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**CONSULTATIVE COUNCIL OF EUROPEAN PROSECUTORS
(CCPE)**

**OPINION (2012) No. 7
OF THE CONSULTATIVE COUNCIL OF EUROPEAN PROSECUTORS
ON THE MANAGEMENT OF THE MEANS OF PROSECUTION
SERVICES**

**adopted by the CCPE at its 7th plenary meeting
(Strasbourg, 26-27 November 2012)**

I. INTRODUCTION

1. The Consultative Council of European Prosecutors (CCPE) was established by the Committee of Ministers of the Council of Europe in 2005 with the task of rendering opinions regarding the functioning of prosecution services and promoting the effective implementation of Recommendation Rec(2000)19 of the Committee of Ministers to member States on the role of public prosecution in the criminal justice system.

2. The Committee of Ministers instructed the CCPE in 2012 to adopt an Opinion for its attention on the management of the means of prosecution services¹.

3. The CCPE has drafted the present Opinion on the basis of replies received from 30 member States to a questionnaire². According to these replies the level of financial autonomy seems to have an impact on the tools at disposal of prosecution services for managing their resources. The competence for establishing a budget is in most cases shared between the prosecution service and the ministry of justice; often the ministry of finance is also directly involved. Approximately a half of the states indicate that the budgets of their prosecution services are governed by the system of management by results including such objectives as efficiency and productivity.

4. In addition, a significant number of countries indicated that the budgets allocated to prosecution services are regarded as insufficient; this situation is bolstered by the current crisis. The current economic situation represents a challenge to the efficiency of justice; however, it can also be an opportunity for introducing changes in the way the means of prosecution services are managed. In any case prosecution services should bear in mind the need to use the available resources in the most efficient manner.

A. Reference texts

5. The CCPE underlines the importance of referring to the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) and the case-law of the European Court of Human Rights (the Court)³.

6. The CCPE took into consideration the Recommendation Rec(2000)19, and in particular the part concerning the guarantees to the prosecution service for exercising its role. It also took into account the relevant conclusions and recommendations contained in the previous Opinions of the CCPE, especially in Opinions No. 3 (2008) on the "Role of prosecution services outside the criminal law field" and No. 4 (2009) on the relations between judges and prosecutors in a democratic society.

7. The CCPE also took into consideration the European Guidelines on ethics and conduct for public prosecutors – the Budapest Guidelines⁴, Opinion No. 2 (2001) of the Consultative Council of European Judges (CCJE) on the funding and management of courts with reference to the efficiency of the judiciary and to Article 6 of the ECHR, as well as the Report of the European Commission for the Efficiency of Justice (CEPEJ) entitled "European Judicial Systems: Edition 2010"⁵ and the Report of the Venice Commission on European

¹ 1127th meeting of the Ministers' Deputies (23 November 2011).

² See the replies of member States to the questionnaire on the CCPE website (www.coe.int/ccpe) under "Preliminary work – preparation of the 7th CCPE opinion".

³ See in particular *Broniowski v. Poland* (22 June 2004), §183.

⁴ Adopted at the 6th Conference of Prosecutors General of Europe in Budapest in May 2005.

⁵ See CEPEJ website at http://www.coe.int/t/dghl/cooperation/cepej/evaluation/default_en.asp.

Standards as regards the Independence of the Judicial System – Part II: the Prosecution Service⁶.

8. Lastly, the CCPE also took note of the instruments adopted by some other international organisations such as the United Nations and the International Association of Prosecutors, as well as the Final Document of the 5th Plenary Meeting of the Network of Public Prosecutors or equivalent institutions at the Supreme Judicial Courts of the member States of the European Union, adopted in Budapest on 26 May 2012⁷.

B. Scope and purpose of this Opinion

9. The present Opinion applies to prosecution services as regards the execution of all functions entrusted to them in accordance with the law. Where they have functions outside the criminal justice system⁸, the principles and provisions of this Opinion also apply to these functions *mutatis mutandis*. The prosecution services assume a key role in the national justice system and ensure the respect of human rights, including in some jurisdictions in places of detention. In particular, as the authority charged with monitoring the application of the law and prosecuting any criminal behaviour, the prosecution service must respond to the common need to combat domestic and international crime.

10. At present the prosecution service is confronted with an increasing density of crime that gives rise to a growing feeling of insecurity. Due to the serious danger it represents for the society, the expansion of organised crime, including acts of terrorism, drug trafficking and cybercrime requires an increased efficiency of the prosecutors' activities and enhanced protection of human rights and public interests.

11. Even if the powers of prosecution services to manage autonomously their own budgets and resources vary from one member State to another, autonomy of management represents one of the guarantees of their independence and efficiency. Therefore, relying on professionals in management and elaborating common principles as regards the management of means, particularly financial, is indispensable.

12. This Opinion aims at elaborating recommendations permitting to identify the needs and allocate and use the resources of prosecution services in a more efficient manner.

II. NEEDS OF PROSECUTION SERVICES

A. Preparation of the budget

13. The budget of any prosecution service should be integrated into the state budget as a separate line. It is important to ensure that the procedures for establishing budgets for prosecution services and allocating additional financial resources to them are provided for in the law on the budget or other financial regulations. Despite the fact that allocation of funds to the prosecution service is deemed to be a political decision, the legislative and executive authorities concerned should not be in the position to unduly influence the prosecution service when making a decision on its budget. The decision on the allocation of means to the prosecution service should be made in strict accordance with the principle of its independence, and should ensure the necessary preconditions for accomplishing its mission.

⁶ Adopted at the 85th plenary session of the Venice Commission (17-18 December 2010).

⁷ http://www.coe.int/t/dghl/cooperation/ccpe/opinions/travaux/OP_7_Ref_doc_Network_pros_gen_en.asp

⁸ See Recommendation CM/Rec(2012)11 of the Committee of Ministers to member States on the role of public prosecutors outside the criminal justice system.

14. The prosecution service should participate, along with the executive branch, in the elaboration of its budget. In countries where the legal system allows it, the right of the prosecution office to contact the parliament directly in order to express its opinion concerning its needs may be one of the forms of active involvement in the elaboration of its own budget. In any event the procedure for adopting the budget of the prosecution service in the parliament should provide for taking into consideration the opinion of the prosecution service itself.

15. To allow for sufficient allocation of means by the parliament (or by another competent state authority), the estimated costs need to be calculated in advance. This calls for reliable schemes of budget planning, be it regarding operational or investment budgets. Criminal and other relevant statistics of previous years as well as sustainable trends and activities of the prosecution service, in particular planned and on-going projects, may serve as a basis for elaborating an overall minimum budget for the year or time period to come. Management by results offers a number of helpful tools for establishing budgets for future periods.

16. In any case it is important that the responsibility for all administrative decisions related to the allocation of resources which directly affect the prosecution service activities should be laid on the prosecution service concerned.

17. The management of budgetary resources should be conducted by the prosecution service itself in an efficient and responsible manner, according to the principles of good governance. Therefore an appropriate training of prosecutors on this subject should be arranged, among other measures. Prosecution services should also have at their disposal, where appropriate, specialised personnel with background in finance, auditing and management to carry out such functions and ensure an appropriate use of resources. Prosecution services should be aware of the possibility to rely on such specialised personnel, and should have at their disposal the resources required to do so. They should have the final word on and responsibility for the essential choices.

18. The budget of the prosecution service must in all circumstances allow for its quick reaction to unforeseen events and developments.

B. Needs of the prosecution service

19. The new criminal challenges as well as the growing complexity of certain types of criminality are due to the speedy development of new technologies, the increasing international integration and globalisation, the expanding international trade and data flow. This reality has enabled new ways to commit crimes, which implies the need to cooperate, including internationally, in their detection and the prosecution of criminals. A special training to enable to face the threats posed by the above mentioned phenomena is also required.

20. At the time of economic crises, when poverty and inequality of the people can provoke an increase of social disorder and criminality and make all kinds of fraud and injustice committed by those who violate the law all the more unbearable for the population, the means allocated to prosecution services should be maintained at the same level, or possibly increased, so as to allow them to be the watchdog of the public interest, human rights and fundamental freedoms.

21. There is an expanding demand for human resources in prosecution services, as well as for the necessary material and budgetary means to carry out prosecutorial tasks. Taking into account the fact that in a number of countries prosecutors also perform tasks outside the

demand certainly becomes much more evident.

22. While carrying out their functions in the criminal law field or outside of it, prosecutors should be subject to proper measures related to their safety. For this purpose member States should ensure that prosecutors and, if necessary, members of their families are physically protected when their personal safety can be threatened as a result of the proper discharge of the professional duties of prosecutors¹⁰.

23. The participation of prosecutors in international cooperation in criminal matters is increasingly expensive. To ensure that this function is carried out expeditiously and efficiently, modern technologies are needed (such as videoconferencing and encryption); additional funds and human resources are required, for example, for drafting international conventions, seconding liaison officers (prosecutors in particular) to national embassies in foreign states, funding joint investigation teams and participation in the relevant coordination bodies¹¹.

24. Due to the importance of the protection of human rights in places of deprivation of liberty, sufficient resources should be devoted to carrying out their supervision, where prosecution services are entrusted with such functions.

1. In the criminal law field (investigation and prosecution)

25. Adequate allocation of resources for ensuring prosecutorial activities is a necessary precondition for implementing the principle of independence of prosecutors and/or prosecution services, in particular in the criminal law area.

26. Financial independence of prosecution services is aimed at guaranteeing fairness of criminal prosecution, effective protection of human rights and fundamental freedoms in criminal proceedings in general and, finally, a proper administration of criminal justice.

27. The management of financial resources of on-going investigations varies significantly in the different member States. The same diversity applies to the role of prosecution services in the course of investigation: in some member States the prosecution service itself has certain or full investigative powers; in other member States it has no investigative power, but may or may not have the right to order the investigative authorities to carry out investigative and other procedural acts even though it has no investigative power of its own.

28. The costs of such investigative and other procedural acts are usually advanced by the investigating authority actually executing them. In many members States prosecutors therefore often face the problem that investigating authorities – with reference to their low budgetary means – are unable or reluctant to execute the prosecutorial order to carry out investigative and other procedural acts. This problem is especially pertinent in cases where the investigation generates additional costs, such as costs of some types of expertise (e.g. homogenetics expertise, expertise of economic matters), DNA analysis or the cost of special investigative techniques.

⁹ See Resolution (77)28 of the Committee of Ministers of the Council of Europe on the contribution of criminal law to the protection of the environment.

¹⁰ See in particular the Declaration of Minimum Standards Concerning the Security and protection of Public Prosecutors and their Families, adopted by the International Association of Prosecutors in March 2008.

¹¹ For example, Eurojust, the European Judicial Network, the Network of Public Prosecutors or equivalent institutions at the Supreme Judicial Courts of the Member States of the European Union, the Consultative Forum of Prosecutors General and Directors of Public Prosecution, the Consultative Council of European Prosecutors and the Coordination Council of Prosecutors General of the Commonwealth of Independent States or other prosecutors' networks which keep appearing day after day.

29. Member States should allocate sufficient means for all investigations ordered by the prosecutors to be carried out. This kind of approach would significantly contribute to ensuring that investigations are completed and there are no loopholes in criminal proceedings that may hinder the administration of justice.

30. Thus, member States where investigation is one of the functions entrusted in the prosecution service should:

- ensure an immediate and unhindered access of prosecutors to principal resources allocated for conducting any actions necessary for effective and impartial investigation;
- enable them to use modern technologies in an appropriate manner for investigation and for ensuring the rule of law during investigations (computer search tools, forensic equipment, electronic data bases, videoconferencing and encryption equipment, interception of telecommunications, audio and video surveillance etc.).

The same principles should be applied to the resources required by prosecutors for an adequate action in trials.

31. In addition, special attention should be paid to the full payment and – where this is provided for in the law – a subsequent recovery of the costs borne during criminal proceedings by the different authorities. The necessary mechanisms should be set up to ensure such recovery. This aspect is of particular importance for the member States and their judicial bodies at the time of economic crises.

32. Member States may explore developing confiscation policies aimed at depriving criminals of the proceeds of crime, which may assist in the prosecution of offences, while always respecting the role and independence of prosecutors.

33. Prosecution services should not be unduly restricted in managing the budget resources allocated for the investigation purposes. The utilisation of such resources should be rational, effective and transparent.

2. Outside the criminal law field

34. The prosecutorial activities outside the criminal law field which, to a different extent, are performed in most member States of the Council of Europe, sometimes require among other procedural steps special forensic examinations and involvement of specialists from different areas of expertise (e.g. psychologists in cases related to family law, accountants and financial experts on bankruptcy, chemists and biologists in the matters related to environment protection etc.).

35. Depending on the variety and scope of the work the need may arise to create within a prosecution service specialised units or prosecutor positions to perform activities outside the criminal law field in general or in particular fields. The specific nature of such activity may require a special training of the personnel.

III. POSSIBLE SOLUTIONS

A. Human resources

36. The current situation calls for adapting the need for human resources in accordance with the needs of the public action, whether this implies a sufficient remuneration or an appropriate training¹², both initial and continuous.

37. Generally speaking, there are three different professional levels in a modern public prosecution service:

- prosecutorial functions are carried out by prosecutors themselves. In case of need (and if compatible with the legal system), legal specialists may be hired for specific legal functions;
- experts in specific fields, for instance psychologists or psychiatrists may be essential to deal with cases of juvenile delinquency and mentally ill offenders, or to assist victims. Sociologists and experts in statistics may be of great use when there is a need to rely on statistical data, computer specialists – to research anything which has to do with cybercrime, or biologists or chemists to investigate environmental offences etc.;
- administrative staff is an essential part of a public prosecutor's office. This staff must be qualified to cope with the workload of cases processed which inevitably increases in parallel with the specialisation or complexity of matters dealt with by the prosecutor.

38. A system for calculating the workload of prosecutors must be designed in order to identify their evolving needs. This system should also be able to measure those factors that influence or affect the execution of their tasks, so that those tasks are carried out properly.

B. Financial resources

39. The general principles of using public resources should be observed: the principle of opportunity, the principle of effectiveness and the principle of legality. When more than one body is involved in the use of resources (e.g. the prosecution service, the police and the tax authorities), these principles must be observed in parallel with a careful coordination to avoid duplication of efforts and ensuring that resources are used to achieve the final goal of the effective administration of justice.

40. Provided that their independence is ensured, in order to make savings prosecution services are encouraged to conclude agreements with other state authorities with a view to sharing facilities and administrative services or participating in joint actions. Coordination is an essential instrument for avoiding the waste of resources and duplication of activities – also within a prosecution service, when, for instance, more than one public prosecutor (locally competent) is investigating connected facts.

41. As an effect of the principle of legality on the use of public resources, the financial management performed by prosecution services independently should be subject to supervision by the state authorities entrusted with control and audit competencies, similarly to the courts.

C. Equipment and material resources

42. Prosecution services are urged to put in place and use compatible information technology systems for planning, monitoring and comparing the expenditure of prosecution

¹² See "Report on European Standards as Regards the Independence of the Judicial System: Part II – The Prosecution Service" adopted by the Venice Commission.

services. This may be a practical and efficient method for balancing the use of resources against the workload of their territorial services, generating benchmarks for using resources at the level of different offices, enabling quick reallocation of resources when needed and finally ensuring accountability of the expenditure.

43. Member States are encouraged to enable prosecution services to use IT equipment in their daily work, by introducing e-justice tools, electronic case management and data exchange systems with the bodies in charge of the application of law that prosecutors are in contact with when carrying out their tasks. This would enable ensuring a more efficient case management, reducing the length of proceedings and guaranteeing the application of data protection and confidentiality measures.

44. Member States are also required to support the need of the prosecution services to maintain their own websites and to have adequate premises where the public can be received, in order to maintain due level of transparency and public awareness, as well as to support and facilitate access to justice.

D. The means of prosecution services and governmental austerity plans

45. Economic crises, if not properly resolved, may affect the functioning of prosecution services. The magnitude of this effect seems to vary from one member State to another: from the introduction of a general policy towards making savings and redistributing resources to core activities at the expense of capital investment, on the one hand, to radical cuts in the salaries of prosecutors, on the other. Obtaining additional human and financial resources, better technical equipment, better access to training for the staff as well as to technical expertise required in support of evidence used in courts is seen as a priority in a number of member States.

46. The prosecution services themselves must have a role to play in refuting or at least minimising the negative effect of economic crises on their everyday work. To do so, a balance should be found between the resources available and the results to be attained. By better cooperation and coordination between the European and domestic actors of fight against crime such situation can improve considerably. At the European level the different new possibilities for international cooperation in criminal matters (e.g. through Eurojust or by conducting joint investigations) should be used much more extensively. At the domestic level agreements with other local, regional and national authorities permitting to share administrative services, office facilities and support staff, or improved cooperation with other controlling authorities (such as environmental inspectorates) may help in overcoming the problems related to economic crises.

47. Where prosecution services have adequate means for the management of human and financial resources at their disposal, the quality of their work will not be affected in a negative way. The introduction of new structures within prosecution services (e.g. establishment of specialised units for the fight against economic crime or cybercrime) or in the system of financing the prosecution (e.g. providing budgetary autonomy in countries where prosecution services do not have it) can contribute on a large scale to maintaining professional quality.

48. In times of economic crisis it is especially important for prosecution services to streamline their organisations and improve management in order to ensure the optimal use of both financial and human resources. Also the distribution of public prosecution offices throughout the country, with a rational attribution of competence, can be helpful.

E. Improving the management of prosecution services

a. Auditing and controlling

49. Controlling and auditing are core elements for assuring the diligent management of public funds. They have to be adapted to the specific tasks of the prosecution service. Due to its special mission the use of funds spent, for instance, on investigating crimes cannot be assessed by ordinary cost performance calculation; investigations should not only be evaluated in terms of cost effectiveness. Controlling may be a useful instrument for establishing best practices within the prosecution service to compare the handling of cases in different units and in different matters, but may not be used as a means to govern the prosecution service as such.

50. Only in exceptional circumstances should prosecution services revert to prioritising certain types of cases or crimes as a means of counteracting the limitation on resources. However, such prioritisation should not be to the detriment of prosecutorial activities on the whole, and especially to the effective prosecution of other types of crime, nor should it limit the general principle of equality before the law.

b. Management by results

51. Whatever is the system of management adopted by the different member States, prosecutors should always ensure that the resources put at their disposal are used in an efficient and economic manner, and that a proper control and follow-up mechanisms are in place.

52. Member States may also consider – as far as it is compatible with their respective legal systems – introducing or reinforcing a model whereby the activities of the prosecution service are managed according to the principle of management by results. This concept is an interactive, agreement-based steering model, where resources are allocated based on agreed and expected activity. The principal idea of management by results is to help the parties to strike an appropriate balance between the resources available and the results to be achieved (for example, for reducing delays of procedure or improving the access of justice for users), while fully respecting the role and the independence of the prosecution services and the principle of legality.

53. This model (concept) is a steering instrument established on the basis of performance negotiations, between a relevant government body (i.e. the ministry of finance, ministry of justice or parliament) and the prosecution service. The latter should itself participate in these negotiations, as it is best placed to set the objectives for its outputs in order to guide prosecutors in their actual work. The prosecution service should have sufficient liberty for setting its objectives so as to achieve the best possible results.

54. The basis for evaluating performance and allocating resources are outcomes and outputs. The outcomes of the prosecution service consist of how well its social objectives (e.g. enforcement of criminal liability) have been attained. Outputs concern objectives which the prosecution service can itself influence through its own activities and how they are managed, i.e. operating efficiency, quality control and management of human resources.

55. Outputs and outcomes of the prosecution service should be closely linked to the prosecution service's core activities and available resources, so that the attainment of objectives depends solely on what the agency concerned does and how it is managed. Attention should be paid to the fact that definition of outputs will impact on the activities carried out by prosecutors.

56. Management by results requires the agency concerned to report on the attainment of its objectives. In particular, local prosecution offices report to the office of the Prosecutor General, which in turn reports to the government body allocating the resources or to the parliament. Evaluation and measurement of results in a clear and reliable way is vital, but may represent a challenge. Good performance indicators show what has been achieved, not what action has been taken.

57. How well the objectives are attained will influence the objectives set and the resources allocated for the next operating period. An evaluation of whether the objectives of the prosecution service have been attained or not should always be followed by decisions on concrete measures to be taken by the prosecution service itself.

IV. RECOMMENDATIONS

- (i) Prosecutors must have at their disposal sufficient means in order to fulfil their various tasks in the situation of new national and international dangers and challenges, including those brought by the development of technologies and globalisation processes.**
- (ii) Prosecution services must be enabled to estimate their needs, negotiate their budgets and decide how to use the allocated funds.**
- (iii) In order to be able to prepare their budgets, the prosecution services should rely on accurate and solid indicators derived from criminal and other relevant statistics.**
- (iv) The difficult economic and financial environment represents professional challenges which emphasise the need for a more rational management. The independence, impartiality, financial autonomy and efficiency of prosecution services are values that must be guaranteed under all economic circumstances.**
- (v) Prosecution services should use modern management methods in an efficient and transparent manner. The use of performance indicators and a system of management by results can be helpful in this respect. They must also have sufficient freedom to choose which actions to pursue to achieve the desired results. Prosecution services should not be confronted with excessive budgetary rigidity.**
- (vi) Both internal and external control and auditing of the use of prosecutorial budgets should be ensured. The external control and auditing should be in line with those applied to the courts.**
- (vii) Management training for prosecutors entrusted with management functions must be ensured. Procedures for cooperation between prosecution services and external finance and management professionals should be clearly regulated.**
- (viii) Prosecution services must be consulted on the savings to be made as well as on the initiatives to attract new resources or to increase the existing ones.**
- (ix) In order to explain the use of means required for their actions, prosecution services should maintain a proper level of transparency and public**

(x) Exchange of experience and good practices in the field of management of means by prosecution services, at domestic and international levels, is recommended.