly unique) “ethics interviews” between prosecutors and their superiors. This is a system that could be transposed directly to other countries, regardless of how the prosecution is organised.

France’s disciplinary system for prosecutors is also quite robust, involving, as it does, a specific formation of the Higher Council of the Judiciary, which creates a jurisprudence that is publicly available (with names redacted). The fact that litigants affected by what they perceive as prosecutorial (or judicial) misconduct can make complaints to the Higher Council of the Judiciary, triggering disciplinary proceedings, is probably unique and makes prosecutors more answerable to the people whose lives their actions affect.

3.6 France: Conclusions and recommendations

France is unlikely to be seen as a good model for prosecution services in other countries. There are two main reasons for this, one theoretical and one practical. The theoretical problem with France’s system is that

prosecutors are not independent from political power. The various systems for evaluating prosecutors have been developed in the context of that fundamental problem. The practical problem is that reports from recent years paint a dire picture of a prosecution service in crisis; it seems likely that any prosecutor in France asked about whether her country's system could serve as a model for other places would find the idea laughable, given the enormous strains on the system and the feeling of an "identity crisis" among prosecutors. This is probably mostly a result of underinvestment. According to the European Union, France is in 22nd place out of the 28 EU Member States in terms of the percentage of GDP spent on the judicial system and in 24th place when it comes to the number of judges per 100,000 inhabitants.[47] Overworked prosecutors might not be enthusiastic about recent reforms which place greater burdens on them to ensure they do not have conflicts of interest and to evaluate their own performance. The biggest lesson from France's experience seems to be that it can be very hard "to do more with less"; a good system will suffer if under-resourced.

There are nonetheless many aspects of France's system which can be applied elsewhere. As mentioned above, the robust system of discipline and the processes for avoiding conflict of interest are useful models. Allowing litigants affected by prosecutorial misconduct to trigger disciplinary proceedings is an empowering idea and makes prosecutors answerable to the citizens affected by their conduct. At a more general level, the notion in France's constitutional order that prosecutors are magistrates extends a high level of respect to the profession (in theory) and ensures, through prosecutors' participation in the Higher Council of the Judiciary, involvement of prosecutors in the oversight of the entire judicial system. It is an approach many prosecutors elsewhere will find attractive, and which facilitates prosecutors' involvement in judicial reforms.

[47] European Commission, "The 2017 EU Justice Scoreboard", COM(2017) 167 final, available at https://ec.europa.eu/commission/news/commission-publishes-2017-eu-justice-scoreboard-2017-apr-10_en. The data set out above are based on data for 2010, 2013, 2014, and 2015.

4.Measuring the Performance of Public Prosecutors in United Kingdom

4.1. Overview of the historic background and development of the criminal justice sector reforms with particular focus on prosecution

There are three distinct jurisdictions with separate, though linked, judicial and legal systems in the United Kingdom: the combined jurisdiction of England and Wales, and the separate jurisdictions of Scotland and Northern Ireland. The three jurisdictions have pursued different approaches to criminal justice policy-making. This paper will focus primarily on the development of the criminal justice sector reforms in the UK's largest jurisdiction, that of England and Wales, encompassing some fifty-six (56) million people.

The criminal justice system has evolved over a very long period of time and presents a unique mix of traditional and modern institutions, agencies and procedures. For instance, one key modern participant in the criminal justice system of England and Wales is the Justices of the Peace, that can be traced back to the **Justices of the Peace Act 1361**[48]. In 2018, the Act, as amended, remains enforceable in England and Wales. Working alongside the Justices of the Peace, usually referred to in the modern era as "magistrates"[49], is the Crown Prosecution Service (CPS), an agency established as recently as 1985, under the **Prosecution of Offences Act 1985.**

[48] The Act defined who was eligible to become a Justice of the Peace, their duties and their powers. It detailed that in every County of England shall be assigned for the keeping of the Peace, one Lord, and with him three or four of the most worthy in the County, with some learned in the Law, and they shall have Power to restrain the Offenders, Rioters, and all other Barators, and to pursue, arrest, take, and chastise them according their Trespass or Offence; and to cause them to be imprisoned and duly punished according to the Law and Customs of the Realm", Justices of the Peace Act 1361. The criminal justice system of England and Wales is thus characterised by a history of involving lay people, namely people from the local community who are not required to hold any legal qualifications, in the judicial decision-making process of the courts.

[49] The titles "magistrate" and "justice of the peace" mean the same, although today the former is commonly used in the popular media, and the latter in more formal contexts. The term "lay" referred to the voluntary, unsalaried nature of the appointment and was used to distinguish them from professional magistrates.

Legislative Reforms

The pace of reform of the criminal law in England and Wales, has been particularly slow, mainly as a result of a combination of two factors: 1. the influential presence of considerable numbers of lawyers in both houses of Parliament[50] and 2. the British parliamentary practice permits the scrutiny and debate of the detail, and not just the principle, of proposed legislation. Until the 1900s, every substantial reform was opposed by either the judiciary or the practicing profession.

In 1833, Lord Brougham, the Lord Chancellor, initiated what proved to be the first of three projects for the codification of English criminal law[51]. Such attempts proved unsuccessful however and there is no Penal Code in the United Kingdom. As one judge put it "to reduce unwritten law to statute is to discard one of the great blessings we have for ages enjoyed in rules capable of flexible application".

The sources and interpretation of the criminal laws are to be found in individual Acts of Parliament (statutory sources) and decisions by judicial bodies, in particular the Court of Appeal (case-law). The definition of many criminal offences can be found in statutes. The other principal source of criminal law is common law, which derives not from legislation but from what originally were the customs of the people that were subsequently used as the basis of decisions made by judges in individual cases.

The history of legislative reform in the field helps to illustrate the growing interest in criminal justice in England and Wales. In the first eighty years of the twentieth century there were only four statutes entitled Criminal Justice Acts (1925, 1948, 1967, and 1972). The rate of change increased with Criminal Justice Acts in 1982, 1988, 1991, 1993, and 1994, the Prosecution of Offences Act 1985, and a major piece of criminal legislation in each year since 1994: Criminal Appeal Act 1995, Criminal Procedure Act and Investigations Act 1996, Crime (Sentences) Act 1997, Crime and Disorder Act 1998, and the Youth Justice and Criminal Evidence Act 1999. In the busy parliamentary session 1999/2000 the following laws were enacted:

[50] New laws introduced as Bills need to pass through both the House of Commons and the House of Lords before they become Acts of Parliament.
[51] The second, initiated by James Fitzjames Stephen, was to come before Parliament between 1877 and 1881; the third, initiated by the Law Commission in 1967, is still notionally continuing.

Powers of the Criminal Courts (Sentencing) Act, Crown Prosecution Service Inspectorate Act, Regulation of Investigatory Powers Act, and the Criminal Justice and Court Services Act.

Pressure for reform resulted inter alia from Britain's membership in the European Union, which has brought greater cross-jurisdictional cooperation and coordination in an attempt to control cross-European organised crime and to incorporate reforms such as the European Convention on Human Rights[52]. In October 2000 the Convention came into effect in the United Kingdom and some of the legislation in the 1999/2000 parliamentary session was to ensure compliance with the European Convention especially with regard to the surveillance powers of the police.

Development of the Crown Prosecution Service (CPS)

Until the nineteenth century, in England and Wales, there was no public official responsible for ensuring that crimes were prosecuted. Early modern policing and criminal justice fundamentally relied on the activities of private individuals who exercised enormous discretion in determining whether, and how, those deemed guilty of criminal acts should be prosecuted and punished. The widespread discretion exercised by all the participants in criminal justice was significantly curtailed in the eighteenth century. The 1792 Middlesex Justices Act set up seven public offices, and six salaried constables were appointed to each office with powers of arrest. This was the origin of the modern stipendiary magistrate, modern-day District Judge, whilst the power to take fees was removed from all justices in the city. As a consequence of these reforms, policing became perceived as a more professional activity, and the notion that crime should be punished systematically, rather than at the discretion of victims and potential prosecutors, became more widely accepted.

It was not until 1829 that a paid, full-time organised and disciplined police force became established in London[53] that began to take responsibility for the prosecution of criminal offences, hiring independent barristers and solicitors to proceed with their cases in court. However, the majority of prosecutions continued to be undertaken by private citizens as no specific prosecution powers or responsibilities were conferred on the police.

[52] Adopted by the United Kingdom in the Human Rights Act 1998.
[53] Under the Metropolitan Police Act 1829..

The Prosecution of Offences Act 1879 established the first public prosecutor office in England, that of the Director of Public Prosecutions (DPP). The DPP's primary function was to decide whether or not to prosecute in a handful of particularly challenging cases. Once that decision was made, prosecutions continued to be undertaken by police forces or the Treasury Solicitor. The Office of the DPP was characterised as a 'compromise between those who wanted to retain England's unsystematic approach to prosecution and those who wanted prosecutions in general to be structured and controlled as was believed to happen in most of Europe'.

In 1970 the Committee of JUSTICE,[54] as a result of their inquiry into the problems relating to contemporary prosecution practices, published a report in which they highlighted the danger to public perception and the quality of justice when the same police officer decides on whether to charge a suspect, selects the charge, acts as prosecutor, and also takes the stand as his or her own chief witness. Another report by Sir Henry Fisher in 1977[55] after the Confait Case[56] and growing public concern led to a Royal Commission on Criminal Procedure under the chairmanship of Sir Cyril Philips being established in February 1978 to evaluate the procedure for prosecuting criminal cases. On publication in 1981, its final report recommended the creation of a fully independent, national prosecution authority to handle the prosecution of all criminal offences in England & Wales[57] taking into account the following main considerations: '(a) concerns that combining the role of investigation and prosecution invests too much power and responsibility in one organisation; (b) the desirability, from a public confidence perspective and in order to secure a balanced criminal justice system, of separating the investigative and prosecutorial functions; (c) inconsistencies in prosecution policy across the country and concerns that too many cases were being prosecuted on the basis of insufficient evidence; and (d) a desire for greater accountability and openness and common standards on the part of prosecutors'.

Four years later, the **Prosecution of Offences Act 1985** created the Crown Prosecution Service (CPS) – essentially a civil service agency – which became fully operational on 01 October 1986. It was designed to be a national

[54] The British Section of the International Commission of Jurists.
[55] The report is available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/228759/0090.pdf.
[56] R v. Leighton, Lattimore and Salih (1975) 62 Crim. App. R. 53.
[57] Royal Commission on Criminal Procedure (RCCP), Report (Cmnd 8092), 1981.

organisation with local discretion and with all services provided at the local level. The existing Director of Public Prosecutions became head of the CPS. The CPS had a duty to take over the conduct of all criminal prosecutions[58] instituted by the police and advise the police forces on matters relating to criminal offences. It was empowered to discontinue prosecutions or drop and amend specific charges although the police retained the power to investigate and to decide what charge to bring without the interference of the CPS. The CPS was originally arranged into 31 areas, each area led by its own Chief Crown Prosecutor (CCP).

In the early 1990s, a series of miscarriages of justice, such as the Birmingham Six[59] and the Guildford Four[60] led to the appointment of another Royal Commission on Criminal Justice which examined once again the possibility of giving the CPS a role in investigations.

The CPS, in the early days of its creation, experienced criticism from various groups from all branches of the criminal justice process, such as the Association of Chief Police Officers, the General Council of the Bar and the Magistrates' Association. Through the 1990s, the CPS struggled with low conviction rates, high cracked and ineffective trial rates, and a poor track record of public visibility. During this time, the CPS reorganised from 31 areas down to 13, a centralisation move that made working relationships with local police forces more difficult.

The failures of the CPS in its first ten years led to a formal review of the organisation. In 1998, Sir Ian Glidewell, a former Lord Justice of Appeal, published his Review of the CPS, in which he offered three primary recommendations for improving the functioning of this nascent agency [61]. First, he argued that the CPS was too encumbered by low-level cases and that it needed to focus more of its resources on higher level offences. Second, he identified the need for the CPS and police to work cooperatively rather than against one another. Finally, it criticised the CPS's lack of sufficient electronic case management systems. The Glidewell Committee (1998) recommended the creation of Criminal Justice Units (CJU) in each major police station where CPS case workers and police civilian staff were able

[58] With the exception of the prosecutions concerning some minor offences.
[59] R. v. McIlkenny, Hunter, Walker, Callaghan, Hill and Power (1991) 93 Crim. App. R. 287.
[60] R. v. Anne Maguire, Patrick Joseph Maguire, William John Smyth, Vincent Maguire, Patrick Joseph Paul Maguire, Patrick O'Neill and Patrick Conlon (1991) 94 Crim. App. R. 133.
[61] Rt Hon Sir Iain Glidewell, The Review of the Crown Prosecution Service: A Report, June 1998, Cm 3960.

to work together on some cases. It was believed that, through co-location, the relationship between the prosecutor and the police would improve and cases would be prepared earlier and more efficiently.

Many academics argued that the failure of the CPS to live up to their promises was inevitable precisely because deeper changes in the system were not introduced: 'In a system where the prosecutor becomes involved in a case at a stage when the odds are already stacked in favour of prosecution, the objective and independent review of files which is expected of them is a difficult duty to carry out'. With the Criminal Justice Act 2003, however, more radical changes have been introduced which mark a significant reorientation of the English prosecution system. The Criminal Justice Act 2003 implements many of the changes suggested by Lord Justice Auld[62] in order to improve the effectiveness and efficiency of the criminal justice system in England and Wales. As far as prosecutions were concerned, Auld LJ concluded that one contributor to the high level of discontinuances was the 'overcharging' by the police and the failure of the CPS to remedy it at an early stage. He identified one of the causes of this to be the fact that it was the police who initiated prosecutions, leaving the CPS to review the charge at a later stage and, in doing so, to apply a more stringent test than that of the police. To resolve these problems, Auld LJ suggested that the CPS should become involved earlier in the process and be given the power to determine the charge and initiate the prosecution. The new legislation provides for new, extensive powers allocated to the CPS and the DPP[63] to enable them to discharge their new functions. It also emphasises and facilitates the early consultations between the police investigators and 'duty prosecutors' before a charge is preferred.[64] In 2006, statutory charging was installed nationwide. However, there is no conclusive evidence that the charging authority to the CPS led to improvement in the quality of charging decisions.

The CPS performs five (5) key roles: 1. Advises the police on cases for possible prosecution; 2. Reviews cases submitted by the police for

[62] Auld, R. E., Review of the Criminal Courts of England and Wales; Report, London: The Lord Chancellor's Department, 2001.
[63] E.g. the power of the DPP to issue guidance to custody officers as to how detained persons should be dealt with and as to what the police ought to do to facilitate the decisions on charge by prosecutors. The first edition of the DPP's guidance was issued in May 2004 and the second one in January 2005.
[64] For a detailed analysis of the new legislation, see Brownlee, I. D., 'The Statutory Charging Scheme in England and Wales: Towards a Unified Prosecution System' (2004) Criminal Law Review, 869.

prosecution; 3. Prepares cases for court and presents them at court; 4. Provides information, assistance and support to victims and prosecution witnesses; and 5. its main role to determine the appropriate charges in more serious or complex cases, and advises the police during the early stages of investigations.

Restructuring of the CPS

Following the Glidewell Review, the CPS underwent its second reorganisation in five years, this time from 13 to 42 Areas, so that its geographic organisation was fully congruous with the 42 police areas. This change was made, and justified publicly by the CPS itself, "to create a service much more locally based and therefore much better structured to cooperate with the police in ensuring an effective prosecution system"[65]. Although co-terminosity was claimed to have improved joint-working and made the criminal justice process more speedy and efficient, in April 2011, following the 2010 Comprehensive Spending Review and largely as a means of absorbing significant spending reductions of 25% over four years, the CPS reorganised itself a third time, deciding to reconsolidate back to 13 areas. No mention was made of the earlier benefits that the CPS previously claimed from a localised prosecution structure aligned with local police areas. From 01 April 2017 CPS London split into two separate Areas, London North and London South, rendering the number of CPS Areas to increase to 14.

4.2. How the UK measures the performance of public prosecutors and in the justice sector generally

External accountability

On 01 October 2000, **Her Majesty's Crown Prosecution Service Inspectorate (HMCPSI)** was constituted[66] as an independent statutory body with the purpose to promote continuous improvement in the efficiency, effectiveness and fairness of the prosecution services through the process of inspection, evaluation and identification of good practice. The Crown Prosecution Service Inspectorate Act 2000 gives the Chief Inspector the functions of inspecting the CPS, reporting on any matter to do with the

[65] Crown Prosecution Service Press Release, 21 May 1997.
[66] Crown Prosecution Service Inspectorate Act 2000.

performance of the CPS referred to him by the Attorney General, and reporting annually to the Attorney General on the operation of the Service. HMCPSI routinely undertakes inspections and follow-up inspections of the performance of CPS Areas, some of them focusing on particular aspects of the CPS's work in those areas[67]. In addition it undertakes a range of thematic inspections, some jointly with other criminal justice inspectorates. The CPS takes account of HMCPSI's findings, issues responses to its findings and seeks to ensure that its recommendations are implemented as appropriate.

HM Chief Inspector of the CPS is an independent statutory office-holder reporting directly to the Attorney General and Solicitor General (the Law Officers) and the Justice Committee of the House of Commons. The Attorney General appoints HM Chief Inspector of the Crown Prosecution Service, nevertheless the post is subject to a pre-appointment hearing before the House of Commons Justice Committee[68], and in general the Attorney General will not make a formal appointment until she/he has had an opportunity to consider the Committee's report. Parliament allocates the Chief Inspector funds for the Inspectorate in a budget separate from that of the CPS.

Internal accountability

The CPS is arranged in 14 Areas, with 'CPS Direct'[69] considered a 15th 'virtual' Area, with each area encompassing between two and five police force areas. Each of the 15 CPS Areas is headed by a Chief Crown Prosecutor

[67] During 2017-18 HMCPSI conducted the following Area Assurance Inspections: CPS Areas North West, South East, East of England, West Midlands, North East Thames & Chiltern. In addition the following Thematic Reviews, Bespoke & Joint Inspections with HM Inspectorate of Constabulary, were undertaken and reports published: The Operation of Individual Quality Assessments in the CPS – March 2018; The CPS Response to the Modern Slavery Act 2015 – December 2017; The CPS Internal Fraud Controls – November 2017; Making it Fair: The Disclosure of Unused Material in Volume Crown Court Cases – July 2017; Living in Fear: The Police and CPS Response to Harassment and Stalking – July 2017;The CPS Case Finalisations Recording on CMS – May 2017. Copies of HMCPSI reports are available on their website www.justiceinspectorates.gov.uk.

[68] Pre-appointment hearings were recommended in the Liaison's Committee's report Shifting the Balance Sheet: Select Committees and the Executive published in 2000 (HC 384, 2007-08). Although the idea was initially rejected by the Government, the July 2007 Governance of Britain Green Paper contained a proposal for select committee scrutiny of prospective appointments in the following terms: "...the hearing would be non-binding, but in the light of the report from the [relevant select] committee the Minister would decide whether to proceed. The hearings would cover issues such as the candidate's suitability for the role, his or her key priorities, and the process used in selection..." (HC 594, Annex A, 2007-08).

[69] A 24-hour telephone service to provide charging advice to police officers outside of ordinary working hours

(CCP) assisted by an Area Business Manager. The way in which the CPS undertakes its role is governed by two key documents: the Code for Crown Prosecutors and the service's *Casework Quality Standards*[70].

Individual prosecutors -Crown Prosecutors

All prosecutors are recruited through open competition. Appointees must be lawyers, but may be either barristers or solicitors. Crown Prosecutors (CPs) are usually employed on permanent appointments under civil service terms and conditions. Although all appointments of CPs are made in the name of the DPP, they are in practice made by the CCP for the Area in which the vacancy arises. CPs serve a two-year probationary period, after which—subject to satisfactory performance—they are designated Senior Crown Prosecutors (SCPs).

The CPS has its own annual appraisal system. Each grade and function has a set of qualities and behaviours, covering legal and managerial ability, against which prosecutors are evaluated. Each individual prosecutor is also set personal targets by his/her line manager. Quarterly meetings are held between the manager and the prosecutor to discuss progress and future targets, and at the end of the annual reporting cycle, a detailed report is written. This report is taken as the basis for development needs, promotion prospects, and performance pay. In 2014, the Casework Quality Standards (CQS) were introduced replacing the Core Quality Standards and Individual Quality Assessment (IQA) was designed to assess compliance with the CQS by evaluating casework and advocacy conducted by individual prosecutors, rather than by assessing the work done on the case as a whole. It focused on four key stages of individual contributions to a case: advice, charging and review, case progression, and case presentation. The IQA was fully rolled out by the start of the 2015-16 business year. Following an inspection into the newly introduced scheme in 2018, HMCPSI noted a clear improvement in measuring the performance of individual prosecutors under the new quality assurance scheme.

Individual accountability of prosecutors

The CPS has a hierarchical structure, and individual prosecutors do not normally prosecute a case, or refuse to prosecute a case, against the

[70] Available at: https://www.cps.gov.uk/sites/default/files/documents/publications/cqs_oct_2014.pdf.

judgment of a superior. In principle, however, prosecutors exercise their own professional judgment in pursuing a given prosecution. However, internal guidance seeks to ensure that certain decisions will be taken at an appropriately senior level. Generally, in such cases, the first prosecutor will make a preliminary decision and pass it up the line for confirmation. Some cases must be dealt with entirely by a more senior lawyer; some cases, for example serious fraud cases, are referred to Headquarters for prosecution by specialists. Managers control the distribution of cases to prosecutors and also dip check the decisions they make.

The CPS has developed its own disciplinary policy[71] which requires a transparent system of discipline. If an alleged offence by a prosecutor is a minor infraction, the matter can be dealt with informally. The prosecutor will be spoken to by his/her line manager. No record is kept unless the prosecutor wishes it. If the matter is more serious, the allegation must be made in writing and a formal interview held, during which the prosecutor may be accompanied by a union official or a "friend," who may be a colleague or someone from outside the Service. The meeting may be chaired at a local level, but in very serious cases, the Head of Human Resources may chair the hearing. The prosecutor may call evidence in support of his case. If the matter is sufficiently serious (and thus cannot be dealt with informally), the Head of Human Resources, who is the official with the power to dismiss a member of staff, may indicate that the matter is one of gross misconduct, in which case the prosecutor may be dismissed for a first offence. Offences of gross misconduct include, for example, the commission of a crime. If the offence is not one involving gross misconduct, the prosecutor may only be dismissed for a succession of offences. A prosecutor who is dismissed may appeal within the CPS and/or to the Civil Service Appeal Board, a civil service panel outside the CPS that hears appeals against dismissal by anyone who has been employed for at least a year. The department and the employee submit their cases in writing, and a hearing is addressed by both sides. The employee may be represented by a union official. In any event, a prosecutor who is dismissed may bring a case before an Employment Tribunal for unfair dismissal. This is a court that deals with unfair dismissal and cases of discrimination in employment. The Court of Appeal, in a case in which a dismissed member of staff unusually instituted proceedings for Judicial Review, has upheld the right of the CPS to dismiss prosecutors for

[71] Available at: http://www.legalservicesboard.org.uk/what_we_do/regulation/pdf/annex18_disciplinary_policy.pdf.

disciplinary reasons[72], although in obiter dicta the Court indicated that this would not extend to disciplinary actions that interfered with a prosecutor's decisional independence.

Chief Crown Prosecutors (CCPs)

Chief Crown Prosecutors are appointed by the DPP. The majority of the CCPs belong, by virtue of their grade, to what is known as the Senior Civil Service. All such posts across government must be advertised within and outside the civil service. CCPs are accountable to the Chief Executive and DPP for the functioning of their local areas. Currently, this accountability is achieved primarily through ***quarterly Area performance reviews and biannual reviews of individual CCP performance***. The DPP hosts combined meetings with all 14 CCPs, and she also hosts individual meetings with CCPs either at Headquarters or locally. The DPP meets with each CCP approximately 4–6 times each year. Indeed, one of the supports given for reducing the number of CCPs from 42 to 13 was that it increased the scrutiny with which the DPP is able to monitor each one.

Compensation for CCPs includes a performance-based bonus structure, whereby a bonus of 5–6% of gross salary is awarded to the top 25% of performers. This bonus is awarded based on an internal evaluation of Area performance, witness satisfaction, staff surveys, and the CCP's personal corporate contribution. Failures, too, may attract particular attention from the DPP. The contract for CCPs covers expectations regarding poor Area performance. However, a Freedom of Information request from Policy Exchange in 2012, discovered that not a single CCP has been formally dismissed in the CPS's 26 year history[73].

Director of Public Prosecutions (DPP)

The Director of Public Prosecutions (DPP) is the head of the CPS and is responsible for the management of the Service and, ultimately, for every casework decision. She is "superintended" by the Attorney General. Parliament does not directly supervise the DPP's operations. Rather, the DPP reports to the Attorney General[74] who serves as an intermediary in their

[72] R v Crown Prosecution Service ex p Hogg [1994] e Times, April 24, 1994.
[73] Policy Exchange, In the Public Interest; Reforming the Crown Prosecution Service, 2012, available at: https://policyexchange.org.uk/wp-content/uploads/2016/09/in-the-public-interest.pdf.
[74] Pursuant to Prosecution of Offences Act 1985, Section 9.

relations and is accountable for the CPS before Parliament. However, the Attorney General is not administratively or managerially responsible for the CPS. Each year, the DPP must submit a general report on CPS operations in the previous year to the Attorney General[75]; the Attorney General presents a copy of the report to Parliament and publishes it. There is no formal requirement for the DPP to attend Parliament to give evidence before MPs, though in recent years this has become more common. The DPP must also submit reports on specific matters at the Attorney General's request. The DPP and the Attorney General have regular weekly meetings to discuss CPS performance and individual cases.

The DPP is appointed by the Attorney General. An appointee must have at least 10 years of experience as a lawyer and may be either a barrister or a solicitor. The DPP is generally appointed on a fixed term contract (five years). The DPPs are recruited by open competition, and most frequently they are appointed directly from the private Bar[76]. The DPP is generally seen as an independent figure.

Oversight of the DPP and CPS - Parliament's role

The Attorney General for England and Wales has direct oversight of the operation of the CPS. Democratic accountability for the prosecution service is only at the level of the Attorney General - the DPP is an appointed role with no established Parliamentary oversight of that process. In addition, he or she can only be removed from post by the Attorney General[77]. Although the Attorney General retains the power to remove the DPP, the role is largely independent of the Attorney General. Decisions to prosecute are almost exclusively the domain of the DPP, with only a few exceptional cases requiring the consent of the Attorney General. Only where a prosecution is of unusually high relevance to the public interest will the Attorney General engage with the DPP about a case.

[75] Annual Report and Accounts 2017–2018 (for the period April 2017 – March 2018) of 03 July 2018, is available at: https://www.cps.gov.uk/sites/default/files/documents/publications/CPS-Annual-Report-2017-18.pdf.
[76] The Director of Public Prosecutions at the time of writing, Ms. Allison Saunders, also a barrister, was the CCP for CPS London, and is the first DPP to be appointed from within the CPS.
[77] At the time of writing however there are unconfirmed suggestions that the Director of Public Prosecutions (DPP) was pressured to step down by the Government following a series of controversies, please see:
https://www.independent.co.uk/news/uk/home-news/alison-saunders-public-prosecutions-dpp-leave-stand-down-cps-controversy-rape-trials-a8284486.html;
https://www.theguardian.com/law/2018/apr/02/alison-saunders-quit-director-of-public-prosecutions-cps.

According to the Protocol between the Attorney General and the Prosecuting Departments, the Attorney General advises the DPP on the "strategic direction" of the CPS, consults with the DPP on proposed revisions to the Code for Crown Prosecutors, and receives periodic reports from the DPP on the CPS's functions[78].

The National Audit Office (NAO) is an independent Parliamentary body in the United Kingdom which is responsible for auditing central government departments, government agencies and non-departmental public bodies. The NAO reports to the Comptroller and Auditor General who is an officer of the House of Commons of the Parliament of the United Kingdom and in turn reports to the Public Accounts Committee, a select committee of the House of Commons. The reports produced by the NAO are reviewed by PAC and in some cases investigated further. The NAO has two main streams of work: Financial Audit and Value For Money (VFM) audits. In their report Efficiency in the criminal justice system published on 01 March 2016[79], the NAO found inter alia that:

In 2014-15, the CPS spent £21.5 million on preparing cases that were not heard in court. Of this £5.5 million related to cases that collapsed due to 'prosecution reasons', including non-attendance of prosecution witnesses and incomplete case files.

The **Justice Select Committee** of the United Kingdom is a select committee of the House of Commons which scrutinises the policy, administration, and spending of the Ministry of Justice. In addition, the committee examines the work of the Law Officers of the Crown, the Serious Fraud Office, and the Crown Prosecution Service.

4.3. The level of cooperation between public prosecutors and other state Institutions in the process of justice sector reforms

The Criminal Justice Board (CJB) - The main organisations involved in the criminal justice system of England and Wales are police forces, the Crown

[78] Protocol Between the Attorney General and Prosecuting Departments", July 2009 (http:// www.a orneygeneral.gov.uk/Publications/Documents/ Protocol%20between%20 the%20Attorney%20General%20 and%20the%20Prosecuting%20 Departments.pdf).
[79] The report is available at: https://www.nao.org.uk/report/efficiency-in-the-criminal-justice-system.

Prosecution Service, HM Courts and Tribunals Service, victims and witness services, the judiciary and lawyers. The system as a whole is co-ordinated through a national Criminal Justice Board. Central government spending on this part of system is around £2 billion a year and, in the year to September 2015, around 1.7 million offences were dealt with through the courts[80].

The Criminal Justice Board's aim is to deliver swift and certain justice by driving improvements across the system. Among those joining the Justice Secretary who chairs the CJB, and the Home Secretary are the Attorney General, senior members of the judiciary and representatives of policing groups, the Crown Prosecution Service and Her Majesty's Courts and Tribunals Service. Its members span the criminal justice system, allowing the board to have a complete overview of upcoming reforms. It ensures each part of the criminal justice system, including the CPS, as an agency that plays a critical role in the criminal justice system, operating between the investigative role of the police and the adjudication role of the courts, is held accountable for delivering these reforms[81]

In May 2016, the House of Commons Committee of Public Accounts (PAC) issued a report as a result of efficiency in the criminal justice system inquiry. The report published on 27 May 2016, found that: The criminal justice system is close to breaking point… the system suffers from too many delays and inefficiencies. The inquiry was launched after The National Audit Office had found that the criminal justice system was not delivering value for money and a joint 2015 inspection by HM Inspectorate of Constabulary and HM Crown Prosecution Service Inspectorate found that 18.2% of police charging decisions were incorrect. PAC issued a set of conclusions and recommendations to be implemented by the CJB accordingly. The following findings and recommendations where action was specifically required by the CPS in cooperation with another criminal justice system institution were issued:

1. Finding: The criminal justice system is not good enough at supporting victims and witnesses.

[80] House of Commons Committee of Public Accounts, Efficiency in the Criminal Justice System, First Report of Session 2016–17, 27/05/2016, available at: https://publications.parliament.uk/pa/cm201617/cmselect/cmpubacc/72/72.pdf.
[81] For a complete lists of the members of the CJB please visit: https://www.gov.uk/government/groups/criminal-justice-board.

Recommendation: The Ministry, with others on the CJB, needs to demonstrate a step change in service to victims and witnesses and it should report back to the Committee on progress in a year's time.

2. Finding: The Ministry has been too slow to recognise where the system is under stress, and to take action to deal with it.

Recommendation: The Ministry and the CPS need to have a better understanding of the likely consequences of cutting available resources. The CPS struggles to fund prosecutors as a result of reductions in legal aid spending.

3. The reform programme[82] is welcome, but the full benefit will not be seen for another four years, and users of the system should not have to wait this long to see real change.

Recommendation: The Ministry and the CPS should work with others on the CJB to agree and publish by the end of 2016 a timetable that sets out what specific measurable improvements will be achieved, and by when, over the course of the next four years.

The Local Criminal Justice Board (LCJB)- brings together criminal justice organisations at police force area level. It is composed of the Chief Crown Prosecutor, Chief Probation Officer, Chief Constable of Police and Director of the Court Service. LCJB is to work in partnership across agencies to improve the efficiency and effectiveness of the Criminal Justice System and to improve the experience of the victims of and witnesses to crime. The purpose and vision of the LCJB is to reduce crime, harm and risk by increasing the efficiency and credibility of the Criminal Justice System. Boards were originally set up in all the 43 Force areas by central government and received funding. They now operate as a voluntary partnership in most counties in England. Each CCP publishes an annual report on operations for the fiscal year.

[82] The reform programme is the Ministry of Justice and the CPS "ambitious proposals to reform the system" which includes investing in digital technology, so that the system is less heavily paper-based, and developing a new digital case management system, which everyone will use to manage cases better and reduce delays, as well as rationalising the court estate and taking some cases out of court entirely.

4.4 The methodology and outcome of measuring prosecutorial performance

The methodology of measuring individual prosecutorial performance internally, by the bureaucratic oversight of their local CCP and ultimately the DPP, has been outlined above (Section 2). The internal appraisal system of individual prosecutors is based on a fairly rigid civil service system of exams and promotions. Individual Quality Assessment (IQA) was designed to assess compliance by individual prosecutors with the CPS's quality standards for casework and advocacy, and so provide a framework for Areas to improve the quality of the service they provide. There is a formal system in place for dealing with disciplinary problems as well as for complaints against the service.

In terms of evaluating the CPS as a whole and in particular the performance of the DPP who as the Head of the CPS is ultimately responsible for every casework decision, the main mechanism is the statutory mandated report the HMCPSI must submit to Parliament every year[83]. The Chief Inspector is actively engaged in leading the day to day inspection process.

The thematic inspections undertaken by the HMCPSI have proven an effective way of evaluating performance and resulting in recommendations for improvement of the efficiency of the CPS and the criminal justice system overall. Such an example is HM Crown Prosecution Inspectorate and HM Inspectorate of Constabulary and Fire & Rescue Services joint report issued in 2017, exposing systemic failings in disclosure processes by the Police and the CPS[84]. HM Chief Inspector Kevin McGinty said:

A failure to deal effectively with disclosure has a corrosive effect on the criminal justice system. It undermines the principles of a fair trial which is the foundation of our system. It adds delay, cost and increases the stress faced by witnesses, victims and defendants... If the police and CPS are ever going to comply fully with what the law requires of them by way of disclosure, then there needs to be a determined cultural change. This is too important to be allowed to continue to fail.

[83] The Annual Report 2016-2017 is available at: https://www.justiceinspectorates.gov.uk/hmcpsi/wp-content/uploads/sites/3/2017/07/HMCPSI_CIAR_2016-17_rpt.pdf

[84] Under the current system, police and prosecutors have a duty to hand over any material that might be relevant to the defence case before it comes to court. However the urgent review into rape and sex assault cases was ordered after it emerged that detectives had failed to disclose crucial evidence stored on digital devices such as mobile phones, tablets and laptops.

The Justice Select Committee opened an inquiry into the issue in February 2018 and the DPP appeared before the Justice Committee on 05 June 2018, as part of its inquiry into disclosure failings which have dogged the CPS after the high-profile collapse of several rape trials. The inquiry is undergoing at the time of writing.

The findings of a joint 2015 inspection by HM Inspectorate of Constabulary and HM Crown Prosecution Service Inspectorate which triggered the inquiry of the House of Commons Committee of Public Accounts (PAC) on the efficiency in the criminal justice system resulting in a series of conclusions and findings as well as recommendations for improvement of the criminal justice system (described in detail at Section 3 above), is another outcome of the independent performance evaluation of the CPS by the HMCPSI.

4.5. Positive and negative aspects of the system for measuring the performance of public prosecutors

The establishment of both internal and external accountability measures is certainly a positive aspect of the system for measuring the performance of public prosecutors in England and Wales. The introduction of Individual Quality Assessment (IQA) which in 2015, replaced the "box-ticking" system of its predecessors[85], is clearly an improvement as confirmed by HMCPSI[86]. The external inspection undertaken by the HMCPSI provides an additional safeguard that the IQA is being undertaken as envisaged and whether it is driving improvements in advice, review and case progression. In March 2018, HMCPSI found that the CPS overall judged the quality of its casework to be 14.3% better than the inspectors' assessment.

With regards to measuring the overall performance of the CPS the mandatory statutory requirement for an annual report not only by the CPS[87] but more importantly by an independent statutory body in the form of HMCPSI[88] is clearly a positive measure, as it creates a binding and very public obligation on the CPS to account for its work. The CPS has an obligation to

[85] Casework Quality Assurance and Casework Quality Standards Monitoring.
[86] The operation of Individual Quality Assessments in the CPS, March 2018. The report is available at: https://www.justiceinspectorates.gov.uk/hmcpsi/wp-content/uploads/sites/3/2018/03/IQA_thm_Mar18_rpt.pdf.
[87] Pursuant to Prosecution of Offences Act 1985, Section 9.
[88] Pursuant to Crown Prosecution Service Inspectorate Act 2000, Section 2 (2).

respond to issues of concern raised by the HMCPSI[89]. The thematic reports undertaken by the HMCPSI either by itself or jointly with other criminal justice inspectorates (described in detail at Sections 3 and 4 above) have proven an effective measure for evaluating the work of the CPS, however inquiries are only launched when an area of concern has been identified within the CPS. In addition, the inspections – whilst valuable – have not led to fundamental reforms of the CPS.

The CPS is a major public service that spends hundreds of millions of pounds each year[90], and it cannot be immune from democratic oversight and accountability for its performance. Democratic accountability for the prosecution service is only at the level of the Attorney General, whose scope to control the operation of the CPS is limited. Consequently, the CPS's accountability to Parliament and the public is tenuous at best, and by extension, the DPP is, in fact, one of the most powerful and least accountable governing officials in public life. Systemic inquiries into the CPS have been rare and the most extensive independent inquiry – the Glidewell Review – was in 1998.

4.6. United Kingdom: Conclusions and recommendations

The writing of this paper coincides with a major crisis faced by the CPS following a series of controversies and a scandal over the manifest failure to ensure the duty of disclosure of evidence to defence lawyers, is properly discharged (please see section 5 above). The historic feature of independency of the prosecution system from the government is at risk of being marred by the unconfirmed allegations that the DPP was pressured to step-down as the most senior public prosecutor second only to the Attorney General and Solicitor General, by the government. Notwithstanding the above allegations, the prosecution system of England and Wales provides a clear model set up to operate entirely independently from political power with an independent head prosecutor (the DPP) overseen by the indirect ministerial accountability provided by the 'superintendence' of the Attorney General. The system is a clear example of an independent public prosecution agency that could be applied elsewhere.

[89] The CPS responses can be found at: https://www.cps.gov.uk/inspectorate-responses.
[90] The CPS budget for 2012/13 was £592 million.

The Casework Quality Standards which sit along the Complaints handling and Community Engagement Standards, as documents that outline the standards the public can expect from the CPS and are important in holding the CPS to account, are other aspects that are applicable as good practice. Each standard has clearly established benchmarks of quality that have to be achieved by the CPS.

Another aspect of the public prosecution system of England and Wales that could be helpful elsewhere is the establishment under statute of the HM Crown Prosecution Service Inspectorate which has proven an effective measure to oversee the performance not only of the CPS as a whole, but also of the performance of individual prosecutors.

5.Measuring the Performance of Public Prosecutors in Denmark

5.1 Background and development of justice sector and prosecution reforms

The Danish system for public prosecution is regulated by the law that constitutes the Procedural Code, which in accordance with Danish legislative tradition is reissued by Parliament as a restatement law when the number of amendments made to the Code warrants a codification in the interest of legal certainty. A similar approach has subsequently been adopted by the European Union (EU).

The current version of the Procedural Code was issued in 2017[91], and as it currently has received 9 amendments[92], it may be the subject of a further reissue. There is no authorised translation of the Code into the English language, although previous versions of the code have been translated, and although the selected parts of the current Code are available in English from private publishers.

The Code concerns the structure and procedure of the Danish judicial system, comprising both civil and penal jurisdiction, with administrative law being considered as part of civil law and not subject to a separate jurisdiction in Denmark. As for structure, it is the Code that regulates the institutional competences of the courts, prosecution and police.
While the Code has separate sections on civil and penal procedure, the court structure is unified so that the same courts will have both civil and penal jurisdiction. Although larger courts may establish separate chambers for civil and penal matters, the judges will rotate between such chambers and not have separate career paths.

The court system essentially has three levels, comprising the Municipal Courts, the High Courts and the Supreme Court. Denmark does not have

[91] Restatement Law (Lovbekendtgørelse) 2017-09-22 No. 1101, Retsplejeloven
[92] Amended by Law 2017-12-26 No. 1679, Law 2017-12-26 No. 1680, Law 2018-02-27 No. 130, Law 2018-05-23 No. 503, Law 2018-06-08 No. 708, Law 2018-06-08 No. 709, Law 2018-06-08 No. 710, Law 2018-06-08 No. 713, Law 2018-06-08 No. 714 og Law 2018-06-08 No. 715

any Constitutional Court, as any court is in principle empowered to make a decision on the constitutionality of legislation issued by the Parliament or other public authorities. In practice, the Municipal Courts have tended to leave such decisions to appeal hearings at the High Courts and the Supreme Court.

Outside the scope of the present report, separate arrangements have been made for the territories of the Faroe Islands and Greenland, which have extensive local rule, and in the field of civil law an additional jurisdiction is granted to a special Maritime and Commercial Court. Likewise, special courts exist for impeachment, under Article 59 of the Constitution, and for extraordinary review of judgments, under Article 1a of the Procedural Code. Previously, the competence to hear both civil and penal cases in the first instance was divided between the Municipal Courts and the High Courts, based on the scope of the civil claims and the character of the criminal acts. This entailed a need for the Supreme Court to act as an ordinary court of appeal in cases that were initiated in the High Courts, but only as an extraordinary court of appeal in cases that were initiated in the Municipal Courts.

Significant reforms have been undertaken in Denmark in 1919, where courts and police were institutionally separated, and again in 1972, where the number of Municipal Courts was significantly reduced, and the territorial jurisdiction was aligned with a new system of municipalities, so as to have 102 Municipal Courts covering 277 municipalities, which had previously been 1090 municipalities.

A further reform was undertaken in 2007, where the number over Municipal Courts was reduced to 24, so as to cover a reduced number of 98 municipalities. At the same time, a major reform of the police and prosecution was initiated, so as to be gradually implemented between 2007 and 2010. For the police, this entailed a reduction in the number of local police stations and the creation of larger regional police stations, which entailed heated discussion as to whether adequate response times could be maintained.

For the prosecution, which is the focus point of the this report, the main target of the 2007 reform, adopted by Parliament in 2006,[93] was organisational changes so as to achieve improvements in competence,

[93] Amendment Law (Lov om ændring) 2006-06-08 No. 538

strategy and performance measurement. This legislative basis was ensured in the Procedural Code, which was amended to remove the division of competence between the Municipal Courts and the High Courts.

The main structure of the prosecution authorities is provided by Article 95, which provides that public prosecutors shall comprise the Chiefs of Police, the State Prosecutors and the Prosecutor General, which all are subject to Minister of Justice who shall supervise them. Furthermore, the number of State Prosecutors and the distribution of tasks between them are decided by the Minister of Justice under Article 103 of the Procedural Code. This is deemed to comply with Article 62 of the Constitution, which requires that the administration of justice is independent of executive authority, as the provision is contained in a chapter that deals only with the courts and their procedure.

The Procedural Code further provides in Article 98 that the Minister of Justice may intervene in individual cases and require any of the public prosecutors to commence of desist from proceedings. However, any such direct order must be notified to the President of the Parliament together with a statement of reasons. The procedural code does not provide specifically for measures that may be taken by the President of the Parliament, but as mentioned above the Danish judicial system includes a special court for impeachment, which might be addressed in case of an abuse of powers by the Minister of Justice.

At a practical level, it is the Prosecutor General who supervises the State Prosecutors under Article 99 of the Procedural Code, just as the Chiefs of Police in relation to prosecution are subject to the State Prosecutors under Article 101. Accordingly, decisions may be appealed to the supervising prosecutor, but further appeal to the Minister of Justice, or in the case of Chiefs of Police, to the Prosecutor General is not possible. However, this limitation only applies to administrative appeal, as access to judicial appeal cannot be limited under the principles of EU law, in so far as rights under EU law are concerned. Prior to joining the EU, Denmark had several provisions precluding both administrative and judicial appeal of administrative decisions in specific fields.

In addition to supervision, it is the Prosecutor General who undertakes penal proceedings before the Supreme Court, where appeal under Article 932 of the Procedural Code is subject to approval by the Procedural Permission

Committee. Such approval will be granted only in principal cases or where other special reasons so warrant. As set out above, the Danish judicial system also does comprise a special court for extraordinary review of judgments, which may be addressed also in relation to penal matters.

Under the preceding division of competence, the prosecution authority in Municipal Courts had belonged to the Chief of Police in the municipal police authorities, whereas the prosecution authority in the High Courts belonged to special State Prosecutors that were each nominated with territorial jurisdictions covering regions of Denmark, and an additional State Prosecutor with jurisdiction in cases of serious economic crime and with integration of both investigative and prosecutorial authority.

In principal, this division of competence was not changed by the 2007 reform, but under Article 686 of the Procedural Code all penal cases must now be initiated in the Municipal Courts. Unlike the revised rules for civil cases, which in Article 226 allow the Municipal Court to refer a case to the High Court, no such referral is available for penal cases.

Accordingly, the State Prosecutors in general undertake only appeal cases, and their number has been reduced to 2 State Prosecutors, each with a territorial jurisdiction corresponding to that of one of the 2 High Courts, located respectively in the City of Viborg for the peninsular of Jutland, and in Copenhagen for the remaining part of mainland Denmark. In addition, the State Prosecutor for serious economic crime has been maintained.

However, under Article 101 of the Procedural Code, the Prosecutor General may decide that certain penal cases are to be undertaken by the State Prosecutors, although the provision does indicate that this is apply only until further. In practice, the General Prosecutor has issued a Circular Notice in 2012[94], which provides that certain cases subject to jury proceedings may be taken over by the State Prosecutors.

In general, jury proceedings apply under Article 686 of the Procedural Code where a penalty of more than 4 years of prison or containment in a mental or other institution may be imposed, as well as cases concerning political crimes. This latter concept is not defined in the Procedural Code, but it is in practice given a narrow interpretation that does not include for example

[94] Circular Notice 2012-12-18 No. 9755 (Internal number: Notice No. 3/2012)

terrorist activities, but such activities will most often be covered by the 4 year criterion.

It is important to underline that the notice does not provide that the State Prosecutor shall take over such cases, but only that the Prosecutor General may order this in specific cases. This may include cases involving international and EU law, as well as terrorist cases as well as other cases covered by Chapters 12 and 13 of the Penal Code[95], which in practice are seen as including political cases. However, in general the notice requires cooperation between the Chief of Police and the State prosecutor in such cases, where a takeover has not been ordered by the Prosecutor General.
Although the distribution of competences refers to the persons of Chief of Police, State Prosecutor and Prosecutor General, the Procedural code does provide in Article 95 that the concept of prosecutors also includes staff hired to assist these in bringing penal cases before the courts. In addition Article 100 provides that the Prosecutor General is to be assisted by one or more State Prosecutors with competence to plead before the Supreme Court.

Under Article 104, the Chief of Police may designate other persons to bring cases before the Municipal Courts, which is especially used to authorise police officers to act as prosecutors. Likewise, Article 100 provides that the Prosecutor General may designate other persons to bring cases before the Supreme Court, while Article 103 provides that it is the Prosecutor General that shall designate assistants for the State Prosecutors and may also authorise other persons to bring individual cases before the High Court.

Thus, although many interdependencies exist between the different elements of Danish public prosecution, the reform of 2007-2010 has in general achieved a simplified structure that allows the different actors in the judicial system to concentrate on the respective main objectives. The overarching main object for the prosecution remains in Article 96 to pursue crime in cooperation with the police, and to ensure both the rapid pursuit of every case, and also to avoid pursuit of innocent parties.

Different from other national systems of penal law, neither the Procedural Code nor the Penal Code allow prosecutors the option of settling cases by agreement, often referred to as plea bargaining. It is only the courts that

[95] Restatement Law 2017-08-09 No. 977

may, under Article 82 of the Penal Code, take into consideration, when deciding on the level of penalty, the cooperation given by a guilty party during the investigation.

However, it remains for the prosecution to decide which cases warrant being brought before the courts based on the likelihood of achieving a conviction and also on the rational use of available resources, both by prosecution authorities and by the police authorities.

5.2 System for measuring the performance of public prosecutors

The provisions referred to above in the Procedural Code and the Penal Code do not as such provide standards under which the performance of public prosecutors should be measured. However, as set out above, one of the objectives of the 2007-2010 reform was for the prosecution authorities to achieve improvements in competence, strategy and performance measurement.

The objectives were defined as increasing the quality aspects of prosecution activities, specifically in relation to the development of competences and the sharing of information. Further, it was an objective to achieve an increase in efficiency by use of modern methods for directing development based on targets and results, including the optimisation of procedures with focus on management and human resources. Within the new structure to be developed, it was also set as priority to ensure compliance with legal standards by means of strategies to be developed with a focus on issues that reach beyond the competences of individual authorities.

As set out above, the Prosecutor General has a central task in supervising the public prosecution system, and as part of this task the Prosecutor General has also had a central role in initiating measures to be adopted during the reform period 2007-2010 and in the following years, where development of the prosecution services has continued. However, en important aspect of the reform has also been decentralisation and the integration of staff members into the development of common goals and policies.

On this background, the prosecution services now enter into a yearly agreement with the Ministry of Justice concerning targets set and results to

be achieved in the coming year. For 2018 the following main targets have been set[96]:

Efficient case processing

a. To be achieved in penal cases view from the perspective of all authorities involved
b. Weight: 25 %

Increased quality

c. To be achieved in the penal procedures
d. Weight: 25 %

Increased productivity

e. To be achieved in the prosecution services
f. Weight: 20 %

Supervision of penal procedures

g. To be achieved in relation to the police and serious crime
h. Weight: 15 %

Implementation of good behaviour

i. To be achieved in the public sector
j. Weight: 15 %

The targets, which are referred to as strategic markers, have developed over the years 2007-2018 for which such targets have been published, with some differences between the early years 2007-2009, the middle years 2011-2015 and the later years 2016-2018.

During the early years, the strategic markers were quality, efficiency and legality, thus reflecting the need to adjust the prosecutions services to the requirements of the 2007-2010 reform. These strategic markers were developed in the middle period to encompass management, IT, working methods and communication, which may be seen as a continuation from the early years, as well as the opening towards a more coherent set of strategic markers for the handling of penal cases between various authorities.

While the terms used for strategic markers in the early and middle years are no longer found in strategic markers in the later years, the issues raised continue to have relevance also for the component markers that are defined within each strategic marker for the later years, which are dealt with in more detail in the following sections.

[96] The agreement is available only in Danish: Mål- og resultatplan for anklagemyndigheden 2018

5.3 Practice of monitoring and evaluating performance in the justice sector

As part of monitoring and evaluating performance in the justice sector, both the Ministry of Justice and the prosecution services, under the auspices of the Prosecutor General, have defined mission and vision statements, which are published in the yearly reports on targets and results that are referred to above.

The mission of the Ministry of Justice is defined as:

> Ensuring that Denmark is a safe and confident society
> Guaranteeing that the basic principles of a society of law are respected

In order to achieve this mission, the Ministry of Justice has defined the following vision:

> The ministry is to provide problem solving at a high quality level, so as to support achievement of government targets
> The ministry is to act one group together with its constituent services, so as to ensure comprehensive consideration of issues and efficiency across the entire field of justice
> The ministry is to be an open and service minded cooperation partner that offers contribution in due time and in a useful format

Based on the mission and vision statements of the Ministry of Justice, the prosecution services and the police, forming part of the ministry group referred to above, have jointly defined their mission and vision statements.

The mission of the prosecution services and the police is defined as:

The police is to ensure safety, confidence, peace and order in society through preventive, assisting and enforcing activities

-The prosecution services, together with the police, is to ensure that guilty parties are held responsible and that innocent parties are not pursued

-In order to achieve their respective parts of the mission, the prosecution services and the police have defined the following joint vision:

The prosecution services and the police is to ensure safety and confidence in cooperation with other public authorities, the prosecution services and the police are to ensure that Denmark is a safe and confident country.

It is to ensure realisation of these mission and vision statements that the above mentioned strategic markers are developed on a yearly basis, with a weighting assigned to each marker, as well as individual weighting of the components that are dealt with below, and which form the basis for measurement of performance.

In this connection, a set of guidelines were issued by the prosecution services in 2011[97] concerning the achievement of quality on the processing of penal cases. It was underlined that whenever new initiatives are implemented as pilot projects, it is important to define measuring points so as to be able to evaluate whether the initiatives do actually lead to any improvement.

5.4 Cooperation between public prosecutors in judicial reform

As set out above, one of the vision statements of the Ministry of Justice is that the entire justice sector is to act as one group, so as to ensure cooperation across the boundaries between the authorities in the justice sector.

Likewise, the group approach is found throughout the period of strategic markers from 2007 to 2018, where the group approach constitutes an informal heading for the first of the 2018 strategic markers, which concerns efficient case processing from the perspective of all authorities involved.

The group approach also has support in the legislation, where the Circular Notice 2012-12-18 No. 9755, as referred to above, requires cooperation as the standard approach to the special cases that are subject to the Notice, and which are then to remain with the scope of work of the Chief of Police, but with support from the State Prosecutor. Only in specific cases, decided by the Prosecutor General, is the prosecution to be taken over by the State Prosecutor.

[97] The document exists only in Danish: Anklagemyndighedens Kvalitetsprogram 2011

However, the legislation does not in itself provide further support for cooperation and in Article 103 only provides that the Prosecutor General may transfer a case from one State Prosecutor to another. However, in the development of strategic markers, the prosecution services have clearly granted priority to cooperation and as a primary tool created a basis for consultation and information sharing.

Within management consulting, the concept of lean management gained prominence during the same period as the prosecution reform was implemented within the prosecution services. The targets of lean management were creation of efficient management supervision and motivation of employees through target setting, as in the components of the strategic markers set out below.

At the same time, the concentration of staff in larger service units allowed for specialisation that would not have been possible in the previous decentralised model. As set out in the yearly report for 2010[98], each Chief of Police now has 5 specialised prosecution services within his force, so as to achieve better quality in the processing of cases.

Although specialisation does not in itself constitute a contribution to cooperation, this was closely linked to information sharing where the use of IT services and the creation of databases were supported to ensure access for all staff to relevant practice information. The information that is added to the knowledge database is also brought proactively to the attention of prosecution staff through use of the intranet.

Additionally, from an original media policy of limited media presence, the prosecution services adopted an open policy towards social media, recommending the presence of public prosecutors in media such as Twitter, but underlining the need for a responsible approach to statements made in such media. As for specialisation, such media presence does not in itself constitute an element of cooperation, but with increased visibility of prosecutors, it does support mutual awareness as a first step towards increased cooperation.

In a similar manner, the prosecution services in 2012 issued a

[98] The document exists only in Danish: Resultater 2010

recommendation on better writing styles when addressing citizens, so as to avoid overly bureaucratic and legalistic phrasing, which might hinder effective communication. This follows a long tradition of taking measures against formal language, which previously has led the public administration to discontinue the distinction between formal and informal address in the personal pronoun "you", which in principle remains available in Danish as in other European languages, but which following the administration initiative is no longer used anywhere in practice.

Finally, the yearly target and result documents are created on the basis of a cooperative effort in a series of workshops arranged across the prosecution services, where the issues to be given weight in the components of the strategic markers are discussed and defined, so as to ensure that the strategic markers become a joint goal and not a top down imposition, thus letting the strategic markers system in itself become a platform for cooperation.

As a practical outcome of cooperation between judicial authorities, a system was initiated in 2009 to ensure that routine judicial hearings, such as extension of custody decision, could be decided in video conferencing with the court rather than through the physical presence of the police and prosecution involved, which entailed timesaving for all parties involved.

This has been followed up by digital communication between police, prosecution, defence lawyers and the court, as set out in a cooperation agreement between the Court Management Authority, The Prosecutor General and the national Chief of Police in 2017[99]. Under the cooperation agreement, the case files are submitted in a digital format by the prosecution services to the court and the defence lawyer, and during the oral hearing, the parties refer to the digital files, which may also be displayed on AV equipment. The digital format allows all parties to search the materials and to add notes.

An additional initiative, which serves to support both quality enhancement and cooperation, has been the introduction of a basic education for new prosecutors, which is provided for staff with less than 3 years of employment, as set out in the catalogue for 2018[100].

[99] The document exists only in Danish: Samarbejdsaftale mellem Domstolsstyrelsen og Rigsadvokaten og Rigspolitiet om afvikling af digitale hovedforhandlinger i straffesager 2017

[100] The document exists only in Danish: Uddannelse 2018

The education has 9 modules each of 3 days which cover:

-The role of the prosecutor and introduction to good judicial working methods
-The methodology of the prosecutor in relation to good judicial working methods
-Penal procedure
-Court hearings
-Legality and police work
-The role of a case handler
-Communications
-Organisation
-Practice

In addition to the modular basic education for prosecutors, the prosecution services provide access to basic training for non-judicial staff, as well as continuous training for all staff members, but with emphasis on courses for prosecutors. Issues addressed include personal data protection, cybercrime and also technical subjects such as use of DNA based evidence.

5.5 Methodology and outcome of measuring prosecutorial performance

The strategic markers for 2018, referred to above, include realisation of the group vision of the Ministry of Justice as the first target with the title of efficient case processing to be achieved in penal cases view from the perspective of all authorities involved.

This target has been given the overall weight of 25%, and it is further defined as having the following components:

The average processing time for cases that lead to an imprisonment, to be commenced in 2019, is to be reduced by 10%, which corresponds approximately to 30 days based on 2016 statistics

k. As the target is to be achieved in 2019, it does not have a contributing weight for 2018, but it is expected to have a 10% weight in 2019

The average processing time from judgment to prison service is to have fallen by 15% in 2018, which corresponds to approximately 15 days based on 2016 statistics

l. The target has a 5% weight

The average processing time for police and prosecution services in cases concerning violence, rape and weapons is in 2018 to reach 75 % of the target set in a 2017 report to the Parliament

m. The target has a 10% weight

The prosecution services are to ensure that the number of pending cases with a preliminary charge but no formal charge does not in 2018 exceed the 2017 level, excluding cases on traffic violation

n. The target has a 10% weight

The second target, concerning increased quality to be achieved in the penal procedures, also has a weight of 25 %, and it is defined as having the following components:

The percentage of penal cases leading to conviction must be maintained within plus minus 5 % of the level in 2017

o. The target has a 7.5% weight

The processing time for requests for prosecution must be decided by the regional State Prosecutors within 60 days in 80 % of cases

p. The target has a 7.5% weight

Reports on money laundering must be checked by the Money Laundering Secretariat within 2 days in 90% of cases

q. The target has a 5% weight

The police in cooperation with the prosecution services is to develop a documentation tool for implementation of the new sanction in Article 79a of the Penal Code, which prohibits in presence of the convicted person in

the area in which a gang or drug related crime has been perpetrated

r. The target has a 5% weigh

The third target, concerning increased productivity to be achieved in the prosecution services, as a weight of 20%, and it comprises the following components:

The prosecution services of the Chiefs of Police are to increase productivity in 2018 by 6 % based on the results in 2015

s. The target has a 10% weight

The prosecution services of the regional State Prosecutors are to increase productivity in 2018 by 6 % based on the results in 2015

t. The target has a 5% weight

The State Prosecutor for Serious Economic Crime is to increase productivity in 2018 by 6 % based on the results in 2016

u. The target has a 5% weight

The fourth target, concerning supervision of penal procedures to be achieved in relation to the police and serious crime, has a weight of 15%, and it comprises the following components:

The prosecution services are to undertake special supervision of pending cases within the police without a preliminary charge, as well as cases closed without a change under Article 749 of the Procedural Code

v. The supervision is to identify the number of cases, age, share, type, and other relevant issues
w. The target has a 5% weight

The prosecution services are to undertake special supervision of pending cases within the police with a preliminary charge

x. The supervision is to identify the number of cases, age of the oldest 20% of cases with preliminary charges but no formal charges, and

share of cases with preliminary charges where a decision on formal charges is made within 60 days

y. The target has a 5% weight

The prosecution services are to undertake special supervision of cases concerning violence, rape and weapons

z. The supervision is to identify the number of pending cases and age, as well as cases closed without charges and cases with charges discontinued

aa. The target has a 5% weight

The last and fifth target, concerning implementation of good behaviour to be achieved in the public sector, has a weight of 15%, and it comprises the following components:

The prosecution services must have developed a plan before 1 March 2018 for the implementation of the government guidance on good behaviour in the public sector

bb. The plan must indicate specific actions to be undertaken in relation to different categories of staff, with a precise indication of milestones, and it must have been implemented prior to the end of 2018

cc. The target has a 5% weight

The Prosecutor General must have developed a concept note before 30 March 2018 for the undertaking of a stakeholder analysis

dd. The stakeholder analysis must have been implemented by 30 June 2018, with a view to commencing relevant initiatives before the end of 2018 based on the results of the analysis

ee. The target has a 10% weight

The question of how to measure the target achievement is clear in relation to most of the targets, but requires some further explanation in relation to the third target, which is concerned with an increase of productivity. Reference is made to figures for 2016, which is also the latest year for which a yearly report has been published for the police and prosecution services[101].

[97] The report is available only in Danish: Politiets og anklagemyndighedens årsrapport 2016

For the purposes of the yearly report, productivity is measured by dividing a weighted case number by the total staff costs, so as to arrive at a cost per case. The weighting system involves consideration of the number of violations in each case, and the total of the weighted number of cases is achieved by adding the weighted figures for number of formal charges and the number of court decisions, orders and judgments.

The figure for 2016 was 322.00 Euro per weighted case with the Chief of Police prosecution services, which represents a reduction by 4.1% compared to 2015, and which therefore fulfils the 2016 target which was set at productivity increase by 2%. However, figures are not given for the State Prosecutors, but it is noted that they have remained unchanged compared to 2015, which is declared not to be satisfactory. On this basis, the target is deemed to have been partially achieved.

5.6 Positive and negative aspects of the system for measuring performance

It will be open to discussion how illustrative the weighted case model is as measurement of productivity. For the purposes of the 2016 report a new weighting model was introduced, which required adjustment of the previously reported figures for the years 2013 to 2015, which are included in the report.

However, apart from such transitional issues, the issue is not whether the productivity figure, as expressed in cost per case, is it itself a meaningful figure, but rather whether changes in this figure over years do reflect changes in levels of productivity, so that the weighted model does not induce behaviour that only serves its own purposes and not actual improvement of productivity.

In any case, it would seem clear that productivity can be measured only in units of output per unit of input. With the weighted model, it is not only the number of prosecutions that are considered, which could encourage excessive persecution in violation of the principles of legal certainty referred above, under which the task of the prosecution services is both to pursue crime, but also to avoid pursuing the innocent.

Likewise, by not only focussing on successful judgments, the weighted

model avoids encouraging that the prosecution services limit their efforts to cases with a high probability of success, thus avoiding complicated cases to the detriment of justice. Accordingly, it seems clear that a weighted model taking into account but overall activities and successful activities must constitute the most neutral measurement of output.

One issue that is not dealt with in the strategic markers is the consequences of respectively meeting, surpassing and failing the targets. However, it is clear from the 2011 publication on strategic markers[102] that achievement of the strategic markers is linked to a result based salary agreement for the Prosecutor General as well as for the national Chief of Police.

In addition to this salary agreement, a failure to meet the strategic markers will have a shaming effect for the institution as such, but it may be questioned how strong the motivating effect of a shaming mechanism will be. In this connection it must be recalled that the reform of the prosecutions services was adopted by Parliament, and also that the 2018 strategic markers explicitly refer to a productivity report that the prosecution services was required to submit to Parliament in 2017.

Accordingly, it may be assumed that in addition to the salary and shaming mechanism, the strategic markers and the requirement to meet the criteria defined therein will have a strong motivating effect, as the Parliament might otherwise consider further legislative initiatives to obtain the results that the strategic markers were meant to obtain.

In addition to measurements against targets set by the strategic markers, the courts have also been involved in a more direct measurement of the quality of work done by public prosecutors. Based on a pilot project in 2012, a questionnaire was developed for judges in Municipal Courts to evaluate the performance of prosecutors appearing before them. It was underlined that the evaluation was not to be construed as an evaluation of the individual prosecutor, but as a general evaluation of the prosecutions services, so as to form the basis for a further quality improvement. This initiative was positively received in a statement from the Danish Bar and Law Society in 2014[103].

[102] The publication is available only in Danish: Mål 2011
[103] The document exists only in Danish: Dommere evaluerer anklagerens retsarbejde, Advokaten Nr. 3, 2014

5.7 Denmark: Conclusions and recommendations

In the view of the prosecution services, a major effort remains to be undertaken in relation to complicated penal cases. In a strategy document adopted in 2017[104], the prosecution services conclude that much improvement has been achieved in relation to the handling of ordinary cases, but that complicated cases still present a procedural challenge.

This issue was also addressed in the strategic markers for 2016, which included targets to be met by the State Prosecutor for serious economic crime, which were deemed only to have been partially met.

The proposal in the strategy document is to take further steps in ensuring cooperation between the police and the prosecution services during the entire processing of complicated cases. One initiative in this connection has been the digitalisation of case records, which has taken time to develop, as well as the introduction of knowledge databases as referred to above, which are at the disposition of all prosecutors dealing with a case.

The strategic markers may serve also as reference points for the supervision that is to take place between authorities within the prosecution services, and the strategy documents underlines the importance of linking the supervision not only to reporting of results, but also to the development of new initiatives for the improvement of prosecution services.

In order to support such initiatives, the strategy document proposes a decentralisation, so as to promote local initiatives, rather than depending only on a top down approach to be applied by the services of the Prosecutor General. Such local initiatives may lead to pilot projects that are later developed in to common new procedures for the prosecution services.

This decentralisation approach is to be applied also in relation to the strategic markers, which are to be used for defining targets to be achieved by individual employees in the prosecution services, so as to share the work on achieving both productivity increases and workplace satisfaction. This work is to be undertaken in a broad cooperation with other judicial authorities and especially the police.

[104] The document exists only in Danish: Anklagemyndighedens virksomhedsstrategi 2017

On this background, it may be concluded that the 2007-2010 reform of the Danish prosecution services, concurrently with the reform of court and police systems, have led to much simplified structure for the prosecution services, and also has provided an impetus for focus on quality and productivity enhancement.

This focus is materialised in the yearly strategic markers, and in the subsequent reporting on the degree to which the targets have been achieved. However, as acknowledged in the 2017 strategy documents, much remains to be done in relation to quality and productivity development, as a continuation of the work initiated by the 2007-2010 reform.

6.Measuring the Performance of Public Prosecutors in Republic of Croatia

6.1 Historic background and development of the public prosecution service in Croatia

The government in the Republic of Croatia is organized on the principle of separation of powers into the legislative, executive and judicial branches, cooperating among each other while each maintaining the independence in its operations. The judicial system consists of courts, the Public Prosecution Service (PPS), the National Judicial Council and the National Prosecutorial Council (NPC), the Bar Association, the Notary and the Judicial Academy.

The role of the Public Prosecution Service can be seen through three functions: to instigate prosecution of perpetrators of criminal and other penal offences, to initiate legal measures to protect the property of the Republic of Croatia and to apply legal remedies to protect the constitutionality and legality. The basis of the prosecution's action is derived from the Constitution of the Republic of Croatia, thus defining the Public Prosecution as an autonomous and independent judicial body[105]. On a proposal of the Government of the Republic of Croatia and elected by the Croatian Parliament, the Prosecutor General is appointed for a period of 4 years[106].

Although it is traditionally considered that the public prosecutor service was established in French criminal procedures Ordonanse Louisa XIV from 1670, this institution is mentioned in Dalmatian statutory law[107] from 1214. The development of the institution can be seen even in the Kingdom of Yugoslavia in 1938 as a state body entrusted to represent the state in judicial and administrative procedures[108].

[105] According to Article 125 paragraph 1 of the Constitution of the Republic of Croatia (consolidated text), available at: http://www.sabor.hr/important-legislation0001
[106] Ibid., Article 12 paragraph 2 of the Croatian Constitution
[107] Korčulanski statut, Gl. XXVIII. starije i gl. XXXI. novije redakcije Korčulanskog statuta; Korčulanski statut,
Statut grada i otoka Korčule iz 1214. godine, (prijevod A. Cvitanić), Zagreb – Korčula, MCMLXXXVII.
[108] Dr. sc. Dinka Shago and Rozana Domić: The role of the State Attorney in civil proceedings. Work compilation of the Law Faculty in Split, year. 50, 1/2013., page. 199.- 222.

At the time of the Socialist Federal Republic of Yugoslavia (SFRY), there was a division between a Public Prosecutor and a Public Attorney. The Public Attorney Institution was established with the federal and republic laws of SFRY from 1952. Under the law of the Federal Republic of Croatia, the Public Attorney, as a representative of a particular party, had two grounds for participation in litigations. After the independence of the Republic of Croatia, the Public Attorney became the State's Attorney with a limited role to protect the property of the Republic of Croatia.

The Law on Public Prosecution was applicable since the independence of the country until the year 2000[109]. The Public Prosecution was an independent state body which prosecuted perpetrators of criminal acts and applied legal means for protection of constitutionality and legality.

The amendments to the Constitution of the Republic of Croatia in 2000 envisaged the existence of the PPS as an autonomous and independent body authorized to act against perpetrators of criminal acts, to undertake activities for protection of the property of the Republic of Croatia and to apply legal remedies for protection of the constitutionality and legality.

The new State Attorney's Office Act[110] was adopted in 2009 and regulates the issues of the Public Prosecution organization, as well as the powers of the PP and his / her deputies, the election of the members, the jurisdiction and the work of the National Prosecutorial Council, so as other areas[111].

The Law on the Office for the Suppression of Corruption and Organized Crime stipulates the establishment of the Office for the Suppression of Corruption and Organized Crime (hereinafter referred as USKOK) as a separate prosecution office for specific criminal offenses with jurisdiction over the entire territory of Croatia.
In addition, specialized sub-units tasked to work on war crimes cases were established in the County[112] Public Prosecutors' Offices in Osijek, Rijeka, Split and Zagreb in accordance with the Law on Application of the Statute

[109] http://www.podaci.net/_gHRV/propis/Zakon_o_javnom/Z-jtuzil03v8934-9239.html
[110] Croatian: Zakon o državnom odvjetništvu, Provisional translation - State Attorney's Office Act / source: Judicial Academy, available at: http://digured.srce.hr/arhiva/263/33319/38955.pdf.
[111] In the period 2009 until 2015 9 amendments to the Law on State Attorney Office were adopted
[112] Republic of Croatia, politically and territorially is divided on regions called counties (Croatian: zupani). Thus, the county state prosecutions are regional public prosecution offices.

of the International Criminal Court and the prosecution of criminal offenses against international military and humanitarian law. However, due to the insufficient number of Public Prosecutors and with the decision of the Prosecutor General, cases have been assigned to other non-competent County Public Prosecutors.

With the February 10, 2006 conclusion of the Croatian Parliament, the 2006-2010 Judicial Reform Strategy was adopted, outlining the general objectives of the reform in the judiciary and the measures that need to be implemented in order to harmonize the jurisdiction for entering the EU. The objective is to create an efficient judiciary system i.e. reorganization of the judicial and Public Prosecution network[113].

The Strategy envisaged introduction of a modern information technology tool. Thus, the Public Prosecution Service anticipated introduction of a Case Tracking System (CTS).

The amendments to the Constitution of the Republic of Croatia in 2010 provided preconditions for further strengthening of the independence of the judiciary. The amendments envisaged that the National Prosecutorial Council is no longer elected by the Croatian Parliament, but its members should be elected by the judicial officers themselves in direct and secret elections.

For developing the capacities of the PPS of particular importance is the establishment of the Judicial Academy in 2006 with its regional centers in Zagreb, Split, Rijeka, Osijek and Varazdin.

At the end of 2012, the Croatian Parliament adopted a new 2013-2018 Strategy for Development of the Judiciary[114]. The Strategy stipulates the need for establishment of complete working conditions, hereby including material conditions, filling the administrative posts vacancies and adoption of all regulations that should ensure enactment of the constitutional role of these bodies. An important part of the reforms is the New 2011 Criminal Code Procedure which changed the concept of the criminal prosecution and thereby the need to strengthen the role of the PPs. That would mean a further capital investment, strengthening of the material and personnel capacities of PPS and compliance with the entire system. In this way, the efficiency of the work of the Public Prosecution Service would be achieved.

[113] https://narodne-novine.nn.hr/clanci/sluzbeni/2012_12_144_3085.html
[114] https://narodne-novine.nn.hr/clanci/sluzbeni/2012_12_144_3085.html

The Public Prosecution Service is comprised of 39 Public prosecution Offices in total: the Public Prosecution of the Republic of Croatia (here and after referred as DORH[115]), (USKOK), 15 County public prosecution offices and 22 Municipal public prosecution offices.

The PPSis headed and represented by the Prosecutor General. Simultaneously he carries out duties and tasks within the jurisdiction of the National Prosecutorial Council of the Republic of Croatia and manages the Council.

The internal structure of the Public Prosecution Offices covers penal and civil-administrative units, while as in DORH there are 4 units: Penal Unit, Civil-Administrative Unit, Unit for Internal Supervision and Unit for International Assistance and Cooperation.

The Prosecutor General may decide investigative units in the County or Municipal public prosecution offices to be additionally established.

6.2 Current trends and developments in Croatia

The latest DORH 2017 Report of the submitted to the Croatian Parliament contains information on reported crime in the state, the cases related to the protection of property interests of the Republic of Croatia, so as an assessment and the situation with the personnel in the PPS.
Regarding the filed criminal charges against known offenders, a slight decrease of 1.7% was registered compared to 2016, while as in relation to the criminal charges against unknown perpetrators, a decline of 2.2% was noted. The largest part, i.e. 90.1% of the criminal charges against unknown persons, refers to criminal acts against the property. In 2017 USKOK received 1481 submissions, which is for 4.7% more than the previous year.

The accuracy of this body can be seen from its Report in terms of decisions adopted upon criminal charges, i.e. 75.1% of the total number of criminal charges were resolved. It is noted that most of the criminal charges are dealt within three months from the day of the registration i.e. within the instructional timeframe of 6 months, which according to DORH's Report, the received criminal charges were handled promptly while as the decisions were adopted within the stipulated deadlines.

[115] DORH is a Croatian aabbreviate.

The success of its work can be seen from the fact that in 2017 out of the total number of first instance verdicts against adults, 90.8% were convictional with 13.8% issued prison sentences, 9.2% probation – community service, 1,8% fines and 75.1% conditional discharge.

In 2017, in respect to the successfulness and representation in litigations where one of the parties was the Republic of Croatia, in 45% of the disputes were won, in 11% the disputes were partially successful, while as in 42.46% of the cases the disputes were lost.

In 2017, the authorized Public Prosecution offices gave international legal assistance in 718 criminal cases, which represents an increase of 59.6% compared to 2013 when the Republic of Croatia became an EU member state.

By the end of 2017, 1,754 employees were employed out of whom 613 Public Prosecution servants (at managerial positions), 1014 Officers and 127 technical staff[116].

However, with the introduction of some significant amendments to the current laws so as the adoption of new ones in the area of criminal law[117], the need to strengthen the capacities of the Public Prosecution Service have arisen in order to fill the number of employees according to the systematization of workplaces. For example, the amendments to the Law on Criminal Procedure introduced a longer time limit for the PP to complete the investigation or to file an indictment, but at the same time it strengthens the role of the court in controlling the work of the PP in respecting the deadlines for completion of the investigation i.e. filing an indictment.

At the same time in 2017 significant changes were introduced in the litigation procedures too. Thus, having in mind the general determination of the legislator to shorten the proceedings and speed up the procedures, one can expect that the application of these regulations in practice would require additional efforts from the PP Deputies in order to acquire the needed information within the prescribed deadlines and take necessary actions. Considering this, DORH emphasizes the lack of employees[118].

[116] http://www.dorh.hr/dorh07062018
[117] Law on Protection of Domestic Violence, Law on Amending and Supplementing the Law on Criminal Procedure, Law on Amending the Law on Witness Protection, the Law on Amending and Supplementing the Criminal Law.
[118] 2017 – there were 175 seats or just over 1/5 of the systematized places for deputy state attorneys

For a quality application of these laws, vocational education will be also needed, which would require additional funds.

Apart from the lack of staff, DORH's 2017 Report of highlights the problems with inadequate spatial capacities where the employees work, old and worn equipment, especially the equipment used for evidence recording. For that reason, for several years now, the Human Rights Committee and the Judicial Board of the Croatian Parliament have proposed the Government of the Republic of Croatia to increase the funds for work, which would enable adequate working conditions that will influence the quality and timely execution of the obligations.

In order to secure an efficient office of the Public Prosecution Service, **on July 6, 2018, the Croatian Parliament adopted a new Law on the Public Prosecution service which will enter into force on September 1, 2018**[119].

This law introduces a new way of appointing and dismissing the Prosecutor General in accordance with the recommendations made in the 4th Evaluation Round of the Group of Countries Against Corruption (GRECO) for the Republic of Croatia. At the same time, the actions of the civil and administrative units of the State's Attorney Offices that work on the protection of property rights and interests of the Republic of Croatia are better regulated, as well as the working methodology of the public prosecution office is expounded.

One of the novelties of the new law is the election of the Prosecutor General. The procedure for appointment shall be initiated by the National Prosecutorial Council with a public call published no later than six months before the expiry of the mandate or 30 days after the termination of the office, at the latest. The list of candidates will be submitted to the Government. The Prosecutor General may have two terms at most. The new law details the ways of dismissal of the Prosecutor General.

At the same time, on July 6, 2018, a Law on National Prosecutorial Council was adopted, which comes into force on September 1st, 2018. According to the provisions of this law, the Council is an autonomous and independent body that ensures the autonomy and independence of the DORH. The Council is consisted of seven Public Prosecutor Deputies, two Members of Parliament

[119] http://www.sabor.hr/-konacni-prijedlog-zakona-o-drzavnom-odvjetnistvu-

(MPs), one of whom is from the opposition party and two professors in legal sciences. For the purpose of electing the members, Selection Committee, Candidate and Electoral Boards will be set. The decision on election is published in Official Gazette of the Republic of Croatia and on the website of the Council. The voting is conducted in front of the election boards. Secrecy of the voting is envisaged.

The Council's scope of work contains, among others responsibilities, appointment and dismissal of PP's Deputy, and appointment and dismissal of County and Municipal PP. In addition, the Council is authorized to conduct disciplinary procedures, keeps oversight of the property cards, decide upon the objections to the assessments of the Public Prosecution Service, etc.

One of the novelties of the Law on the National Prosecutorial Council is publishing the rendered decisions and acts. Further on, the new law, in a certain extent, limits the mandate of the County and Municipal PP, but introduces a new disciplinary liability regarding the implementation of the regulations on personal data protection. The Supreme Court of the Republic of Croatia decides on appeals for decisions on disciplinary liability.

Certainly, the amendments to the laws that directly relate to the PPS are not sufficient in order to meet the objectives of the Strategy on reforms in the judicial system.

In that direction, the Ministry of Justice informed that all these needs related to the adequate spatial capacities, additional employment, promotion of a system for continuous professional development, internship possibilities in the Public Prosecution service, so as continuation of the advancement of the information system, will be secured from the EU IPA 2012 funds. Further computerization of the Public Prosecutor's Offices is planned to be funded by the European Social Fund.

At the same time, courts network reorganization imposed a need for changes within the network of the PPS, i.e. harmonization. The rationalization of the network of Municipal and County PPs was carried out in 2008, 2010 and 2015. In these processes, the Municipal Public Prosecution Offices were downsized to 22 out of the previous 71, while as the County Public Prosecution Offices to 15 out of the earlier 21[120].

[120] The current network of public prosecutors in the Republic of Croatia is stipulated with the Law on Areas and Seats of the Public Prosecutors (Official Gazette 128/14).

In the package of reform laws which will come into force in September 2018, there is a network of Public Prosecution Service. Thus, as of September 1st, 2018, in addition to the existing 22, three new Municipal Public Prosecution Offices will be established (Metkovich, Pazin and Vinkovci), enabling better organization of the work and uniform utilization of the existing resources.

6.3 How Croatia measures the performance of public prosecutors and in the justice sector generally

According to the Law on the Public Prosecution[121] the DORH has an obligation to submit an Annual Report on the situation and dynamics of the reported crime in the previous year, the cases related to the protection of the interests of the Republic of Croatia, as well as the situation with the personnel and the organizational structure.

This report is submitted to the Croatian Parliament, meaning that the highest parliamentary body carries out indirect oversight over the work of DORH. The annual report can warn about the situation and the functioning of the justice system, the shortcomings in the legislation and the internal organization of DORH, and give proposals for enhancement of the work.

The Croatian Parliament takes into consideration the DORH’s Report, while as the Government of the Republic of Croatia gives opinion. According to Article 122 paragraph 2 of the Government’s Rules of Procedures, the Government gives opinions, views and proposals regarding the Public Prosecutor’s Report. At the same time, through its Boards on Human Rights and Judiciary, the Croatian Parliament may propose amendments and supplements to the laws that would increase the efficiency of DORH.

The citizens may refer complaints to the Ministry of Justice about the work of the courts and the PP. In such matters, the Ministry of Justice may request a report from the General Prosecutor. The Ministry cannot interfere in the adoption of court’ decisions nor influence over the outcome of the procedure conducted by competent PP.

The NPC is a separate and independent body. It is solely responsible for appointing and dismissing the PP’s Deputies, appointing and dismissing

[121] Law on the Public Prosecution (NN 76/09, 153/09, 116/10, 145/10, 57/11, 130/11, 72/13, 148/13, 33/15, 82/15).

the Municipal and County PPs, deciding on the disciplinary liability of the attorneys, as well as controlling the property cards of the PPs and their deputies.

The implementation of the supervision enters as an internal segment of the PPS, as one of the important prerequisites for its successful and quality functioning in general.

In that sense, DORH has established a Department for Internal Control whose scope of work includes a supervision over the work of the Public Prosecutors' Offices of a lower rank, maintaining monthly and annual statistics, and takes care of the professional development of the prosecutors, their deputies, advisers and others. Apart of the regular supervision, an extraordinary supervision of the work of the regional PP is also carried out. Considering the hierarchical setup, DORH specifically supervises the county Public Prosecutors and USKOK. At the same time, the Public Prosecutors of a lower rank provide annual reports to the upper Public Prosecutors, hereby including the number of received, resolved and unresolved cases, review of the structure of the criminal, civil and administrative cases, indictment, representations and legal remedies.

The supervising function, a part of direct supervision, is also carried out through the work on complaints submitted by the citizens, no matter whether they were submitted to challenge the work of the prosecutor in general or for the work of a particular case. In most of the cases, submitters of complaints are damaged parties in criminal matters, defendants, submitters of criminal charges and other citizens dissatisfied with the course or the outcome of the court proceedings. The complaints are usually submitted to the competent or higher prosecutor, the Ministry of Justice, as well as other bodies, in writing or directly. Upon the submitted complaint, a report on the work and concrete acting in the specific case is requested and, if necessary, insight of the case is carried out. For the conducted inspection, the complainant shall be notified in writing, whereby the legal deadline for submitting a notification on the merits of the complaint varies from 15 to 30 days, depending on whether it refers to a specific case or in general to the work of the PP. At the same time, some of the submitted complaints relate to the duration of the criminal procedure, dissatisfaction with the procedural situation, dissatisfaction with the implementation of certain evidentiary matters.

In cases when there is a supervision for the purpose of determining the merits of the complaint, the PP's Deputy who handles the case shall be informed in writing on all detected irregularities, while as the conclusions shall be deposited in his personal case for the purpose of monitoring and further assessment of his work. According to the Law on Criminal Procedure, the lower rank prosecutor is required to undertake actions within the legally envisaged deadlines.

The Law on Public Prosecution and the Rulebook on the Public Prosecution envisage implementation of regular and extraordinary supervisions. Regular supervision is carried out once in two years. The supervision is carried out during a public call for transfer or appointment of a PP.

An extraordinary assessment will be undertaken when a disruption in the work of the prosecution service is concluded, for the purpose of determining and removing the reasons that led to it. The lawfulness, diligence and regularity of the work are reviewed, and at the same time the work of the Public Prosecution's administration and the work of the archive.

The continuous implementation of the supervision enables the acquisition of quality insight into the work of each prosecutor's office, but also in the individual work of every single one of them. This is taken into consideration when appointing new PP, their career promotion or dismissal in those cases where such actions are necessary for proper and lawful implementation of his/hers duties.

However, the perception in the media and among the citizens is that the PPS is not efficient enough. According to some media, the main problem in the system is the outflow of personnel and the small salaries. At the same time, the media emphasize that the Government for years has not approved funds for employment of new prosecutors, which is also emphasized in the DORH's reports submitted to the Croatian Parliament[122].

The citizens also submit complaints to the Ombudsman of the Republic of Croatia who forward them to the Prosecutor General. In the Ombudsman's latest report it was concluded that DORH does not initiate ex officio procedures when there is information on possible police violence[123].

[122] https://www.express.hr/top-news/novi-zbjeg-tuzitelja-iz-dorh-a-ostaje-pravosudna-mla-14091
[123] http://ombudsman.hr/hr/izvjesca-2017/izvjesce-pp-2017/send/82-izvjesca-2017/1126-izvjesce-pucke-pravobraniteljice-za-2017-godinu

A procedure is only initiated once the damaged person filed a criminal charge. In this regard, although the Ombudsman has no competence to conduct direct supervision over the work of the PP, however, in the 2017 Annual Report, recommends that DORH should ex officio carry out an effective investigation when there are allegations of possible police violence. It should be noted that the practice of the European Court of Human Rights (ECtHR) points to an ineffective investigation and violation of Art. 3 of the European Convention on Human Rights (ECHR) in some cases pertaining to the Republic of Croatia[124].

6.4 The level of cooperation between public prosecutors and other state Institutions in the process of justice sector reforms

Particular role contributing towards the efficiency of the Public Prosecution Service in detection of criminal offenses and their perpetrators, as well as in collection of relevant data and facts, plays the cooperation with the Police and other relevant bodies. For the most part, the initial collection of evidence lies within the Police, especially in relation to the criminal investigations, but once a reasonable doubt is determined, the prosecution is informed by filing a criminal charge.

In a small part of some more complex cases, the competent PP, especially USKOK and the specialized war crimes units, conduct investigations themselves thus continuously and directly monitor and direct the work of the Police. Once the Strategy is implemented, it is expected that it will link the application systems of the Police, the Public Prosecutor’s Office, the courts, and the delivery of cases, exclusively in an electronic form.

Pursuant the Article 88a of the Law on the Public Prosecution, a cooperation between the state bodies and the PPS is required in terms of the representation of the Republic of Croatia in courts and administrative bodies. The state bodies are obliged to appoint coordinators for cooperation with the Prosecution who will be obliged to respond in a timely manner to certain allegations or proposals, documentation they have, as well as opinions on the merits of some requests. In this way, efforts are made to more efficiently protect the property assets of the Republic of Croatia and

[124] Djurdjevic vs Croatia 2011, Madjer vs Croatia (2011.), V.D. vs Croatia (2011.) and Mafalani vs Croatia (2015.).

the state's property interests. In case of non-cooperation, DORH should notify the head of the competent body (the Minister) or the Government of the Republic of Croatia, as well as the Ministry of Justice.

The 2017 Report of the Public Prosecutor's Office emphasizes that the cooperation with the Customs Administration should be intensified (according to the new Law on Concession the Customs Administration acquired more powers in the monitoring of debt collection), so as the individual controls for unauthorized use of real estate that are or should be subject to concession.

The Public Prosecution also cooperates with the Government Agent's Office in the European Court of Human Rights in respect to the complaints submitted by individuals or other states for an alleged violation of a right under the ECHR. The Public Prosecution provides assistance and cooperation in preparing the answers in individual cases and delivers relevant documentation necessary for the defense of the Republic of Croatia in front of the ECtHR.

The Public Prosecution is also a member of the Expert Council for Execution of Judgments and Decisions of the ECtHR and through cooperation with the Unit for Enforcement of Judgments and Decisions of the ECtHR, actively participates in the enforcement procedures. In addition, this body identifies the reasons for the occurred violation, and proposes concrete general and individual enforcement measures.

In the Strategic Plan for Judicial Reforms 2017 -2019 as main objectives of the Ministry of Justice are the following:

- Strengthening of the judicial professionalism and transparency

- Strengthening the efficiency of the judiciary

- Strengthening the protection of human rights

- Effective suppression of corruption and organized crime

Legislative reform: For the purpose of of strengthening the PPS, the Strategy envisages the adoption of a new Law on the Public prosecution which basically changes the manner of election of the Prosecutor General through a transparent procedure.

Strengthening of the capacities: The Strategy emphasizes the need for continuous education and improvement of the education system where the PPs take part.

Advancement of the information technology system: Among other, the project Capacity Building and Efficiency of DORH / USKOK aims at increasing the efficiency through creation of modern, efficient and effective IT tools.

A special objective of the strategic plan is the fight against corruption and organized crime, and here DORH plays one of the key roles.

According to the Strategy, DORH should cooperate with the Government of the Republic of Croatia, the Ministry of Justice, as well as with other relevant bodies in order to implement its legal powers and effectively carry out its function, hereby mainly referring to the Police, but also to all other relevant bodies and organs for prosecution of the criminal offenses.

Based on the Strategy for Judicial Reforms, a decision has been made responsible persons for implementation of the reforms to be appointed[125] , thus it has been decided that the Assistant Minister of the Office for Organization of the Judiciary from Ministry of Justice will be in charge for advancing the work of the Public Prosecution Service, while as for implementation of the special objectives in respect to the fight against corruption and organized crime for the timeframe 2015-2020, the Assistant Minister in the Office for European Affairs, International and Judicial Cooperation will be in charge.

The new 2018 – 2020 Strategy[126] contains the same objectives with a key emphasis on the cooperation with the international bodies since in 2020 Croatia will be presiding with the EU Council.

The cooperation of DORH with the other judicial bodies, the Government of the Republic of Croatia and the Croatian Parliament is especially important in order to assess the achievements in the justice system reforms.

[125] https://pravosudje.gov.hr/UserDocsImages/dokumenti/Strategije,%20planovi,%20izvje%C5%A1%C4%87a/Planovi/Odluka%20o%20imenovanju%20odgovornih%20osoba%20za%20provedbu%20Strate%C5%A1kog%20plana%20Ministarstva%20pravosu%C4%91a%202017%20do%202019.pdf
[126] https://pravosudje.gov.hr/UserDocsImages/dokumenti/Pravo%20na%20pristup%20informacijama/Strateski%20plan%20Ministarstva%20pravosudja%20za%20razdoblje%202018_2020.pdf

6.5 The methodology and outcome of measuring prosecutorial performance

- DORH's Annual Report - provides an overview of the promptness and efficiency in all fields individually i.e the total number of resolved criminal charges, initiated indictment, number of rulings, representations in litigations or administrative proceedings when it comes to the property assets of the Republic of Croatia.

- The Government of the Republic of Croatia submits an Opinion on DORH's Report and implements the Strategy for Reforms in the Judicial System.

- Internal supervision carried out by the DORH on the basis of a fixed annual plan or a submitted complaint, thus controlling the work of the PPs with a possibility for issuing a disciplinary sanction.

The supervision affects the career of the prosecutors and their deputies, but may also point out the weaknesses in the functioning of the whole system in general, thus imposing a need for amending or enhancing the prosecutorial system.

There is no system of self-evaluation or assessment of the procedures of the PPSby a separate monitoring body, having in mind that the current constitutional set up declares DORH as an autonomous and independent body.

6.6 Positive and negative aspects of the system for measuring the performance of PP in Croatia

In general, still prevails the public perception that the Public Prosecution is not immune of political influence. Hence, the reform legislation adopted in 2018 and the changes related to the Prosecutor General elections may change such public views.

On the account of the negative perception goes the view that DORH has no proactive role and that mainly relies on the work of the other organs, primarily on the Police.

Certainly, we should also take into consideration the earlier remarks listed by DORH in its Reports submitted to the Croatian Parliament. The 2017 Report proposes:

- creation of legal and material conditions for employment of the required number of employees, as well as technical staff;

- instruction of foreign languages and introduction of continuous education and training of the officials in the Public Prosecution service;

- provision of adequate equipment, mainly for USKOK, but also for the County Public Prosecutors' Offices;

- securing additional information and communication equipment;

- increase of financial resources for intellectual services, procurement of professional literature and financial compensation for carrying out tasks during duty hours.

Greater efficiency and effectiveness has been expected by DORH although they were faced with lack of human and material resources which certainly affected its level of performance. By the end of 2017, not all envisaged vacancies were filled, but the efforts made by the Government of the Republic of Croatia and the Ministry of Justice aime at ensuring a sufficient number of human resources as a key priority among the measures listed in the Judicial Reforms.

6.7 Croatia: Conclusions and recommendations

Republic of Croatia lately has begun the reforms in the justice system that comprises three components: legislative amendments, strategy for capacity building and enhancement of the information technology.

The novelties re the election of the Prosecutor General through a transparent procedure give hope for election of an independent person who will exercise the competencies skilfully, professionally and without political pressure. However, in light of the new Law on the Public Prosecution, the list of candidates applying for a publicly announced vacancy call will be

submitted to the Government which may blur the procedure and open possibilities for some political influences.

Even when adopting the package of legislative reforms, the opposition reacted that the changes imposed are only of technical and not of essential nature; the selective approach has not been addressed yet since some procedures go fast, some get stuck, and on the other hand the fight against organized crime does not move forward.

According to the comments, the National Prosecutorial Council should not only endorse the applications received on the published vacancy call and compile a list that will later be submitted to the Government of the Republic of Croatia, but the Council should also prepare opinions for each candidate and forward it to the Government as a starting point for assessing the candidates[127].

As a conclusion it should be emphasized that as part of the judicial reforms, DORH should raise and become a real autonomous and independent body as per the Constitution of the Republic of Croatia, while as the Government should secure it with both material and personnel conditions for implementation of all its competencies acquired in the last period, in particular after the amendments of the Law on Criminal Procedure.

[127] http://www.nacional.hr/oporba-tvrdi-da-ni-drugi-dio-vladina-pravosudnog-paketa-nije-reformski/

7.Measuring the Performance of Public Prosecutors in Republic of Macedonia

7.1. Legal framework on the position, organization and competencies of the Public Prosecutor's Office

7.1.1 Constitutional standing of the Public Prosecutor's Office

The Constitution of the Republic of Macedonia (RM)[128] and Amendment XXX to the Constitution of the Republic of Macedonia from 2005 define the constitutional standing of the Public Prosecutor's Office (PPO) within the government and justice system[129]. The Public Prosecutor's Office is the sole and independent state authority responsible for the prosecution of perpetrators of crimes and other punishable acts by law and other operations as prescribed by law. The Public Prosecutor's Office performs its functions based on the Constitution, laws and international agreements that had been ratified in accordance with the Constitution and thus had become part of the domestic legal order. The Constitution provides the basis for the legal definition of the competences, establishment, abolishment, organization and functioning of the Public Prosecution Office, as matters that are regulated by the Law on the Public Prosecutor's Office (hereinafter referred to as LPPO)[130]. The functions within the Public Prosecutor's Office are being performed by the Public Prosecutor of the Republic of Macedonia and the public prosecutors in the basic and Higher Public Prosecutor's Offices and the Public Prosecutor's Office of the Republic of Macedonia.

In order to make sure that prosecutors are performing their duties in an objective and professional manner, it is prohibited for public prosecutors to be members of political parties or to perform other public functions or professions. At the same time, the Constitution expressly prohibits any kind of political organization or activities within the Public Prosecutor's Office.

[128] "Official Gazette of the Republic of Macedonia", number 52/1991.
[129] "Official Gazette of the Republic of Macedonia", number 107/2005.
[130] "Official Gazette of the Republic of Macedonia", numbers 150/2007 and 111/2008.

With regards to the appointment of public prosecutors, the Constitution provides for a twofold appointment and dismissal system. Namely, the Parliament of the Republic of Macedonia, after receiving an opinion from the Council of Public Prosecutors (CPP), appoints and dismisses the Public Prosecutor of the Republic of Macedonia. Pursuant to the Constitution, the Public Prosecutor's term in office is 6 years and has a right to be reelected. The Constitution also contains certain provisions that refer to the Council of Public Prosecutors. Its competencies, composition, structure, terms in office of its members, as well as the basis and the procedure for the appointment and dismissal of any of its members are regulated by the Law on the Public Prosecutors' Council of the Republic of Macedonia[131]. Pursuant to its competencies defined by the Constitution, the Council of Public Prosecutors appoints the public prosecutors without any term limits and it also has the authority to dismiss them.

Pursuant to the conditions prescribed in the Constitution of the Republic of Macedonia, when appointing public prosecutors, one has to observe the requirement for an adequate and fair representation of citizens from all the various communities.

It is the Council of Public Prosecutors that decides on any dismissals of public prosecutors. The grounds and the procedure for termination and dismissal of the Public Prosecutor of the Republic of Macedonia and the other public prosecutors are regulated by the Law on the Public Prosecutor's Office.

The law contains an explicit provision on the incompatibility of the position of the Public Prosecutor of the Republic of Macedonia and the other public prosecutors with a political party membership or the performance of other public functions and professions as regulated by law, and at the same time it prohibits any kind of political organization or activities within the Public Prosecution Office.

Public prosecutors do not enjoy immunity as a constitutional category and they only enjoy functional immunity, which basically means that public prosecutors may not be detained or held criminally liable for any actions taken, given opinions and passed decisions whilst performing their prosecutorial function and they may not be the subject of any compensation claims or any other types of proceedings, initiated by parties that are dissatisfied with the prosecutorial decision.

[131] "Official Gazette of the Republic of Macedonia", number 150/2007.

7.1.2. Historical development and competencies of the public prosecution organization

The development of the public prosecution organization has gone through several stages: the very first begun with the adoption of the LPPO of Republic of Macedonia in 1992 and the second stage took place between 1992 and 2004. The third stage covered the period from the adoption of the LPPO in 2004 and lasted until the adoption of the LPPO in 2007. The fourth stage started in 2007 and is still ongoing.

The **LPPO from 1992** regulated the establishment of the public prosecution offices, their organizational setup and competencies, territories of jurisdiction and their official seats, as well as the conditions and the procedure for the appointment and dismissal of the public prosecutors and their deputies. A public prosecutor may have one or more deputies, and the precise number used to be determined by the Parliament of the Republic of Macedonia. All public prosecutors and their deputies used to be appointed by the Parliament of the RM upon a nomination by the Government of RM and an opinion provided by the Public Prosecutor of the Republic of Macedonia for e term of six years, with a possibility for reelection. The functions of a public prosecutor and deputy public prosecutor were incompatible with the position of a Member of Parliament, i.e. councilor, as well as with the positions within the various state authorities in the Republic, municipalities and the City of Skopje and these individuals were not allowed to assume any political positions or to be members of political parties or other political associations. The accountability system was setup in a way so that the public prosecutors would be held responsible for their own work and the functioning of their prosecution office before the Parliament of the RM and the deputy public prosecutors would be held responsible before the public prosecutors and the Parliament of the RM. Public prosecutors and their deputies used to enjoy immunity. This law provided for the abolishment of the military prosecution offices, which were supposed to hand over any received criminal reports and incomplete cases to the competent public prosecutors offices for further action.

Pursuant to the **LPPO from 2004**, the public prosecutors offices performed their functions based on the Constitution, laws and international agreements, ratified in accordance with the Constitution of the RM. According to this Law, the public prosecution service was organized pursuant to the principles of hierarchy and subordination and it comprised

of a Public Prosecutors Office of the Republic of Macedonia, Higher Public Prosecutor's Office (HPPO) and Basic Public Prosecutor's Offices (BPPO). The Public Prosecutor's Office of the Republic of Macedonia was established for the entire territory of the country and appeared before the Supreme Court. The three Higher Public Prosecutor's Offices in Bitola, Skopje and Shtip appeared before the appellate courts and the remaining 22 Basic Public Prosecutor's Offices appeared before one or more basic courts. The Higher Public Prosecutor's Offices are authorized to monitor the work of the lower public prosecutors offices by reviewing their case files and otherwise. For the first time within the Public Prosecutors Office of the Republic of Macedonia, this Law provided for the establishment of a Department for Prosecuting Crimes in the Field of Organized Crime and Corruption. This Law also provided for the establishment of the Council of Public Prosecutors, for the purpose of implementation of the procedure for appointment, dismissal and establishment of responsibility in the performance of the functions by the public prosecutors and deputy public prosecutors.

Amendment XXX to the Constitution of RM was adopted in 2005 and it prescribed a new way of regulation of the public prosecutorial functions within the public prosecution, by excluding the deputy public prosecutors from the overall public prosecution structure. There was a need to enact a new LPPO in order to harmonize it with the amendments.

The **LPPO from 2007**, which is still valid and in force, provided for the establishment of a new Higher Public Prosecutor's Office in Gostivar, as a result of the establishment of the new Appellate Court in Gostivar and also for the transformation of the Department for Prosecuting Crimes in the Field of Organized Crime and Corruption into a separate Public Prosecutor's Office for Cases Related to Organized Crime and Corruption. The public prosecutorial function is being performed by public prosecutors of the public prosecution offices and public prosecutors in the public prosecution offices (a new title for the former deputies).

The L**aw on the Criminal Procedure (LCP)** of 2010 strengthened the role of the public prosecutors in the fight against perpetrators of criminal offences that are being prosecuted ex officio and public prosecutors were given a managerial role during the preliminary proceedings, much greater authority in the party-driven criminal proceedings, a role in the sentence bargaining, as well as greater care for the rights of the victims, especially for the rights of the vulnerable victim categories. A new PPOL is being

drafted currently (hereinafter referred to as 2018 PPOL Proposal), in an attempt to harmonize the PPOL with the new competencies as provided in the LCP and strengthen the position of the Public Prosecution Office.

The Law on the **Public Prosecutor's Office for Prosecuting Criminal Offences Related to and Arising from the Content of the Illegally Intercepted Communications**[132] (hereinafter referred to as the SPPO) was enacted in 2015, in an attempt to resolve the political crisis in RM at that time. This Law provided for an exceptional type of organization, authority, appointment and responsibility of the SPPO pursuant to the Przino Agreement, as a political agreement that provided the basis for the establishment of the SPPO. This Law regulated the authority, establishment, abolishment, organization and the operation of the SPPO, the basis for the appointment and dismissal of the Public Prosecutor and other issues related to the operation of this public prosecution office. This Law will be in force for five years after its adoption by the Parliament and its validity may be extended, one year at a time, by means of a decision adopted by two thirds of the members of Parliament. The appointment of the Public Prosecutor heading the SPPO follows a specific procedure. Namely, following a proposal by the parliamentary Committee on Elections and Appointment Issues within the Parliament of the Republic of Macedonia, with the consent of the four major political parties with the largest number of MPs in the Parliament of the Republic of Macedonia, upon a proposal by the Parliament of the Republic of Macedonia, the Council, without an open call, appoints the Public Prosecutor for a term of four years and the right to be re-elected. The Parliament determines the prosecutorial candidate by means of a two-thirds majority vote, including the majority of the MPs who belong to the communities that are not majority and duly notifies the Council of Public Prosecutor of RM thereof. The Council of Public Prosecutors then appoints the Public Prosecutor during a session that has to be attended by at least two thirds of its members. The SPPO has jurisdiction over the entire territory of the Republic of Macedonia and its seat is in the city of Skopje. The Public Prosecutor who manages the SPPO is authorized to take action and represent cases before the basic courts, appellate courts and the Supreme Court of the Republic of Macedonia. The Public Prosecutor has full discretion in the investigation and prosecution of criminal offences related to and arising from the content of the illegally intercepted communications in the period 2008-2015, including but not limited to the audio recordings and transcripts delivered to the Special Public Prosecution before July 15, 2015. None of

[132] Also known as Special Public Prosecutor's Office

the public prosecutors in the Public Prosecutor's Office of the Republic of Macedonia, including the Public Prosecutor of the Republic of Macedonia, may not influence the work of the SPPO or ask for reports related to cases processed by the Public Prosecutor of the SPPO or other public prosecutors from the SPPO. The Public Prosecutor of the Republic of Macedonia or any other public prosecutor may not initiate investigations or criminal prosecution for cases that fall under the jurisdiction of the Public Prosecutor of the SPPO without his or her written consent. The Public Prosecutor of the SPPO shall be held responsible for his or her work before the Parliament of the Republic of Macedonia and before the Council of Public Prosecutors. Following the closure of the SPPO, its public prosecutors, administrative staff and investigators shall be transferred to the Public Prosecutor's Office to job positions with similar salaries.

7.2 Strategic documents regarding the position of the Public Prosecutor's Office

The Stabilization and Association Agreement with the European Community and its Member States is the legal framework that regulates the relations between the Republic of Macedonia and the European Union[133]. The Republic of Macedonia signed the Agreement on April 9, 2001 and it entered into force on April 1, 2004. The issues of institutional strengthening and the rule of law are especially emphasized in Chapter VII, which relates to the field of justice and internal affairs.

One of the goals of the National Strategy for EU Integration of RM of 2004 was the development of European standards in the justice area and institutional reforms, aimed at providing for the rule of law and consistent application of the principle of division of power[134]. The Strategy included measures aimed at reforms at the Public Prosecutor's Office, including strengthening of the position and authority of the public prosecution in prosecuting crimes, as well as strengthening its capacities especially in the prosecution of organized crime and full incorporation of the Council of Europe Recommendation (2000) 19 on the Role of the Public Prosecution in the Criminal Justice system[135]. The Council of Public Prosecutors of the

[133] http://www.sep.gov.mk/data/file/SSA/SSA(1).pdf
[134] https://www.sobranie.mk/WBStorage/Files/Nacionalna_strategija%2006.09.04.PDF.
[135] Recommendation Rec (2000) 19 on the role of public prosecution in the criminal justice system, Committee of Ministers of the Council of Europe, 6 October 2000.

Republic of Macedonia was established afterwards. It was also required to promote the Code of Conduct for the public prosecutors. The need to strengthen the capacities of the Public Prosecutor's Office for combating organized crime and corruption was also identified and therefore a new appropriate department was established. One also emphasized the need to strengthen the capacities of the Public Prosecutor's Office for regional cooperation with other prosecution services, as well as for cooperation with relevant institutions and associations from the EU Member States.

The general goal of the Strategy for the Reform of the Justice System of 2004[136] is building a functional and efficient justice system based on European legal standards. With regards to the public prosecutorial organization, the Strategy emphasizes the need for upgrade of the legal framework defining the position of the Public Prosecutor's Office, aimed at providing a new procedure for appointment of public prosecutors, as well as increasing the efficiency in the performance of its basic functions. The following solutions have been provided as part of the proposed measures and activities for public prosecutorial reforms: life tenure for deputy public prosecutors; establishing e separate department for organized crime and corruption; new structure for financing of the public prosecutorial organization; and establishing the Council of Public Prosecutors. Aimed at further promotion of the public prosecution organization's status, the Strategy pointed out the following points: hiring additional staff to satisfy the needs of personnel and providing the Public Prosecutor's Office with the necessary operational materials and technical means, especially in the Department for Prosecuting Crimes in the Field of Organized Crime and Corruption; implementation of the constitutional and legal provisions regarding community representation; education of public prosecutors; the salary system for public prosecutors and their deputies; IT system and software application at the public prosecution; as well as strengthening the autonomy and independence of the public prosecution in relation to the appointment of public prosecutors, by strengthening the position of the Council of Public Prosecutors.

The Strategy of the Reform of the Criminal Legislation of 2007-2009[137] was adopted in May 2007 and its goal was to harmonize the criminal legislation with the European standards. The Strategy provided for essential systemic changes in the current model of the domestic criminal procedure, in

[136] Government of RM, Ministry of Justice, November 2004.
[137] http://arhiva.vlada.mk/registar/files/strategija_kazneno.pdf.

order to eliminate any dysfunctional elements. This goal has been met be the enactment of the Law on the Criminal Procedure of 2010, whose implementation started in December 2013.

7.3. Parameters for measuring the performance of the Public Prosecutor's Office

As of 2007, there are several bases that have been prescribed for measuring the performance of the Public Prosecutor's Office:

- the Annual Performance Report; the grounds for disciplinary responsibility;
- supervision by the higher public prosecutor and
- the internal audit department at the PPO of RM.

The suggested changes that are expected to be introduced with the 2018 LPPO proposal are briefly presented in this paper and are aiming at strengthening the aspects of professionalism and responsibility amongst public prosecutors.

Annual performance report – Each public prosecutor's office prepares an Annual Performance Report, whereas the Public Prosecutor's Office of the Republic of Macedonia prepares a single Annual Performance Report for all public prosecutors' offices and regarding the crime situation in the Republic of Macedonia and submits it to the Parliament of the Republic of Macedonia. The Annual performance report is given for review to the Council of Public Prosecutors of the Republic of Macedonia and copies of the Report are also made available to the Government of the Republic of Macedonia, the Supreme Court of the Republic of Macedonia and the Ministry of Justice. Pursuant to the **2018 LPPO Proposal**, once a year, the Public Prosecutor of the Republic of Macedonia shall be obliged to deliver a Report on the use of special investigative means (with contents as defined in the LCP) to the Parliament of the Republic of Macedonia.

Disciplinary responsibility – The procedure for establishing disciplinary responsibility of public prosecutors is regulated by separate Bylaw adopted by the Council of Public Prosecutors of the Republic of Macedonia on 12.09.2008, whilst the types of disciplinary violations and applicable disciplinary measures are regulated by the LPPO of 2007. There are two types

of disciplinary violations: serious disciplinary violations (serious violation of the public order and piece, serious violation and disrespect of the honour and dignity of parties or other participants, conduct unbecoming, violation of the non discrimination principle) and disciplinary violations (indecent and shameful behaviour in public, receiving gifts and other benefits, involvement in partisan and political activities etc.). The LPPO also defines the term of unprofessional performance of the public prosecutorial function (insufficient professionalism and capability that influences the quality of the work, lack of knowledge or wrongful application of the laws, ratified international agreement and other regulations, making poor quality public prosecutorial decisions), as well as the term of negligent performance of the public prosecutorial function (serious violations of the norms prescribed by the public prosecutorial Code, illegal, untimely or reckless performance of public prosecutorial duties, partiality, unauthorized dissemination of classified information, data regarding prosecution cases and unjustified refusal of unwillingness to follow instructions). An Ethics Council for the prosecution service has already been established within the PPO of RM.

The prescribed disciplinary measures are as follows: written warning; public reprimand; reduction of the public prosecutor’s monthly salary in the amount of 15% to 30% for one to six months; suspension and dismissal from the public prosecutorial function.

The **2018 LPPO Proposal** introduces certain changes with respect to disciplinary responsibility. Violations have been defined as either serious or minor. Minor violations have been completely redefined, bearing in mind the fact that the conceptual setup of the current disciplinary violations in the LPPO is inappropriate. Amongst other, it is proposed that the minor violations should also include the following: working the cases in an order that is different from the order in which they have been received; being absent from or late to court sessions; inadequate or insulting behaviour and treatment of certain people; unjustified absence from work during working hour or inappropriate behaviour towards colleagues and other employees at the PPO of RM. The serious violations have been redefined as well: failure to ask for recusal in cases when there are reasons for the prosecutor’s recusal; failure to act for no justified reasons thus causing the statute for limitations for criminal prosecution to expire; preventing the superior prosecutor from supervising his or her work etc. The unprofessional performance of the public prosecutorial function, amongst other, includes any wrong application of the laws or other regulations thus causing the public prosecutor to lose his

or her procedural rights, damages to the parties or any other participants in the proceedings; omissions that do not provide for protection of the public interest; poor quality in drafting prosecutorial decisions as identified during at least three supervisions by superior public prosecutors etc.). The negligent performance of the public prosecutorial function includes non-diligent or illegal performance of the function, unauthorized dissemination of classified information and failure to observe the mandatory instructions given by the senior public prosecutor.

With regards to the disciplinary measures, **2018 LPPO Proposal** provides only two measures in the event of a minor violation: Written warning or reduction of the public prosecutor's monthly salary in the amount of 15% for one to six months. Two measures may also be imposed for a serious disciplinary violation or unprofessionalism or negligence: reduction of the public prosecutor's monthly salary in the amount of 15% to 30% for one to six months or dismissal.

Inspections of the lower public prosecutor's offices by the Higher PPO and the PPO of RM – The manner of inspection of the public prosecutor's offices is prescribed by the Council of Public Prosecutors by means of a separate Bylaw. The higher public prosecutor's offices inspect the work of the lower public prosecutor's offices and the way they have dealt with specific individual cases. It is the Public Prosecutor's Office of the Republic of Macedonia that inspects the work and treatment of individual cases by the Basic Public Prosecutor's Office for Cases Related to Organized Crime and Corruption. The inspection and monitoring of the treatment of individual cases is done so as to identify the existence of the following: insufficient professionalism and capability; lack of knowledge of the laws, ratified international agreements and other regulations; wrongful application of the laws, ratified international agreements and other regulations; serious violations of the norms prescribed by the public prosecutorial Code; illegal, untimely or reckless performance of public prosecutorial duties; partiality; serious violations of the rights of the parties and other participants in the proceedings; and violations of the non discrimination principle on any grounds.

The **2018 LPPO Proposal** prescribes that the inspection is to be carried out on the basis of a Bylaw enacted by the Public Prosecutor of RM and the inspection is associated to the lawful and timely performance of the public prosecutorial functions. There are certain changes when it comes to the

inspection of the work of the Basic Public Prosecutor's Office for Organized Crime and instead of the Public Prosecutor's Office of RM, the inspection is to be carried out by the Higher Public Prosecutor's Office in Skopje and the Public Prosecutor of the Republic of Macedonia. When it comes to the SPPO, it is the Public Prosecutor of the Republic of Macedonia who is in charge of inspecting the lawfulness and timely performance of public prosecutorial functions related to the recorded conversations as regulated by the special law originating from the Przino Agreement. With regards to the other competencies vested in the SPPO, the inspection task belongs to the Higher Public Prosecutor's Office in Skopje and the Public Prosecutor of the Republic of Macedonia.

In conclusion, even though there are several parameters which may be considered as a base for evaluation of prosecutor's performance, the same are not sufficient enough in providing substantive and objective data for evaluation of their work. At present there is no comprehensive performance monitoring system in place for wide-ranging and objective oversight of the Public Prosecutor's Office. Amongst other objectives, the Strategy for Reform of the Judicial System (2017-2022) aims to stimulate transparency and accountability of the judicial institutions, including the PPO, and to develop systems for evaluation and performance monitoring for the overall justice system. Such system will be highly useful not only for developing evidence-based policy that would inform the organisational restructuring but also for feeding future policy-making as well as defining more effective reform measures in line with the internationally set standards.

7.4. Relevant aspects related to the performance of the Public Prosecutor's Office

7.4.1. 2016 European Commission Report on Macedonia

The 2016 European Commission Report on Macedonia[138] states that the justice system in the country has shown a certain degree of progress, following the regression process that started in 2014. Some of the achievements of the reforms implemented during the previous decade have been undermined by the constant interference of politics in the

[138] https://www.sobranie.mk/content/%D0%9D%D0%A1%D0%95%D0%98/izveshtaj_na_evropskata_komisija_za_republika_makedonija_2016_godina-mk2-raboten_prevod.pdf (in Macedonian language).

judicial system. The Government had not shown sufficient political will to effectively resolve the basic problems listed as “future reform priorities”. A certain level of preparedness has been identified with regards to the fight against corruption, however, corruption still prevails in many of the areas and it represents a serious problem.

The European Commission (EC) pointed out the following necessary steps:

- Depoliticization of the appointment and promotion systems in practice and not just in the legislation;

- Providing full support and the necessary resources for the Special Public Prosecution Office;

- Conducting reforms of the system for disciplinary measures and dismissal of judges, pursuant to EU and Venice Commission’s recommendations;

- Developing a serious strategy for judicial reforms and an action plan that will provide for elimination of the remaining shortcomings in a sustainable manner;

- Improvement of the strategic planning, needs assessments, management and allocation of resources within the judiciary, as well as within the Ministry of Justice.

With respect to the selection of members in the Judicial Council of RM and the Council of Public Prosecutors of RM by the Parliament, the EC has expressed its concerns regarding the merits and professional experience of some of the members and the performances of the professional staff.

The Council of Public Prosecutors is yet to be provided with its own budget, appropriate IT support and personnel.

The work of the Special Public Prosecution Office (SPPO) that was established in 2015 so as to investigate the cases related to the wiretap scandal was continuously obstructed in practice. There are demands for the SPPO to be allowed to perform its functions independently and to ensure the necessary legal and institutional basis that would enable the Special Public Prosecutor to operate unhindered.

Currently, there are 280 public prosecutors in the country. In 2015, additional 130 administrative staff was hired by the public prosecution offices without a previously clearly defined strategy. The number of employees at the Department for Prosecuting Crimes in the Field of Organized Crime and Corruption continued to increase with the employment of 10 new individuals. Nine support staff had been hired at the Basic Public Prosecutor's for Organized Crime and Corruption in 2014 and additional 13 in 2015. The average number of public prosecutors per 100 000 inhabitants in Macedonia is slightly below the European average. A more significant difference is identified in reference to the number of professional staff supporting the work of the prosecutors which is significantly lower than the European average[139].

In 2016, the per capita budgets of the courts and the public prosecution organization were much smaller in comparison with the European average, whilst the number of judges and judicial personnel per 100.000 capita is significantly higher than the European average, thus raising certain issues related to work efficiency and proper allocation of resources.

7.4.2. Conclusions and recommendations by the EC Senior Experts' Group regarding the Public Prosecutor's Office

The Senior Experts' Group analyzing the systemic rule of Law issues relating to the communications interception revealed in the spring of 2015, found significant weaknesses and identified five critical areas, including the area of the judiciary and the public prosecution[140]. According to its recommendations, the judiciary and the public prosecutorial service need to be capable of working in an independent and unbiased manner, thus avoiding leaving an impression of operating in a selective and unbalanced manner in certain cases. It was established that there is a perception that the common standards are being neglected in certain areas, especially when it comes to cases that are considered to have a political dimension or of interest to the politicians. The Group has indicated the need of further reforms, especially with regards to the appointment, promotion and

[139] https://rm.coe.int/european-judicial-systems-efficiency-and-quality-of-justice-cepej-stud/1680788228

[140] The former Yugoslav Republic of Macedonia: Recommendations of the Senior Experts' Group on systemic Rule of Law issues relating to the communications interception revealed in Spring 2015, Brussels, 8 June 2015, https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/news_corner/news/news-files/20150619_recommendations_ of_the_senior_experts_group.pdf.

dismissal of judges and public prosecutors. In the Group's opinion, there are a sufficient number of well qualified and trained judges, public prosecutors and judicial administrative workers, required for the efficient functioning of the justice system. Any appointments and promotions of judges and public prosecutors have to be made by the Judicial Council and the Council of Public Prosecutors, following transparent and objective criteria that are strictly based on the merit system. These procedures have to be transparent and prescribed by law and not just by internal rules.

The second Report by the Senior Experts' Group for 2017[141] concludes that the entry into the judiciary and the public prosecution service, as well as any subsequent appointments and promotions, have to be based on high standards and merits, instead on political considerations. The Special Public Prosecution Office has shown its commitment and competence, however, the limitations and obstructions of the work of the SPPO raise the issue of continuity, which is of vital importance and has to be provided for through an appropriate legal framework. There are certain indications that the SPPO is not willing to ask for support or to order certain investigative measures to be conducted by the Organized Crime Department or the Special Investigative Means Sector within the police, which might be explained by the lack of conviction that the police is truly free of any political influence. The Basic Public Prosecutor's Office for Organized Crime and Corruption has the qualitative capacity required to conduct investigations and prosecute, however, it is not immune to any direct and indirect external influences when investigating potential cases of corruption.

7.5. Further strategic steps for the reform of the Public Prosecution Office

In accordance with the Strategy for Reforms of the Judicial Sector for 2017-2022, there are clearly defined directions for the improvement of the justice system in general, and by the same token of the public prosecution. In order to overcome the current weaknesses of normative and institutional character, the Strategy considers the basic problem of interference by the

[141] The Former Yugoslav Republic of Macedonia: Assessment and recommendations of the Senior Experts' Group on systemic Rule of Law issues 2017, Brussels, 14 September 2017, https://ec.europa.eu/neighbourhood-enlargement/ sites/near/files/2017.09.14_seg_report_on_systemic_rol_issues_for_publication.pdf.

executive branch of the government and partisanship, as a reason for the decline and lack of functionality of the overall justice sector. According to the recommendations contained in the Strategy, the SPPO of RM should be given the primary role in the policy creation process in the areas of institutional management and management of the public prosecution offices, whilst the PPO of RM should have the primary role in the design of the policies related to the application of the criminal law by the public prosecution offices and the procedures that are to be followed.

The goals of the Strategy include the following aspects:

- Elimination of any laws that endanger the autonomy, independence and impartiality of the judges and the independence of the public prosecution from the legal order;

- Review of the judicial system and the public prosecutorial system from the aspect of the institutional network and authority, availability of personnel and funding;

- Providing for the necessary financial, personnel, IT and other conditions, with an urgent increase in budget investments, in order to improve the efficiency of the judiciary and the public prosecution service;

- Compulsory review of the system for assessing the quality and efficiency of the work of judges and public prosecutors in the context of the commitment to base the performance evaluation system on new objective, quantitative and qualitative criteria and to be focused on professional skills, capabilities, integrity and experience: professional capability (knowledge of the law, capability to lead court proceedings, capacity to write well reasoned judgments), personal capability (being able to deal with the allocated number of cases, decision making capability, openness to accept new technologies), social skills i.e. mediation capability and showing respect for the parties and in addition, possessing leadership capabilities and skills;

- When promoting a judge or a public prosecutor, one should take under consideration his or her years of service, performance evaluations in the past and the complexity of the cases that he or she has been working on;

• The disciplinary responsibility of public prosecutors is regulated with bylaws, however, what is missing are functional and transparent mechanisms for clear definition of the grounds for establishing responsibility, initiation and course of the procedure for establishing disciplinary responsibility and proportionality of disciplinary measures;

• Adjustment of the size of the judicial and prosecutorial budgets according to their real needs;

• Functional electronic case management system that will provide for electronic allocation of cases by preserving the principle of incertitude. The proper functioning of the case management system requires consistent application and greater engagement and willingness on the part of the public prosecutors and the prosecution service, as well as additional technical resources. Its realistic utilization and the introduction of an electronic case allocation system will contribute towards institutionalization of the principle of functional (personal and procedural) prosecutorial independence;

• Overcoming the problem of public prosecution offices sharing the same buildings with the courts and making sure that enough office space is provided, thus ensuring successful work of the public prosecution offices;

• One needs to separate the system for individual performance evaluation of the prosecutors from the performance evaluation system of the entire prosecution service as an institution and it is also necessary to regulate the procedure for establishing disciplinary violations or unprofessional and negligent performance of the prosecutorial functions in the Law on the Public Prosecutor's Office;

• Establishing inter-institutional operational cooperation and synchronization of the work of the public prosecution with all the other entities that are involved in criminal prosecution, the courts, penitentiaries and the Macedonian Bar Association.

7.6 Macedonia: Conclusions and recommendations

The following recommendations derive on the basis of the previously listed aspects that are an undeniable indicator of the identified weaknesses, inconsistencies, shortcomings and problems that the public prosecution service is facing from several different aspects:

- At present, there is no relevant methodology or system in place for objective monitoring, measurement and evaluation of the performance of the public prosecution. Such system would be not only helpful in assessing the current performance within the prosecutorial system but it will also identify its needs and weaknesses, measure the results of implemented initiatives and reforms and incentivise better performance in the future;

- Disciplinary responsibility should be a topic regulated by the law, as well as the evaluation criteria and procedure;

- Strengthening the interoperability of state authorities and the public prosecution service;

- Increased inspection of the lower prosecution offices by the higher prosecution offices;

- Emphasizing the role and competence of the professional staff meetings at the public prosecution offices;

- Providing appropriate office space for the accommodation of the public prosecution services;

- Full employee roster with public prosecutors and other professional and technical personnel;

- Activation of the IT system for automatic case allocation.

8. International instruments and standards for measuring the performance of public prosecutors

Assessing a criminal justice system is a particularly challenging task when there is insufficient qualitative and quantitative information available on the system itself, the problems and obstacles the system is confronted with, or on the resources available for monitoring and measuring performances of particular sectors of the criminal justice system per se. This paramount task has been quite challenging not only for the individual states continuously striving to achieve success in properly measuring its justice system, but also for the international community as well.

Today there are numerous international institutions and associations that produce instruments and reports for monitoring and measuring various aspects regarding the performance of different segments of countries justice systems such as: European Commission for the Efficiency of Justice (CEPEJ)[142], EU Justice Scoreboard[143], EC progress reports on EU candidate countries[144], European Network of Councils for the Judiciary (ENCJ)[145], Network of the Presidents of the Supreme Judicial Courts of the EU (NPSJC)[146], Association of the Councils of State and Supreme Administrative Jurisdictions of the EU (ACAEurope)[147], Eurostat[148], World Justice Project (WJP) Rule of Law Index (ROLI)[149], World Bank[150], United Nations (UN)[151] and others.

[142] The acronym is in French and stands for Commission Européenne pour l'Efficacité de la Justice
[143] https://ec.europa.eu/info/sites/info/files/justice_scoreboard_2018_en.pdf
[144] https://ec.europa.eu/neighbourhood-enlargement/countries/package_en
[145] ENCJ unites the national institutions in the Member States that are independent of the executive and legislature, and who are responsible for the support of the judiciaries in the independent delivery of justice: https://www.encj.eu/
[146] NPSJC provides a forum through which European institutions are given an opportunity to request the opinions of Supreme Courts and to bring them closer by encouraging discussion and the exchange of ideas: http://network-presidents.eu/
[147] ACA-Europe is composed of the Court of Justice of the EU and the Councils of State or the Supreme administrative jurisdictions of each EU Member State: http://www.aca-europe.eu/index.php/en/
[148] Eurostat is the statistical office of the EU: http://ec.europa.eu/eurostat/about/overview
[149] https://worldjusticeproject.org/our-work/publications/rule-law-index-reports/wjp-rule-law-index-2017-2018-report
[150] http://siteresources.worldbank.org/INTLAWJUSTINST/Resources/CriminalJusticeLegalNote.pdf
[151] http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS EXTLAWJUSTINST/0,,contentMDK:23128050~menuPK :1990294~pagePK:210058~piPK:210062~theSitePK:1974062,00.html

For the purpose of practicality, the analysis here will focus only on few instruments which have greater significance and relevance for measuring the performance of the prosecutorial systems divided in two groups: 1.European and 2. International.

8.1 European instruments

8.1.1 CEPEJ

The story about setting up the European Commission for the Efficiency of Justice (CEPEJ) started at the end of 2002 at the initiative of the European ministers of Justice who met in London (2000). The Committee of Ministers of the Council of Europe wanted to establish an innovative body for improving the quality and efficiency of the European judicial systems and strengthening the court users ' confidence in such systems[152].

The CEPEJ develops concrete measures and tools aimed at policy makers and judicial practitioners in order to:

- Analyse the functioning of judicial systems and orientate the public policies of justice
- Have a better knowledge of judicial timeframes and optimize the judicial time management,
- Promote the quality of the public service of justice
- Facilitate the implementation of European standards in the field of justice
- Support member states in their reform

The CEPEJ also contribute with specific expertise to debates about the functioning of the justice system in order to provide a forum for discussion and proposals and bring the users closer to their justice systems. The statute of the CEPEJ emphasizes the comparison of judicial systems and the exchange of knowledge on their functioning. The scope of this comparison is broader than ' just ' efficiency in a narrow sense: it also emphasizes the quality and the effectiveness of justice. In order to fulfill these tasks, the CEPEJ has under taken a regular process for evaluating judicial systems of the Council of Europe's member states.

[152] https://www.coe.int/en/web/cepej/

Every two years CEPEJ releases report on the efficiency of judicial systems based on the statistics provided by experts of each of the CoE member states. The main aim of judicial statistics is to facilitate the efficient functioning of a judicial system and contribute to the steering of public policies of justice. Therefore judicial statistics should enable policy makers and judicial practitioners to get relevant information on court performance and quality of the judicial system, namely the workload of courts and judges as well as prosecutors, the necessary duration for handling this workload, the quality of courts' and prosecutor's outputs and the amount of human and financial resources to be allocated to the system to resolve the incoming workload. The CEPEJ performance indicators referring the public prosecution included in the evaluation schema are:

- The number of cases dropped by the public prosecutor, the number of cases sanctioned directly, the number of cases charged before courts and the median length of the prosecution proceeding.
- Number of public prosecutors
- Number of staff public prosecution
- Median salary of a prosecutor
- Prosecution budget
- Number of prosecuted cases: cases dropped
- Number of prosecuted cases: cases sanctioned directly
- Number of prosecuted cases: cases charged before courts
- Median length of a prosecution proceeding (from charge till drop, sanctioning or listing to the court)

While the CEPEJ reports are relevant resources that incorporate important indicators related to measuring the performance of the public prosecutors it is still very general considering its main focus is the judicial system (courts) and many aspects of the work of the prosecutorial system is therefore not scrutinized and fully explored.

8.1.2. EU Justice Scoreboard

The EU Justice Scoreboard is a comparative information tool that aims to assist the EU and Member States to improve the effectiveness of their national justice systems by providing objective, reliable and comparable data on a number of indicators relevant for the assessment of the quality, independence and efficiency of justice systems in all Member States. The

Scoreboard does not present an overall single ranking but an overview of how all the justice systems function, based on various indicators that are of common interest for all Member States.

The Scoreboard does not promote any particular type of justice system and treats all Member States on an equal footing. Independence, quality and efficiency are essential parameters of an effective justice system, whatever the model of the national justice system or the legal tradition in which it is anchored. Figures on these three parameters should be read together, as all three elements are necessary for the effectiveness of a justice system and are often interlinked (initiatives aimed at improving one of them may have an influence on the other). The Scoreboard mainly focuses on litigious civil and commercial cases as well as administrative cases in order to assist Member States in their efforts to create a more investment, business and citizen-friendly environment. The Scoreboard is a comparative tool which evolves in dialogue with Member States and the European Parliament. Its objective is to identify the essential parameters of an effective justice system[153].

The EU Justice Scoreboard ('the Scoreboard') develops the overview of indicators concerning the independence, efficiency and quality of the national justice systems.

The Scoreboard provides elements for the assessment of quality, independence and efficiency of national justice systems and thereby aims at helping Member States to improve the effectiveness of their national justice systems. This makes it easier to identify shortcomings and best practices and to keep track of challenges and progress. In the context of the European Semester, country-specific assessments are carried out through bilateral dialogue with the national authorities and stakeholders concerned. This assessment is also based on a qualitative analysis and takes into account the characteristics of the legal system and the context of the Member States concerned. It may lead to the Commission proposing to the Council to adopt country-specific recommendations on the improvement of national justice systems.

The limited aspects of the EU Justice Scoreboard's scope are two folded:

[153] https://ec.europa.eu/info/sites/info/files/justice_scoreboard_2018_en.pdf

1. The reports are not dealing specifically with the effectiveness of the prosecutorial systems within EU but with the performance of their justice systems in general;

2. The reports are primarily focused on the EU member countries and hence their broader applicability particularly to other aspiring EU countries is limited;

8.2 International instruments

8.2.1 WJP Rule of Law Index

The World Justice Project (WJP) Rule of Law Index (ROLI)[154] is a comprehensive dataset of its kind that relies principally on primary data, measuring countries' adherence to the rule of law from the perspective of ordinary people and their experiences. The WJP uses a working definition of the rule of law based on four universal principles, derived from internationally accepted standards. The rule of law is a system where the following four universal principles are upheld:

1. Accountability - The government as well as private actors are accountable under the law.

2. Just Laws - The laws are clear, publicized, stable, and just; are applied evenly; and protect fundamental rights, including the security of persons and property and certain core human rights.

3. Open Government - The processes by which the laws are enacted, administered, and enforced are accessible, fair, and efficient.

4. Accessible & Impartial Dispute Resolution - Justice is delivered timely by competent, ethical, and independent representatives and neutrals who are accessible, have adequate resources, and reflect the makeup of the communities they serve.

The WJP Rule of Law Index presents a portrait of the rule of law in 113 countries by providing scores and rankings based on eight factors:

[154] https://worldjusticeproject.org/our-work/publications/rule-law-index-reports/wjp-rule-law-index-2017-2018-report

- o constraints on government powers;
- o absence of corruption;
- o open government;
- o fundamental rights;
- o order and security;
- o regulatory enforcement;
- o civil justice;
- o criminal justice;

The country scores and rankings for the WJP Rule of Law Index are derived from more than 110,000 household surveys and 3,000 expert surveys in 113 countries and jurisdictions. The Index is intended for a broad audience that includes policy makers, civil society organizations, academics, citizens, and legal professionals, among others. This sort of a diagnostic tool aims to identify countries' strengths and weaknesses and encourage policy choices that strengthen the rule of law within and across countries.

The WJP Rule of Law Index captures adherence to the rule of law as defined by the WJP's universal principles through a comprehensive and multi-dimensional set of outcome indicators, each of which reflects a particular aspect of this complex concept. However, in terms of reflecting the work or the performances of the prosecutors in the selected countries, the ROLI only covers minor segment within the section referring to the criminal justice. Hence, the Index per se, while recognized as a reliable instrument for measuring the rule of law in 113 countries worldwide, it's still lacks comprehensive data on the efficiency, quality and effectiveness of the prosecutorial systems in these countries.

8.2.2 United Nations Rule of Law Indicators

The United Nations Rule of Law Indicators are designed to measure four major dimensions of each cluster of criminal justice institutions: performance; integrity, transparency and accountability; treatment of members of vulnerable groups; and capacity. They are simple enough to be interpreted by members of the general public, but precise enough to provide experts and officials with the information they need to determine those areas in which the performance of the police, the judicial system and the corrections service is improving, deteriorating or remains essentially unchanged. In the United Nations Rule of Law Indicators – Implementation Guide and

Project Tools[155], 135 indicators are grouped under three institutions: the police (41 indicators); the judicial system (51 indicators); and prisons (43 indicators). The public prosecution system falls under the judicial system. The judicial system indicators as a whole, are grouped into several baskets, each relating to one of the four main dimensions of the institution (within the judicial system). Considering the very few jurisdictions that have adopted indicators that systematically address the issue of prosecutors' performance, the most obvious indicators in that regard are:

- The average number of cases per prosecutors;
- The average number of appellate cases per prosecutors;
- The number of cases completed per year per prosecutor;
- The number of cases where a prosecution has been initiated and then abandoned or stayed;
- The proportion of cases in a year in which the offenders pleaded guilty;
- The proportion of cases in a year that went to trial;
- The proportion of cases in a year where a conviction was obtained;
- The proportion of cases that went to trial in which the offender was eventually acquitted;
- The number of cases of wrongful convictions in a year;
- The proportion of cases that were diverted away from the formal criminal justice process (and the same indicators for juvenile offenders specifically);
- The average cost per case prosecuted during a given period of time, usually a year.

The individual indicators are designed to be rated in isolation and also to be combined to provide aggregate measures at the level of the baskets and major dimensions for each institution. The performances, particularly of the prosecutions, are measured through:

o **the public confidence,** assessing whether the public believes that the judicial system is fair and effective and respects individual rights.
o **Integrity and independence,** assessing whether courts/ prosecutors violate human rights or abuse their power and are free from undue influence of political and private interests (bribes to judges, prosecutors or court personnel)

[155] http://www.un.org/en/events/peacekeepersday/2011/publications/un_rule_of_law_indicators.pdf

o **Transparency and accountability,** assessing whether relevant information on the activities, decision making processes, decisions and use of resources by the courts is publicly available, and the judges and prosecutors are held accountable for their actions:

- Public access to criminal trials,
- Investigation od prosecutor's misconduct
- Prosecutorial misconduct
- Performance monitoring system for prosecution

o **Treatment of members of vulnerable groups** assesses whether the judiciary treats vulnerable individuals, such as members of minorities, children in need of protection or in conflict with the law, internally displaced persons, asylum-seekers, refugees, returnees, and stateless and mentally ill individuals, fairly and without discrimination.

o **The capacity** is measured through assessment of the material resources (which shows whether prosecution services have the infrastructure and equipment they need to deliver services across the country, such as: Material resources of the courts, Means to protect court personnel, Prosecution material resources) and human resources (which shows whether courts and prosecution services have sufficient personnel who are adequately screened, fairly recruited and sufficiently remunerated – all focused on: Competence (skills and knowledge) of prosecutors, Competence (skills and knowledge) of defence counsels, Remuneration of prosecutors).

9. Final Conclusions and Recommendations

I. There are different European approaches in measuring the performance of public prosecutors

Each of the assessed European countries has different approach, methodology and instruments for measuring the performance of their prosecutorial system. While some countries tend to show bigger success in objectively assessing the state of play within their prosecutorial systems and the criminal justice systems in general, all of the countries show certain strengths and weaknesses in completing this task.

II. Developing of tailor made assessment tool for performance monitoring is indispensable for objective and reliable oversight of the public prosecution

The programmes, strategies and tools for measuring the performance of the criminal justice systems in the selected European countries represent reflection of their own, unique historical, legal, social and cultural heritage. Based on this, simple copy-paste application of these instruments and methods in other countries (ex. Macedonia) would not produce positive results. The best way in approaching this paramount task is to produce a tailor made instrument which will reflect the best European standards and practices in measuring the performance of the public prosecutors and yet will take into account country's historical, legal and social background.

III. Active stakeholders' involvement in developing the assessment tool for measuring performance is deemed essential

The development of an objective and reliable national tool for measuring the performance of the prosecutorial system is a complex process. It requires the participation and cooperation of many components of the system, including the prosecutors, prosecutorial staff, courts, police, lawyers and other relevant parties within the legal community. Experience shows that such instruments cannot be successfully developed without the active

inclusion and commitment of these key stakeholders from the early stages of development of the performance monitoring and evaluation system.

IV. Maintaining political neutrality and objectivity is crucial

Given that in most cases criminal justice evaluation programmes and instruments have been developed by Governments for the purposes of planning and monitoring the criminal justice system's performance, establishing political impartiality may prove to be quite challenging. One essential obligation of a national criminal justice programme for monitoring and measuring performance is public accountability. This obligation cannot be effectively fulfilled if such instrument is viewed as one subscribing to a political ideology or subject to interference by the Government in power. The instrument must be, and must be seen to be, impartial, objective and equally important, reliable.

V. Ownership of the process for measuring performance of the prosecutorial systems

Every prosecutorial system should be capable of objectively monitoring and measuring of its own performances. Effective management of this process requires certain degree of capacities to determine whether the goals and objectives are being accomplished in a timely and orderly fashion, and whether the resources are being used efficiently and effectively. The more complex the organization, the greater will be the need for statistical and other relevant information. While many European prosecutorial systems lack capacities and other resources for measuring their performance and they require support at certain stage, the ownership of this process unquestionably should be theirs.

VI. Capacity building of the key stakeholders within the prosecutorial system is a necessity

Once objective and reliable national tool for measuring the performance of the prosecutorial system has been established and in place, the greatest substantive challenge of a criminal justice statistics system is to foster the evolution of its outputs in response to the most pressing needs of data users. The key operational needs in this area are a capacity for analysis of the data collected, establishing effective interactions with a wide range of

client groups, a planning system that can translate these needs into specific projects, and the resources to achieve the desired outputs. For successful fulfilment of these tasks, the capacity building of the key stakeholders within criminal justice system (Public Prosecutors Office, Council of Public Prosecutors, Ministry of Justice and other state institutions) is deemed necessary.