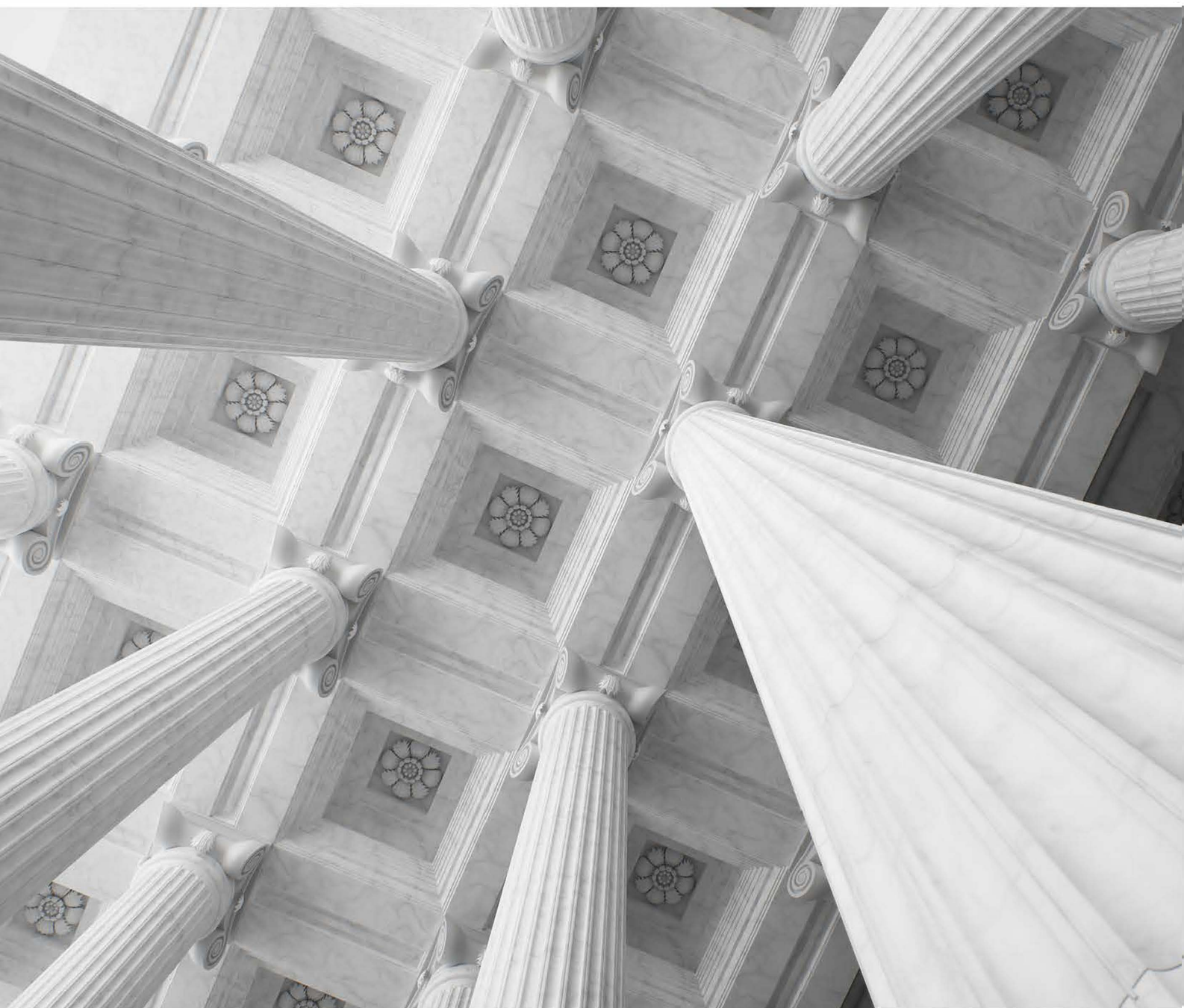


# The Independence of Prosecutors in Eastern Europe, Central Asia and Asia Pacific





# **The Independence of Prosecutors in Eastern Europe, Central Asia and Asia Pacific**

Please cite this publication as:

OECD (2020), The Independence of Prosecutors in Eastern Europe, Central Asia and Asia Pacific

This work is published under the responsibility of the Secretary-General of the OECD. The opinions expressed and arguments employed herein are those of the authors and do not necessarily reflect the official views of the OECD, the governments of OECD member countries, OECD Anti-Corruption Network for Eastern Europe and Central Asia member countries, or Parties to the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.

This document and any map included herein are without prejudice to the status or sovereignty over any territory, to the delimitation of international frontiers and boundaries and to the name of any territory, city, or area.

© OECD 2020

# Foreword

The independence of prosecutors is a crucial issue in the fight against corruption. A strong rule of law and the implementation of national anti-corruption legislation require that prosecutors be free from any undue external pressure. The power of prosecutors in deciding whether to prosecute a case, their role in carrying out investigations and the substantial choices they take in the course of the whole proceedings make the independence of prosecutorial service a decisive factor conditioning the possibility of a country to combat corruption crimes.

This study was conducted by the OECD Anti-Corruption Network for Eastern Europe and Central Asia and examines how aspects of the independence of prosecutors are reflected in the legal framework and practices in different jurisdictions. It provides examples of various models of the organisation of prosecutorial systems, as well as multiple approaches applied concerning the institutional and individual independence of prosecutors, their recruitment and career. The study also includes a brief overview of standards, regulations and practices related to the independence of specialised anti-corruption prosecutors. While the study focuses on the Eastern Europe and Central Asia region, it reviews frameworks and practices in many other jurisdictions, notably from the Asia Pacific region.

The objective of the study is not to set new standards, but to describe the state of play in the area of prosecutors' independence, to identify and reflect good practices and to indicate challenges in this area. It also includes a set of recommendations on ways to address or avoid these challenges. This study was undertaken by the Secretariat of the OECD Anti-Corruption Network for Eastern Europe and Central Asia (ACN) at the request of Network members.

All data and legislation referred to in the study do not take into consideration reforms enacted after January 2018, except some later developments reflected in the text with specific time references.

# Acknowledgements

This thematic study is a project of the OECD ACN with the involvement of some countries from the Asia-Pacific region, as well as several OECD and other countries.

This report was drafted by Simone Rivabella working as a consultant for the OECD ACN and co-ordinated by Andrii Kukharuk (OECD/ACN Anti-Corruption Analyst).

The authors acknowledge with gratitude an Advisory Board that revised the text and submitted inputs to the general conclusions and regional recommendations. The Board was composed of James Hamilton (former President of the International Association of Prosecutors, former Director of Public Prosecutions of Ireland), Anca Jurma (councillor to the Chief Prosecutor of the National Anticorruption Directorate, Romania, former Chief Prosecutor of the National Anticorruption Directorate, *ad interim*), and Vitaliy Kasko (former First Deputy Prosecutor General, Ukraine). The draft study further benefited from the comments provided by Drago Kos, an international anti-corruption and integrity expert.

The authors wish to express their appreciation to the countries that provided responses to the questionnaire and comments to the draft study.

The draft study also benefited from discussions at the meetings of the ACN Law Enforcement Network that took place in Prague, Czech Republic, on 15-16 November 2018, and in Tashkent, Republic of Uzbekistan, on 16-18 October 2019.

# Table of contents

Foreword	3
Acknowledgements	4
Abbreviations and acronyms	9
Introduction	11
Recommendations for ensuring the independence of prosecutors	13
<i>Institutional independence</i>	13
<i>Individual independence</i>	15
<i>Recruitment and career</i>	17
<b>1. Institutional Independence</b>	<b>20</b>
1.1. Legal regulations on the Prosecution Service	20
1.2. Institutional framework	22
1.3. Systems of self-governance and associations of prosecutors	27
1.3.1. Prosecutors' associations	28
1.3.2. Prosecutors' self-governance entities	28
1.3.3. Appointment and composition of self-governance bodies	32
1.4. Leadership of the Prosecution Service	38
1.4.1. Appointment of the Prosecutor General	39
1.4.2. Tenure of the Prosecutor General	45
1.4.3. Dismissal of the Prosecutor General	47
1.5. Accountability of the leadership of the Prosecution Service	55
1.5.1. Accountability for the general activity of the Prosecution Service	55
1.5.2. Accountability for individual cases	59
1.6. Budget and staff	63
1.6.1. Budget drawing up	64
1.6.2. Amount of budget and staff	67
<b>2. Individual Independence</b>	<b>72</b>
2.1. Organisation of prosecutors' offices	72
2.1.1. Hierarchical organisation of the Prosecution Service	74
2.1.2. Allocation and reallocation of cases	78
2.2. Discretionary/Mandatory prosecution and issuance of general guidelines	84
2.2.1. Mandatory and discretionary prosecution policies	86
2.2.2. Use of prosecutorial discretion	87

2.2.3. Issue of general guidelines	88
2.2.4. Guidelines on priorities	90
2.3. Direction and guidance to prosecutors in individual cases	92
2.4. Review of prosecutors' decisions	98
2.5. Public prosecutors' internal accountability	104
2.5.1. Accountability for individual activity and priorities	105
2.5.2. Accountability for not prosecuting	108
2.5.3. Civil, penal and administrative liability of prosecutors	111
2.6. Immunities	114
2.7. Means of protection against undue external pressure	118
2.8. Safeguards for prosecutors	122
2.9. Integrity of prosecutors	125
2.9.1. Codes of Conduct and ethical standards	125
2.9.2. Legislation on conflicts of interest and other anti-corruption restrictions	128
<b>3. Recruitment and Career</b>	<b>133</b>
3.1. Recruitment	133
3.2. Tenure, promotion and retirement	142
3.2.1. Tenure and retirement of prosecutors	143
3.2.2. Promotion	144
3.3. Remuneration	148
3.4. Dismissal and forced retirement	153
3.5. Transfer without consent	160
3.6. Training	165
3.7. Evaluation	168
3.7.1. Institution of evaluation procedures	169
3.7.2. Evaluation's criteria and procedures	169
3.8. Discipline	176
3.8.1. Authorities and legal framework of disciplinary proceedings	176
3.8.2. Review of disciplinary decisions and figures on disciplinary proceedings	182
<b>4. Specialised anti-corruption prosecutor's offices</b>	<b>187</b>
4.1. International standards	187
4.2. Institutional and legal framework	188
4.3. Appointment and dismissal of the leadership and subordinated prosecutors	191
4.4. Financial independence	194
<b>Bibliography</b>	<b>196</b>
<b>Tables</b>	
Table 1.1. Number of prosecutors per country	70
<b>Figures</b>	
Figure 1.1. Institutional framework of the Prosecution Service	23
Figure 1.2. Recruitment and career separation between judges and prosecutors	26
Figure 1.3. Self-governance entities	29
Figure 1.4. Authorities and entities appointing members of self-governance bodies	33



Figure 1.5. Members of self-governance bodies	34
Figure 1.6. Authorities appointing the Prosecutor General	41
Figure 1.7. Number of Prosecutor Generals during 2008-2017	44
Figure 1.8. Tenure of the Prosecutor General	45
Figure 1.9. Tenure of the Prosecutor General (years)	46
Figure 1.10. Authorities taking part in the dismissal of the Prosecutor General	51
Figure 1.11. Fair hearing for the Prosecutor General	54
Figure 1.12. Account for general activity of the Prosecutor General	56
Figure 1.13. Authorities to which the Prosecutor General accounts	57
Figure 1.14. Reporting on individual cases	60
Figure 1.15. Obligation to inform the media	61
Figure 1.16. Annual Budget/100 000 residents (trends)	68
Figure 1.17. Budget every 100 000 residents (2017)	69
Figure 1.18. Allocated budget as a percentage of the requested (2017)	69
Figure 1.19. Number of prosecutors every 100 000 residents (2016)	70
Figure 2.1. Allocation of cases regulated by law	79
Figure 2.2. Obligation to motivate the reassignment	82
Figure 2.3. Discretionary vs. Mandatory prosecution	86
Figure 2.4. General guidelines	89
Figure 2.5. Authority issuing general instructions	89
Figure 2.6. Public access to general guidelines	90
Figure 2.7. Guidelines on priorities	90
Figure 2.8. Authority issuing guidelines on priorities	91
Figure 2.9. Public access to the rules on priorities	91
Figure 2.10. Mandatory instructions on individual cases	95
Figure 2.11. Authority issuing mandatory instructions on specific cases	95
Figure 2.12. Challenge to an order	96
Figure 2.13. Revision of decisions to prosecute and not to prosecute	99
Figure 2.14. Review of the decision to prosecute (seeker)	100
Figure 2.15. Review of the decision not to prosecute (seeker)	102
Figure 2.16. Periodical account of prosecutors	106
Figure 2.17. Entities receiving accounts from prosecutors on their activity	106
Figure 2.18. Parties and entities notified of the decision not to prosecute	110
Figure 2.19. Liability for prosecutors' wrongdoings in carrying out their work	112
Figure 2.20. Special procedures for suing prosecutors	112
Figure 2.21. Immunities	116
Figure 2.22. Grievance procedures	119
Figure 2.23. Authority deciding protection measures	123
Figure 2.24. Mentions in prosecutors' Codes of Conduct	127
Figure 2.25. Restrictions after retirement	129
Figure 3.1. Authorities involved in prosecutors' recruitment	136
Figure 3.2. Same recruitment prerequisites between prosecutors and judges	140
Figure 3.3. Authorities involved in prosecutors' promotions	145
Figure 3.4. Prosecutors' annual salaries and national average income	150
Figure 3.5. Prosecutors' and judges' annual salaries (beginning of the career)	151
Figure 3.6. Authority deciding on additional benefits	152
Figure 3.7. Authorities involved in prosecutors' dismissal	155
Figure 3.8. Judicial review of dismissal decisions	158
Figure 3.9. Forced retirement	159
Figure 3.10. Forced transfer	161
Figure 3.11. Authorities deciding prosecutors' transfer without consent	162
Figure 3.12. Authorities involved in prosecutors' evaluation	171
Figure 3.13. Authorities involved in disciplinary proceedings (first instance)	179
Figure 3.14. Prosecutors' right to be heard during disciplinary proceedings	181
Figure 3.15. Authorities reviewing disciplinary decisions	183
Figure 3.16. Number of imposed disciplinary sanctions (2012-2017)	185
Figure 3.17. Number of imposed disciplinary sanctions every 100 prosecutors	185

## Boxes

Box 1.1. Federal Constitution (Excerpt) – Brazil	26
Box 1.2. A multi-level system of self-governance - Poland	32
Box 1.3. The Consiglio Superiore della Magistratura - Italy	36
Box 1.4. Appointment of the leadership of the Prosecution Service – Israel	43
Box 1.5. Appointment and dismissal of the Prosecutor General - Italy	49
Box 1.6. Removal and suspension of the Prosecutor General - Mexico	53
Box 1.7. Double-layered accountability - UK	59
Box 1.8. Limited account on individual cases - Lebanon	62
Box 1.9. Drawing up the budget - Mexico	67
Box 1.10. The budget of the Prosecution Service – Israel and Poland	71
Box 2.1. A vertical structure of the Prosecution Service, but horizontal relationships among prosecutors - Italy	77
Box 2.2. Computerized allocation of cases - Mexico	83
Box 2.3. Legal guidelines for prosecutors' discretion - UK	88
Box 2.4. Rules on priorities - Mexico	91
Box 2.5. Instructions from the Ministry of Justice, a reform - Germany	97
Box 2.6. Decision not to prosecute - Israel and Lebanon	103
Box 2.7. Indirect accountability on individual cases - UK	107
Box 2.8. Judicial review of dismissing decisions - Mexico	111
Box 2.9. Special procedures to try prosecutors - Lebanon	114
Box 2.11. Undue external pressure – Italy	121
Box 2.12. Security measures – Mexico	124
Box 2.12. The Code of Conduct of the Crown Prosecution Service - UK	128
Box 2.14. A comprehensive regulation of conflicts of interest - Mexico	132
Box 3.1. Public examination of prosecutor candidates - Brazil	141
Box 3.2. Salaries and benefits – Brazil and Lebanon	153
Box 3.3. Dismissals through only disciplinary proceedings – Lebanon	160
Box 3.4. Obligatory rotation of all prosecutors - Lebanon	164
Box 3.6. Training, specialisation and career management of prosecutors - Italy	168
Box 3.7. Evaluations fully overseen by the Supreme Council of Magistracy - Italy	175
Box 3.8. The Crown Prosecution Service's Disciplinary Policy - UK	181
Box 3.9. A criminal-like disciplinary procedure - Poland	186
Box 4.1. Judgement of the European Court of Human Rights concerning Romania	192

# Abbreviations and acronyms

<b>ACN</b>	OECD Anti-Corruption Network for Eastern Europe and Central Asia
<b>AG</b>	Attorney General, UK
<b>AGC</b>	Attorney General's Chambers, Malaysia
<b>ADB</b>	Asian Development Bank
<b>CCJE</b>	Consultative Council of European Judges
<b>CCPE</b>	Consultative Council of European Prosecutors
<b>CoE</b>	Council of Europe
<b>CPC</b>	Criminal Procedure Code
<b>CPS</b>	Crown Prosecution Service, UK
<b>DIICOT</b>	Directorate for Investigating Organized Crime and Terrorism, Romania
<b>DNA</b>	National Anti-Corruption Directorate, Romania
<b>ECHR</b>	European Court of Human Rights
<b>FICAC</b>	Fiji Independent Commission Against Corruption
<b>HRA</b>	Human Resources Adviser
<b>IAP</b>	International Association of Prosecutors
<b>LEN</b>	Law Enforcement Network
<b>LFPRH</b>	Federal Law on Budget and Fiscal Responsibility, Mexico
<b>LOFGR</b>	Organic Law of the General Prosecutor's Office, Mexico
<b>NAB</b>	National Accountability Bureau, Pakistan
<b>NPSA</b>	National Public Service Act, Japan

<b>OECD</b>	Organisation for Economic Co-operation and Development
<b>PPOA</b>	Public Prosecutor's Office Act, Japan
<b>PSG</b>	prosecutorial self-governance
<b>SCM</b>	Superior Council of Magistracy, Romania
<b>SFO</b>	Serious Fraud Office, UK
<b>SHCP</b>	Ministry of Finance and Public Credit, Mexico
<b>SPC</b>	State Prosecutorial Council, Serbia
<b>SPOA</b>	State Prosecutor's Office Act, Slovenia
<b>UK</b>	United Kingdom of Great Britain and Northern Ireland
<b>UN</b>	United Nations
<b>UNCAC</b>	UN Convention against Corruption
<b>WGB</b>	OECD Working Group on Bribery

# Introduction

Several models and constitutional arrangements characterise the organisation of Prosecution Services around the world. The international community upholds prosecutorial systems both as a part or independent of the executive, if appropriate safeguards are in place. Regardless of the model followed, the Prosecution Services' autonomy and effective independence from any undue pressure or interference constitute an indispensable corollary to the independence of the judiciary.

Naturally, prosecutors' work presumes some reasonable degree of their discretion in decision-making in the cases they are in charge of. While usually these decisions may be reviewed by the superior prosecutors or courts, it is important to strike a balance between the powers of reviewing instances and respect for prosecutors' right to make decisions independently. In a broader context, it is important to have in place a set of safeguards to avoid any undue pressure on prosecutors or interference in their work by the hierarchy. The other essential aspects of so-called 'internal' independence of prosecutors are transparent and fair rules of their accountability, performance evaluation, recruitment, promotion, dismissal, and remuneration. In terms of individual independence it is important to have in place effective means for ensuring prosecutors' safety.

In addition, prosecutorial independence should also ensure that the Prosecution Service receives sufficient and non-arbitrary budgetary funding and all necessary resources to properly perform its functions.

While the independence of prosecutors is guaranteed to different extents in the legislation of many countries around the world, it is essential to ensure that those rules are also respected in practice and a worrying trend of attempting to unduly influence prosecutors' decision-making is eliminated.

This study is based on the governmental data provided in participating country responses to a detailed data collection questionnaire, ACN country monitoring reports, and desk research undertaken by the ACN Secretariat. Participating countries include:

- ACN countries - Albania, Armenia, Azerbaijan, Bosnia and Herzegovina, Estonia, Georgia, Kyrgyzstan, Latvia, Lithuania, Moldova, Mongolia, Montenegro, Romania, Serbia, Slovenia, Ukraine, and Uzbekistan;

- Asia-Pacific countries - Cambodia, the Cook Islands, Fiji<sup>1</sup>, Japan, Malaysia, Pakistan, the Philippines<sup>2</sup>, Timor-Leste, and Viet Nam.

Other countries that shared relevant examples and practices include Brazil, Germany, Israel, Italy, Lebanon, Mexico, Poland, and the United Kingdom.<sup>3</sup>

---

<sup>1</sup> Fiji's data refer to FICAC (Fiji Independent Commission Against Corruption), a body investigating and prosecuting any alleged offences of corruption and bribery, separated from the ODPP (Office of the Director of Public Prosecutions). As Prosecutor General they refer to the Deputy Commissioner, head of FICAC.

<sup>2</sup> The replies of the Philippines consider the "Office of the Special Prosecutor" (*Tanodbayan*), created within the Office of the Ombudsman, as the Prosecution Office, and the "Special Prosecutor" as the Prosecutor General. The Office of the Special Prosecutor conducts investigations and prosecutes cases within the jurisdiction of the "*Sandiganbayan*". The *Sandiganbayan* has jurisdiction over criminal, and civil cases involving graft, corrupt practices and other offenses committed by public officers and employees, including those in government-owned or controlled corporations, in relation to their office.

<sup>3</sup> Experiences from jurisdictions outside of the regions of Eastern Europe and Central Asia and Asia-Pacific are featured in boxes at the end of each section.

# Recommendations for ensuring the independence of prosecutors

Following an analysis of the state of play in the area of prosecutors' independence, the respective approaches applied and challenges faced by different jurisdictions, as well as with taking into account existing international standards and soft law instruments, this set of recommendations suggests ways to address or avoid various deficiencies in the area. These recommendations are non-mandatory, and their implementation should take into consideration the features of respective national legal systems. Nevertheless, countries are encouraged to use the recommendations for considering and taking further measures aimed at strengthening the independence of prosecutors.

## ***Institutional independence***

### *Legal sources of the Prosecution Service*

- The status, principles, organisation, role and powers of prosecutors and prosecution offices should be provided for by law. Strong guarantees for prosecutors' necessary independence and autonomy in taking decisions free from any undue influence should be included.
- Legislative reforms aimed at providing or changing the necessary guarantees for prosecutors' independence and autonomy in decision making should be preceded by wide and substantive consultations involving the legal community and civil society.

### *Institutional framework*

- The nature and scope of the independence of the public prosecution from the political and judicial branches of power should be established by law.
- Where prosecutors belong to the judiciary, the law should ensure separate roles for prosecutors and judges and should regulate how to perform successively the two functions where this is an option.

### *Systems of self-governance and associations of prosecutors*

- The appropriate authorities should consider establishing by law an independent system of prosecutorial self-governance (PSG) to protect and enhance the independence of prosecutors.

- Those countries who have already established a system of PSG or plan to introduce it should:
  - ensure that PSG bodies operate on the basis of strong legal regulations that provide for their proper functioning and independence;
  - ensure that PSG bodies are conferred with important powers regarding at least the budget, the appointment of prosecutors, promotions, and disciplinary proceedings;
  - regulate the composition of PSG bodies and the appointment of their members in order to avoid any undue political or other external influence in the carrying out of their activity;
  - consider providing that some members of PSG bodies be suitably qualified non-political legal professionals who are not prosecutors so as to avoid the risk of these bodies to become inward-looking and unduly corporatist;
  - ensure that the activities of PSG bodies are transparent and their activity reports are made public;
  - ensure that PSG bodies maintain open communication channels with practicing prosecutors and establish transparent decisional processes;
  - avoid the risk of corruption by setting proper conflict of interest rules for the members of PSG bodies and by limiting the term during which they may serve;
  - consider tasking PSG bodies with the role of representing the Prosecution Service in its relations with branches of public power regarding the role and status of prosecutors and their independence.

#### *Leadership of the Prosecution Service*

- Clear, transparent and credible procedures for the selection, appointment and dismissal of the leadership of the Prosecution Service should be established by law.
- The legal community (including prosecutors) and, if appropriate, civil society should be involved in the selection of the leadership of the Prosecution Service.
- A key role in the selection process should be given to PSG bodies or an independent expert selection committee (formed by professionals who are themselves selected through a transparent procedure based on merit).
- If the leadership of the Prosecution Service is elected by Parliament, use a qualified majority for the final election.
- The head of the Prosecution Service should be appointed for a relatively lengthy period (no less than 5 years) and without the possibility to run for another term.
- The tenure of the Prosecutor General should not normally coincide with the term in office of the appointing authority.
- The grounds for dismissal of the head of the Prosecution Service should be established by law in a clear-cut, objective and exhaustive manner.
- An independent expert body should participate in the dismissal procedure with the authority to give a prior legal opinion on the matter.
- The leadership of the Prosecution Service should be granted a fair hearing in any dismissal proceedings as well as judicial legal remedies where appropriate.



*Accountability of the leadership of the Prosecution Service*

- Reports of the head of the Prosecution Service to the state authorities should be envisaged by law, made public, and limited to the general activity of the Prosecution Service. These reports should include appropriate statistical information.
- Reporting procedures should not be used as a means of interference with individual cases.
- The Prosecution Service should be as clear as possible in explaining its work to the public, giving information of general nature about the prosecution policy, guidelines, statistical data and reporting on the outcome of concluded cases.

*Budget and staff*

- The Prosecution Service should be provided with adequate financial and staff resources to carry out its tasks effectively and be entitled to make proposals during the process of drawing up the annual budget.
- The Prosecution Service and the public should be informed about the reasons in the case of a significant discrepancy between the proposed budget and that which is finally approved or allocated.

***Individual independence****Organisation of prosecutors' offices*

- The regulation of superior prosecutors' hierarchical powers should be published.
- The prosecutor presenting the case in court should always be independent in his/her pleading before the court.
- The assignment and reassignment of cases should follow clear and transparent pre-established rules, ensuring impartiality and autonomy from any form of external and internal pressure.

*Discretionary/Mandatory prosecution and issuance of general guidelines*

- Where prosecutors have a discretion whether to prosecute in any particular case or on prioritisation of cases, that discretion should be exercised following principles set out either in law or in guidelines which are made public.
- Any decision not to prosecute should be reasoned, and the reasons thereof should be set out in writing by the prosecutor who made that decision.
- The right to judicial review of prosecutors' unlawful decisions should be granted to the offended party irrespective of the availability of internal review procedures.

*Direction and guidance to prosecutors in individual cases*

- The independence of prosecutors should include functional independence concerning decisions to prosecute or not to prosecute in individual cases as well as the conduct of prosecutions.
- Any authority external to the Prosecution Service should not be allowed, in principle, to give or influence any instructions to prosecutors concerning any individual case. Where this is possible, the law should provide for sufficient guarantees that instructions given to prosecutors by external bodies be limited in nature, transparent, in writing, and consistent with the law. The instructions should be preferably general, aiming at better defining the criminal law policy.

- Guidance or instructions in individual cases which can lawfully be given by a senior prosecutor shall be based on law, be reasoned, and in writing and should be part of the case file.
- A prosecutor should be entitled to insist that any instruction be given in writing and should not be bound by any oral instruction.
- Prosecutors should be granted the right to challenge unlawful orders in an internal independent procedure like PSG bodies.

#### *Review of prosecutors' decisions*

- Clear and proper mechanisms for challenging prosecutor's decisions not to prosecute before higher prosecutors and before the court should be established.
- The decision not to prosecute should be communicated shortly after it has been taken to the complainant and to the offended party, and a reasonable deadline be given to them to file a complaint.

#### *Public prosecutors' internal accountability*

- The modality in which prosecutors are called to report on their activities and methods internally should not hinder their activity or put pressure on them.
- The internal reporting obligations of prosecutors should be reasonable and thoroughly determined by internal regulations.
- Prosecutors should not be held liable for honest decisions made in good faith in the course of their work in the absence of evidence of misconduct or gross negligence.

#### *Immunities*

- Prosecutors should be protected by functional immunity only to the extent necessary to enable them to perform their functions properly, meaning that they cannot be criminally investigated or be subject to civil claims for carrying out their official duties in good faith. Any immunity from prosecution that goes beyond this functional immunity should be excluded.

#### *Means of protection against undue external pressure*

- There should be effective grievance mechanisms where prosecutors complain of undue pressure or interference in their work, including the possibility for prosecutors to have access to judicial review.

#### *Safeguards for prosecutors*

- The law should contain all necessary elements for the effective protection of prosecutors and their families against any threats related to their work whenever they provide competent authorities with reasoned requests.
- Comprehensive and consistent statistics should be maintained on cases where prosecutors or their families are harmed because of their professional activities, as well as concerning the means of protection which are provided.

#### *Integrity of prosecutors*

- Clear ethical standards, codes of professional conduct, and rules on conflict of interest applicable to all prosecutors should be set. These instruments should be complemented by guidance and confidential advice on the handling of concrete situations.
- Effective mechanisms of detection and investigation of violations of professional ethics and rules on conflict of interest should be established.

- Initial and advanced training activities for prosecutors should regularly cover the subject of professional ethics and conflict of interest.
- Bodies and officials supervising prosecutors' ethics should be free from undue political or any other external influence.

## ***Recruitment and career***

### *Recruitment*

- The recruitment of prosecutors should be based on a fair, impartial, and competitive selection, based on criteria of professional competence and integrity, in compliance with the following rules:
  - the recruitment procedure should be regulated by law;
  - the selection procedure and criteria should be publicly available within a reasonable time before the competition takes place;
  - the selection should be based on high professional qualifications
  - no specific political group or institution should influence the recruitment and the participation in the process of outside legal experts would be beneficial;
  - the power to appoint prosecutors should not rest solely with the Prosecutor General or senior prosecutors but should involve an independent body of prosecutors whose experience will qualify them to propose appropriate candidates for appointment;
  - the appointment should be based on evidence that applicants meet the criteria for office as well as a competitive process including an examination and possibly an interview;
  - processes and decisions should be subject to judicial review.

### *Tenure, promotion and retirement*

- Prosecutors should hold their status of prosecutor until reaching the retirement age.
- The promotion of prosecutors should be based on a fair, impartial, and competitive selection, based on criteria of professional competence and integrity, in compliance with the following rules:
  - the promotion procedure should be regulated by law;
  - the promotion procedure and criteria should be made publicly available within a reasonable time before the competition takes place;
  - the promotion should be based on merit and high professional qualifications;
  - no specific political group or institution should influence the promotion and the participation in the process of outside legal experts would be beneficial;
  - the power to promote prosecutors should not rest solely with the Prosecutor General or senior prosecutors but should involve an independent body of prosecutors whose experience will qualify them to propose appropriate candidates for promotion;
  - the promotion should be based on evidence that applicants meet the criteria for promotion as well as a competitive process including an examination and possibly an interview.
- The promotion processes and decisions, as well as decisions on forced retirement, should be subject to judicial review.

*Remuneration*

- The remuneration of prosecutors should be established by law and be proportionate to the importance of the functions performed by them.
- Prosecutors should be entitled to an adequate pension on retirement.

*Dismissal and forced retirement*

- The dismissal of prosecutors should be strictly regulated by law and be determined by objective criteria related either to serious misbehaviour, including but not limited to committing a grave disciplinary misdemeanour or a criminal offence, or to the loss of the ability (e.g., medical ability) or competence to act in such position.
- Prosecutors should be protected from undue forced retirement.
- The occurrence of the situation conducive to dismissal should be acknowledged by a professional body, and the decision of dismissal should be challengeable in court.
- Dismissal procedures should include appropriate safeguards to prevent abuses, at least comparable to those recommended for disciplinary proceedings.

*Transfer without consent*

- Transfers of prosecutors from one office to another without their consent should be prohibited unless such transfers are caused by necessary organisational changes or apply in the framework of a transparent and precise mechanism of mandatory rotation.

*Training*

- Prosecutors should have both the right and the duty to receive initial and regular continuing training in view of their specialisation, with an independent and expert body participating in the determination of the training provided to prosecutors.
- Training courses for prosecutors should include components covering prosecutorial independence.

*Evaluation*

- Performance evaluation of prosecutors should be based primarily on objective qualitative criteria.
- Evaluation proceedings should be carried out by a body independent of the day-to-day management and provide prosecutors with an opportunity to respond to a negative assessment.

*Discipline*

- Disciplinary actions against prosecutors should be regulated by law and governed by transparent and objective criteria, in compliance with fair and impartial procedures, excluding any discrimination and allowing for unbiased review, including judicial review.
- In systems where a self-governing body exists, states should consider empowering this body or a disciplinary committee within it to handle disciplinary cases.
- The following rights of the prosecutor subject to disciplinary action should be ensured: to be informed of the case, to be heard, to have a representative, to make submissions and to produce evidence, and to challenge adverse evidence.
- The disciplinary body should be able to choose among a wide range of sanctions appropriate to deal with any sort of cases.

- Persons responsible for investigating and preparing the disciplinary case may present it to the disciplinary body but should not take part in the deliberations and sanctioning.
- The disciplinary body should give a reasoned decision that should be made available to the prosecutor and, at least in serious cases, should be subject to judicial review.

*Specialised anti-corruption prosecutor's offices*

- Specialised anti-corruption prosecutors should be provided with guarantees of institutional, functional, and financial autonomy envisaged by law. These guarantees should be sufficient to prevent undue external and internal interference with the work of specialised anti-corruption prosecutors, unjustifiable removal from cases, and other forms of hierarchical pressure.
- Any undue influence in the procedures of appointment, promotion, and dismissal of specialised anti-corruption prosecutors should be prohibited.
- Specialised anti-corruption prosecutors should not be subject to instructions from the political institutions or individuals that are under their jurisdiction.
- Specialised anti-corruption prosecutors should be provided with sufficient resources and salaries that adequately reflect the nature and specificities of their work.

# 1. Institutional Independence

---

This chapter analyses the general framework of the Prosecution Services in the participating countries. Focus is placed on the legal sources defining powers, competencies, and procedural role of prosecutors (1.1), as well as the institutional framework of the Prosecution Service (1.2). The existence, regulation, and powers of self-governance systems are described in (1.3). Finally, this chapter also describes the status of the leadership of the Prosecution Service and its accountability (1.4 and 1.5), the procedures for the budget formation together with figures from the responding countries (1.6).

---

## 1.1. Legal regulations on the Prosecution Service

Granting independence to prosecutors begins with referring to the Prosecution Service in the highest national legal sources together with the most important institutions and powers. A robust legal framework should describe the status, competences, and procedural role of prosecutors to ensure that the rule of law governs all the main aspects of the prosecutorial activity.

### **Council of Europe, Recommendation Rec(2000)19**

Relationship between public prosecutors and court judges

17. States should take appropriate measures to ensure that the legal status, the competencies and the procedural role of public prosecutors are established by law in a way that there can be no legitimate doubt about the independence and impartiality of the court judges. In particular states should guarantee that a person cannot at the same time perform duties as a public prosecutor and as a court judge.

### Consultative Council of European Judges, Opinion No.12

6. The enforcement of the law, the equality of arms and, where applicable, the discretionary powers of the prosecution at the pre-trial stage require that the status of public prosecutors be guaranteed by law at the highest possible level, in a manner analogous to that of judges. They shall be independent and autonomous in their decision-making and carry out their functions fairly, objectively and impartially.

**Bosnia and Herzegovina, Japan, and the Cook Islands**<sup>4</sup> have the fundamental activities of prosecutors established by law. All of the other responding countries report that the Prosecution Service is defined in the national Constitution. In some cases, the mention of the Service provided by the Constitution is a mere reference to the fact that its regulation must have a legislative basis.<sup>5</sup> In other countries, constitutional provisions are more extended and describe the institutional status of the Prosecution Service, the procedure for the appointment and dismissal of its leadership, and even the competences of prosecutors.<sup>6</sup>

It is common practice that more detailed regulations of the prosecutors' status and competences/powers are envisaged in the special laws, as the laws on the prosecutor's office, while the national criminal procedure laws regulate their procedural role.<sup>7</sup> The **Philippines** is the only participating country where the criminal procedure is not established by law but by rules promulgated by the Supreme Court, as provided for in the Constitution.<sup>8</sup>

#### Conclusions:

In all the countries, the role of public prosecutors and judges is essential in ensuring the rule of law and guaranteeing a fair and impartial administration of justice. The prosecutor is in the vast majority of countries the one who promotes and presents the criminal action before the courts and, in some countries, he/she also has a central role in the investigations of crimes. In doing so, they act on behalf of the entire society and in the public interest, and are compelled to respect and protect the human rights and freedoms.

Such an essential role and the related powers should come together with the necessary safeguards against any political or another form of undue pressure and interference to curb any risk of abuse. Therefore, the principles, the status, organisation, the role, and powers of prosecutors and prosecution offices should be determined by law, following the principles of a democratic society. The law should also provide for the

<sup>4</sup> Provided data on the Cook Islands refer to the Crown Law Office. The Crown Law Office provides legal services to the government, including the Queen's Representative, Cabinet, the Prime Minister, Ministers, the Speaker, the Ombudsman, other government entities, and statutory bodies. The office is responsible for criminal prosecutions and civil litigation, as well as legislative drafting services. The office has been set up under the Crown Law Office Act 1980 and is responsible for fulfilling the Crown's obligation to advance the public interest in the justice system. Prosecutors of the Crown Law Office lead investigations only for the most serious offences, while usually, they cooperate with Police Prosecutors. The Police practices and internal management processes in the Police system of the Cook Islands are not described in this Study.

<sup>5</sup> For example, Article 81<sup>4</sup> of the Constitution of Georgia states that powers and activities of the Prosecution Service shall be defined by law.

<sup>6</sup> For example, according to Article 133 of the Constitution of the Republic of Azerbaijan the Prosecutor's Office of the Republic of Azerbaijan is a constitutional body which carries out criminal investigations, exercises criminal prosecution, oversees the application and execution of laws by inquiry and operational agencies, represents the state in court and acts as a complainant in civil, economic and administrative court cases and lodges appeals against court decisions.

<sup>7</sup> This is the case at least in Albania, Armenia, Azerbaijan, Estonia, Japan, Latvia, Lithuania, Moldova, Romania, Slovenia, Ukraine, Cambodia, Fiji, Malaysia, Timor-Leste, and Uzbekistan.

<sup>8</sup> See Art. VIII, Sec. 5[5] of the Philippines' Constitution.

independence and autonomy of the Prosecution Service in its decision-making and that prosecutors should perform their functions fairly, objectively and impartially.

While it is preferable that the main principles and general status of prosecutors be enshrined in the Constitution, the constitutional provisions should be further developed by special legislation on the status and organisation of prosecutors and by the provisions of the Criminal Procedure Codes.

**Recommendations:**

The status, principles, organisation, role and powers of prosecutors and prosecution offices should be provided for by law. Strong guarantees for prosecutors' necessary independence and autonomy in taking decisions free from any undue influence should be included.

Legislative reforms aimed at providing or changing the necessary guarantees for prosecutors' independence and autonomy in decision making should be preceded by wide and substantive consultations involving the legal community and civil society.

## 1.2. Institutional framework

The relation between the Prosecution Service and the executive and judicial branches of power is critical to frame its independence. Many countries have established different forms of subordination of the Prosecution Service to the government. In some countries, the prosecution, while regarded as part of the executive power, nevertheless exercises this power independently of the government to varying degrees. In other systems, it is part of the judiciary or considered as a separate body. The powers of the government concerning the Prosecution Service, where these exist, should be clearly defined by law. Legislation should ensure separated roles for prosecutors and judges as well as regulate how to perform successively the two functions where transfer between them is an option.

### Council of Europe, Recommendation Rec(2000)19

13. Where the public prosecution is part of or subordinate to the government, states should take effective measures to guarantee that:

a. the nature and the scope of the powers of the government with respect to the public prosecution are established by law;

[...]

14. In countries where the public prosecution is independent of the government, the state should take effective measures to guarantee that the nature and the scope of the independence of the public prosecution is established by law.

[...]

#### Relationship between public prosecutors and court judges

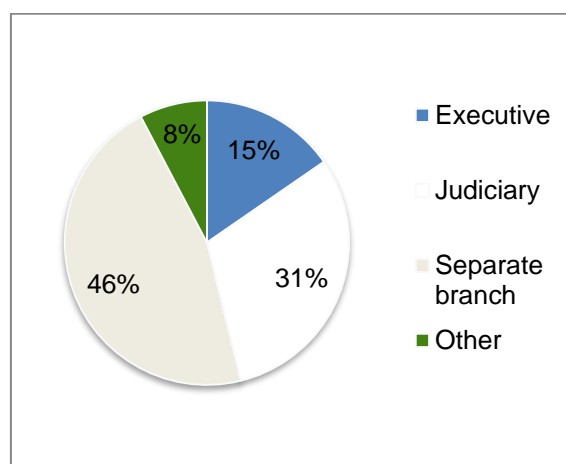
17. States should take appropriate measures to ensure that the legal status, the competencies and the procedural role of public prosecutors are established by law in a way that there can be no legitimate doubt about the independence and impartiality of the court judges. In particular states should guarantee that a person cannot at the same time perform duties as a public prosecutor and as a court judge.

18. However, if the legal system so permits, states should take measures in order to make it possible for the same person to perform successively the functions of public prosecutor and those of judge or vice versa. Such changes in functions are only possible at the explicit request of the person concerned and respecting the safeguards.



46% of the responding countries<sup>9</sup> have established the Prosecution Service as a separate body, independent from the government, and separated from the judiciary. In 31% of countries<sup>10</sup> it is part of the judiciary, while in 15%<sup>11</sup> it is subordinated to the government (see Figure 1.1). As the **Cook Islands'** prosecution activity is shared between the Crown Law Office, an independent body,<sup>12</sup> and Police Prosecutors, subordinated to the government, the country appears twice in this part of the collected data.

**Figure 1.1. Institutional framework of the Prosecution Service**



*Note:* Only data from the countries that replied to the relevant sections of the questionnaire are displayed. Data are updated as of January 2018.

In Romania and Slovenia, the institutional framework of the service presents hybrid characteristics. In **Romania**, the Prosecution Office is established within the judiciary, but according to Art. 132 of the Constitution<sup>13</sup> prosecutors' activity is carried out "under the authority of the Minister of Justice", whose powers are limited and cannot extend to the judicial activity of prosecutors. The Prosecutor's Office of **Slovenia** is formally part of the executive. However, a 2013 decision of the Constitutional Court stated that taking into account its specific functions, it is not admissible to consider or organise the Office as part of the government or the administration.<sup>14</sup> This entails a limitation of the supervision over its functioning from branches of public power.

**Georgia's** Prosecution Service was part of the executive until Constitutional Amendments entered into force at the end of 2018, establishing it as a separate body.

<sup>9</sup> Armenia, Bosnia and Herzegovina, Cambodia, the Cook Islands (Crown Law Office), Fiji (Fiji Independent Commission against Corruption), Kyrgyzstan, Lithuania, Malaysia, Pakistan, Serbia, Uzbekistan, and Viet Nam.

<sup>10</sup> Albania, Azerbaijan, Latvia, Moldova, Mongolia, Montenegro, Ukraine and Timor-Leste.

<sup>11</sup> The Cook Islands (Police Prosecutors), Estonia, Georgia, Japan.

<sup>12</sup> The Crown Law Office is an independent legal office run by the Solicitor-General (S-G) who is also an independent legal advisor to the government. The S-G is a law officer of the Crown with a warrant from the Queen's Representative.

<sup>13</sup> Art. 132 of Romania's Constitution. "(1) The prosecutors carry out their activity according to the principles of legality, impartiality and hierarchical control, under the authority of the minister of justice."

<sup>14</sup> See Section 21-25 of Decision U-I-42/12-15 of Slovenia's Constitutional Court, dated 7<sup>th</sup> February 2013.

Even where there is a subordination of the Prosecution Service to the executive, several countries state that the powers of the government with respect to the public prosecution are defined by law. A standard model is to provide for functional independence for the prosecutor in respect of individual cases confining the executive to the overall establishment of policy.

For instance, according to Par. 1 of **Estonia's** Prosecutor's Office Act, "the prosecutor's office is independent in the performance of its functions arising from law, and it acts pursuant to this Act, other Acts, and legislation issued on the basis thereof". The principle of the functional independence of **Slovenia's** state prosecutors in relation to filing criminal charges is considered by the case law of the Constitutional Court as implicitly contained in the first paragraph of Art. 135 of the Constitution.<sup>15</sup> The **Cook Islands'** Police Prosecutors are part of the police service, which is an agency separate from the Public Service. The Police Act provides a degree of independence to the police. In **Japan**, the individual prosecutors have prosecutorial powers on the assigned cases and take all relevant decisions. The Minister of Justice may give prosecutors general directives on matters such as the interpretation of the law, in the form of directories or circulars. In fact, the Minister of Justice can provide directions in individual cases to the Prosecutor General, who may, in turn, provide directions to lower-level prosecutors. However, it appears that ministerial directives were issued only once in 1954, producing an outcry that led to the government's resignation.<sup>16</sup>

All of the countries with the Prosecution Service separate from the executive have established in law the nature and the scope of the independence of public prosecutors. The following are some relevant examples.

In **Albania**, the independence of the public prosecution is ensured by the Law for the Organization and Functioning of the Prosecution, in Art. 6: "Prosecutors shall, in assuming their functions, act, submit requests and make decisions independently based on the principle of legality, objectivity and impartiality. Prosecutors shall be subject to higher prosecutors' general instructions in writing, in accordance with the provisions of this Law. The law guarantees the independence and the autonomy required by prosecutors to make decisions during the assumption of their constitutional and legal functions, regardless of the unlawful internal or external influence of any of the public or private authorities."

The Prosecutor's Office of **Azerbaijan** enjoys a certain degree of independence within the judicial branch of power. According to Art. 4 of the Prosecutor's Office Act, no task or obligation other than those envisaged in the Constitution and the law can be imposed on prosecutors.

**Romania's** law no. 303/2004 on the statute of judges and prosecutors, and law no. 304/2004 on the judicial organisation mentioned the independence of prosecutors and prosecution offices.<sup>17</sup> The powers of the Minister of Justice include his/her role in the procedure for appointment of the Prosecutor General, Chief prosecutors of the specialised prosecution offices (DNA, DIICOT), their deputies and the chief of sections of these prosecution offices, as well as in his/her attributions of control, as strictly provided by the Law no. 304/2004.<sup>18</sup> However, the Minister of Justice can never give instructions to prosecutors on particular cases.

---

<sup>15</sup> Constitution of Slovenia. Article 135 (State Prosecutor). "State Prosecutors file and present criminal charges and have other powers provided by law. The organisation and powers of state prosecutor offices are provided by law."

<sup>16</sup> See John O. Haley, "Public Prosecution in Japan", Oxford Handbooks Online, 2015.

<sup>17</sup> Art. 3, Law no. 303/2004. "The prosecutors appointed by the President of Romania enjoy stability in function" and "the prosecutors are independent in deciding the case resolutions, under the conditions provided by the Law no. 304/2004 regarding the judicial organization." The amendment was enacted with highly controversial Law no. 242/2018.

<sup>18</sup> Art. 69, Law no. 304/2004. "(1) The Minister of Justice, when he/she deems necessary, at his initiative or the request of the Superior Council of Magistracy, exercise the control over the prosecutors, via prosecutors specially appointed

Art. 16 of **Ukraine's** Law on the Prosecutor's Office prohibits any form of illegal influence, pressure, or interference with the execution of prosecutorial powers.

**Cambodia's** Law on the Organization of the Court<sup>19</sup> states the duties of the Ministry of Justice concerning the Judiciary and the Prosecution Service. The Law on the Statute of Judges and Prosecutors<sup>20</sup> ensures the independence of the judicial and prosecution powers in compliance with the Constitution of the Kingdom of Cambodia. Judges and prosecutors are both under the supervision and guidance of the Supreme Council of Magistracy, while the Ministry of Justice only supports the functioning of the courts through administrative services.<sup>21</sup> However, Art. 75 of Cambodia's Law on the Statute of Judges and Prosecutors states that the Minister of Justice is the Chief of the Prosecution Office (see 1.4).

At the same time, although guarantees of independence and autonomy may be provided for by law, there are examples where the Prosecution Service receives instructions on concrete cases from the executive in practice. For instance, in **Mongolia**, the media mentioned about several sensitive, high-profile corruption cases in which the President provided the Prosecutor General, Director of the Anti-Corruption Agency and Minister of Justice with some instructions.<sup>22</sup> A similar situation was reported in **Malaysia** where the Government instructed the prosecutors to speed up proceedings in several high-profile corruption cases.<sup>23</sup>

More than 80%<sup>24</sup> of the participating countries declare having separate recruitment and career development for judges and prosecutors. In **Bosnia and Herzegovina, Estonia, Romania,**<sup>25</sup> and **Cambodia**, there are instead common hiring and promotion procedures. **Timor-Leste** is the only example where the recruitments of judges and prosecutors are merged, while their careers are then separate.

---

by the Prosecutor General attached to the High Court of Cassation and Justice or by the Chief Prosecutor of DNA, as the case may be, or by the Minister of Justice. (2) The control regards the verification of the managerial efficiency, the way how the prosecutors carry out their functions, how the official relations carried out by the prosecutors with the people seeking justice and other people involved in the activity of the prosecution offices are developed. The control cannot target the measures ordered by the prosecutor during the criminal investigation and the resolutions adopted. (3) The Minister of Justice can request the Prosecutor General of the Prosecution Office attached to the High Court of Cassation and Justice or, as the case may be, to the Chief Prosecutor of the DNA, to be informed regarding the activity of the prosecution offices and he can give written instructions concerning the measures to be taken for the efficient prevention and combating of the criminality.”

<sup>19</sup> Law on the Organization of the Court, ratified by the National Assembly on 22<sup>nd</sup> of May 2014.

<sup>20</sup> Law on the Statute of Judges and Prosecutors, ratified by the National Assembly on 23<sup>rd</sup> of May 2014.

<sup>21</sup> See Art. 10-11 11 of Cambodia's Law on the Organization of the Courts.

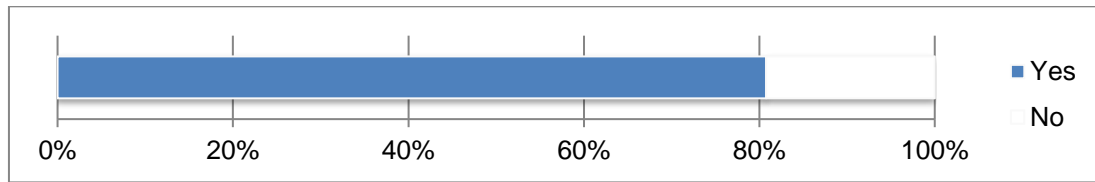
<sup>22</sup> Montsame, Mongolian News Agency website (2017), <https://montsame.mn/en/read/131002>, (accessed 30 September 2020).

<sup>23</sup> The Star website (2019), <https://www.thestar.com.my/news/nation/2019/02/10/solicitor-general-agc-can-receive-government-directives-as-long-as-it-complies-with-the-constitution/>, (accessed 30 September 2020).

<sup>24</sup> Albania, Armenia, Azerbaijan, the Cook Islands, Fiji (Fiji Independent Commission against Corruption), Georgia, Japan, Kyrgyzstan, Latvia, Lithuania, Malaysia, Moldova, Mongolia, Montenegro, Pakistan, the Philippines, Serbia, Slovenia, Ukraine, Uzbekistan, and Viet Nam.

<sup>25</sup> Romanian judges' and prosecutors' careers are now separate, according to Law no. 234/2018, which amended Law no. 317/2004 on the Superior Council of Magistracy. The decisions of the Plenum of the SCM regarding the career (appointment, promotion, etc.) of judges and prosecutors are transferred to the respective sections of the SCM (Section for Judges and Section for Prosecutors).

**Figure 1.2. Recruitment and career separation between judges and prosecutors**



Note: Only data from the countries that replied to the relevant sections of the questionnaire are displayed. Data are updated as of January 2018.

### Box 1.1. Federal Constitution (Excerpt) – Brazil

Art. 127 of the Federal Constitution of Brazil declares the centrality of the Prosecution Service in the jurisdictional system of the state and establishes the fundamental features of its institutional independence. Of particular interest is the importance given to the procedure to define the Service's budget.

#### CHAPTER IV - The Functions Essential to Justice

##### SECTION I

##### The Public Prosecution

Article 127. The Public Prosecution is a permanent institution, essential to the jurisdictional function of the state, and it is its duty to defend the juridical order, the democratic regime and the inalienable social and individual interests.

Paragraph 1. Unity, indivisibility and functional independence are institutional principles of the Public Prosecution.

Paragraph 2. The Public Prosecution is ensured of functional and administrative autonomy, and it may, observing the provisions of article 169, propose to the Legislative Power the creation and abolishment of its offices and auxiliary services, filling them through a civil service entrance examination of tests or of tests and presentation of academic and professional credentials, the remuneration policies, and the career plans; the law shall provide for its organization and operation.

Paragraph 3. The Public Prosecution shall prepare its budget proposal within the limits established in the law of budgetary directives.

Paragraph 4. If the Public Prosecution does not forward its respective budget proposal within the time period stipulated in the law of budgetary directives, the Executive Power shall, with a view to engrossing the annual budget proposal, take into account the figures approved in the current budgetary law, such figures adjusted in accordance with the limits stipulated under the terms of paragraph 3.

Paragraph 5. If the budget proposal referred to in this article and thus forwarded does not obey the limits stipulated under paragraph 3, the Executive Power shall effect the necessary adjustments with a view to engrossing the annual budget proposal.

Paragraph 6. In the implementation of the budget of a specific fiscal year, no expenses may be incurred and no obligations may be assumed that exceed the limits stipulated in the law of budgetary directives, except when previously authorized, by opening supplementary or special credits.

Source: Response from Brazil to the Study Questionnaire

### Conclusions:

There are different models that regulate the relationship between prosecutors and the executive and legislative powers, i.e. prosecutors' external independence, which follows countries' different legal traditions. As it results from the analysis above, the prosecutor service could be either part of the judicial authority (the body of "magistrates", that encompass both judges and prosecutors) or of the executive. It can also be an autonomous or hybrid authority.

However, as the example of the countries that were subject to this study also shows, there is a clear tendency among the states belonging to both civil and common law system towards increased legal guarantees of independence and autonomy of prosecutors and prosecution offices. This tendency is highly embraced by numerous reports, opinions and recommendations of international organisations<sup>26</sup>. The purpose of providing the necessary level of independence to prosecutors is to ensure that they can carry out their functions without unjustified influence or interference from the political sphere more in general, and especially from the executive branch of power. On the other hand, there also are worrying examples of attempts by political bodies to interfere in the prosecutor's work.

The independence should be an essential principle of the functioning of prosecution offices, as an indispensable corollary to the independence of the judiciary.<sup>27</sup> However, the independence of prosecutors is not expected to be as strong in nature as the independence of the judiciary, which is the cornerstone of the rule of law. On the other hand, prosecutors need to respect and protect the independence of judges.

The recruitment and career of prosecutors could be either separated from or joined with those of judges. However, in the case their careers are joined, legislation should ensure separated roles for prosecutors and judges and regulate how to perform successively the two functions where transfer between them is an option. It should also be ensured that prosecutors do not have a determining role in the appointment, promotion or disciplinary procedures of judges.

### Recommendations:

- The nature and scope of the independence of the public prosecution from the political and judicial branches of power should be established by law.
- Where prosecutors belong to the Judiciary, the law should ensure separate roles for prosecutors and judges and should regulate how to perform successively the two functions where this is an option.

### 1.3. Systems of self-governance and associations of prosecutors

The existence of bodies for self-government and representation of prosecutors is a relevant factor for enhancing the independence of the Prosecution Service. National Prosecutorial Councils and other types of self-governance bodies can be conferred with important powers and competences concerning the appointment of prosecutors, disciplinary proceedings and other crucial matters. Their establishment can also serve to dilute the power of the Prosecutor General and reduce the risk of an over-powerful individual exercising a disproportionate degree of influence which in some cases might amount to an abuse of power. Countries should regulate their composition and the appointment of their members to avoid any undue

---

<sup>26</sup> For instance, in its Opinion regarding Romania (CDL-AD(2014)010, para. 185), the Venice Commission stressed the importance "of a unified and coherent regulation of the status of prosecutors, with clear, strong and efficient guarantees for their independence".

<sup>27</sup> See Rome Charter, Opinion No. 9 (2014) Consultative Council of European Prosecutors.

political influence in the carrying out of their activity. National associations of prosecutors can strengthen their capability to resist improper institutional interference.

### Venice Commission Report<sup>28</sup>

87. In order to provide for guarantees of non-interference, the Venice Commission recommends:  
[...]

19. Where it exists, the composition of a Prosecutorial Council should include prosecutors from all levels but also other actors like lawyers or legal academics. If members of such a council were elected by Parliament, preferably this should be done by qualified majority.

20. If prosecutorial and judicial councils are a single body, it should be ensured that judges and prosecutors cannot influence each other's appointment and discipline proceedings.

#### **1.3.1. Prosecutors' associations**

In several countries, there is the practice of establishing professional associations of prosecutors, which are different from self-government bodies as their role is mostly representational, and they are not empowered to make any binding decisions. At the same time, such associations can play an essential supportive role through advocating for prosecutor's rights or representing their opinion on different issues.

Only the **Cook Islands**,<sup>29</sup> **Fiji**<sup>30</sup> and **Viet Nam** expressly report that prosecutors cannot create professional associations representing their interests. However, 50%<sup>31</sup> of the participating countries have one or more prosecutors' associations effectively active on their territory.

In some countries, namely in **Kyrgyzstan**, **Moldova** and **Mongolia**, all prosecutors are members of a professional association. Such a broad membership raises concerns about its possible mandatory nature.

#### **1.3.2. Prosecutors' self-governance entities**

50%<sup>32</sup> of the participating countries have created systems of self-governance of prosecutors, such as Prosecutorial Councils and other bodies. For the appointment and composition of these bodies, see 1.3.3.

**Albania** has established the High Council of Prosecutors, that together with its committees constitute the country's prosecutorial self-governance bodies. Art. 159 of Law No. 115/2016 ("On Governance Institutions of the Justice System") defines the competencies of the Plenary Meeting of the High Prosecutorial Council, which include appointing and promoting prosecutors, as well as imposing the disciplinary measure of dismissal.<sup>33</sup> Art. 160 of the same law states that the High Prosecutorial Council is composed of four

<sup>28</sup> Venice Commission (2010), Report on European Standards as regards the Independence of the Judicial System: Part II – The Prosecution Service (hereinafter – Venice Commission Report), <https://rm.coe.int/1680700a60>.

<sup>29</sup> It has to be noted that the Cook Islands has a population of about 15,000.

<sup>30</sup> Fiji's data refer to FICAC (Fiji Independent Commission against Corruption), a body investigating and prosecuting any alleged offences of corruption and bribery, separated from the ODPP (Office of the Director of Public Prosecutions). As Prosecutor General they refer to the Deputy Commissioner, head of FICAC.

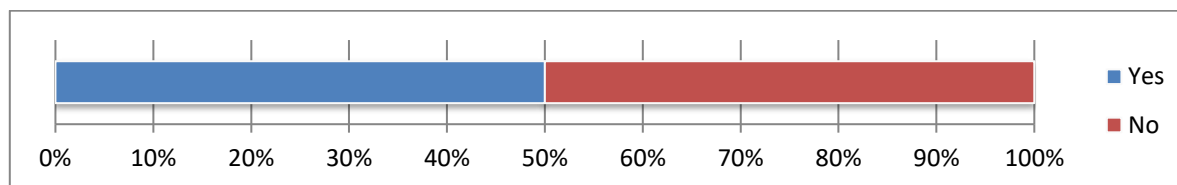
<sup>31</sup> Albania, Azerbaijan, Bosnia and Herzegovina, Kyrgyzstan, Latvia, Lithuania, Moldova, Montenegro, Romania, Serbia, Slovenia, Ukraine, and Uzbekistan.

<sup>32</sup> Albania, Bosnia and Herzegovina, Cambodia, Estonia, Georgia, Japan, Moldova, Montenegro, Romania, Serbia, Slovenia, Timor-Leste, and Ukraine.

<sup>33</sup> Art. 159 Law No. 115/2016 "On Governance Institutions of the Justice System". The Plenary Meeting of the High Prosecutorial Council shall exercise the following competencies: a) adopt secondary legislation, according to this law or other laws, with general binding effect on all prosecutors, administration of the prosecution office, private individuals

standing committees: Strategic Planning Administration and Budget Committee, Disciplinary Committee, Committee of Ethical and Professional Performance Evaluation, and Career Development Committee.

**Figure 1.3. Self-governance entities**



Note: Only data from the countries that replied to the relevant sections of the questionnaire are displayed. Data are updated as of January 2018.

The Law on the High Judicial and Prosecutorial Council of **Bosnia and Herzegovina** establishes the Council's organisation, competencies and powers. The Council has competence over the appointment of judges and prosecutors, disciplinary proceedings, temporary suspensions from the office of judges and prosecutors, termination of the mandate, and other matters. The Council is an independent institution with legal personality.

**Estonia's** entities for prosecutors' self-governance are the Prosecutors' Assembly, the Prosecutors' Competition Committee, and the Disciplinary Committee. The Prosecutors' Assembly appoints the members of the two Committees, which are competent over prosecutors' recruitment and disciplinary proceedings. The Prosecutors' Assembly is a meeting of all prosecutors, which is convened at least once a year.<sup>34</sup> The Assembly hears reports concerning the activities of the Prosecution Service from the Minister of Justice and the Prosecutor General and discusses relevant issues concerning the prosecutors' offices. The Prosecutor General convenes the Prosecutors' Assembly and directs its activities.

**Georgia** has established the Conference of Prosecutors, the Prosecutorial Council and the Consultative Council. The Conference is composed of all prosecutors and investigators of the Prosecution Service, whose main task is to elect eight members of the Prosecutorial Council. The powers of the Prosecutorial Council are set in Art. 8 of the Prosecutor Service Law and include conducting disciplinary proceedings against the Prosecutor General. The Prosecutorial Council meets upon convocation by the Minister of Justice, or by request of at least one third of its members, and cannot interfere with the exercise of investigative and prosecutorial powers. The Consultative Council, established in 2016 by order of the Chief Prosecutor, was responsible for assisting the Chief Prosecutor in the application of incentives, promotion and disciplinary liability of prosecutors.<sup>35</sup>

---

and public bodies; b) adopt acts governing the internal procedures of the Council; c) appoint and promote prosecutors based on the proposal of the Career Development Committee; d) impose the disciplinary measure of dismissal against the prosecutors of the Special Prosecution Office by 2/3 of the votes, upon the proposal of the Disciplinary Committee; e) review complaints against decisions of the committees, except for decisions dismissing the decisions of the High Justice Inspector to archive claims or close investigation, according to paragraph 13, article 160 of this law; f) adopt general non-binding guidelines; g) approve detailed rules on the functioning of the administration of the Council; h) approve the composition of the standing committees, ad hoc committees and detailed rules for their activities; i) review complaints according to the instructions of the Prosecutor General or heads of prosecutor's offices; j) approve detailed rules on the management and use of information technology by the institutions of the prosecution system in cooperation with the information technology centre for the justice system.

<sup>34</sup> See § 13 of Estonia's Prosecutor's Office Act.

<sup>35</sup> The new Organic Law of Georgia on the Prosecutor's Office, enacted on 30 November 2018, has replaced the Consultative Council with consultative bodies (the Career management, Ethics and Incentives Council and the

All prosecutors of **Moldova** meet periodically at the General Meeting, where they discuss the activity reports of the Prosecutor General, approve the Code of Ethics, and consider the priorities of the prosecutorial activity. Besides, the High Council of Prosecutors has been instituted and entrusted with the approval of the rules on the selection of prosecutors, the organisation of competitions to select a candidate for the Prosecutor General, the submission of proposals to the Prosecutor General on all important HR issues (appointment, termination of powers, secondment, promotion), the determination of the number of prosecutors in each prosecutor's office, and other tasks.

**Montenegro's** self-governance bodies of prosecutors are the Conference of Public Prosecutors, the Committee for the Code of Ethics for Public Prosecutors and the Prosecutorial Council. The Conference of Public Prosecutors elects the prosecutors who are members of the Prosecutorial Council and adopts the Code of Ethics for Public Prosecutors. Any person may contact the Committee for Code of Ethics of Public Prosecutors to comment on whether or not prosecutors comply with the Code. The Committee reports to the Prosecutorial Council annually. The Conference of Public Prosecutors elects the President of the Committee. The responsibilities of the Prosecutorial Council are established by Art. 37 of the Law on the Public Prosecution Office. The Council, among other tasks, determines the number of public prosecutors, proposes the removal from office of the Prosecutor General (Supreme Public Prosecutor), decides on the disciplinary responsibility, and investigates complaints from prosecutors regarding threats to their independence.

**Romania's** Superior Council of Magistracy is the guarantor of the independence of both the Romanian judiciary and Prosecution Service.<sup>36</sup> It has two separate sections for judges and for prosecutors. Decisions on the career of prosecutors are taken by the section for prosecutors.

In **Serbia**, the State Prosecutorial Council (SPC) and the Disciplinary Commission have been established. The SPC proposes to Parliament the candidates to the position of prosecutor, decides on promotions and provides the government with the list of nominations for the heads of the prosecutors' offices (see 3.2.2).<sup>37</sup> The annual request for budget and the monitoring of its execution are also competence of the Council. The SPC appoints the members of the Disciplinary Commission and decides on the appeals filed against its decisions. The activities of Serbia's Disciplinary Commission are described in Section 3.8.1.

**Slovenia's** State Prosecutorial Council has its competences established by Art. 102 of the State Prosecutor's Office Act (SPOA). Among others tasks, the Council initiates the procedure to adopt new general instructions, gives opinions on the proposals for the appointment of state prosecutors and decides on their promotion, submits the proposal on the appointment of State Prosecutor General, decides on transfers and secondments, as well as appoints and dismisses the disciplinary bodies.

Prosecutors' self-governance bodies in **Ukraine** are the Conference of Prosecutors, the Council of Prosecutors and the Qualification and Disciplinary Commission. The Conference of Prosecutors, representing all Ukrainian prosecutors,<sup>38</sup> is the highest self-governance body, but it is not permanently established. It hears the reports of the Council of Prosecutors on the performance of tasks of prosecutorial self-governance bodies, funding, and organisational support of the Prosecutor's Office. The Conference appoints the Qualification and Disciplinary Commission and a part of the members of the Council of

---

Strategic Development and Criminal Policy Council). According to the new legislation, the Prosecutorial Council meets every six months, with no need to be convened by the Minister of Justice.

<sup>36</sup> See Art. 1 para. (1) of Law no. 317/2004.

<sup>37</sup> See Art. 165 of the Constitution of Serbia.

<sup>38</sup> Each prosecutor's office in the country conducts its staff meeting to elect by secret ballot delegates to the Conference. The Prosecutor General's Office elects six delegates, each regional prosecutor's office - three delegates, and each local prosecutor's office - two delegates.



Prosecutors. It approves the Code of Ethics and Conduct of Prosecutors. The Council of Prosecutors executes the Conference's decisions and organises its convocation. Among other competencies, the Council submits recommendations on the appointment and dismissal of prosecutors, examines prosecutors' reports related to threats to their independence and takes the respective measures, requests the application of security measures for prosecutors, and assesses the performance of prosecutors holding managerial positions. The Qualification and Disciplinary Commission of Prosecutors is a collegial body that evaluates the professional qualification of candidates to prosecutorial positions and decides on disciplinary liability, dismissal and transfer of prosecutors.

The Supreme Council of Magistracy of **Cambodia** submits requests to His Majesty the King regarding the appointment, transfer, discharge, suspension, and the removal of prosecutors, at the request of the Minister of Justice. The Supreme Council gives advice on the promotion of prosecutors.<sup>39</sup>

**Japan's** Examination Committee<sup>40</sup> is the self-governance body that carries out regular evaluations of all prosecutors every three years (see □) and examines individual prosecutors upon request of the Minister of Justice. The Committee can also start examinations at its initiative. The Examination Committee assesses physical/mental disabilities, inefficiency in the course of duty or any other reasons that would render a prosecutor unfit for duty. The Committee reports to the Minister of Justice.

In **Timor-Leste**, the Prosecutor General Office and the Public Prosecution Council are the entities, internal to the Prosecution Service, that have decisional power over its organisation. The Public Prosecution Council decides on the transfer or dismissal of prosecutors.

**Azerbaijan, Latvia and Lithuania** are among the countries which haven't established self-governance bodies for prosecutors. Nevertheless, particular bodies with specific powers have been created within the offices of the Prosecutor General.

**Azerbaijan** has established the Collegial Board of the Prosecutor General's Office, a consultative body whose composition is approved by the President of the Republic. It is presided over by the Prosecutor General and comprises his/her deputies and other senior prosecutors by virtue of the office held. The Board discusses among other things the main trends of the Prosecutor's Office's activities, the conditions for combatting crime, executive discipline and personnel management. It also drafts orders and acts. The Board's decisions are adopted by majority vote. In the case of diverging opinions, the Prosecutor General takes an individual well-reasoned decision. The Board's decisions are binding on all employees of the Prosecution Service and form the basis for the Prosecutor General's orders.

**Latvia's** Council of the Prosecutor General, Certification Commission and Qualification Commission are part of the Prosecutor General's Office. Their powers and competencies are provided for in the Prosecution Office Law.<sup>41</sup> Latvia's Council of the Prosecutor General is appointed by the Prosecutor General and composed of the heads of the departments of the Prosecution General's Office, the Administrative Director of the Prosecution Office and other public prosecutors and heads of internal institutions of the Prosecution Office.

**Lithuania** has set the Collegiate Council. Its chair is the Prosecutor General, and members include the Deputy Prosecutors General and the chief prosecutors of regional prosecution offices. The Prosecutor General may decide to include other prosecutors as members of the Collegiate Council. The Collegiate Council is an advisory body that gives advice to the Prosecutor General on the most important issues concerning the work and the organisation of the Prosecution Service. Priorities, strategic plans and the

<sup>39</sup> See Art. 18 of the Law on the Organization and Functioning of the Supreme Council of Magistracy.

<sup>40</sup> In full, Public Prosecutor's Qualifications Examination Committee.

<sup>41</sup> See Section 29 of Latvia's Prosecution Office Law.

budget of the territorial offices are also developed by the Council. Many members of the Collegiate Council are appointed by virtue of the office held while the others are chosen by the Prosecutor General.

### Box 1.2. A multi-level system of self-governance - Poland

The Polish system of prosecutors' self-governance is composed of bodies established at national and local levels.

The National Council of Prosecutors consists of prosecutors of different ranks and is established within the Prosecutor General's Office. The National Council has advisory tasks and the general responsibility to guard the independence of prosecutors. It also adopts the rules of ethics of prosecutors and supervises their application.

In addition to the Council, general assemblies of prosecutors and territorial councils are instituted both at central and local levels. These bodies are vested with tasks related to the opinion-giving on the work of prosecutors and career management, the election of representatives of prosecutors within the self-governance system and the election of the members of the Disciplinary Court at the Prosecutor General's Office.

Source: Response from Poland to the Study Questionnaire

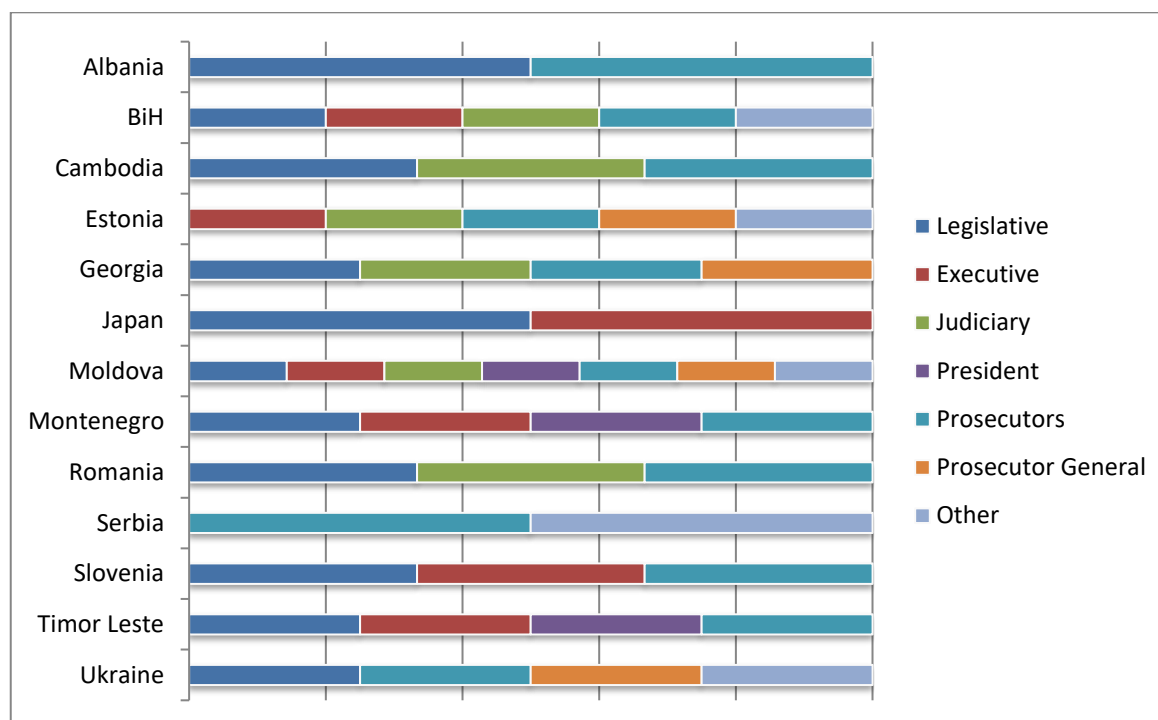
### 1.3.3. Appointment and composition of self-governance bodies

The rules underlying the appointment and the composition of self-governance bodies are crucial for ensuring their independence from political interference and avoid undue interference in the work of the Prosecution Service.

All countries but **Latvia** and **Lithuania** allow representatives of other professions (such as lawyers and judges) to participate in the appointment of prosecutors and disciplinary proceedings.

Art. 149 of the Constitution of **Albania** states that the High Council of Prosecutors consists of 11 members, six of whom are elected by prosecutors of all levels and five members are elected by Parliament from among non-prosecutorial lawyers. Prosecutors are selected according to a public procedure that ensures fair representation of all levels of the Prosecution Service. Non-prosecutorial members are selected among prominent lawyers with no less than 15 years of work experience in legal professions or teaching, with high moral and professional integrity. One member is appointed from civil society. All members cannot have held political functions in public administrations or leadership positions in political parties over the last ten years before the appointment. Other criteria and procedures for the selection of candidates are regulated by law. The chairman of the High Council of Prosecutors is elected at the first meeting of the Council by its non-prosecutorial members, according to the law. Members of the High Council of Prosecutors exercise a full-time office for a period of five years, without the right to be re-elected. At the end of the mandate, prosecutorial members return to their previous offices and non-prosecutorial members who worked full time in the public sector prior to their appointment return to their previous positions.

Figure 1.4. Authorities and entities appointing members of self-governance bodies



Note: Only data from the countries that replied to the relevant sections of the questionnaire are displayed. Data are updated as of January 2018.

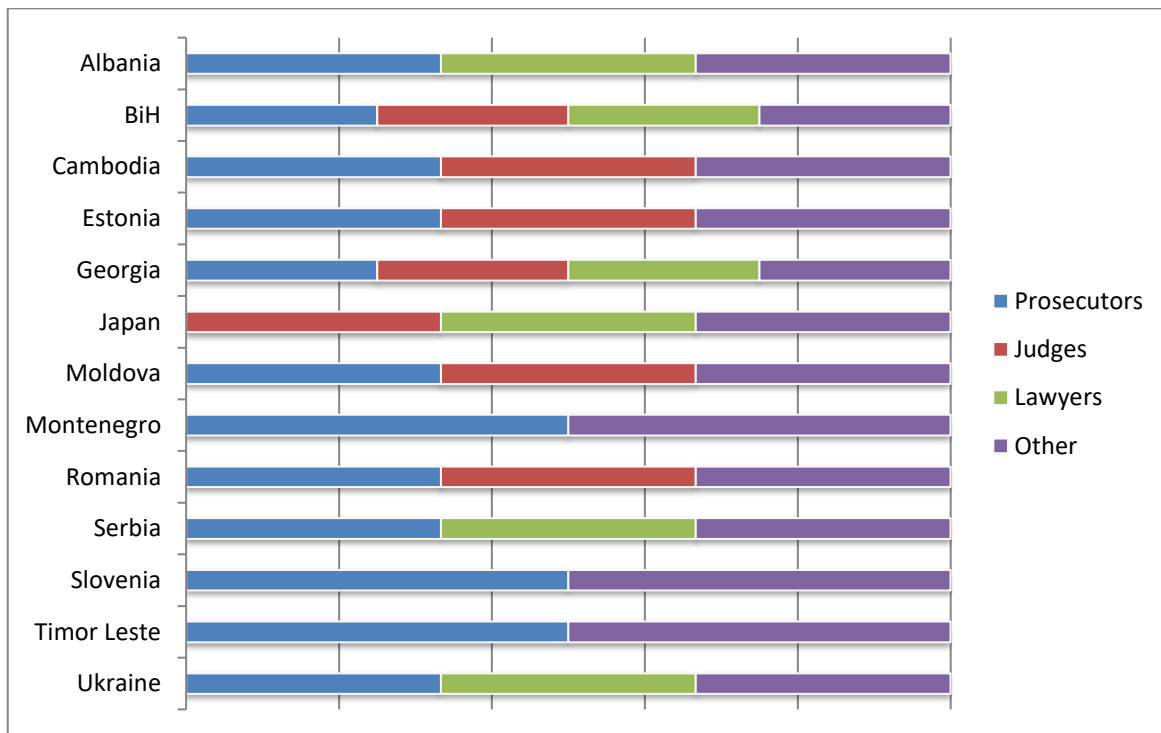
Art. 4 of the Law on the High Judicial and Prosecutorial Council of **Bosnia and Herzegovina** establishes that each of its 15 members is appointed by a different authority. These authorities are regional courts and the Supreme Court of the Federation, local courts, regional and federal Prosecutor's Offices, local Prosecutor's Offices, Parliament, and the government. The Council is therefore formed by five prosecutors, six judges, two attorneys, and two other members by Parliament and the government.

**Estonia's** Prosecutors' Assembly is a meeting of all Estonian prosecutors, which appoints the members of the Prosecutors' Competition Committee and the Disciplinary Committee (see also 1.3.1). The seven members of the Competition Committee are the Prosecutor General, a state prosecutor, two district prosecutors, a judge, a professor from the University of Tartu and a representative of the Ministry of Justice. The disciplinary committee is composed by two state prosecutors, two district prosecutors and one judge.

**Georgia's** Conference of Prosecutors is a general meeting of all prosecutors and investigators of the Prosecution Service. The Prosecutorial Council consists of 15 members including the Minister of Justice as chairperson,<sup>42</sup> a majority of prosecutors elected by the Conference of all prosecutors, one MP from the parliamentary majority and one from parliamentary minority, two judges elected by the High Council of Justice, and two members appointed by Parliament from the candidates nominated by the higher educational institutions and civil society organisations.

<sup>42</sup> The new Organic Law of Georgia on the Prosecutor's Office, enacted on 30 November 2018, established that the Minister of Justice is not part of the Prosecutorial Council anymore, with the Council being presided by the Prosecutor General. One additional member of the Prosecutorial Council is appointed by Parliament on the basis of a recommendation from the Minister of Justice. The Prosecutor General Appoints the members of the consultative bodies (the Career management, Ethics and Incentives Council and the Strategic Development and Criminal Policy Council).

Figure 1.5. Members of self-governance bodies



Note: Only data from the countries that replied to the relevant sections of the questionnaire are displayed. Data are updated as of January 2018.

**Moldova's** High Council of Prosecutors is composed of 12 members. The Prosecutor General, the Minister of Justice, the Prosecutor of Gagauz Autonomous Region, and the Head of the High Magistrates Council are appointed by virtue of the office held. Five prosecutors are appointed by the General Meeting of prosecutors (see 1.3.1) and three representatives of the civil society are selected through open competition by the President, Parliament and the Academy of Sciences.

The Conference of Public Prosecutors of **Montenegro** comprises all heads of Public Prosecutor's Offices and public prosecutors. The Prosecutorial Council is formed by five prosecutors appointed by the Conference, four prominent lawyers appointed and relieved from office by Parliament and one representative of the Minister of Justice.<sup>43</sup> The Prosecutor General presides over the Council. The composition of the Prosecutorial Council is promulgated by the President of Montenegro. The Committee for the Code of Ethics for Public Prosecutors has a president and two members. The president is elected from among the members of the Prosecutorial Council who are not public prosecutors, one member is elected by the enlarged meeting of the Supreme Public Prosecutor's Office from among public prosecutors, and the other member is the President of the Association of Public Prosecutors of Montenegro.

**Romania's** Superior Council of Magistracy has 19 members: nine judges and five prosecutors, forming the two sections of the Council, elected in the general assemblies of judges and prosecutors; two representatives of civil society who are specialists in the field of law, elected by the Senate; the President of the High Court of Cassation and Justice, the Minister of Justice and the General Prosecutor attached to the High Court of Cassation and Justice. The decisions on the career of judges and prosecutors, as well as the disciplinary proceedings, are conducted, separately, by the respective sections of the Superior

<sup>43</sup> See Art. 18 of the Law on Public Prosecution Office.

Council of Magistracy. Other, general decisions are taken by the Plenary of the Superior Council, including both judges and prosecutors and non-prosecutorial members.

In **Serbia**, the State Prosecutorial Council (SPC) is formed by six prosecutors elected through general elections held in the public prosecutor's offices, one law school professor elected at a general session of all law schools, one defence attorney appointed by the Defence Attorney Bar Association, the Prosecutor General, the Minister of Justice and the head of Legislative Committee of Parliament. The involvement of political officials in the work of the Serbian State Prosecutorial Council was criticized by some representatives of civil society claiming that the body does not protect prosecutors from political pressure.<sup>44</sup>

The State Prosecutorial Council of **Slovenia** consists of four members elected by state prosecutors, four members elected from among the legal experts by Parliament on the proposal of the President of the Republic, and one member appointed by the Minister of Justice from among the heads of district state prosecutor's offices.

**Ukraine's** Council of Prosecutors is composed of two legal scholars elected by the Meeting of the High Law Schools and 11 prosecutors from the Prosecutor General's Office as well as regional and local offices. Prosecutors holding managerial positions and who are members of the Qualification and Disciplinary Commission of Prosecutors cannot be members of the Council of Prosecutors. The Qualification and Disciplinary Commission of Prosecutors is composed of five prosecutors appointed by the Ukrainian Conference of Prosecutors,<sup>45</sup> two legal scholars elected by the Meeting of the High Law Schools, one defence lawyer appointed by the Meeting of Advocates of Ukraine, and three members appointed by the Ombudsman on the consent of the Parliamentary Committee on Law Enforcement Issues.

Art. 4 of **Cambodia's** Law on the Organization and Functioning of the Supreme Council of Magistracy establishes the composition of the Council. *De jure* members are the Minister of Justice, the President of the Supreme Court and the General Prosecutor Attached to the Supreme Court. The eight members are appointed from among experienced legal professionals, judges of higher courts, senior prosecutors, judges of and prosecutors attached to the first instance courts. The Senate, Parliament, Constitutional Council, Minister of Justice, judges of the first instance courts, judges of the higher-standing courts, senior prosecutors, and prosecutors attached to the first instance courts elect one member each. All members of the Supreme Council of the Magistracy are finally appointed by His Majesty the King.

**Japan's** Examination Committee is formed of MPs, elected by their peers, and members appointed by the Minister of Justice.

The Public Prosecution Council of **Timor-Leste** is composed of four members appointed by the President of the Republic, Parliament, Government and all the prosecutors. The Prosecutor General who presides over the Council.

---

<sup>44</sup> The study [When the Law Doesn't Rule](#), by the Open Society European Policy Institute, Transparency Serbia, and the Centre of Investigative Journalism of Serbia, pages 19, 27.

<sup>45</sup> See 1.3.1

### Box 1.3. The Consiglio Superiore della Magistratura - Italy

The Consiglio Superiore della Magistratura (Superior Council of Magistracy) is the Italian body for self-governance of judges and prosecutors. Two-thirds of its members are magistrates and one-third are elected by the plenary of Parliament among law professors and lawyers with 15 years of professional experience. The Council is presided over by the President of the Republic and includes among its members the President of the Supreme Court of Cassation and the General Prosecutor of Cassation. The elected members of the Council are renewed every four years with no possibility of immediate re-election. As of January 2018, there are 27 members in the Council.

Out of the 16 members elected by the magistrates (called “stipendiary members”), two are chosen from among judges and prosecutors of the Court of Cassation, ten are elected from among judges of trial courts (Courts of Appeal and District Courts) and four from among public prosecutors attached to the Courts of Appeal or District Courts. The six members elected by Parliament (called “lay members”) are chosen among university law professors or practicing lawyers having at least a 15-year experience.

Art. 104 of the Constitution lays down that the Council elects a Vice President from among the members appointed by Parliament. The Vice President sits in for the President in case of absence or impediment and exercises the functions delegated to him/her by the President. The Vice President also presides over the President’s Committee (composed of the First President and the General Prosecutor of the Supreme Court of Cassation). The President’s Committee is competent to promote the Council’s activity, implement its resolutions and manage budget funds.

The Superior Council of Magistracy has exclusive competence over a wide range of matters, including recruitment, promotions, transfers, discipline, and retirement of judges and prosecutors.

*Source:* Response from Italy to the Study Questionnaire

### Conclusions:

International standards and national practices do not offer a uniform model for the system of prosecutorial self-governance. Various institutional approaches are taken by different jurisdictions to set up prosecutorial self-governance bodies. In some countries, such bodies consist in a general conference or assembly of all prosecutors that takes the most important decisions related to the work of the Prosecution Service. For instance, such a conference may be authorised to approve codes of conduct for prosecutors. Other jurisdictions have only prosecutor’s councils with or without special committees dealing with recruitment, disciplinary or ethics issues. Moreover, in some countries, there is one council covering both judges and prosecutors, while in others there are two separate councils.

At the same time, several countries do not have any prosecutorial self-governance bodies yet. Some jurisdictions created collegial bodies under the leadership of the prosecutor’s offices to consider, propose or even adopt important decisions regarding prosecutors’ activities.

Similarly, different approaches are also applied to the composition of prosecutors’ self-governance bodies. In most cases, political institutions, namely Parliament, President or Government, participate in the appointment of members of self-governance bodies that are generally composed of prosecutors, judges and other lawyers. However, in some jurisdictions, political officials are also members of these bodies.

The existence of a self-governance body of prosecutors is not a binding international standard. However, the international institutions that focus on the rule of law and democracy or the fight against corruption

deem that councils of prosecutors could be a good mechanism to protect prosecutors from external interference and pressure and provide transparency on the appointment, career and, in some cases, the disciplinary procedure regarding prosecutors in a manner that is similar to Judicial Councils.

At the same time, the existence of prosecutors' self-governance bodies may not by itself be a sufficient guarantee of the independence for prosecutors. Therefore, it is essential to ensure that when such bodies exist, they are composed and operate on a sound legal basis that provides for their independent and proper functioning.

It is recommendable that the majority of members of these bodies are prosecutors elected by their peers from all levels of the prosecution office. However, it should be avoided that prosecutorial self-governance (PSG) bodies are composed only by prosecutors, as such a composition would give a sign of corporatism and lack of transparency and accountability of the profession of prosecutors.

The composition of a PSG body should also include, with the equal right of vote, a number of lay members, notably legal academics, lawyers and members of the civil society so that they can bring input from the general society in the work of the Prosecution Service. The process of the election of lay members may involve the legislative power, for instance through their election by Parliament on a proportional basis in order not to exclude the minority.

In order to preserve the legitimacy of a PSG body as a safeguard of prosecutors' independence, the chairmanship of the council should not be given to the leadership of the prosecutor's office or politically appointed officials. The chairperson should be democratically elected by the members of the council themselves.

Care should be exercised to ensure that councils maintain communication with practicing prosecutors. Also, to avoid any risk of corruption countries should establish proper conflict of interest rules for councils' members, requiring a high degree of transparency in their activities and limiting the term during which members may serve.

With regard to the functions performed by a PSG body, in the case it is also an authority deciding on disciplinary actions against prosecutors, it would be important to set up a different body (commission, sub-commission or even an autonomous structure) tasked with disciplinary investigations. This would allow that a PSG body does not find itself in a situation of conflict in which it initiates disciplinary proceedings or conducts investigations and also decides on sanctions. On the other hand, having in mind that the decisions of a PSG body on the career of prosecutors is just an administrative decision, it should be subject to appeal before a court.

A good practice could be considered to task a PSG body (alone or together with a Judicial Council where they are separate bodies) also with a role of representing an interface between the Prosecution Service and branches of public power with regard to the role and status of prosecutors and their independence. A PSG body should be consulted by Parliament or Government on draft laws or other legislative initiatives regarding the status and competences of prosecutors or the organisation of the Prosecution Service. It should provide support to the Prosecutor General in matters regarding the strategic management of the Prosecution Service.

#### **Recommendations:**

- The appropriate authorities should consider establishing by law an independent system of prosecutorial self-governance (PSG) to protect and enhance the independence of prosecutors.
- Those countries who have already established a system of PSG or plan to introduce it should:
  - ensure that PSG bodies operate on the basis of strong legal regulations that provide for their proper functioning and independence;

- ensure that PSG bodies are conferred with important powers regarding at least the budget, the appointment of prosecutors, promotions, and disciplinary proceedings;
- regulate the composition of PSG bodies and the appointment of their members in order to avoid any undue political or other external influence in the carrying out of their activity;
- consider providing that some members of PSG bodies be suitably qualified non-political legal professionals who are not prosecutors so as to avoid the risk of these bodies to become inward-looking and unduly corporatist;
- ensure that the activities of PSG bodies are transparent and their activity reports are made public;
- ensure that PSG bodies maintain open communication channels with practicing prosecutors and establish transparent decisional processes;
- avoid the risk of corruption by setting proper conflict of interest rules for the members of PSG bodies and by limiting the term during which they may serve;
- consider tasking PSG bodies with the role of representing the Prosecution Service in its relations with branches of public power regarding the role and status of prosecutors and their independence.

#### 1.4. Leadership of the Prosecution Service

A close connection between the Prosecutor General and the political environment has negative effects on the possibility to fight against corruption. Countries should put much attention on regulating the appointment, tenure and dismissal of the leadership of the Prosecution Service, to ensure that the highest position of the Prosecution Service is free from political interference.



### Venice Commission Report

87. In order to provide for guarantees of non-interference, the Venice Commission recommends:

1. In the procedure of appointing a Prosecutor General, advice on the professional qualification of candidates should be taken from relevant persons such as representatives of the legal community (including prosecutors) and of civil society.
2. In countries where the Prosecutor General is elected by Parliament, the danger of a politicisation of the appointment process could be reduced by providing for the preparation of the election by a parliamentary committee.
3. The use of a qualified majority for the election of a Prosecutor General could be seen as a mechanism to promote a broad consensus on such appointments.
4. A Prosecutor General should be appointed permanently or for a relatively long period without the possibility of renewal at the end of that period. The period of office of the Prosecutor General should not coincide with Parliament's term in office.
5. If some arrangement for further employment for the Prosecutor General (for example as a judge) after the expiry of the term of office is to be made, this should be made clear before the appointment. On the other hand, there should be no general ban on the Prosecutor General's possibilities of applying for other public offices during or after his term of office.
6. The grounds for dismissal of the Prosecutor General must be prescribed in law and an expert body should give an opinion whether there are sufficient grounds for dismissal.
7. The Prosecutor General should benefit from a fair hearing in dismissal proceedings, including before Parliament.

#### 1.4.1. Appointment of the Prosecutor General

International standards and recommendations consider a separation of the Prosecutor General from political institutions as a critical feature of the independence of the Prosecution Service. The appointment system of the Service's leadership is a central element ensuring this separation. According to the established standards, the professional qualification of candidates should also be assessed by representatives of the legal community and prosecutors, as well as by civil society.

As with many other aspects of the functioning of the Prosecution Services, there are various approaches to the appointment of the leadership of prosecutor's offices applied in different jurisdictions.

Article 148/a of the Constitution of **Albania** establishes the rules for the election of the Prosecutor General. Thus, the Prosecutor General is elected by three-fifths of the members of Parliament, who choose among three candidates proposed by the Albanian High Council of Prosecutors. Among other requirements, the candidate cannot have held political functions in the public administration or leadership positions in political parties in the previous ten years. If Parliament does not elect the Prosecutor General within 30 days from the submission of the proposals, the candidate listed first by the High Prosecutorial Council is appointed.<sup>46</sup>

An all-parliamentary procedure has been established in **Armenia**, where the National Assembly (Parliament) elects the Prosecutor General by at least three-fifths of votes of the total number of the deputies, upon recommendation of the Parliamentary standing committee.<sup>47</sup> The Fourth Round Monitoring

<sup>46</sup> The procedure is further detailed in Articles 22-37 of the Law 97/2016 of Albania.

<sup>47</sup> See Art. 177 of Armenia's Constitution."

Report on Armenia, adopted by the ACN in the framework of the Istanbul Anti-Corruption Action Plan, highlighted that the existent model does not adequately insulate the Prosecution Service from potential political pressure and influence and, therefore, recommended to introduce mandatory involvement of independent experts to the process of selection of a candidate for the Prosecutor General by the standing committee.<sup>48</sup> Based on the report's recommendation, a new draft strategy on judicial-legal reforms provided for a mandatory involvement of independent experts in the process of selecting candidates for the position of Prosecutor General.

In **Azerbaijan**, according to Art. 133 par. III of the Constitution the Prosecutor General is appointed by the President, with the approval of Parliament. Similar rules underlie the appointment of **Lithuania's** Prosecutor General.

In **Kyrgyzstan**, **Mongolia** and **Ukraine** the President sends a candidature to the approval of Parliament, and then the President appoints the Prosecutor General.<sup>49</sup> Similarly, in **Uzbekistan** Parliament approves the Presidential Decree on the appointment of the Prosecutor General. In the framework of the Fourth Round of Monitoring of the Istanbul Anti-Corruption Action Plan these countries were recommended to take steps related to limiting the role of political bodies in the appointment of the Prosecutor General.

In view of the appointment of one of the previous Prosecutor Generals of **Ukraine**, Parliament had eliminated the obligation for the Prosecutor General to hold a law degree, which he did not own. Ukraine's Fourth Round Monitoring Report raised concern over the reform, as it "does not set a good tone for the rule of law in the overall prosecution system" and "it does not contribute to building up of public trust that the office of the Prosecutor General is independent of the political bodies who changed these basic rules to be able to appoint their candidate."<sup>50</sup> The requirement of holding a law degree by the Prosecutor General was re-established in 2019 after the respective Prosecutor General had stepped down.

The chairman of the Supreme People's Procuracy of **Viet Nam** is elected by Parliament at the proposal of the President.

**Bosnia and Herzegovina** applies to the appointment of the leadership of the Prosecution Service the same system as the recruitment of any other prosecutor: by a decision of the High Judicial and Prosecutorial Council (HJPC).<sup>51</sup>

**Georgia's** system unfolded in four phases. At first, the Minister of Justice consulted representatives of academia, civil society and law experts. Based on the consultations, at least three candidates were proposed to the Prosecutorial Council with a reasoned decision. The Prosecutorial Council then held separate voting procedures by secret ballot for the three candidates. The candidate receiving more votes from not less than 2/3 of all members was nominated. The Minister of Justice, on behalf of the Prosecutorial Council, presented the successful candidate to the Government of Georgia to obtain consent. The

---

<sup>48</sup> OECD (2018), Istanbul Action Plan Fourth Round Monitoring Report on Armenia 2018, OECD Publishing, Paris, pages 89-90, <http://www.oecd.org/corruption/acn/OECD-ACN-Armenia-4th-Round-Monitoring-Report-July-2018-ENG.pdf>

<sup>49</sup> See Art. 9 of Mongolia's Law on the Prosecutor's Office and Art. 131-1 of the Constitution of Ukraine. For the Deputy Prosecutor General of Ukraine, who is the head of the Anticorruption Prosecutor Office, a competition takes place. Shortlisted candidates are selected by a special commission composed of four people appointed by the Council of Prosecutors and seven appointed by Parliament. The selected candidate is submitted to the Prosecutor General, who appoints him/her.

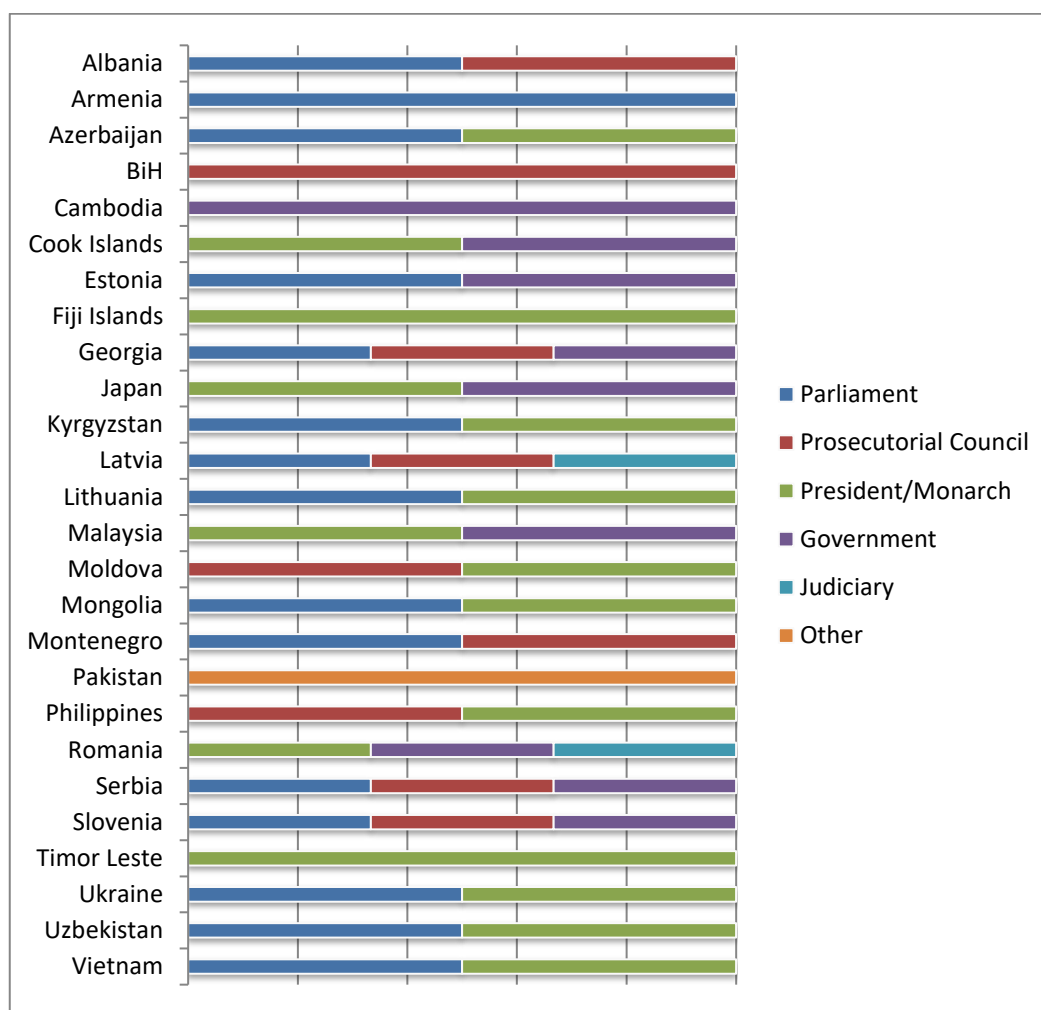
<sup>50</sup> OECD (2017), Istanbul Action Plan Fourth Round Monitoring on Ukraine 2017, OECD Publishing, Paris, pages 90-94, <https://www.oecd.org/corruption/acn/OECD-ACN-4th-Round-Report-Ukraine-ENG.pdf>.

<sup>51</sup> See Art. 3 of the Law on the Prosecutor's Office of Bosnia and Herzegovina.

candidate who received Government's consent was finally presented to Parliament for election. The parliamentary approval was voted through secret ballot by the majority of its members.<sup>52</sup>

In **Latvia**, Section 38 of the Prosecution Office Law states that the Prosecutor General is nominated by the Chief Justice of the Supreme Court, upon approval of the Judicial Council. The Prosecutor General is therefore appointed to the office by Parliament.

**Figure 1.6. Authorities appointing the Prosecutor General**



Note: Only data from the countries that replied to the relevant sections of the questionnaire are displayed. Data are updated as of January 2018.

The Prosecutor General of **Moldova** is selected by the High Council of Prosecutors through an open competition and appointed by the President.

<sup>52</sup> The new Organic Law of Georgia on the Prosecutor's Office, enacted on 30 November 2018, establishes and appointment procedure in three phases without any participation of the Executive. Consultations and the selection of the candidate are now a competence of the sole Prosecutorial Council. The final approval is given by Parliament with the majority of its members, without a secret ballot.

**Montenegro**'s leadership of the Prosecution Service (the Supreme State Prosecutor) is elected following a procedure that starts with a public invitation. Candidates who are shortlisted by the Prosecutorial Council attend a hearing before the competent working body of Parliament. The Prosecutor General is then appointed by Parliament.<sup>53</sup>

The Prosecutor General of **Romania** is appointed by the President at the proposal of the Minister of Justice, following the advisory opinion of the Section for Prosecutors of the Superior Council of Magistracy.<sup>54</sup>

**Serbian** Parliament elects the Prosecutor General upon the proposal of the government based on a list of candidates submitted by the State Prosecutorial Council. The procedure starts with publicly advertising the vacancy.<sup>55</sup>

In **Slovenia**, the appointment is made by Parliament, on a reasoned proposal of the State Prosecutorial Council following the preliminary acquisition of the opinion of the government.<sup>56</sup>

The Prosecutor General of **Japan** is appointed by the Cabinet (Government) and approved by the Emperor.

In **Malaysia**, the Attorney General is appointed by His Majesty Yang di-Pertuan Agong on the advice of the Prime Minister, in accordance with Article 145(1) of the Federal Constitution.<sup>57</sup> The Solicitor-General of the **Cook Islands**, chief of the Service, is appointed by the Queen's Representative upon recommendation of the Prime Minister, who acts as Attorney-General.

In **Cambodia** the Chief of the Prosecution Service is the Minister of Justice.

---

<sup>53</sup> See Amendment X to the Constitution of Montenegro, "Official Gazette of Montenegro", No. 38/2013.

<sup>54</sup> See Art. 54 of the Law 303/2004 of Romania.

<sup>55</sup> See Art 74 of the Law on Public Prosecution and Art. 13 of the Law on State Prosecutorial Council of Serbia.

<sup>56</sup> See Article 111 Par. 1 of the State Prosecutor's Office Act of Slovenia (SPOA).

<sup>57</sup> The data on Malaysia concern the prosecution system established within the Legal and Prosecution Division of the Malaysia Anti-Corruption Commission. The Legal and Prosecution Division is in charge of the prosecution and trial of cases of corruption and abuse of power. The term "Public Prosecutor", in accordance with the Interpretation Acts 1948 and 1967 means "the Attorney General and includes (within the scope of his authority) a Deputy Public Prosecutor appointed under any written law relating to criminal procedure and a person authorised by any as such law to act as or exercise all or any of the powers of the Public Prosecutor and Deputy Public Prosecutor." This Study refers to the Attorney General/Public Prosecutor also as the Prosecutor General.

#### Box 1.4. Appointment of the leadership of the Prosecution Service – Israel

The Public Prosecution in Israel is headed by the Attorney General. In such capacity, he/she is in ultimate charge of the law enforcement functions of the Prosecution Service in Israel. He/she is ultimately responsible for, inter alia, representing the State before the courts in all legal areas and overseeing the exercise of the professional responsibilities of public prosecutors, including with respect to their appearances in court.

The Prosecution Service is comprised of the State Attorney's Office, headed by the State Attorney, the Israel Police Prosecution Department and other specialised prosecutors within various ministries and local municipalities.

The Attorney General is appointed by the government from among candidates recommended by a standing professional Public Committee. The Committee is headed by a former Supreme Court Justice, nominated by the Chief Justice with the consent of the Minister of Justice, and includes four other members: a former Minister of Justice or a former Attorney General, nominated by the government; a member of Parliament (Knesset), nominated by the Knesset Committee of Constitution, Law and Justice; a private attorney, nominated by the Israel Bar Association; and an academic scholar with expertise in the fields of public law and criminal law, nominated by deans of the law faculties.

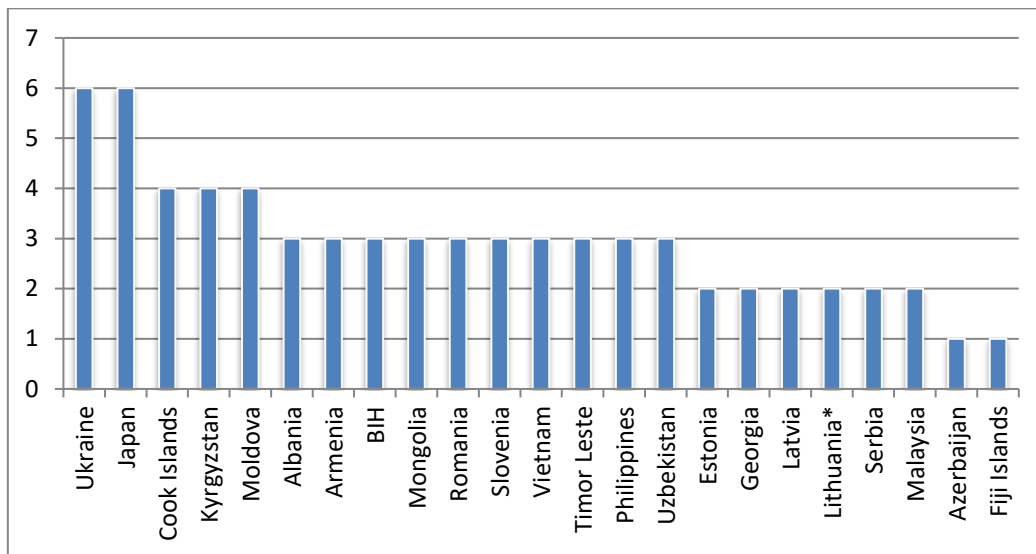
The Prime Minister, the Minister of Justice or a committee member can nominate candidates for the position of Attorney General. Government Decision establishing the manner and conditions for nominating the Attorney General stipulates that the candidates the Committee recommends to the government must be suitable and worthy of nomination, according to the principles set in the 1998 Report of the Committee for Examining the Manner of Nominating the Attorney General. These principles include a specific provision stating that a person currently involved in political activities, or who was involved in such activities during the three years preceding his nomination, cannot be nominated as the Attorney General. The names of the candidates deemed to be suitable and worthy of nomination by the Committee with the support of at least four of its members, would be made public at least 21 days before the recommendation of the Committee is presented to Government.

The Committee can nominate a single candidate or a number of candidates. The Minister is authorized to guide the Committee as to the number of candidates presented, with a maximum of three candidates. The list of candidates is then brought before the government. The Attorney General is selected from amongst the candidates included in this list. If the government decides not to appoint any of the nominated candidates, the Committee would reconvene, and the nomination process would be repeated until a nominated candidate would be selected by the government.

*Source:* Response from Israel to the Study Questionnaire

During 2008-2017, the number of Prosecutor Generals appointed in the participating countries goes from a minimum of one in **Azerbaijan** to six PGs nominated in **Ukraine** and **Japan**, with a vast majority of countries reporting a succession of two or three PGs. The figures regarding **Lithuania** refer to the period 2013-2018.

Figure 1.7. Number of Prosecutor Generals during 2008-2017



Note: Lithuania's figures cover the period 2013-2018. Only data from the countries that replied to the relevant sections of the questionnaire are displayed. Data are updated as of January 2018.

### Conclusions:

As it is shown in the analysis above, the role of the executive and/or the legislative bodies in the appointment of the leadership of the Prosecution Service is common in many countries. This comes in line with the Recommendation Rec (2000)19 of the Committee of Ministers on the role of public prosecution in the criminal justice system, according to which a plurality of models are accepted – from systems in which the public prosecution is independent of the government to others where it is subordinated to the executive branch.

However, no matter what model the country chooses, it is equally important that the system for appointment of prosecutors, and especially the Prosecutor General, could prevent any risk of improper political influence or pressure in connection with the functioning of the Prosecution Service. Even if the final and formal appointment of the Prosecutor General is in the hands of the President, Parliament or Government, it is crucial how the candidates are selected. The selection should be based on merit, as well as on objective criteria and a transparent procedure. In this way, the entire procedure gains the confidence of the public and the respect of the judicial profession in its entirety.

In order to achieve this goal, most of the international soft-law instruments recommend that professional, non-political expertise should be involved in the selection process. Many countries give such a role to the Judicial/Prosecutorial Councils or Selection Committees composed of legal professionals (judges, prosecutors, attorneys, etc.). Even with the members of these committees appointed by political bodies, if the selection of the members is transparent and the whole process of selection of candidates to the leadership of the Prosecution Service managed by this committee is transparent and based on objective criteria, the trust of the public can be obtained. Involvement of civil society experts may also contribute to the transparency of the overall selection process.

If the Prosecutor General is elected by Parliament, the use of a qualified majority for the final election promotes a broader consensus. In such cases, however, it is necessary to ensure that appropriate provisions exist to enable an appointment to be made if Parliament cannot reach the required majority.

### Recommendations:

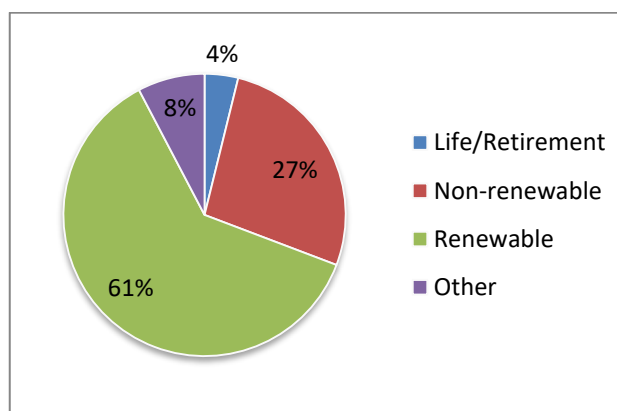
- Clear, transparent and credible procedures for the selection, appointment and dismissal of the leadership of the Prosecution Service should be established by law.
- The legal community (including prosecutors) and, if appropriate, civil society should be involved in the selection of the leadership of the Prosecution Service.
- A key role in the selection process should be given to PSG bodies or an independent expert selection committee (formed by professionals who are themselves selected through a transparent procedure based on merit).
- If the leadership of the Prosecution Service is elected by Parliament, use a qualified majority for the final election.

#### 1.4.2. Tenure of the Prosecutor General

According to the Venice Commission Report on European Standards as regards the Independence of the Judicial System, the leadership of the Prosecution Service “should be appointed permanently or for a relatively long period without the possibility of renewal at the end of that period.”<sup>58</sup> . These rules aim at preserving the stability of the Prosecutor General’s role and its independence from political influence related to possible reappointment.

From all countries that provided information for the study only in **Japan** and **Lebanon** the leadership of the Prosecution Service is appointed until retirement.

Figure 1.8. Tenure of the Prosecutor General



Note: Only data from the countries that replied to the relevant sections of the questionnaire are displayed. Data are updated as of January 2018.

61%<sup>59</sup> of the responding countries have the possibility to reappoint the Prosecutor General after the term expires, 27%<sup>60</sup> have established a non-renewable term, and 8% have other systems. In **Malaysia** the

<sup>58</sup> Venice Commission (2010), Report on European Standards as regards the Independence of the Judicial System: Part II – The Prosecution Service, <https://rm.coe.int/1680700a60>.

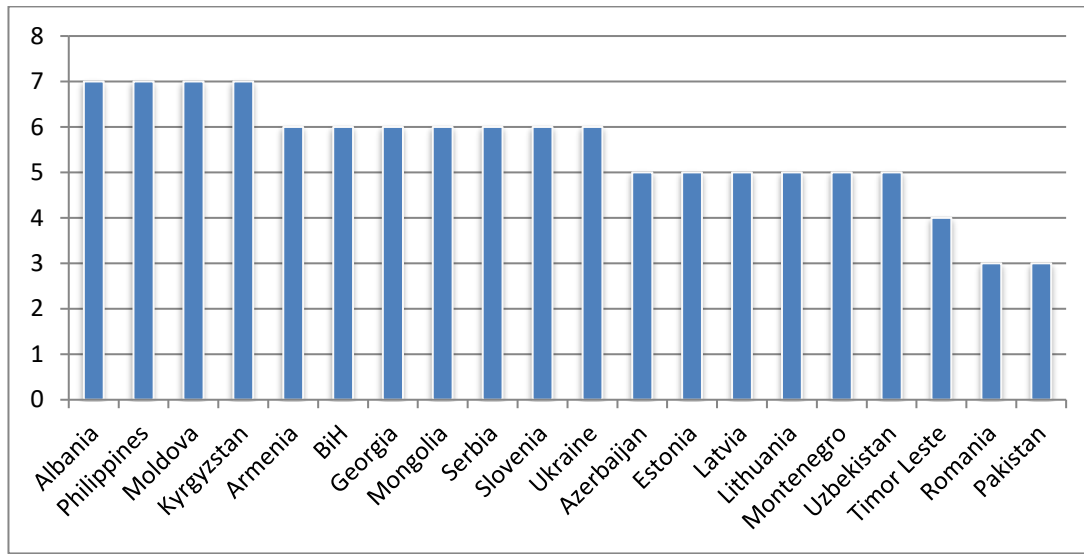
<sup>59</sup> Armenia, Azerbaijan, Bosnia and Herzegovina, Estonia, Fiji (Fiji Independent Commission against Corruption), Kyrgyzstan, Latvia, Lithuania, Mongolia, Montenegro, Romania, Serbia, Slovenia, Timor-Leste, Uzbekistan, and Viet Nam.

<sup>60</sup> Albania, the Cook Islands, Georgia, Moldova, Pakistan, the Philippines (the Special Prosecutor), and Ukraine.

tenure of the head of the Prosecution Service lies “at the pleasure” of the monarch<sup>61</sup>, or until retirement at the age of 65, while in **Cambodia** it is related to the role of the Minister of Justice as Chief of the Prosecution Service.

The duration of the tenure in the participating countries varies from three years in **Romania** to seven years in **Albania, Kyrgyzstan, Moldova**, while in **Mexico** and the **UK** the Prosecutor General’s tenure is of nine years.

**Figure 1.9. Tenure of the Prosecutor General (years)**



Note: Figures display the length of the mandate, in years. Only data from the countries that replied to the relevant sections of the questionnaire are displayed. Data are updated as of January 2018.

### Conclusions:

An issue of concern can be related to the number of mandates that the Prosecutor General can hold. There are some countries where the Prosecutor General, once appointed, can either have an unlimited term subject to revocation at any time by the political body which appointed him/her or can be re-elected for an unlimited number of mandates. Such systems could potentially increase the vulnerability of this key position to political pressure (due to individual expectations of renewal).

The Venice Commission stated in its report on European Standards as regards the Independence of the Judicial System that a Prosecutor General should not be eligible for re-appointment, at least not by either the Legislature or the Executive. This is to avoid the potential risk that a prosecutor who is seeking re-appointment by a political body will behave in such a manner to obtain the favour of that body or at least to be perceived as doing so.

Therefore, it would be preferable to provide by law a mandate that is long enough to give the Prosecutor General the possibility to implement his/her law enforcement strategy but limiting the possibilities of renewal in order to minimise the risks of improper political influence.

<sup>61</sup> However, he/she cannot be removed from office except on the like grounds and in the similar manner as a judge of the Federal Court (Art. 145 of Malaysia’s Constitution).



## Recommendations:

- The head of the Prosecution Service should be appointed for a relatively lengthy period (no less than 5 years) and without the possibility to run for another term.
- The tenure of the Prosecutor General should not normally coincide with the term in office of the appointing authority.

### 1.4.3. Dismissal of the Prosecutor General

According to international standards, the grounds for dismissal of the leadership of the Prosecution Service should be established by law, and a body of experts should participate in the dismissal procedure. The Prosecutor General should be granted a fair hearing in dismissal proceedings.

Among all the participating countries, only **Timor-Leste** declares that the head of the Prosecution Service cannot be dismissed. **Azerbaijan** is the only legal system where the law does not specify any grounds for the dismissal of the Prosecutor General.<sup>62</sup> In all other countries the leadership of the Service can be dismissed, and the grounds founding the dismissal are established by law.

#### *- Grounds for the dismissal*

**Albania's** Art. 149/c of the Constitution provides for the basis on which the Constitutional Court can dismiss the Prosecutor General in case of disciplinary and criminal liability. He/she can be dismissed by the Constitutional Court when he/she commits severe professional or ethical violations or has been convicted by a final court decision for committing a crime. Furthermore, the leadership of the Service can be suspended in case of arrest or house arrest due to a criminal offence, if he/she is prosecuted for a serious crime committed intentionally or when subjected to disciplinary proceedings according to law.

Art. 63 of the Law on the Prosecutor's Office of **Armenia** defines the criteria for the early termination of powers of the Prosecutor General. These grounds are, among other things,<sup>63</sup> related to criminal convictions, the termination of a criminal prosecution instituted against him/her on a non-acquittal ground, or violations of the law or the rules of conduct of prosecutors which impair the reputation of the Prosecutor's Office. Similar regulations have been established in **Bosnia and Herzegovina, Estonia, Georgia, Lithuania, Mongolia, and Viet Nam.**

Section 411 of **Latvia's** Prosecution Office Law states that the Prosecutor General can also be dismissed if he/she is a member of a party or a political organisation, or while performing official duties has committed an intentional violation of law or negligence resulting in "significant consequences". Misconduct and neglect of duty also justify the dismissal of the head of the Prosecution Service in the **Cook Islands.**

Art. 57 and 58 of **Moldova's** Law on the Prosecutor's Office define the criteria for dismissing all prosecutors, including the Prosecutor General. The main cases of early termination of powers are criminal convictions, prohibition by a court sentence to hold prosecutorial positions, dismissal as a disciplinary sanction, incompatibility, candidature to parliamentary or local elections, conflict of interests, and failure or refusal to submit the mandatory declaration of assets and interests.

In **Montenegro**, the leadership of the Prosecution Service may be removed from office because of irresponsible or unprofessional performance of duties, as well as for disciplinary responsibility. **Romania** makes also reference to misconduct in managerial duties regarding the efficient organisation, behaviour

---

<sup>62</sup> See Art. 133 paragraph III of Azerbaijan's Constitution.

<sup>63</sup> E.g. loss of citizenship or physical incapability to carry out the mandate, resignation, and incompatibility.

and communication.<sup>64</sup> **Slovenia**'s law further provides for the possibility to dismiss the Prosecutor General if he/she fails to achieve the planned prosecution performance results stated in the annual work programme of the Office of the State Prosecutor General for two years in a row without justification.<sup>65</sup>

**Serbia**'s grounds for dismissal are the same for all prosecutors, including the leadership of the Service: a final judgment for a criminal offence to a term of imprisonment of at least six months, malpractice or the commission of a serious disciplinary offence.<sup>66</sup>

Similarly, **Uzbekistan** refers to disciplinary liability as the main ground to dismiss the Prosecutor General, and the Fourth Round Monitoring Report in the framework of the Istanbul Anti-Corruption Action Plan highlighted the absence of grounds for the early termination of powers of the Prosecutor General and concluded that both the appointment and the dismissal from the office are of political nature. Therefore, the Report recommended the country to determine an exhaustive list of the grounds for the early release of the Prosecutor General from office.<sup>67</sup>

In **Ukraine** a distinction is made between the dismissal of the Prosecutor General, due to resignation, disciplinary offences or incompatibility, and his/her termination of powers, caused by a parliamentary vote of no confidence. In the first case the decision is taken by the President with the consent of Parliament, while in the second a procedure of impeachment is carried out by Parliament.

Art. 23 of **Japan**'s Public Prosecutor's Office Act (PPOA) states the grounds for dismissals: mental or physical disability, inefficiency in the carrying out duties, and "any other reasons deemed to be inadequate for duty". Besides, the Prosecutor General can also be dismissed following a disciplinary proceeding for violation of the National Public Service Act (NPSA) or the National Public Service Ethics Act, breach of an obligation in the course of his/her duties, or the commission of "such misconduct as to render oneself unfit to be a servant of all citizens."

The Attorney General of **Malaysia**, in the like manner of a judge of the Federal Court, can be removed on the grounds of inability, infirmity of body or mind, and improper discharge of his functions.<sup>68</sup>

---

<sup>64</sup> See Art. 51 par. 2 of the Law 303/2004 of Romania.

<sup>65</sup> See Art. 127 of the State Prosecutor's Office Act of Slovenia (SPOA).

<sup>66</sup> Law on Public Prosecution, Art. 92. See also Art. 90 on "Permanent Loss of Working Capacity" and Art. 93 on "Incompetent Performance".

<sup>67</sup> OECD (2019), Istanbul Action Plan Fourth Round Monitoring Report on Uzbekistan 2019, OECD Publishing, Paris, pages 141-142, 144, [https://www.oecd.org/corruption/acn/OECD-ACN-Uzbekistan-4th-Round\\_Monitoring-Report-2019-ENG.pdf](https://www.oecd.org/corruption/acn/OECD-ACN-Uzbekistan-4th-Round_Monitoring-Report-2019-ENG.pdf).

<sup>68</sup> See Art.145 (6) of the Federal Constitution of Malaysia.

### Box 1.5. Appointment and dismissal of the Prosecutor General - Italy

The head of the Prosecutor General's Office is designated by the Superior Council of Magistracy (CSM) through the same selection procedure as for any other prosecutor's office leadership position.

The Prosecutor General is, by rank, the second magistrate of the Italian judiciary and is appointed by the Superior Council of Magistracy. The Ministry of Justice must give its consent to the choice of the Council but has neither the power of proposal nor appointment. According to the provisions of Article 104 of the Constitution, the Prosecutor General is a member of the Superior Council of Magistracy.

The Superior Council of Magistracy can dismiss the Prosecutor General only in specific cases enumerated by law and through public disciplinary proceedings, either independently or as a consequence of a conviction for a criminal offence.

*Source:* Response from Italy to the Study Questionnaire

*Source:* Italy submission for the Study

#### - Authorities involved in the dismissal

In **Albania** the Constitutional Court is the entity entrusted with carrying out the proceedings and taking the decision on the dismissal of the Prosecutor General.

The Parliament of **Armenia** may, in the cases prescribed by law, remove the Prosecutor General from office by at least 3/5 of votes of the total number of deputies. Moreover, a parliamentary minority has the right to submit a motion ("draft resolution") to the National Assembly to dismiss the Prosecutor General. The resolution is discussed at the sitting of Parliament with the possibility for the Prosecutor General to answer questions as well as make a concluding speech after the main report.<sup>69</sup>

**Azerbaijan's** and **Mongolia's** Prosecutor Generals may be discharged by the decision of the President of the Republic, with the consent of Parliament. Similarly, in **Viet Nam** the chairman of the Prosecution Service is dismissed by the National Assembly at the proposal of the President.

However, the recent legislative amendments allowed the President of **Mongolia** to dismiss the leadership of the Prosecutor's Office under the simplified procedure on the proposal of the National Security Council which is composed of the President, Prime Minister and Speaker of Parliament. Consequently, the Prosecutor General and his deputy were dismissed.<sup>70</sup>

**Bosnia and Herzegovina's** discharge system relies on the decision of the High Judicial and Prosecutorial Council (HJPC).

In **Estonia** the dismissal procedure is wholly in the hands of the Executive. The Minister of Justice makes the proposal to remove the Prosecutor General and Government decides.<sup>71</sup>

<sup>69</sup> See Armenia's Art. 153 of the Rules of Procedure of the National Assembly.

<sup>70</sup> Transparency International (2019), [https://www.transparency.org/news/pressrelease/parliament\\_of\\_mongolia\\_should\\_uphold\\_the\\_independence\\_of\\_the\\_judiciary](https://www.transparency.org/news/pressrelease/parliament_of_mongolia_should_uphold_the_independence_of_the_judiciary) (accessed 30 September 2020).

<sup>71</sup> See Art. 41 of Estonia's Prosecutor's Office Act.

**Georgia** has set up a dismissal procedure which involves both the Prosecutorial Council and Parliament.<sup>72</sup> If there are sufficient grounds to believe that the Prosecutor General committed a crime, the Prosecutorial Council at the initiative of one or more members appoints a Special (*ad hoc*) Prosecutor. The Prosecutorial Council may also appoint a Special Prosecutor upon the petition of at least 1/3 of the full membership of Parliament. If the Prosecutorial Council by the majority of its members considers that there are no grounds to believe that the Prosecutor General has committed a crime, it refuses to appoint the Special Prosecutor. The refusal must be grounded. The appointed Special Prosecutor prepares a report on the alleged criminal acts of the Prosecutor General and submits it to the Prosecutorial Council. If the Prosecutorial Council by two thirds of its members approves the report of the Special Prosecutor, it applies to Parliament of Georgia to remove the Prosecutor General from office. Parliament votes by majority for the removal of the Prosecutor General. The Prosecutor General is suspended from his/her responsibilities immediately after the appointment of the Special Prosecutor until the Prosecutorial Council and/or Parliament make a decision. Furthermore, the Prosecutor General may also be dismissed from office if the Prosecutorial Council decides that he/she committed a disciplinary violation by secret ballot of two thirds of its members. In this case, the procedure is the same as described above except for the appointment of the Special Prosecutor, whose duties are performed by a rapporteur elected by 2/3 of the Prosecutorial Council.<sup>73</sup>

The Prosecutor General of **Kyrgyzstan** can be dismissed by the President with the consent of Parliament. One third of the members of Parliament can initiate the dismissal procedure, which is decided by a qualified majority of two thirds of the total numbers. A similar procedure is applied in **Uzbekistan**, where the President proposes the dismissal and Parliament approves.

In **Latvia**, an investigation into the activities of the Prosecutor General may be carried out by a justice of the Supreme Court, authorised by its Chief Justice either on his/her own initiative or upon request of at least one third of the members of Parliament. The Plenum of the Supreme Court gives its conclusions on the investigations. Parliament votes the discharge of the Prosecutor General if the investigations reveal any violations of the Prosecution Office Law.

Both in **Lithuania** and **Romania** the dismissing authorities are the respective Presidents of the countries, who are not part of the Executive. However, in Romania the procedure for dismissing of the Prosecutor General, symmetric to the one on appointing him/her, includes three actors in the procedure – the Minister of Justice, the Superior Council of Magistracy and the President of Romania. The balanced character of Romania's dismissal procedure for the Prosecutor General was put at test, as the Minister of Justice repeatedly called for the removal of the Prosecutor General because of alleged mismanagement, while the President denied those requests.<sup>74</sup>

**Moldova's** Prosecutor General can be dismissed by the President. In case of termination of powers because of the situation of incompatibility, violation of restrictions or conflict of interests the decision should be based on a judgement entered into force or a decision of the High Council of Prosecutors.

The initiative for the removal of the Supreme Public Prosecutor of **Montenegro** may be submitted by an extended session of the Supreme Public Prosecutor's Office and the Minister of Justice. The procedure is

---

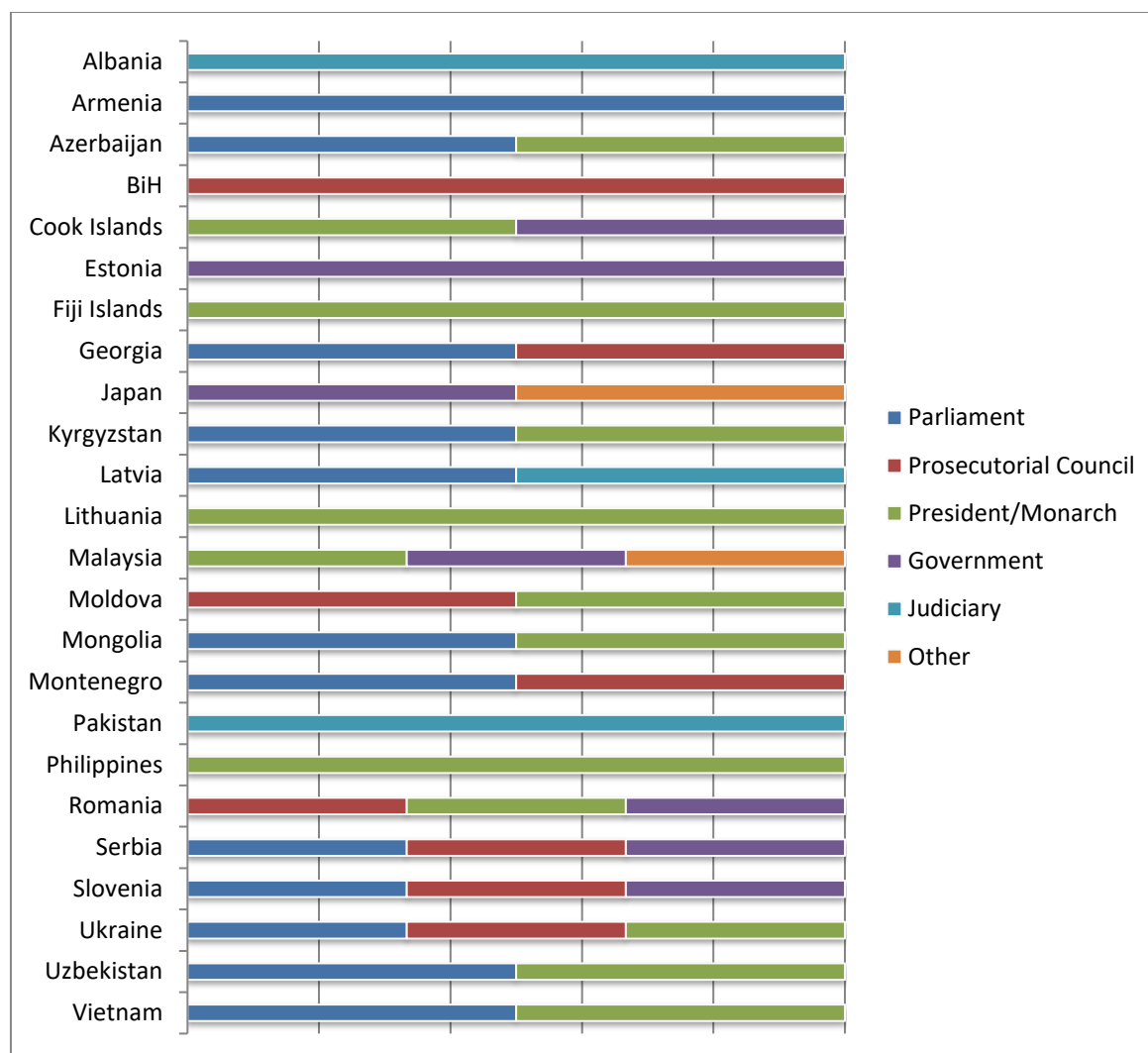
<sup>72</sup> See Art. 9<sup>2</sup> and 9<sup>3</sup> of the Law of Georgia on the Prosecution Service (PSG Law).

<sup>73</sup> The new Organic Law of Georgia on the Prosecutor's Office, enacted on 30 November 2018, set up a dismissal procedure that involves the Constitutional Court and Parliament. If there are sufficient grounds to believe that the Prosecutor General committed a crime, at the initiative of at least 1/3 of the members of Parliament the case is sent to the Constitutional Court. If the Constitutional Court considers that there are grounds to believe that the Prosecutor General has committed a crime, Parliament by two thirds of its members approves the dismissal of the Prosecutor General.

<sup>74</sup> AP News (2019), <https://www.apnews.com/1abfd1df127e43008adf31ee93aba046> (accessed 30 September 2020).

governed by the provisions regulating the procedure to establish disciplinary responsibility of Public Prosecutors for the most serious disciplinary offences. The Prosecutors Council issues a reasoned proposal for the dismissal of the Supreme Public Prosecutor and submits it to Parliament. The proposal may also be submitted to Parliament by 25 of its members.<sup>75</sup>

**Figure 1.10. Authorities taking part in the dismissal of the Prosecutor General**



Note: Only data from the countries that replied to the relevant sections of the questionnaire are displayed. Data are updated as of January 2018.

In **Slovenia** the dismissal of the State Prosecutor General is decided by the National Assembly upon the proposal of the State Prosecutorial Council. Before making the decision, the National Assembly sends the proposal to the government in order to receive its opinion.<sup>76</sup> Likewise, in **Serbia** the Prosecutorial Council establishes whether there exist grounds for removal, then the discharge is decided by Parliament, upon

<sup>75</sup> See Art. 110 of the Law on Public Prosecution Office of Montenegro.

<sup>76</sup> See Art. 128, Par. 2, of the State Prosecutor's Office Act of Slovenia (SPOA).

the proposal of the government.<sup>77</sup> An appeal may be lodged with the Constitutional Court against Parliament's decision on dismissal.<sup>78</sup>

The two systems of “dismissal” and “early termination of powers” of **Ukraine** foresee that the President takes the decision with the consent of Parliament, or the Prosecutor General is impeached directly by Parliament. In both cases a note of the Qualification and Disciplinary Commission is requested on the execution of the duties of the Prosecutor General.<sup>79</sup> The Qualification and Disciplinary Commission can also submit to the President a proposal for removal as an outcome of disciplinary proceedings.

In the **Cook Islands**, the decision on dismissal is on the Queen's Representative, after being advised by the Attorney General (currently the Prime Minister) or the Minister of Justice.

The Cabinet of Ministers of **Japan** dismisses the Prosecutor General following a decision of the Public Prosecutor's Qualifications and Examination Committee,<sup>80</sup> after receiving a recommendation from the Minister of Justice.<sup>81</sup> When the dismissal is the outcome of disciplinary action only the Cabinet runs the procedure.<sup>82</sup>

The monarch of **Malaysia** refers the proposal of discharge presented by the Prime Minister to a tribunal appointed by His Majesty, and removes the Prosecutor General on the recommendation of this tribunal.<sup>83</sup>

---

<sup>77</sup> See Art. 94 and 97 of the Serbian Law on public prosecution.

<sup>78</sup> See. Art. 98 of the Serbian Law on public prosecution.

<sup>79</sup> On the Qualification and Disciplinary Commission, see 1.3.1.

<sup>80</sup> The Examination Committee is formed within the MoJ and has 11 members, including MPs, judges, lawyers, and members of the Japan Academy and academics (Article 23(4) of PPOA).

<sup>81</sup> See Art. 23(1) and 15(1) of the Public Prosecutor's Office Act (PPOA).

<sup>82</sup> See Art. 84 of the National Public Service Act (NPSA)

<sup>83</sup> See Art. 125 (3) of the Federal Constitution of Malaysia.

### Box 1.6. Removal and suspension of the Prosecutor General - Mexico

In accordance with Art. 102, section A, subsection IV of the Constitution of the United Mexican States, the Prosecutor General can be removed by the Federal Executive for the serious causes established in the law. The removal can be objected by the vote of the majority of the members of the Chamber of Senators within a period of ten working days. During this period the General Prosecutor is reinstated in the exercise of their functions. If the Senate does not rule on the matter, it will be considered as there is no objection.

In conformity with Art. 110 of the Constitution, the Prosecutor General, as other high-level public officials, can be dismissed as a result of an impeachment procedure before Parliament. The Chamber of Deputies carries out the procedure of accusation and submits the decision to the Chamber of Senators. The accused has the right to a hearing before the Chamber of Deputies. The Chamber of Senators decides the dismissal by resolution of two thirds of its members. The Prosecutor General is heard during the proceedings. The declarations and resolutions of the Chamber of Deputies and Senators are final and cannot be challenged.

In addition, the Chamber of Deputies decides, by the absolute majority of its members, whether or not to initiate criminal proceedings against the Prosecutor General for the commission of crimes during the performance of his/her duties (Art. 111 of the Political Constitution). If the Chamber gives the green light to the proceedings, the Prosecutor is left at the disposal of the investigating authorities. No appeal is possible against the declarations and resolutions of the Chamber of Deputies. In the course of the criminal proceedings the Prosecutor General is suspended from his position.

Source: Response from Mexico to the Study Questionnaire and

#### *- Right to a fair hearing and figures on dismissal proceedings*

In the course of dismissal proceedings, Prosecutor Generals should benefit from a fair hearing. More than 60%<sup>84</sup> of the responding countries grant the head of the Prosecution Service the right to be heard. As seen above, in **Armenia** this is possible only when the procedure of removal starts with a motion of a faction of the National Assembly.<sup>85</sup> In the **Cook Islands** such right is ensured only in the case when a judicial review of the dismissal decision is sought. **Japan's** Prosecutor General is entitled to a hearing before the Examination Committee in the course of the dismissal procedure,<sup>86</sup> while disciplinary proceedings foresee only a written defence.<sup>87</sup>

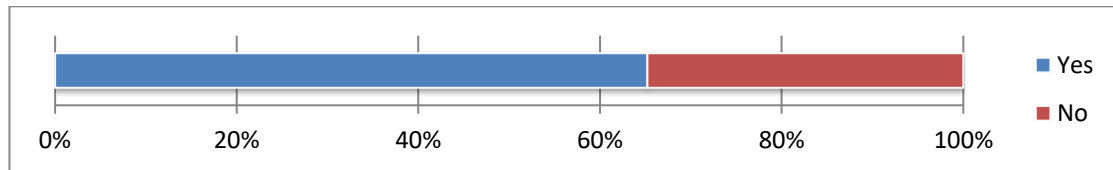
<sup>84</sup> Albania, Bosnia and Herzegovina, Cambodia, Estonia, Fiji (Fiji Independent Commission against Corruption), Lithuania, Malaysia, Moldova, Mongolia, Pakistan, the Philippines (the Special Prosecutor), Slovenia, Timor-Leste, Ukraine, and Viet Nam.

<sup>85</sup> See Art. 153 of the Rules of Procedure of the National Assembly of Armenia.

<sup>86</sup> See Art. 7 of the Ordinance on Public Prosecutor's Qualifications Examination Committee.

<sup>87</sup> See Art. 89(1) of NPSA.

Figure 1.11. Fair hearing for the Prosecutor General



Note: Only data from the countries that replied to the relevant sections of the questionnaire are displayed. Data are updated as of January 2018.

A vast majority of the responding countries state that no Prosecutor General has been discharged during 2008-2017. Only **Bosnia and Herzegovina, Malaysia, Mongolia, and Ukraine** report at least one case of dismissal. In the same period Prosecutor Generals result having resigned in **Armenia, Georgia, Lithuania, Moldova, the Philippines<sup>88</sup>, Ukraine, and Uzbekistan**. It's worth noting that, although **Japan's** leadership is appointed until retirement and no dismissal has been reported, six Prosecutor Generals have taken office in the last ten years.

### Conclusions:

The procedure of dismissal of Prosecutor Generals should follow an approach symmetrical to their appointment. In particular, the removal before the completion of the full term is very sensitive, in the public opinion, to suspicions of politicisation. The procedure should be well-calibrated in order to keep the right balance between the need for the democratic legitimacy of the mandate of the Prosecutor General and the necessity of de-politicisation of the Prosecution Service.

The procedure should be given appropriate safeguards in terms of transparency, objective grounds provided by law and the right checks and balances between the powers of the state. In that sense, the key role of the professional body might be even more important in the dismissal procedure than in the appointment. If the procedure is left totally in the hands of the government, parliamentary majority or other political bodies, the public could perceive the dismissal as a sanction to the Prosecutor General for the cases that his/her office has brought before the courts during the mandate.

The grounds for which the Prosecutor General can be dismissed should be objective and very clearly provided by law. They should not come as a pressure to the Prosecutor General to take decisions wished by the ruling majority. In the course of dismissal proceedings, Prosecutors General should have the right to a fair hearing.

### Recommendations:

- The grounds for dismissal of the head of the Prosecution Service should be established by law in a clear-cut, objective and exhaustive manner.
- An independent expert body should participate in the dismissal procedure with the authority to give a prior legal opinion on the matter.

<sup>88</sup> The replies of the Philippines consider the "Office of the Special Prosecutor" (*Tanodbayan*), created within the Office of the Ombudsman, as the Prosecution Office, and the "Special Prosecutor" as the Prosecutor General. The Office of the Special Prosecutor conducts investigations and prosecutes cases within the jurisdiction of the "*Sandiganbayan*". The *Sandiganbayan* has jurisdiction over criminal, and civil cases involving graft, corrupt practices and other offenses committed by public officers and employees, including those in government-owned or controlled corporations, in relation to their office.



- The leadership of the Prosecution Service should be granted a fair hearing in any dismissal proceedings as well as judicial legal remedies where appropriate.

## 1.5. Accountability of the leadership of the Prosecution Service

The autonomy of the Prosecution Service and the discretion granted to public prosecutors are generally counterbalanced by a certain level of accountability towards the political branches of power, the judiciary, the public, or within the service itself (see also □). Prosecutor Generals can be required to account for the general activity of the Prosecution Service. However, no form of interference of these powers should be allowed in individual cases and decisions regarding specific proceedings should be left to the Prosecution Service itself.

A prosecutor remains accountable to the court with respect to the conduct of criminal cases. Other necessary forms of accountability should include the provision of information concerning decisions in individual cases to interested parties and the provision of statistical and other information to the general public.

### Venice Commission Report

87. In order to provide for guarantees of non-interference, the Venice Commission recommends:

8. Accountability of the Prosecutor General to Parliament in individual cases of prosecution or non-prosecution should be ruled out. The decision whether to prosecute or not should be for the prosecution office alone and not for the executive or the legislature. However, the making of prosecution policy seems to be an issue where the Legislature and the Ministry of Justice or Government can properly have a decisive role.

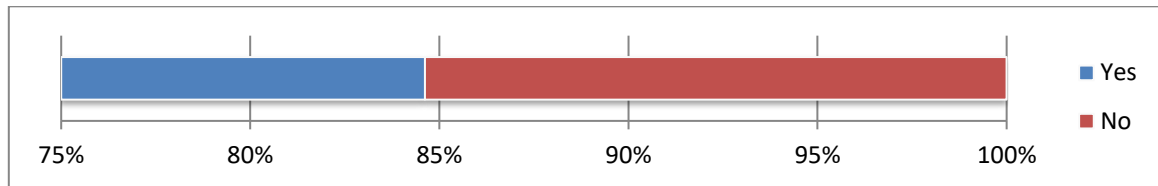
9. As an instrument of accountability the Prosecutor General could be required to submit a public report to Parliament. When applicable, in such reports the Prosecutor General should give a transparent account of how any general instruction given by the executive have been implemented.

### 1.5.1. Accountability for the general activity of the Prosecution Service

Almost 85%<sup>89</sup> of the countries participating in the study require Prosecutor Generals to give an account of the activity of the Service to either the Executive or Parliament. When they're issued (see 2.1), this account also refers to the implementation of the general instructions and guidelines the Prosecution Service is provided with (e.g. the **Romanian** Prosecutor General's report refers to the activity and results of the prosecutor's office).

<sup>89</sup> Albania, Armenia, Azerbaijan, Bosnia and Herzegovina, Cambodia, the Cook Islands, Estonia, Georgia, Kyrgyzstan, Latvia, Lithuania, Malaysia, Moldova, Mongolia, the Philippines (the Special Prosecutor), Romania, Serbia, Slovenia, Timor-Leste, Ukraine, Uzbekistan, and Viet Nam.

Figure 1.12. Account for general activity of the Prosecutor General



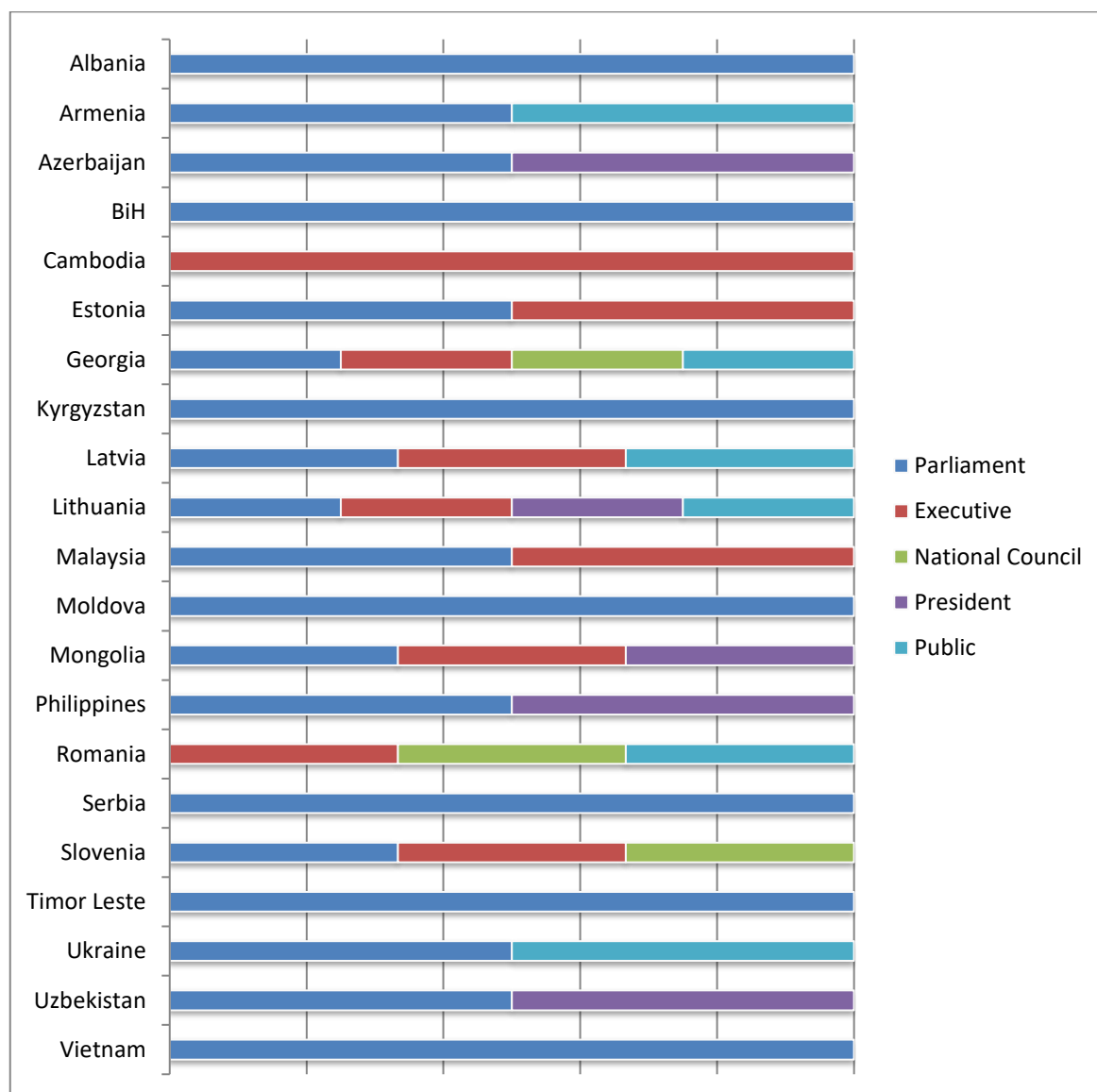
Note: Only data from the countries that replied to the relevant sections of the questionnaire are displayed. Data are updated as of January 2018.

Art. 104 of **Albania's** law 97/2016 states that the Prosecutor General reports to Parliament on the state of crime in the country, at least once a year. The report includes data on the number, types, and geographical location of criminal acts in Albania. The Prosecutor General also refers to the implementation of the Council of Ministers' recommendations on priorities in the fight against criminality. In particular, the Prosecutor General reports whether general guidelines have been issued based on these recommendations and the results of their implementation. The Prosecutor General also submits to the Assembly detailed information on the effectiveness of the prosecution, the quality of indictments in court, as well as other essential activities of the respective institutions. The Prosecutor General must cooperate with parliamentary investigative commissions, although criminal investigations are independent of the investigations of parliamentary committees.

**Armenia's** Public Prosecutor's Office informs the public and Parliament on the activities, directions and strategic priorities of the Prosecution Service. Prior to 1<sup>st</sup> April of each year, the Prosecutor General submits to Parliament a report on the previous year activities of the Prosecutor's Office. The report includes statistical data, comparative analysis and conclusions regarding the activities carried out and it is posted on the website of the Prosecutor's Office. For the purpose of drawing up the report, pre-trial investigation bodies submit information and statistical data on the results of investigations of crimes committed during the previous year.

The Prosecutor General of **Azerbaijan** informs Parliament and the President on the activity of the Prosecutor's Office, except for the cases under investigation.

Figure 1.13. Authorities to which the Prosecutor General accounts



Note: Only data from the countries that replied to the relevant sections of the questionnaire are displayed. Data are updated as of January 2018.

Art. 10 of the Law on the Prosecutor's Office of **Bosnia and Herzegovina** establishes that the Prosecutor General, on an annual basis or upon request, provides the Presidency, Parliament and the Council of Ministers with information on the activity of the Office. In a similar manner, **Timor-Leste's** and **Viet Nam's** heads of the Prosecution Service once a year present a report before Parliament.

In **Estonia**, the Prosecutor General is required to submit to the Minister of Justice a consolidated report on the activity of the Prosecutor's Office once a year.<sup>90</sup> The Prosecutor's Office also presents to the Constitutional Committee of Parliament an annual overview of the performance of its duties imposed on by law. The Prosecutor General may voluntarily submit to the Constitutional Committee reports concerning significant issues that may need prompt regulation and which come to knowledge in the course of the

<sup>90</sup> See §11 of Estonia's Prosecutor's Office Act.

activities of the Prosecutor's Office. Also in **Malaysia** the Attorney General/Public Prosecutor submits official reports to the Executive and Parliament.

According to **Georgia's** Law on the Prosecution Service, twice a year or based on a majority decision of the Prosecutorial Council, the Prosecutor General submits an activity report to the Prosecutorial Council. The report concerns the work of the Prosecution Service, criminal justice, statistics, protection of human rights and freedoms in criminal proceedings, issues of high public interest, priorities, professional training and development programs for prosecutors. These reports of the Prosecutor General are publicly accessible.<sup>91</sup>

In **Kyrgyzstan** the Prosecutor General annually reports on the status of the legal order to the President, and Parliament hears his annual report as well. Similarly, in **Moldova** the Prosecution Service provides Parliament with an annual report on the activities carried out during the previous year.

The annual meeting of **Latvia's** Prosecution Service takes place every year with the participation of the members of Parliament, heads of law enforcement and public authorities, as well as representatives of the mass media. In the meeting, the Prosecutor General gives an account of the Prosecution Office's results throughout the previous year and sets priority directions for the next year. The Prosecutor General's report is published in the media and publicly available on the Prosecution Office's website.

**Lithuania's** Prosecutor General accounts for the activities of the Prosecution Service to the President of the Republic, Parliament (*Seimas*) and Government. An annual report is submitted to Parliament and published on the website of the Service. The Prosecutor General cannot provide information about ongoing proceedings to the government.

In **Mongolia**, the Prosecutor General accounts for the activity of the Service to Parliament and Government. On request of the President the Prosecutor General can issue an opinion on matters pertaining to his authority.

According to **Romania's** Law no. 304/2004, the Prosecutor's Office attached to the High Court of Cassation and Justice draws up an annual report on the activity carried out. The report is submitted to the Superior Council of Magistracy and the Minister of Justice, no later than February of the following year. The Minister of Justice reports to Parliament on the information received.

**Serbia's** Prosecutor General accounts for his work and the work of the entire Prosecution Service to Parliament, although there are no general guidelines given by the Executive or Parliament to the Prosecutor's Office.

In **Slovenia** the Prosecutor General compiles an annual report on the work of state prosecutor offices over the previous year and sends it to the Minister of Justice, Parliament and the State Prosecutors' Council.<sup>92</sup>

At least once a year the Prosecutor General of **Ukraine** has to report to Parliament about activities through providing consolidated statistics and analytical data. Every six months the heads of regional/district prosecutor's offices have to inform the public and the Regional/District Councils on their activity through statistics and data. The media are invited to these periodic reports. Information about the activities of the Prosecutor's Office is published through national and local media, as well as the official website of the Prosecutor's Office.

**Uzbekistan's** Prosecutor General frequently reports to the President and Parliament about the status of criminality in the country and submits an activity report every six months. Within the Parliament a

---

<sup>91</sup> Art. 68 of the new Organic Law of Georgia on the Prosecutor's Office, enacted on 30 November 2018, establishes that the Prosecutor General reports to Parliament once a year.

<sup>92</sup> See Art. 150 of the State Prosecutor's Office Act (SPOA).

Committee has been established for the purpose of ensuring a parliamentary overview of the Prosecution Service.

In **Cambodia**, Prosecutor Generals of the Courts of Appeal make an annual report to the Minister of Justice on their activities as well as on the activities of the prosecutors of the Courts of First Instance under their jurisdiction. A copy of the report is provided to the Prosecutor General of the Supreme Court. A report on the activity of the prosecutors of the Supreme Court is provided to the Minister of Justice by the Prosecutor General of the Supreme Court.

### Box 1.7. Double-layered accountability - UK

The Director of Public Prosecutions and the Director of the Serious Fraud Office (SFO) exercise their statutory functions subject to the superintendence of the Attorney General. The Attorney General is accountable to Parliament for his or her functions in relation to prosecutions and for the work of the Directors and the prosecuting departments. The Attorney General answers Parliamentary Questions and receives correspondence from Members of Parliament. The Directors ensure that their Departments support the Attorney General in fulfilling this duty. The Attorney General is responsible for safeguarding the independence of prosecutors in taking prosecution decisions.

*Source:* Response from the UK to the Study Questionnaire

### 1.5.2. Accountability for individual cases

Less than 30%<sup>93</sup> of the responding countries have set forth an obligation for Prosecutor Generals to report to Parliament or the Executive on specific cases.

In **Latvia** the Prosecutor General has the duty to report major breaches of the law with national relevance to the President, Parliament and the Prime Minister. In **Japan**, cases meeting specific criteria (that have not been specified) are referred to the Minister of Justice.

**Malaysia's** Prosecutor General submits official reports on ongoing cases to the Executive or Parliament upon express request. Also, **Montenegro** has set up a similar reporting only on request.

**Slovenia's** Minister of Justice may request state prosecutor's offices to report about criminal proceedings and other matters under their consideration. On the basis of these reports, the Ministry may account for the State Prosecutor Office's activity to Parliament, Government, the President of the Republic, the Court of Auditors, the Constitutional Court, and the Human Rights Ombudsman.<sup>94</sup> State prosecutor's offices submit to the Ministry reports and data concerning particular proceedings unless disclosing the information is detrimental to the interests of the proceedings, confidentiality or privacy of the involved persons.

The Prosecutor General of **Uzbekistan** reports immediately to the President in case particularly serious crimes occur. The Fourth Round Monitoring Report on Uzbekistan in the framework of the Istanbul Anti-

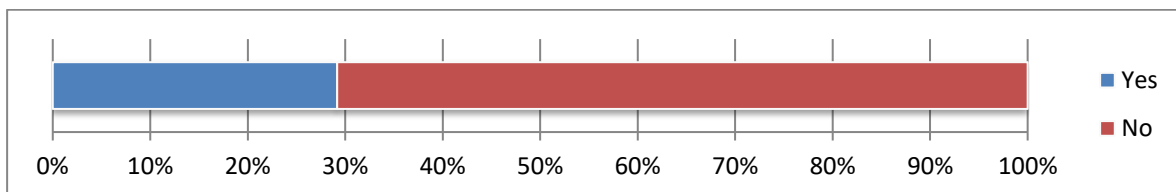
<sup>93</sup> Japan, Latvia, Malaysia, Montenegro, Slovenia, Uzbekistan, and Viet Nam.

<sup>94</sup> See Art. 177 of the State Prosecutor's Office Act (SPOA).

Corruption Action Plan also noted that the Prosecutor's Office provided the President with regular updates about ongoing criminal investigations.<sup>95</sup>

While there is no legal obligation of the Prosecutor General to report about individual cases, according to a media report some ongoing investigations were discussed when the Prosecutor General of **Kyrgyzstan** was presenting his annual report before Parliament.<sup>96</sup>

**Figure 1.14. Reporting on individual cases**



Note: Only data from the countries that replied to the relevant sections of the questionnaire are displayed. Data are updated as of January 2018.

Less than 20%<sup>97</sup> of the participating countries formalised an obligation for prosecutors to inform the media about ongoing investigations.

**Albania's** Law 97/2016 ensures the right of public and media to be informed about the activity of prosecution offices and specific issues, including individual cases. The confidentiality necessary to the investigations is however maintained. Public relations services are established within the prosecution offices under the direction and supervision of the prosecutor assigned to public relations. Public relations services are performed in order to ensure providing information, taking into consideration the protection of human dignity, privacy and personal data, reputation and presumption of innocence.<sup>98</sup>

The relationships between **Azerbaijan's** Prosecutor's Office and mass media are regulated by the Order of the Prosecutor General No 09/62, of 27 June 2005. The Press Service of the Prosecutor General's Office is in charge of disseminating information on criminal cases and other activities of the Prosecutor's Office through the official website and other sources. Nevertheless, attention is paid to preserve the confidentiality of the investigation, the privacy of personal and family life, state secrets and other information protected by law.

In **Montenegro** all prosecution offices designate a prosecutor who handles press releases on behalf of the prosecution office.

Art. 19 of the Guide on the relation between the judicial system and the mass media, adopted by the Superior Council of Magistracy of **Romania** states that courts and prosecutors' offices are obliged to provide representatives of the media with correct and prompt information regarding their activity.<sup>99</sup> The law

<sup>95</sup> OECD (2019), Istanbul Action Plan Fourth Round Monitoring Report on Uzbekistan 2019, OECD Publishing, Paris, pages 142, [https://www.oecd.org/corruption/acn/OECD-ACN-Uzbekistan-4th-Round\\_Monitoring-Report-2019-ENG.pdf](https://www.oecd.org/corruption/acn/OECD-ACN-Uzbekistan-4th-Round_Monitoring-Report-2019-ENG.pdf).

<sup>96</sup> <https://rus.azattyk.org/a/29885564.html> (accessed 30 September 2020)

<sup>97</sup> Albania, Azerbaijan, Montenegro, Romania, and Ukraine.

<sup>98</sup> See also Albania's Law on the Right to Information.

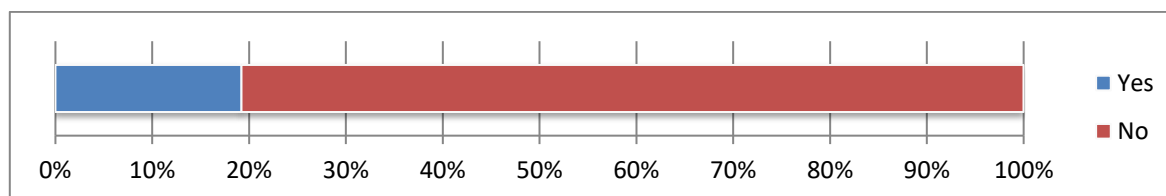
<sup>99</sup> In 2018, the Guide was under a process of revision, following the entry into force of the EU Regulation no. 679/2016 on data protection and the adoption of the Law no. 363/2018 on data protection by authorities competent in preventing and investigating criminal offences. The text reflects provisions of the Guide as of January 2018.

provides for limits to disclose information regarding criminal investigations. The access to this kind of information is not granted when the outcome of the investigation could be jeopardized, the disclosure concerns confidential sources, or the publication violates the right to a fair trial or the legitimate interest of any party to the proceedings.

In **Ukraine**, the Criminal Procedure Code states that information on ongoing investigation can be disclosed only with the written consent of the investigator or prosecutor working on the case and only to the extent allowed by them. However, an Order of the Prosecutor General establishes that when the case is of public interest, prosecutors have to publish comments on the facts and the actions undertaken by the Office. The disclosure cannot unveil the identity of the suspect, accused or defendant until the judgement enters into force, or the identity of the victim, without his/her consent, as well as state or other secrets cannot be shared. The Prosecutor General or his Deputy authorise the sharing of the information from the General Prosecutor's Office, while the heads of local branches approve the related sharing from their offices.

**Uzbekistan's** prosecutors may inform the media about an ongoing investigation without disclosing classified information.

**Figure 1.15. Obligation to inform the media**



*Note:* Only data from the countries that replied to the relevant sections of the questionnaire are displayed. Data are updated as of January 2018.

In **Bosnia and Herzegovina** and **Estonia**, no obligation of informing the media about ongoing investigations has been established, but such disclosure is permitted if useful to the proceedings.<sup>100</sup>

**Georgia's**, **Latvia's** and **Cambodia's** Prosecutor's Offices can publish press-releases and hold press-conferences on cases of high public interest, but no form of disclosure is mandatory. Similarly, in **Serbia** prosecutors are allowed to inform the media, always ensuring the respect of the presumption of innocence and the interests of the investigation.

As in **Malaysia** prosecutors are not involved in the investigations, the enforcement agencies are the bodies which may inform the media on a case during the pre-trial stage of the proceedings.

**Timor-Leste** reports that disclosing to the media information regarding ongoing investigations is prohibited by law.

<sup>100</sup> See Art. 11 of the Law on the Prosecutor's Office of Bosnia and Herzegovina, and § 214 of Estonia's Code of Criminal Procedure.

### Box 1.8. Limited account on individual cases - Lebanon

The Prosecution Service of Lebanon has no obligation to report to any other state institution about ongoing criminal proceedings. The only exception to this general rule are cases concerning crimes which cause national concern. A specialised Parliamentary Committee can request the Prosecutor General to give an account of the investigations made in these cases and the measures taken. However, the Committee does not have any competence to take or order prosecutorial decisions.

*Source:* Response from Lebanon to the Study Questionnaire

### Conclusions:

Accountability of prosecutors is the necessary corollary to their independence. The credibility of both the efficacy and the impartiality of prosecutors is enhanced by a well-balanced obligation to general reporting.

The analysis above shows that there are different forms of accountability of Prosecution Services in the participating countries, mostly to Parliament, Government, or the President, while reporting to Prosecutors' Councils is not so common.

The reporting could be done before the same legislative or executive body that has a role in the appointment of the Prosecutor General or that gives general instructions and guidelines to the Prosecution Service. As an alternative, such reporting could also be provided to the Prosecutorial Council, in the countries where such a body exists. It is recommendable that the reporting is done, at least on an annual basis, by the Prosecutor General and not by other prosecutors, so that the Prosecutor General represents prosecutors before all branches of state power, thus protecting prosecutors' independence. The reporting should cover general issues regarding the performance of the activity of the prosecution offices, the priorities followed in combating the criminality, as well as the quality results of the work of prosecutors in statistical terms. Reports should be made available to the public.

Other important forms of accountability should include the access to information relating to decisions in individual cases for interested parties including suspects and accused persons, crime victims and investigators.

Although in most cases the existent reporting mechanisms do not require providing information about individual ongoing cases, there are examples when it happens in practice. As a general rule, prosecutors and the Prosecutor General should not report to external bodies on ongoing individual cases, so that the reporting obligation will not be used as a pressure or intimidation mechanism against them. They should instead be accountable to courts, which should be entitled to rule on complaints from people involved in the case (suspects, defendants, victims) with regard also to the reasonable duration of the criminal proceedings. It is particularly important that there be accountability to courts in cases where there is a challenge to the legality of an instruction given by a senior prosecutor, as otherwise the principle of the independence of the prosecutor could be abused to hide improper interference coming from within the Service itself.

Reporting to the public about prosecutors' activities is an established policy of most Prosecution Services that is usually implemented in an organised way, through press-services or designated officers, with some restrictions regarding the scope of information about ongoing cases. In some countries such reporting is within the discretion of the prosecutor's offices.



Public reporting should be recommended concerning prosecution policies, guidelines and instructions, as well as statistical information on the outcome of concluded cases. This form of reporting is particularly important for cases that are very sensitive for the public, such as cases regarding a large number of victims, cases that raise concerns on the security of the population, or cases regarding the abuse of power by high-level public officials. Countries should ensure a right balance between the need of the public to be informed and the observance of the presumption of innocence as well as personal data protection, in particular of witnesses and victims.

#### **Recommendations:**

- Reports of the head of the Prosecution Service to the state authorities should be envisaged by law, made public, and limited to the general activity of the Prosecution Service. These reports should include appropriate statistical information.
- Reporting procedures should not be used as a means of interference with individual cases.
- The Prosecution Service should be as clear as possible in explaining its work to the public, giving information of general nature about the prosecution policy, guidelines, statistical data and reporting on the outcome of concluded cases.

### **1.6. Budget and staff**

The Prosecution Service should receive adequate financial and staff resources to carry out its tasks and representatives of prosecutors should participate in drawing up the annual budget.

#### **Council of Europe , Criminal Law Convention on Corruption**

##### Article 20 – Specialised authorities

Each Party shall adopt such measures as may be necessary to ensure that persons or entities are specialised in the fight against corruption. They shall have the necessary independence in accordance with the fundamental principles of the legal system of the Party, in order for them to be able to carry out their functions effectively and free from any undue pressure. The Party shall ensure that the staff of such entities has adequate training and financial resources for their tasks.

#### **Council of Europe, Recommendation Rec(2000)19**

##### Safeguards provided to public prosecutors for carrying out their functions

4. States should take effective measures to guarantee that public prosecutors are able to fulfil their professional duties and responsibilities under adequate legal and organisational conditions as well as adequate conditions as to the means, in particular budgetary means, at their disposal. Such conditions should be established in close co-operation with the representatives of public prosecutors.

**United Nations Convention Against Corruption (UNCAC)**

Article 36. Specialized authorities

Each State Party shall, in accordance with the fundamental principles of its legal system, ensure the existence of a body or bodies or persons specialized in combating corruption through law enforcement. Such body or bodies or persons shall be granted the necessary independence, in accordance with the fundamental principles of the legal system of the State Party, to be able to carry out their functions effectively and without any undue influence. Such persons or staff of such body or bodies should have the appropriate training and resources to carry out their tasks.

**CCJE, Opinion No.12**

4. Adequate organisational, financial, material and human resources should be put at the disposal of the judicial system.

**Rome Charter**

XVIII. Prosecutors should have the necessary and appropriate means, including the use of modern technologies, to exercise effectively their mission, which is fundamental to the rule of law.

XIX. Prosecution services should be enabled to estimate their needs, negotiate their budgets and decide how to use the allocated funds in a transparent manner, in order to achieve their objectives in a speedy and qualified way.

**1.6.1. Budget drawing up**

In more than 60%<sup>101</sup> of the responding countries the Prosecution Service participates in the drawing up of its annual budget.

**Albania's** prosecutors of all levels participate in drafting the Budget Project for each budget unit that is included in the General Prosecution Budget Project.<sup>102</sup> The Project Budget is discussed and validated by the Strategic Management Group (GMS) and sent to the Ministry of Finance for approval. The Group includes program managers of the Prosecutor General's Office, as well as representatives of the First Instance and Appeal Prosecution Offices. In **Estonia**, instead, the Prosecutor General sends the proposal to the Ministry of Justice.

Art. 77 of **Armenia's** Law on the Prosecutor's Office prescribes the procedure to establish the budget of the Prosecution Service. The Prosecutor's Office proposes a Budget Bid to the government. In the case of being approved by the government, the Budget Bid is submitted to the National Assembly along with the draft State Budget. If the government has objections on the proposed budget, it has to submit the rationale to the National Assembly and the Prosecutor General's Office. Moreover, a reserve fund for the Prosecutor's Office is envisaged to fund unforeseen spending needed to ensure the normal operation of the Prosecutor's Office. The size of the reserve fund is equal to two per cent of the budget envisaged for

<sup>101</sup> Albania, Armenia, Azerbaijan, Bosnia and Herzegovina, the Cook Islands, Estonia, Georgia, Lithuania, Moldova, Mongolia, Romania, Serbia, Slovenia, Ukraine, and Uzbekistan.

<sup>102</sup> Albania's legal sources for the creation of the annual budget are Articles 4 and 24 of Law no. 9936 of 2008 "On the Management of the Budgetary System in the Republic of Albania" and the Guidelines "On the Standard Procedures for the Preparation of the Medium Term Budget Program".

the Prosecutor's Office by the law on the State Budget for the corresponding year. Allocations from the reserve fund are made upon the decision of the Prosecutor General. The opinion of the Prosecutor's Office with respect to the Budget Bid and the spending programme is presented in the National Assembly by the Head of Staff of the Prosecutor's Office.

In **Azerbaijan**, the Financial and Material Maintenance Division of the Prosecutor General's Office drafts the project of the annual spending for all relevant structural units of the Service. The draft is presented to the Ministry of Finance, which includes it in the draft law on the state budget, which is discussed by Parliament and adopted by law. In a similar manner, **Ukraine's** Prosecutor General's Office prepares a budget proposal and sends it to the Ministry of Finance, which develops a consolidated budget for the whole state administration. The state budget is then adopted by Parliament.

The Prosecutor's Office of **Bosnia and Herzegovina** has its own budget, which is included in the state budget. The Chief Prosecutor presents a budget proposal to the High Judicial and Prosecutorial Council and has the right to attend the discussion and to defend the High Judicial and Prosecutorial proposal before Parliament. At the end of the budgetary year, the Chief Prosecutor informs the Parliament of Bosnia and Herzegovina on the execution of the budget of the Prosecutor's Office.

The Government of **Georgia** presents the annual draft Budget Law to Parliament, including the budget for the Prosecution Service. Parliament adopts the final Law. According to Georgian legislation, if the sums allocated to the Service are lower than the budgetary funds of the previous year, the consent of the Minister of Justice is needed for the approval.<sup>103</sup>

The Prosecution Office of **Latvia** every year submits to the Ministry of Finance a well-reasoned budget request, while the Ministry provides the draft state budget to the Cabinet of Ministers for further examination. While examining the draft, the Cabinet may reduce the financial resources assigned to the Prosecution Office. The reduction has to be reasonably grounded and proportional. The draft state budget is then sent to Parliament, which approves it. The Prosecution Office is entitled to co-participate throughout all stages of the preparation of the State budget (before the Ministry of Finance, the Cabinet of Ministers and Parliament). In case the Prosecution Office's budget is reduced, the Service can provide its opinion as to the funding necessary to secure its functions.

The budget proposal of **Lithuania's** Prosecution Service is drawn up by the Asset Management, Finance and Bookkeeping Division of the Prosecutor General's Office. It is then added to the draft Budget Law which the government, after its consideration, forwards to Parliament. The Parliament committees and members submit comments concerning the draft Budget Law to the government, which can make changes accordingly. The Budget Law is therefore reconsidered and approved by Parliament.<sup>104</sup>

**Moldova's** Prosecutor General's Office prepares a budget proposal with the consent of the High Council of Prosecutors and sends it to the Ministry of Finance. The Ministry of Finance, which prepares a consolidated budget for the whole state administration. A comparable procedure is followed in **Uzbekistan**.

According to **Romania's** Law no. 304/2004, the Prosecutor's Office attached to the High Court of Cassation and Justice. The budget of the Prosecutor's Office attached to the High Court of Cassation and Justice

---

<sup>103</sup> The new Organic Law of Georgia on the Prosecutor's Office, enacted on 30 November 2018, establishes that the Prosecutor General (and not the Minister of Justice) approves the lower allocation of budget.

<sup>104</sup> See the law "On the Structure of the Budget of the Republic of Lithuania", the Decision of the Government "On Drawing up of the State Budget of the Republic of Lithuania and Budgets of Municipalities and Approval of the Rules of Execution Thereof" and the "Methodology of Strategic Planning of the Prosecution Service of the Republic of Lithuania" approved by the Prosecutor General.

also includes the budgets of the prosecutor's offices attached to the other courts. The draft budget is subject to the opinion of the Superior Council of Magistracy and approved by the government.

**Serbia's** State Prosecutorial Council (SPC) proposes to the Ministry of Finance the budget for the whole Prosecution Service, except for the offices of the Prosecutor General, the Organized Crime Prosecutors and the War Crimes Prosecutors. The proposal includes spending for salaries of prosecutors and investigations costs. The Ministry of Justice submits to the Ministry of Finance the budget concerning the prosecutorial assistants and the administrative staff of prosecutors' offices. The Ministry of Finance approves the budget. In **Slovenia**, the Office of the State Prosecutor General sends its proposal for the annual budget to the Ministry of Finance, which decides on its approval.

In the **Cook Islands**, the financing of the Prosecution Service is established through a coordinated participation of the Crown Law Office (Prosecution Office), the Ministry of Finance and the Prime Minister acting as Attorney General.

Around July each year, **Japan's** government issues the budget request plan. The budgetary request with the estimates for the next fiscal year is submitted to the Minister of Finance by late August and finalised after discussion with the finance authorities. In January, the government produces the budget document and submits it to Parliament, which adopts it.

The annual budget for the Attorney General's Chambers of **Malaysia** is an allocation from the National Budget for the Prime Minister's Department. The National Budget is approved by Parliament.

In **Mongolia**, the Prosecutor General submits a budget proposal to the Finance Ministry that prepares the consolidated draft state budget, which is subject to approval by Parliament<sup>105</sup>.

**Montenegro, Cambodia, Pakistan, and Timor-Leste** have fully-governmental procedures to determine the budget of the Service, which is decided by either the Ministry of Justice, the Ministry of Finance or the government as a whole.

---

<sup>105</sup> OECD (2019), Istanbul Action Plan, Fourth Round Monitoring Report on Mongolia, page 65, <https://www.oecd.org/corruption/acn/OECD-ACN-Mongolia-4th-Round-Monitoring-Report-2019-ENG.pdf>.

### Box 1.9. Drawing up the budget - Mexico

The Political Constitution of the United Mexican States grants the Prosecutor General's Office with budgetary autonomy. Article 5 of the Federal Law on Budget and Fiscal Responsibility (LFPRH) entitles the Prosecutor General's Office with the following powers:

- a) Approve its budget proposal and send it to the Ministry of Finance and Public Credit (SHCP) for its integration into the Expenditure Budget project, observing the general economic policy criteria;
- b) Exercise its budget in accordance with the provisions of the LFPRH, without being subject to the general provisions issued by the SHCP and the Ministry of Public Administration. The said exercise shall be carried out based on the principles of efficiency, effectiveness and transparency and shall be subject to the regulations, evaluation and control of the corresponding bodies;
- c) Authorise adjustments to its budget without requiring the authorisation of the SHCP, observing the provisions of the LFPRH;
- d) Make its payments through its treasury or equivalent;
- e) Determine the corresponding adjustments in its budget in case of a decrease in income, observing the provisions of article 21 of the LFPRH;
- f) Keep the accounts and prepare their reports in accordance with the provisions of the LFPRH, as well as send them to the SHCP for integration into the quarterly reports and the Public Account.

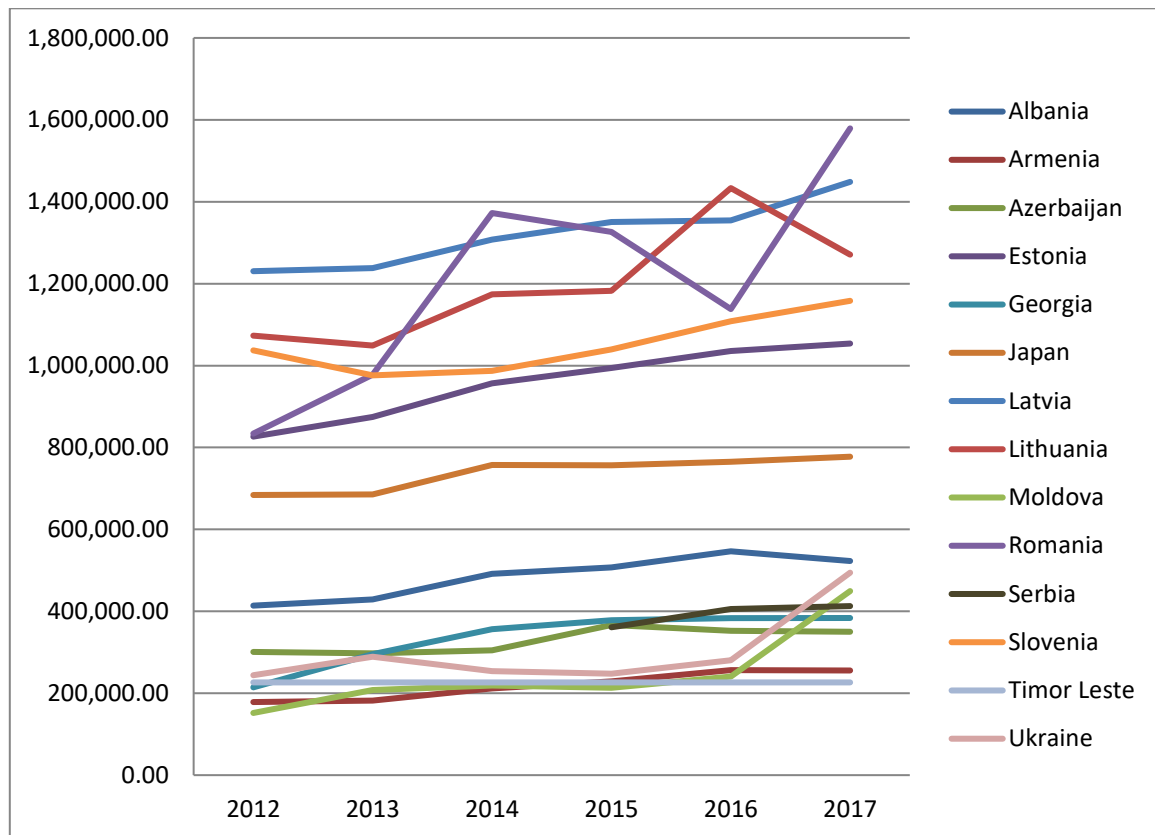
The Law establishes the power of the Prosecutor General's Office to prepare its annual budget for expenditures, indicating that in any case the autonomy, as well as the functional and financial independence, must be guaranteed.

*Source:* Response from Mexico to the Study Questionnaire and comments to the draft Study.

### 1.6.2. Amount of budget and staff

Countries that have communicated data on the financing and staffing of the Prosecution Service show a wide range of different amounts of resources provided. Data regarding the budgets and staff of Anti-Corruption agencies separated from the main Prosecution Service are not comparable and have not been inserted in this section.

Figure 1.16. Annual Budget/100 000 residents (trends)



Note: Figures are reported in US Dollars. Only the budgets concerning the only and whole Prosecution Service are displayed. Data on Serbia refer to the period 2015-2017. Data are updated as of January 2018.

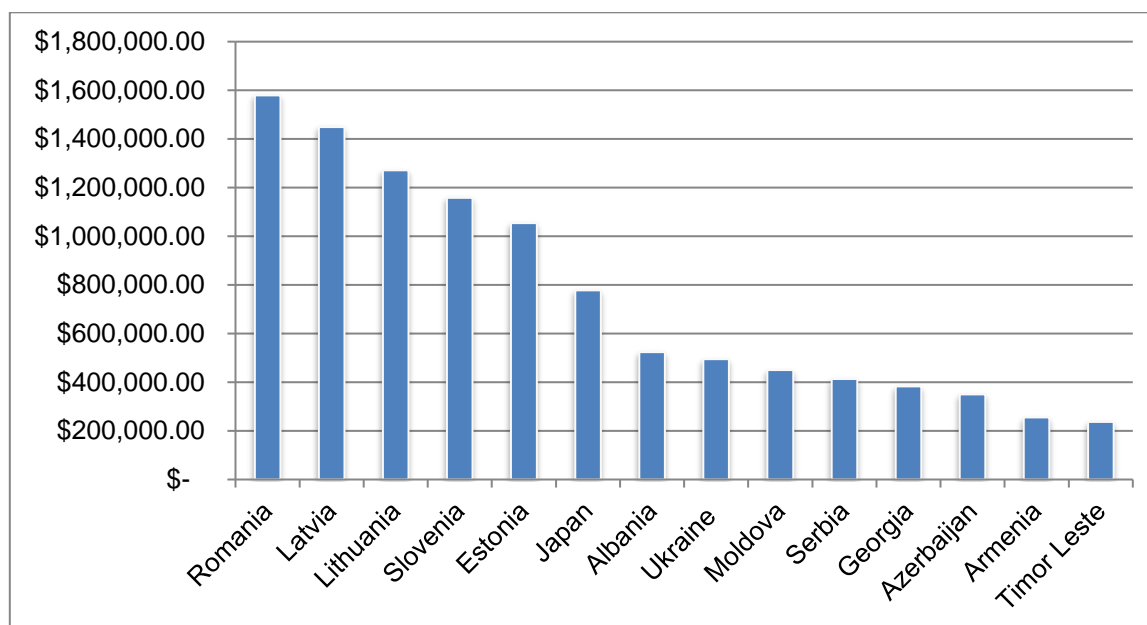
Source: Data on budget have been provided by countries. Figures on population are from the World Bank Open Database.

From 2012 to 2017 in almost all cases figures increased. Only **Timor-Leste's** financing remained unchanged, and no country lowered the budget. The two groups of low-financing and high-financing countries can still be easily distinguished. The first<sup>106</sup> comprises countries whose annual budgets are between 200,000 and 600,000 USD per 100,000 residents. There is here a slow increase since 2012, except for **Ukraine** and **Moldova**, which almost doubled its budget from 2016 to 2017. The second group,<sup>107</sup> where budgets are now between 1,000,000 and 1,600,000 USD per 100,000 residents, experienced a stronger increase. This trend is led by **Romania** that increased Prosecution Service's resources from 164,275,754 USD in 2012 to 311,080,133 USD in 2017, becoming the country with the highest financing among those participating in this study. **Japan's** budget grew from 868,673,247 USD in 2012 to 987,409,726 USD in 2017.

<sup>106</sup> Formed by Albania, Armenia, Azerbaijan, Georgia, Moldova, Serbia, Ukraine, and Timor-Leste.

<sup>107</sup> Formed by Estonia, Latvia, Lithuania, Slovenia, and Romania.

Figure 1.17. Budget every 100 000 residents (2017)

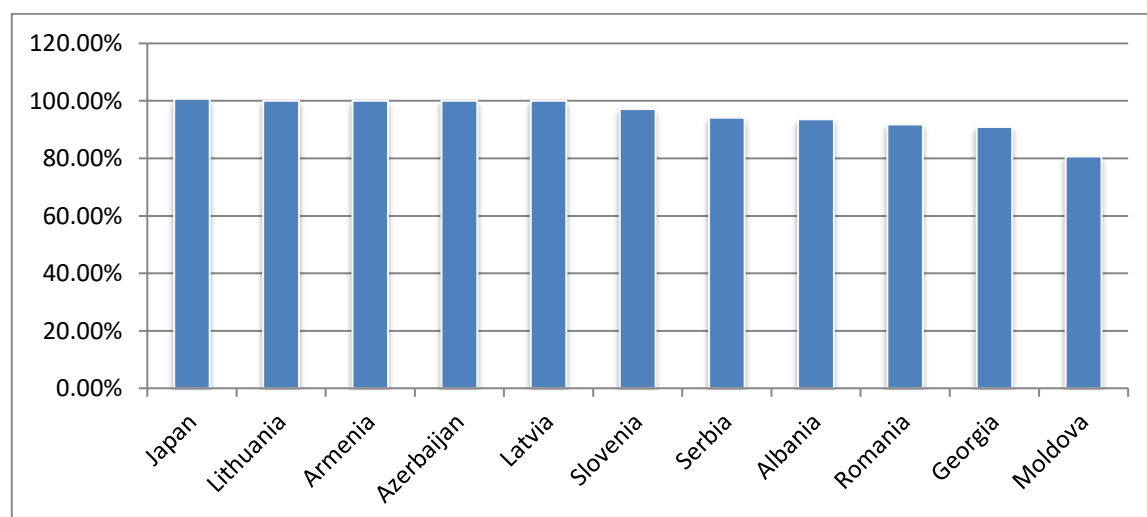


Note: Figures are reported in US Dollars. Only data from the countries that replied to the relevant sections of the questionnaire are displayed. Data are updated as of January 2018.

Source: Data on budget have been provided by countries. Figures on population are from the World Bank Open Database.

In many countries resources eventually received are lower than those requested. **Japan** (100.75% of the requested amount was granted) and **Lithuania** (100.09% of the requested amount was granted) are the only cases where the difference is instead slightly positive in favour of the Service. **Moldova** reports the widest gap between sought and received financing (see Figure 1.18).

Figure 1.18. Allocated budget as a percentage of the requested (2017)



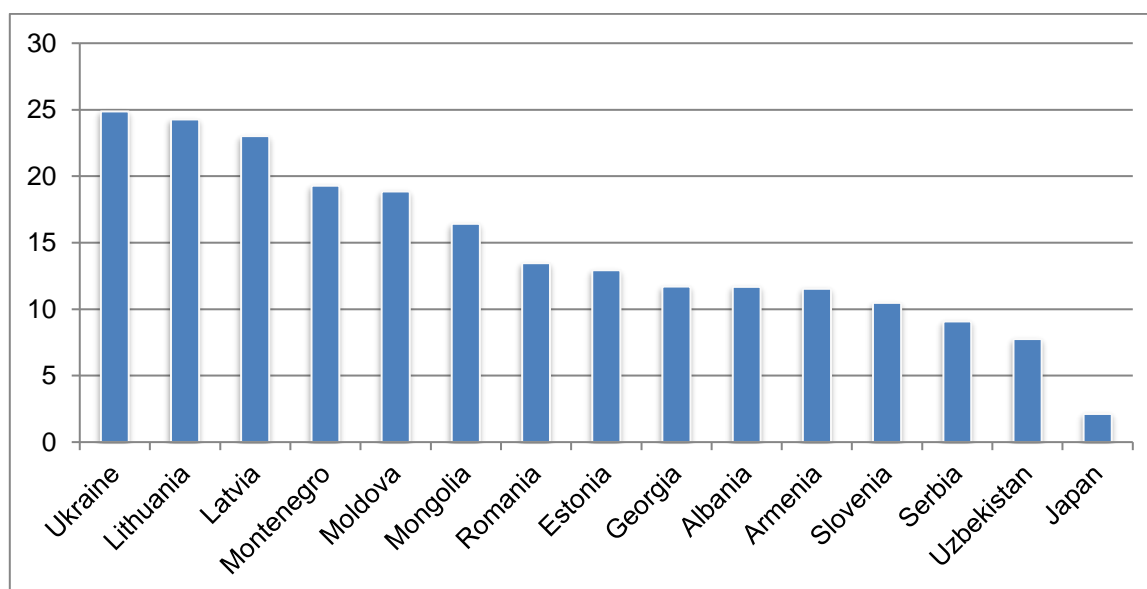
Note: Only data from the countries that replied to the relevant sections of the questionnaire are displayed. Data are updated as of January 2018.

Source: Data on budget have been provided by countries.

The number of prosecutors working in the Prosecution Service of a country depends on several factors, among which the procedural role of prosecutors in criminal proceedings, especially investigations. Countries, where prosecutors have little or no role in the investigative stage of criminal proceedings, need fewer prosecutors. Therefore, the following data should be seen as merely indicative and should be integrated with a more in-depth knowledge of the procedural rules of each country.<sup>108</sup> Replies, referring only to the staff of Anti-Corruption Agencies or specific administrative regions are not reported in this section. **Azerbaijan** and **Kyrgyzstan** expressly declare that the number of prosecutors is deemed confidential and is not public.

During 2012-2016, **Lithuania**, **Moldova** and **Ukraine** have experienced a decrease in the total number of prosecutors, while most countries report increasing or stable figures (see Table 1.1). The number of prosecutors every 100,000 residents varies remarkably among countries, going from about two in **Japan** to 24 in **Lithuania** and **Ukraine** (see Figure 1.19). Despite having the Prosecution Service with the lowest number of prosecutors per residents, **Japan** increased the staff from 2,627 in 2012 to 2,701 in 2016. **Georgia** experienced the highest relative increase with 345 prosecutors in 2012 and 435 in 2016.

**Figure 1.19. Number of prosecutors every 100 000 residents (2016)**



Note: Only figures concerning the sole and whole Prosecution Service are displayed. Data are updated as of January 2018.

Source: Figures on population are from the World Bank Open Database.

**Table 1.1. Number of prosecutors per country**

Country	2012	2013	2014	2015	2016
Albania	330	336	336	336	336
Armenia	337	337	337	337	337
Estonia	170	170	170	170	170
Georgia	345	405	432	444	435

<sup>108</sup> About recruitment procedures, see 3.1.



Japan	2,627	2,639	2,652	2,679	2,701
Latvia	451	450	457	459	451
Lithuania	766	740	720	709	696
Moldova	789	784	740	737	670
Montenegro	N/A	N/A	107	105	120
Romania	2557	2581	2588	2633	2650
Serbia	N/A	N/A	N/A	N/A	641
Slovenia	191	192	194	219	216
Ukraine	12414	13910	15456	13855	11188
Uzbekistan	2194	2217	2235	2332	2468

Note: Only figures concerning the sole and whole Prosecution Service are displayed. Data are updated as of January 2018.

### Box 1.10. The budget of the Prosecution Service – Israel and Poland

In 2012 Israel provided its Prosecution Service with annual resources equal to 103,006,779 USD, while in 2017 the amount was of 171,057,932 USD. The same period also saw Poland increasing the budget from 476,514,526 USD to 623,015,567 USD. Considering the populations of the two countries, in 2012 Israel financed the activity of prosecutors with 1,182,300 USD per 100,000 residents, while in 2017 1,963,384 USD were provided. During the same years, Poland increased the granted resources from 1,254,783 USD to 1,640,557 USD.

Source: Responses from Israel and Poland to the Study Questionnaire.

### Conclusions:

The Prosecution Service should receive adequate financial and staff resources to carry out its tasks. Representatives of prosecutors should be entitled to make proposals during the process of drawing up the annual budget. The Prosecution Service should be informed of the reasons why budget proposals are not accepted. Decisions to change or diminish the budget during the budgetary year should be taken only after due consultation with the representatives of the Prosecution Service and based on objective reasons.

The allocated budget should be sufficient enough for the prosecution offices to be provided with a reasonable number of qualified and trained prosecutors and the other auxiliary staff they need.

### Recommendations:

- The Prosecution Service should be provided with adequate financial and staff resources to carry out its tasks effectively and be entitled to make proposals during the process of drawing up the annual budget.
- The Prosecution Service and the public should be informed about the reasons in the case of a significant discrepancy between the proposed budget and that which is finally approved or allocated.

## 2. Individual Independence

---

The second chapter assesses the main features determining the level of individual independence enjoyed by prosecutors when carrying out their work. In particular, the vertical organisation of the Prosecution Service and the relationship between different layers of decision making is assessed in 2.1. The use of prosecutorial discretion and the issue of general guidelines for prosecutors are analysed in □. Direction and guidance to individual prosecutors are assessed against relevant international standards (□). The possibilities and forms of review of prosecutors' decisions are the subjects of □. The systems for prosecutors' accountability are described in □, while the question whether prosecutors enjoy the same immunities granted to judges is examined in □. Section □ analyses the means of protection that countries established against undue pressure on prosecutors. In □ it is pointed out whether and what safeguards have been put in place to protect prosecutors' personal safety when it's threatened as a result of the discharge of their functions. Professional Codes of Conduct for prosecutors and legislation on conflicts of interest are analysed in □.

---

### 2.1. Organisation of prosecutors' offices

The internal organisation of prosecutor's offices is among the main factors determining the independence of prosecutors. Although the Prosecution Service may follow a hierarchical structure, prosecutors should be independent when making decisions on the cases assigned.

### Council of Europe, Recommendation Rec(2000)19

9. With respect to the organisation and the internal operation of the Public Prosecution, in particular the assignment and re-assignment of cases, this should meet requirements of impartiality and independence and maximise the proper operation of the criminal justice system, in particular the level of legal qualification and specialisation devoted to each matter.

36.

a. With a view to promoting fair, consistent and efficient activity of public prosecutors, states should seek to:

- give prime consideration to hierarchical methods of organisation, without however letting such organisational methods lead to ineffective or obstructive bureaucratic structures

### Venice Commission Report

31. The independence of the prosecution service as such has to be distinguished from any “internal independence” of prosecutors other than the prosecutor general. In a system of hierarchic subordination, prosecutors are bound by the directives, guidelines and instructions issued by their superiors. Independence, in this narrow sense, can be seen as a system where in the exercise of their legislatively mandated activities prosecutors other than the prosecutor general need not obtain the prior approval of their superiors nor have their action confirmed. Prosecutors other than the prosecutor general often rather enjoy guarantees for non-interference from their hierarchical superior.

32. In order to avoid undue instructions, it is essential to develop a catalogue of such guarantees of non-interference in the prosecutor’s activities. Non-interference means ensuring that the prosecutor’s activities in trial procedures are free of external pressure as well as from undue or illegal internal pressures from within the prosecution system. Such guarantees should cover appointment, discipline / removal but also specific rules for the management of cases and the decision-making process.

### Rome Charter

The Consultative Council of European Prosecutors (CCPE), having been requested by the Committee of Ministers of the Council of Europe to provide a reference document on European norms and principles concerning public prosecutors, agreed on the following:

XIV. The organisation of most prosecution services is based on a hierarchical structure. Relationships between the different layers of the hierarchy should be governed by clear, unambiguous and well-balanced regulations. The assignment and the re-assignment of cases should meet requirements of impartiality.

### 2.1.1. Hierarchical organisation of the Prosecution Service

All of the responding countries<sup>109</sup> report that their national Prosecution Services are based on a hierarchical structure. The following are examples of the main hierarchical systems described by countries.<sup>110</sup>

In **Albania**, the Prosecution Service is attached to the judiciary system. Prosecutors are independent in exercising their functions, but there are several competences regarding the management of the prosecution offices that are entrusted to the Director of the Prosecution Office and the General Prosecutor. Law no 97/2016 provides the structure, the organisation and the management of the Prosecution Office, which consists of the General Prosecution Office, the Special Prosecution Office, the prosecution offices attached to the Courts of Appeal, and the prosecution offices attached to first instance courts. The management and representation of the different layers of the Prosecution Office are performed by the Prosecutor General and the heads of the respective prosecution offices. The same law establishes the powers and competences of the leadership of the Service and the heads of the offices.<sup>111</sup> In Art. 46 and 48 are stated the grounds for general binding and non-binding instructions.

The Prosecutor's Office of **Armenia** consists of a Central Office (including nine divisions and the Central Administrative Office), 18 regional prosecutor's offices and the Military Prosecutor's Office (with its own central office and nine garrison prosecutor's offices). Art. 32 of Armenia's Law on the Prosecutor's Office set the rules underlying the relationship between superior and subordinated prosecutors, establishing as a general rule that assignments and instructions of a superior prosecutor are binding unless they are illegal or unjustified (see □). Among other powers, an immediate superior check the fulfilment of the duties of subordinate prosecutors and gives him/her assignments or instructions in case of detecting a violation of the law. A superior prosecutor is entitled to cancel or amend unjustified or illegal acts, action and inaction of a subordinate prosecutor.

The Prosecutor's Office of **Azerbaijan** is a single centralised body based on the subordination of territorial and specialised prosecutors' offices to the Prosecutor General.<sup>112</sup> Hierarchical relations within the Prosecutor's Office are governed by the Criminal Procedure Code, the Prosecutor's Office Act and the Service in the Prosecutor's Office Act. Prosecutors may only receive instructions from their superiors, as well as the Prosecutor General, and the execution of all lawful instructions is mandatory. Senior prosecutors may perform the functions of their subordinates and abrogate, recall, change or substitute their decisions or acts.

In **Estonia**, the Prosecution Service consists of the Office of the Prosecutor General as the highest body and four district prosecutor's offices subordinate to it.<sup>113</sup> The Ministry of Justice and the Prosecutor General exercise supervisory control over the whole Service.<sup>114</sup> The control exercised by the Ministry of Justice does not extend to the activities of prosecutors concerning surveillance, pre-trial criminal proceedings and the representation of public prosecution in court. Chief prosecutors supervise district prosecutor's offices. According to the Code of Criminal Procedure the Prosecutor General may give general instructions for

---

<sup>109</sup> Albania, Armenia, Azerbaijan, Bosnia and Herzegovina, Cambodia, Estonia, Georgia, Japan, Latvia, Lithuania, Malaysia, Mongolia, Montenegro, Pakistan, the Philippines (Office of the Special Prosecutor), Romania, Serbia, Slovenia, Timor-Leste, Viet Nam.

<sup>110</sup> See also Sections 2.2.3 and 2.3 of this Study.

<sup>111</sup> See Art. 41 and 42 of the Law no 97/2016.

<sup>112</sup> See Art. 133, par. II, of the Constitution of Azerbaijan and Art. 2 of the Prosecutor's Office Act.

<sup>113</sup> See § 1 and of Estonia's Prosecutor's Office Act.

<sup>114</sup> See § 9 and of Estonia's Prosecutor's Office Act.

prosecutors and investigative bodies in order to ensure the legality and efficacy of pre-trial procedure (see 2.2.3)

Art. 118 of the Constitution of Lithuania stipulates that the Prosecution Service comprises the Office of the Prosecutor General and territorial prosecutor's offices. A regional prosecutor's office consists of district prosecutor's offices and specialised divisions of the regional prosecutor's office. According to the Law on the Prosecutor's Office the orders, ordinances, instructions, other regulations establishing the procedure for organising procedural actions and work, which have been issued by the Prosecutor General (his deputies), chief prosecutor of the territorial prosecutor's office (his deputies) shall be binding on prosecutors. At the same time, a superior prosecutor shall not give orders to an inferior prosecutor as to what procedural decision he should render. A prosecutor shall have the right to request that the superior prosecutor's directions with regard to procedural decisions which are not executed by resolutions should be given in writing. A superior prosecutor may by a reasoned decision reverse the decision rendered by a prosecutor of lower level<sup>115</sup>. The Regulations of Competencies of the Prosecution Service specify the powers and competence of the prosecutors of the Prosecutor General's Office and regional offices while performing their functions.

**Moldova's** Prosecution Service is composed of hierarchically structured offices. The Prosecutor General's Office is headed by the Prosecutor General and formed by Deputy Prosecutor Generals and several Divisions, headed by chief prosecutors. The Specialised Prosecutor's Offices are also directed by chief prosecutors, as well as the Territorial Prosecutor's Offices. Administrative and procedural instructions of superior prosecutors are binding on subordinated prosecutors. A superior prosecutor is empowered to reverse illegal decisions of lower prosecutors. All procedural instructions should be provided in writing, and a prosecutor may request for justification or appeal to the Prosecutor General or Deputy Prosecutor General.

The Public Prosecution Office of **Montenegro** includes the Supreme Public Prosecutor's Office, the Special Public Prosecutor's Office, the High Public Prosecutor's Offices and the Basic Public Prosecutor's Offices. The Supreme Public Prosecution Office is headed by the Supreme Public Prosecutor. Each Basic and High Public Prosecutor's Office is headed by a Head, and the Head of the Special Public Prosecutor's Office oversees the respective Office.<sup>116</sup>

According to the **Romanian** Constitution, public prosecutors shall carry out their activity following the principle of legality, impartiality and hierarchical control, under the authority of the Minister of Justice<sup>117</sup>. The Prosecution Service, which is the Public Ministry, includes Prosecutor's Office attached to the High Court of Cassation and Justice, Prosecutor's offices attached to courts of appeal, Prosecutor's offices attached to tribunals, Prosecutor's offices attached to courts of the first instance, Military prosecutor's offices. There are also two autonomous specialized offices – the National Anti-Corruption Directorate (DNA) and the Directorate for Investigating Organised Crime and Terrorism (DIICOT). The Law No. 304 of 2004 states that prosecutors are subordinated to the head prosecutor of the respective office. The head prosecutor of a prosecution office is subordinated to the head prosecutor of the hierarchically superior prosecution office from the same circumscription. Lawful decisions of superior prosecutors are binding on subordinated prosecutors, and superior prosecutors may repeal illegal or groundless decisions of lower prosecutors, who, in turn, may

---

<sup>115</sup> Law on the Prosecutor's Office of Lithuania, Art. 15, 16.

<sup>116</sup> See Art. 11 and 17 of the Law on the Public Prosecution Office.

<sup>117</sup> See Art. 132 of the Constitution of Romania.

appeal against decisions of higher-level prosecutors to the Prosecutorial Section of the Superior Council of Magistracy<sup>118</sup>.

In **Serbia**, the management of prosecutor's offices is carried out by the assigned heads, while the supervision of the management of prosecutor's offices is done by superior prosecutor's offices and also by the Ministry of Justice.<sup>119</sup> The Ministry issues the Rulebook, a regulation on the organisation of public prosecutor's offices, and monitors its implementation.<sup>120</sup>

The Prosecution Service of **Ukraine** has a vertical structure that comprises the Prosecutor General's Office, Specialised Anti-Corruption Prosecutor's Offices (autonomous but within the structure of the General Prosecutor's Office), Regional and Local Prosecutor's Offices. Superior prosecutors may give binding administrative and procedural instructions to subordinated prosecutors. A prosecutor may not follow the legally questionable instructions unless they are provided in writing, and obviously illegal orders of the hierarchy<sup>121</sup>.

Similarly, **Uzbekistan's** unified and centralised prosecutorial system includes the General Prosecutor's Office, the Prosecutor's Office of the Republic of Karakpakstan, Prosecutor's Offices of oblasts and the city of Tashkent, as well as Prosecutor's Offices of districts and cities. The Military Prosecutor's Office and the Transport Prosecutor's Office are among the specialised offices, as well as the Department dealing with tax and currency offences and money laundering (Uzbekistan's Financial Intelligence Unit). Superior prosecutors may give to subordinated prosecutors binding instructions and repeal any their decision<sup>122</sup>. Inferior prosecutors are not allowed to appeal against decisions of their superiors.

The Prosecutor's Office of Mongolia has a three-layer structure which includes the Prosecutor General's Office, regional and local prosecutor's offices; there is also a specialised transport prosecutor's office. The institution was subject to reform in 2017 and one of the outcomes of the reform was strengthening of control exercised by superior prosecutors over decisions of inferior ones, or in other words, increasing of hierarchy and centralisation. The Law on the Prosecutor's Office contains a number of rules regarding the respective powers of higher prosecutors, such as the right to cancel any decision of inferior prosecutors they consider illegal. There is also an extensive list of cases when decisions of inferior prosecutors are subject to mandatory monitoring by superiors. This list, for instance, includes receiving complaints from any natural or legal person, requests from an investigator or advocate, termination of a case, change of a sentence or indictment by court, waiver of prosecution at trial stage, acquittal judgment. The monitoring team in the framework of the Fourth Round of Monitoring of Mongolia under the Istanbul Anti-Corruption Action Plan came to conclusion that such approach did not maintain the reasonable balance between control over the work of prosecutors and interference in their activities.<sup>123</sup>

**Cambodia's** Minister of Justice is the Chief of the Prosecution Service and has the right to issue an injunction order to prosecutions of all levels. The Prosecutor General attached to the Supreme Court has authority over all Deputy Prosecutor Generals and prosecutors attached to the Supreme Court. The conclusions of the Deputy Prosecutor General or prosecutor attached to the Supreme Court is submitted to the Prosecutor General for examination before the hearings take place. If the Prosecutor General

---

<sup>118</sup> See Art. 64 and 65 of the Law on Judicial Organisation (Law No 304/2004).

<sup>119</sup> See Art. 160 of the Constitution of Serbia.

<sup>120</sup> See Art. 16 of the Law on the Public Prosecution.

<sup>121</sup> See Art. 17 of the Law on the Prosecutor's Office.

<sup>122</sup> See Art. 5 of the Law on the Prosecutor's Office of Uzbekistan.

<sup>123</sup> OECD (2019), Istanbul Action Plan, Fourth Round Monitoring Report on Mongolia, page 65, <https://www.oecd.org/corruption/acn/OECD-ACN-Mongolia-4th-Round-Monitoring-Report-2019-ENG.pdf>.

disagrees with the conclusions and the conclusion-maker refuses to follow his/her indications, the Prosecutor General may assign the case to another Deputy Prosecutor General or prosecutor or take him/herself the case on. However, during the hearing, the Deputy Prosecutor General and prosecutors of the Supreme Court make verbal remarks on their views regarding the case, no disciplinary sanction can be applied if such verbal remarks differ from the written conclusion. The same form of authority is conferred to the Prosecutor General attached to the Court of Appeal, over the activity of the prosecutors of that office, and the Prosecutor attached to the Court of the First Instance over all prosecutors under his/her jurisdictional competence.<sup>124</sup>

Art. 41 of **Viet Nam's** Criminal Procedure Code sets tasks, powers and responsibilities of Directors and Deputy-Directors of prosecution offices. The main assignments of Directors are to organise and lead the exercise the prosecution power, control the observance of the law in criminal procedures, assign to an office or a case Deputy-Directors and subordinate prosecutors, control the lawfulness of Deputy-Directors' and prosecutors' activity, change or cancel groundless or illegal decisions of Deputy-Directors and subordinate prosecutors, and settle complaints and denunciations under his/her competence. When exercising prosecutorial powers, Directors of prosecution offices request the investigating bodies and agencies to conduct investigating activities, they prosecute or dismiss cases also modifying decisions of subordinate prosecutors, and decide on the application, change or cancellation of preventive measures, coercive measures, searches, seizures, and special measures of investigation.<sup>125</sup> When assigned to the exercise prosecution and control activities, Deputy-Directors have the same powers and tasks as Directors, although they are not allowed to settle complaints or denunciations.

### Box 2.1. A vertical structure of the Prosecution Service, but horizontal relationships among prosecutors - Italy

In Italy, a District Prosecutor's Office is composed of a Chief Prosecutor ("Procuratore Capo"), who is assisted by Deputy Prosecutors ("Procuratori Aggiunti") and Assistant Prosecutors ("Sostituti Procuratori"). Prosecutors are ceremonially referred to as Public Ministry ("Pubblico Ministero").

The Office of the Prosecutor attached to the Court of Appeal is called "Procura Generale" and the Chief Prosecutor of that office is the "Procuratore Generale" (PG). The "Procuratore Generale presso la Corte di Cassazione" is the Chief General Prosecutor before the Corte di Cassazione, the Supreme Court of Italy.

Despite a vertical structure of the Prosecution Service, public prosecutors are granted independence from both political institutions and superior prosecutors. Chief Prosecutors are only responsible for the general administration of the office. Cases are assigned to prosecutors on a random basis and, once assigned to a case they enjoy total autonomy during both investigations and trial. Prosecutors are free to prioritise their caseload and can be removed from a case only according to the strict rules set down by the Superior Council of Magistracy (CSM) AND Art. 53 of the Code of Criminal Procedure.

*Source:* Response from Italy to the Study Questionnaire

<sup>124</sup> See Cambodia's Law on the Organization of the Courts.

<sup>125</sup> For the whole list of competences, see Art. 41 of Viet Nam's Criminal Procedure Code.

**Conclusions:**

As a rule, prosecutor's offices have hierarchical organisational structures. Superior prosecutors may give binding orders and instructions to subordinate prosecutors, but the examples above show that the nature of subordination and degree of control may differ. While some jurisdictions limit the authority of the hierarchy to influence prosecutors' procedural decisions, regulations in other countries do not provide for so well-balanced relations between different layers of the prosecutorial hierarchy, granting broad discretionary powers to superiors.

Although there is no standard on the internal independence of prosecutors with regard to the instructions given by the hierarchy, due consideration should be given to providing individual prosecutors with necessary independence in the solution of the case and, as a corollary, the responsibility for it.

The operational independence of prosecutors is particularly valuable in the investigations of especially high-level corruption cases or other cases of abuse of power by high-level public officials, as it enhances credibility and impartiality of the prosecution.

**Recommendations:**

- The regulation of superior prosecutors' hierarchical powers should be published.
- The prosecutor presenting the case in court should always be independent in his/her pleading before the court.

**2.1.2. Allocation and reallocation of cases**

Impartial and transparent systems to assign individual cases to prosecutors ensure higher levels of independence and fairness in the investigation and prosecution of cases. The possibility to reassign a case to another prosecutor should also be clearly regulated, as it constitutes a functional equivalent to giving mandatory orders in individual cases (see □).

*- Rules on the allocation of cases*

60%<sup>126</sup> of the responding countries regulate the assignment of incoming cases with legislative acts. In the other countries, the rules on the allocation of cases are established by orders of the Prosecutor General (**Latvia**), regulations issued by the Minister of Justice (**Georgia**<sup>127</sup> and **Serbia**), or the mere practice of the offices (**Kyrgyzstan, Malaysia, Timor-Leste, Uzbekistan, and Viet Nam**). In **Cambodia**, the assignment and allocation of cases are managed and handled by the court administration unit attached to each court, based on specific formula and order of each incoming case. Article 75.2 of Cambodia's Law on the Statute of Judges and Prosecutors states that the Prosecution Office is an indivisible organ that requires prosecutors attached to any court to have joint obligations within the function and may replace each other. In accordance with this principle, the members of the prosecution office may replace each other in their work on cases.

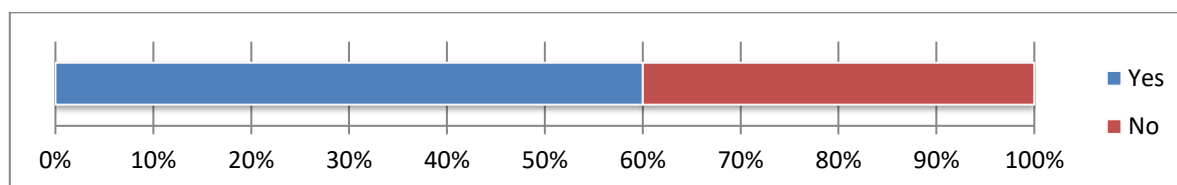
---

<sup>126</sup> Albania, Armenia, Bosnia and Herzegovina, the Cook Islands, Estonia, Japan, Lithuania, Moldova, Mongolia, Montenegro, Pakistan, Romania, Slovenia, Ukraine, and Viet Nam.

<sup>127</sup> According to the new Organic Law of Georgia on the Prosecutor's Office, enacted on 30 November 2018, the rules on case allocation are established by the Prosecutor General.



Figure 2.1. Allocation of cases regulated by law



Note: Only data from the countries that replied to the relevant sections of the questionnaire are displayed. Data are updated as of January 2018.

In **Albania**, the allocation of cases is regulated partly in the law and partly by acts of the Prosecutor General. Art. 53 of Law No. 97/2016 states that the General Prosecutor establishes detailed rules for case allocation, providing transparency and verification opportunities. The case is assigned to at least three prosecutors, while the final assignment is performed electronically by drawing lots. The prosecutor's office ensures the impartiality, independence and efficiency of the prosecution's work, taking into account the need for fair distribution of the burden among prosecutors.

**Armenia's** Law on the Prosecutor's Office states that cases are assigned by superior prosecutors. The Order of the Prosecutor General No. 26 of 13 March 2017 further establishes that prosecutors from any structural subdivisions of the Prosecution Service have to be specialised in and assigned to specific types of offences.

Criminal cases are assigned to **Azerbaijan's** prosecutors according to the requirements of the Criminal Procedure Code and the Prosecutor General's decree on "Measures to ensure the proper arrangement of prosecutorial activities in the assignment of criminal cases of public and public-private prosecution", No. 08/8-09/2s of 27 January 2005. It stipulates that cases are assigned depending on workload, the number and volume of cases, other materials handled, and the level of professional knowledge and skills of a prosecutor.

In **Bosnia and Herzegovina**, according to the law, new cases are allocated to prosecutors randomly through computer software. In practice, however, cases may be assigned to particular prosecutors by superiors. Similarly, in **Moldova** superior prosecutors distribute incoming cases among the prosecutors of the office.

Par. 8 of **Estonia's** Prosecutor's Office Act establishes that, after considering the opinion of the prosecutors of the Office of the Prosecutor General, the Prosecutor General determines the division of cases. Chief prosecutors assign cases within the district prosecutor's offices, given the opinion of subordinate prosecutors. Cases are distributed according to the type of criminal offence, offender or other general criteria. The procedure for the substitution of prosecutors is also determined during the division of duties.

**Georgia** does not regulate the assignment of cases through the law. The procedures for incoming case allocation among different Units of the Prosecution Service were determined by the Charters of the respective units, which were adopted by the Order of the Minister of Justice upon the proposal of the Chief Prosecutor.<sup>128</sup> The allocation of cases within every Unit was made by the heads, based on the available resources and specialisation of prosecutors. Similarly, in **Latvia** the matter is regulated by the order of the Prosecutor General, establishing that the chief prosecutor of every department decides the allocation of regular duties among the subordinated public prosecutors. Also in **Ukraine**, the heads of the offices decide over the assignments to prosecutors.

<sup>128</sup> According to the new Organic Law of Georgia on the Prosecutor's Office, enacted on 30 November 2018, the rules on case allocation are established by the Prosecutor General.

According to art. 95 of **Romania's** Law no. 304/2004, the cases are allocated by the chief prosecutor to the subordinate prosecutors on the basis of criteria concerning the specialisation and workload of prosecutors.

In **Serbia**, the allocation of incoming cases is not regulated in the law but in the Rulebook on the Administration of the Public Prosecution Office, issued by the Minister of Justice.<sup>129</sup> According to the Rulebook, the head of every office distributes incoming cases following the alphabetical order of prosecutors, with possible exceptions due to individual workload, incompatibilities or specialisation.

Art. 144 of **Slovenia's** State Prosecutor's Office Act establishes that cases are assigned to prosecutors following the order of receipt, taking into consideration also their organisation of work, specialisation and workload. Depending on the nature and complexity of the matter, the head of a state prosecutor's office may determine the prosecutors and personnel members who will cooperate with the state prosecutor to whom the case is assigned, under the principles of teamwork and cooperation.

The Public Prosecutor's Office Act of **Japan**, in Art. 12, states that the heads of each office choose the most appropriate prosecutor to assign the case, taking into account its nature and difficulty, the attitude of prosecutors and their caseload.

**Malaysia** and the **Philippines**<sup>130</sup> don't have any legal source determining the system for the assignment of incoming cases within the prosecution offices, but in practice, they are assigned according to caseload, skills and experience of prosecutors. High profile cases are followed by senior prosecutors.

In **Pakistan**, the Attorney General distributes and allocates work at the federal level, while Provincial Prosecutor Generals assign cases within the provincial offices.

#### *- Reallocation of cases*

All of the participating countries have provided for the possibility to reallocate an investigation to another prosecutor against the will of the investigating prosecutor. As criminal investigations in **Malaysia** are conducted by the police without the oversight of a prosecutor, the country is not taken into consideration for this section. Only four countries<sup>131</sup> expressly report not to have established the grounds for reassignment in the law.

Art. 49 of **Albania's** law 97/2016 provides for the grounds to substitute the prosecutor who was assigned the case. It refers to physical incapacity to work and the inability to assume the functions or observe legal deadlines. The Criminal Procedure Code also foresees that cases be reallocated when prosecutors are incompatible, in the situation of conflict of interests, or when there are "serious reasons related to the duty under the law".<sup>132</sup> The head of the prosecution office makes a decision in writing regarding the substitution of the prosecutor. The concerned prosecutor is entitled to file a complaint with the High Prosecutorial

<sup>129</sup> Art. 39 of Serbia's Law on Public Prosecution. "The Regulation on Administration in the Public Prosecution shall be issued by the Minister responsible for the judiciary, following the opinion obtained from the Republican Public Prosecutor. The Regulation on Administration in the Public Prosecution shall be published in the Official Gazette of the Republic of Serbia."

<sup>130</sup> The replies of the Philippines consider the "Office of the Special Prosecutor" (*Tanodbayan*), created within the Office of the Ombudsman, as the Prosecution Office, and the "Special Prosecutor" as the Prosecutor General. The Office of the Special Prosecutor conducts investigations and prosecutes cases within the jurisdiction of the "*Sandiganbayan*". The *Sandiganbayan* has jurisdiction over criminal, and civil cases involving graft, corrupt practices and other offenses committed by public officers and employees, including those in government-owned or controlled corporations, in relation to their office.

<sup>131</sup> Estonia, Serbia, the Philippines (Office the Special Prosecutor), and Timor-Leste.

<sup>132</sup> See Art. 16, 17 and 27 of Albania's CPC.

Council against the decision of substitution, within five days of the reception of the notice. The complaint does not suspend the execution of the decision. If the complaint is accepted, the case is again assigned to the prosecutor who complained. The High Justice Inspector carries out on a regular basis, at least annually, a thematic inspection on the practices and the causes of substitution of prosecutors.

According to Art. 32 of **Armenia's** Law on the Prosecutor's Office, the immediate superior of a prosecutor can transfer a case to another prosecutor in the event of recusal, leave or secondment, suspension from powers, improper fulfilment of duties and other grounds provided for by law. Rules alike have also been set up in **Ukraine**.

In **Azerbaijan**, when the prosecutor in charge of the procedural aspects of an investigation disagrees with written instructions issued by the superior prosecutor, the latter may reallocate the case to another prosecutor.<sup>133</sup>

In **Bosnia and Herzegovina**, the Prosecutor General is given the power to "disqualify" prosecutors from ongoing proceedings according to the rules set forth in the Criminal Procedure Code.

**Estonia's** Prosecutor's Office Act, in Par. 10, establishes that the Prosecutor General or a chief prosecutor may, with compelling reason mainly founded on non-performance or unsatisfactory performance of duties, substitute subordinate prosecutors in criminal proceedings.<sup>134</sup> A substitution order is given in writing and sets out the scope and reasons for the substitution.

The office heads of the Prosecution Service of **Georgia** reallocate the investigations to other prosecutors within the same unit according to the criteria provided for in the Criminal Procedure Code and the Law on the Prosecution Service. These criteria mainly aim at excluding conflicts of interests and enhancing the quality of investigations.

**Latvia's** higher-ranking prosecutors can take on any cases assigned to subordinate prosecutors when they dissent on orders concerning the case. Similarly, **Japan's** Prosecutor General, superintending prosecutors and chief prosecutors reallocate a file to another prosecutor.<sup>135</sup> In **Viet Nam**, only the Prosecutor General is competent to reassign cases.

In **Lithuania**, the parties to a proceeding can recuse an investigation officer or prosecutor if biased or bearing a personal interest in the case. The pre-trial judge decides on the request for removal.

Immediate superior prosecutors are the authority entitled in **Moldova** to transfer, upon his or her reasoned decision, the case from a subordinate prosecutor to another. Art. 53-1 of the Criminal Procedure Code lists the cases where reassignments are possible, including the dismissal or secondment of the subordinate prosecutor, absence, unreasonable non-performance of the necessary activities for more than 30 days, and irrevocable omissions in collecting evidence.

Substitutions in **Mongolia** are decided by superior prosecutors and concern the cases of conflict of interests, as established in the Code of Ethics.

**Montenegro's** heads of prosecution offices may decide to withdraw a case from the assigned prosecutor when he or she unjustifiably fails to act in the case or if unable to perform the duties for more than one month. The cases of high priority may be taken away from a prosecutor if he or she is not able to work on them promptly or within the legal deadline. Furthermore, cases can be reallocated when a prosecutor challenges an order of a superior. A complaint against the decision to reassign the case may be lodged

---

<sup>133</sup> See Art 84.8 of the CPC.

<sup>134</sup> See § 10 of Estonia's Prosecutor's Office Act.

<sup>135</sup> See Art. 12 of Japan's Public Prosecutor's Office Act.

with the immediate superior of the head who issued the order, and against the decision of the Supreme Public Prosecutor - to the meeting of the Supreme Public Prosecutor's Office. The decision on the complaint is issued within two days of the receipt. The complaint suspends the execution of the order only when the case involves persons detained. If the complaint is approved, the case is assigned again to the first prosecutor.

Art. 64 of **Romania's** Law no. 304/2004 provides for the rules on the reassignment of cases. According to it, chief prosecutors can reassign a file in case of prosecutor's suspension from or termination of office, his or her absence or inactivity for more than 30 days. The prosecutor is entitled to challenge the reassignment decision before the Superior Council of Magistracy.

**Serbia** allows the heads of public prosecutor's offices to reassign subordinate prosecutors' cases, but the matter has not been formally regulated.

In **Slovenia** cases may be reassigned to other prosecutors because of a long absence of the prosecutor assigned first, his/her excessive workload, dissent on a decision of subordinate prosecutor with respect to the established prosecution policy, disciplinary violations, and other reasons prescribed by law.<sup>136</sup> The order reallocating the case includes the reason and the legal basis for the reassignment.

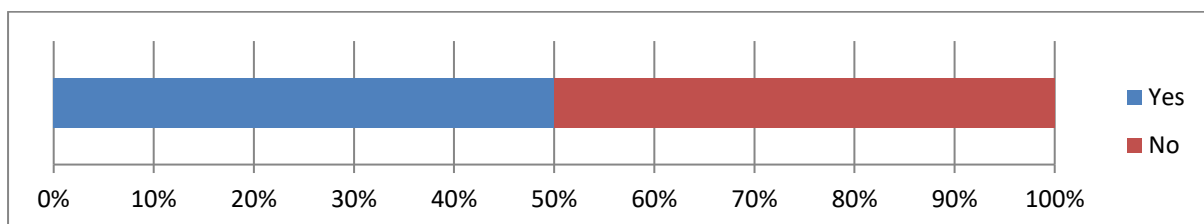
In accordance with the principle of indivisibility of the Prosecution Service, **Cambodia's** prosecutors of the same rank have an obligation to mutually replace one another, if needed. The heads of the prosecution offices can substitute subordinate prosecutors during the proceedings.<sup>137</sup>

Following established procedural guidelines, **Pakistan's** superior prosecutors can order the reallocation of cases on "just, equitable and fair grounds." The order is in written and contains its reasons and legal grounds.

The **Philippines** reported the loss of confidence and differences in legal opinions as main criteria provided to superiors to use their discretion when deciding on reassigning a case of a subordinate prosecutor<sup>138</sup>.

50%<sup>139</sup> of the responding countries oblige the reassigning authority to motivate the reallocation of a case.

**Figure 2.2. Obligation to motivate the reassignment**



<sup>136</sup> See Art. 3, 144 and 170 of Slovenia's Prosecution Office Act.

<sup>137</sup> See Art. 75, Par. 2, of Law on Statute of Judges and Prosecutors.

<sup>138</sup> The replies of the Philippines consider the "Office of the Special Prosecutor" (*Tanodbayan*), created within the Office of the Ombudsman, as the Prosecution Office, and the "Special Prosecutor" as the Prosecutor General. The Office of the Special Prosecutor conducts investigations and prosecutes cases within the jurisdiction of the "Sandiganbayan". The *Sandiganbayan* has jurisdiction over criminal, and civil cases involving graft, corrupt practices and other offenses committed by public officers and employees, including those in government-owned or controlled corporations, in relation to their office.

<sup>139</sup> Albania, Georgia, Lithuania, Moldova, Mongolia, Montenegro, Pakistan, and Slovenia.

Note: Only data from the countries that replied to the relevant sections of the questionnaire are displayed. Data are updated as of January 2018.

### Box 2.2. Computerized allocation of cases - Mexico

The procedure for the allocation of matters within the Prosecutor General's Office follows the "General Guidelines for the Operation of the Accusatory Criminal Justice System of the Attorney General's Office", issued by the Implementation Unit of the Accusatory Criminal Procedure System (UISPPA).

The Guidelines establish the organisation model of all offices, administrative units and decentralized bodies that have competence in the operation of the Accusatory Criminal Justice System, such as the Immediate Attention Unit and the Investigation and Litigation Unit.

Once a criminal complaint has been received, a unique case number is assigned to the file through "Justici@.Net", a computer tool used by the Prosecutor General's Office. The file is then sent to the Guiding Prosecutors of the Immediate Attention Unit or the Investigating Prosecutors of the Investigation and Litigation Unit, according to the case.

The Immediate Attention Unit is in charge of dealing with cases without a detainee which could involve the refraining from investigating, temporary files, no-exercise of criminal action, and the application of opportunity criteria.

The Investigation and Litigation Unit carries out investigations on cases that are not of prompt definition. The office proceeds with the prosecution and participates in the criminal proceedings through the agent of the Public Prosecutor of the Federation.

The hierarchical superior of a prosecutor in charge of a certain investigation can decide to reassign the case issuing a reasoned order according to the law. The main grounds for reallocation are competency issues (territory, subject or specialization), the workload and connections with a different investigation assigned to another prosecutor.

*Source:* Response from Mexico to the Study Questionnaire and comments to the draft Study.

### Conclusions:

There is no standard for random allocation of cases to prosecutors. However, in order to ensure the confidence in the objectivity and impartiality with which prosecutors act, it is crucial that the case allocation process follow clear and transparent rules. Recommended criteria could be the efficient organisation of work as well as specialisations of prosecutors and their workload, having in mind a fair distribution of work and avoiding conflicts of interests and incompatibilities.

The reassignment of cases should also be performed under strict, objective and transparent rules, in exceptional situations, justified by reasons such as the lack of action by the initial prosecutor or the identification of conflict of interests. The reasons for the case reassignment should be put in writing, and the prosecutors should have a legal remedy to challenge the decisions of superior prosecutors to reallocate their cases if they deem the decisions are infringing their independence.

It should be possible to assign complex or very important cases to a team of prosecutors.

### Recommendations:

- The assignment and reassignment of cases should follow clear and transparent pre-established rules, ensuring impartiality and autonomy from any form of external and internal pressure.

## 2.2. Discretionary/Mandatory prosecution and issuance of general guidelines

Prosecutorial systems are generally distinguished between those applying the so-called “Principle of Legality” and those following the “Opportunity Principle”. In the first case, prosecutors are obliged to file charges whenever they have enough evidence to do so. According to the Opportunity Principle, instead, prosecutors have discretion on the decision on whether or not to prosecute. That discretion, however, is not an unfettered one and must be exercised in accordance with the law and the requirements of the public interest.

At the same time, legal systems are in practice very nuanced, and features of both systems are found in most countries. For instance, although applying the rule of mandatory prosecution, in many countries general guidelines are issued in order to guide prosecutors in their decisions on cases. Similarly, in countries with discretionary prosecution it is commonly the case that guidelines provide for when and how discretion should be exercised. When issued, these guidelines should be founded in law and aim at enhancing fairness and consistency of prosecutions. They should be accessible to the public, including under request.

### Council of Europe, Recommendation No. R (87) 18

#### I. Discretionary prosecution

##### a. The principle of discretionary prosecution

1. The principle of discretionary prosecution should be introduced or its application extended wherever historical development and the constitution of member states allow; otherwise, measures having the same purpose should be devised.
2. The power to waive or to discontinue proceedings for discretionary reasons should be founded in law.
3. The decision to waive prosecution, under this principle, only takes place if the prosecuting authority has adequate evidence of guilt.
4. This principle should be exercised on some general basis, such as the public interest.
5. The competent authority, in exercising this power, should be guided, in conformity with its domestic law, notably by the principle of the equality of all citizens before the law and the individualisation of criminal justice, and especially by:
  - the seriousness, nature, circumstances and consequences of the offence;
  - the personality of the alleged offender;
  - the likely sentence of a court;
  - the effects of conviction on the alleged offender; and
  - the position of the victim.

### UN, Guidelines on the Role of Prosecutors

#### Discretionary Functions

17. In countries where prosecutors are vested with discretionary functions, the law or published rules or regulations shall provide guidelines to enhance fairness and consistency of approach in taking decisions in the prosecution process, including institution or waiver of prosecution.

### IAP, Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors

#### 2. Independence

2.1 The use of prosecutorial discretion, when permitted in a particular jurisdiction, should be exercised independently and be free from political interference.

2.2 If non-prosecutorial authorities have the right to give general or specific instructions to prosecutors, such instructions should be:

- transparent;
- consistent with lawful authority;
- subject to established guidelines to safeguard the actuality and the perception of prosecutorial independence.

2.3 Any right of non-prosecutorial authorities to direct the institution of proceedings or to stop legally instituted proceedings should be exercised in similar fashion.

#### 6. Empowerment

In order to ensure that prosecutors are able to carry out their professional responsibilities independently and in accordance with these standards, prosecutors should be protected against arbitrary action by governments. In general they should be entitled:

(a) To perform their professional functions without intimidation, hindrance, harassment, improper interference or unjustified exposure to civil, penal or other liability.

### Council of Europe, Recommendation Rec(2000)19

13. Where the public prosecution is part of or subordinate to the government, states should take effective measures to guarantee that:

- a. the nature and the scope of the powers of the government with respect to the public prosecution are established by law;
- b. government exercises its powers in a transparent way and in accordance with international treaties, national legislation and general principles of law;
- c. where government gives instructions of a general nature, such instructions must be in writing and published in an adequate way;

36.

a. With a view to promoting fair, consistent and efficient activity of public prosecutors, states should seek to:

[...]

- define general guidelines for the implementation of criminal policy;
- define general principles and criteria to be used by way of references against which decisions in individual cases should be taken, in order to guard against arbitrary decision making.

b. The above-mentioned methods of organisation, guidelines, principles and criteria should be decided by parliament or by government or, if national law enshrines the independence of the public prosecutor, by representatives of the public prosecution.

c. The public must be informed of the above-mentioned organisation, guidelines, principles and criteria; they shall be communicated to any person on request.

### Rome Charter

The Consultative Council of European Prosecutors (CCPE), having been requested by the Committee of Ministers of the Council of Europe to provide a reference document on European norms and principles concerning public prosecutors, agreed on the following:

V. Prosecutors should be autonomous in their decision-making and should perform their duties free from external pressure or interference, having regard to the principles of separation of powers and accountability.

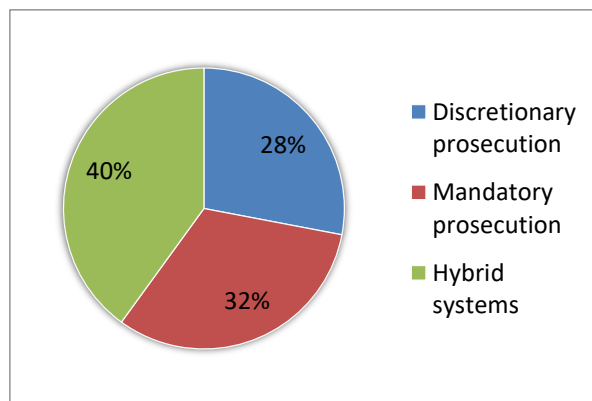
XVII. In order to achieve consistency and fairness when taking discretionary decisions within the prosecution process and in court, clear published guidelines should be issued, particularly regarding decisions whether or not to prosecute. Where appropriate, and in accordance with law, prosecutors should give consideration to alternatives to prosecution.

#### 2.2.1. Mandatory and discretionary prosecution policies

28%<sup>140</sup> of the participating countries stated that their prosecution systems followed the opportunity principle. The rule of mandatory prosecution is more common within ACN countries and in total has been established in 32% of cases.<sup>141</sup>

40% of the participating countries<sup>142</sup> present hybrid prosecution systems with a general obligation to prosecute but also relevant exceptions where prosecutors are granted discretion on the decision on whether or not to prosecute. In **Bosnia and Herzegovina**, for instance, discretion may be exercised only in cases concerning minors or legal entities.

Figure 2.3. Discretionary vs. Mandatory prosecution



Note: Only data from the countries that replied to the relevant sections of the questionnaire are displayed. Data are updated as of January 2018.

**Latvia's** Criminal Procedure Law details several cases where the prosecution can be waived: if a criminal offence has been committed but has not caused any harm, (Section 379(1)(1)); when the accused person has made a settlement with the victim (Section 379(1)(2)); if taking into account the nature of and harm

<sup>140</sup> Georgia, the Cook Islands, Fiji, Japan, Malaysia, Pakistan, and Timor-Leste.

<sup>141</sup> Albania, Azerbaijan, Kyrgyzstan, Lithuania, Mongolia, the Philippines, Ukraine and Uzbekistan.

<sup>142</sup> Armenia, Bosnia and Herzegovina, Cambodia, Estonia, Latvia, Moldova, Romania, Serbia, Slovenia, and Viet Nam.



caused by the offence, the personal characteristics of the offender and other conditions of the case, the prosecutor believes that the accused will not commit other criminal offences (Section 415); in cases when a person has substantially assisted in the disclosure of a serious or especially serious crime that is more serious or dangerous than the criminal offence committed by such person (Section 415<sup>1</sup>).

In 2014, with **Romania's** new Criminal Procedure Code, some elements of the opportunity principle were introduced. According to Art. 318 of the CPC, a prosecutor can abandon criminal investigation if the case regards a criminal offence punished with seven years' imprisonment as maximum and he/she deems that there is no public interest in prosecuting.<sup>143</sup> In such cases, the prosecutor may order the suspect or defendant to fulfil obligations, such as indemnifying the victim, providing community service, etc. If the suspect or defendant breaches the obligations in bad faith, the prosecutor can revoke the order of waiving the investigation. Also, **Serbia** foresees a form of deferred prosecution in Art. 283 of the Criminal Procedure Code.

**Slovenia's** Criminal Procedure Act provides for three kinds of exceptions to the mandatory prosecution rule. The first one, regulated in Art. 161, concerns cases where there is a disproportion between the low importance of the criminal offence and the consequences of criminal prosecution. The state prosecutor may also settle the case during the investigations stage, as prescribed in Art. 161.a, taking into account the type and nature of the offence, the circumstances in which it was committed, the personality of the perpetrator and his prior convictions, as well as his/her degree of criminal liability. The third exception is regulated in Art. 162 and refers to the possibility of suspending the prosecution if the suspect agrees on performing certain actions to allay or remove the harmful consequences of the criminal offence.

In **Cambodia**, prosecutors are bound to the obligation of investigating any wrongdoing. Nevertheless, the decision to prosecute or not to prosecute depends on their evaluation of the facts, evidence gathered, and damage caused, following the criteria established in the Code of Criminal Procedure.

According to **Moldova's** Criminal and Criminal Procedure Codes, there is a set of criteria according to which prosecutors discretionarily discontinue proceedings on non-serious offences and offences of medium gravity, but there is also the obligation for investigators and prosecutors to start the investigation.

### **2.2.2. Use of prosecutorial discretion**

All but two countries which apply strictly discretionary prosecution policies founded this prosecutorial power in law. The **Cook Islands** report that police prosecutors are bound to "no-drop policies" regarding certain crimes, but that ultimately there is a *de facto* discretion not founded in the written law. In **Pakistan**, prosecutors' power to discontinue a case is not regulated by law.

The discretionary powers of **Georgia's** prosecutors are set forth in Art. 16 of the Criminal Procedural Code, which refers to "public interest".

In the **Cook Islands**, New Zealand's prosecution guidelines are usually followed by the Crown Law Office, although they have no official standing.

---

<sup>143</sup> The public interest is assessed against several circumstances, strictly provided by the law (art. 318 para (2) letters a)-g) of Romania's Criminal Procedure code): a) the content of the act and the concrete circumstances of the act; b) the modus operandi and the instruments used; c) the goal of the offence; d) the consequences that occurred or could have occurred; e) the efforts of the criminal prosecution bodies necessary in order to carry out the criminal procedure in relation to the seriousness of the act and time elapsed since its commission; f) the attitude of the victim in the course of procedure; g) the existence of a clear disproportion between the costs involved in the conduct of the criminal proceedings and the seriousness of the consequences that occurred or could have occurred.

In **Japan**, Art. 248 of the Code of Criminal Procedure establishes that prosecutors can discontinue proceedings when they deem that the prosecution is unnecessary owing to the character or age of the accused, the environment, the gravity of the offence, the circumstances or the situation after the offence.

**Malaysia's** prosecutors are given the discretionary power under Art. 145(3) of the Constitution, and they have to consider all matters and facts that will affect the outcome of the case when waiving or discontinuing proceedings for discretionary reasons.

### Box 2.3. Legal guidelines for prosecutors' discretion - UK

The Code for Crown Prosecutors is issued by the Director of Public Prosecutions (DPP) under section 10 of the Prosecution of Offences Act 1985. It gives guidance on the general principles to be applied when Crown Prosecutors make decisions about prosecutions. The Code sets out the basis upon which prosecutions are reversed, refused, discontinued or proceeded with. In cases where the police determine the charge, which are usually more minor and routine cases, the police should also apply the provisions of this Code. The Code is a public document and can be accessed online.

Section 10 of the Prosecution of Offences Act.

“Guidelines for Crown Prosecutors.

(1)The Director shall issue a Code for Crown Prosecutors giving guidance on general principles to be applied by them—

(a)in determining, in any case—

(i)whether proceedings for an offence should be instituted or, where proceedings have been instituted, whether they should be discontinued; or

(ii)what charges should be preferred; and

(b)in considering, in any case, representations to be made by them to any magistrates' court about the mode of trial suitable for that case.

(2)The Director may from time to time make alterations in the Code.

(3)The provisions of the Code shall be set out in the Director's report under section 9 of this Act for the year in which the Code is issued; and any alteration in the Code shall be set out in his report under that section for the year in which the alteration is made.”

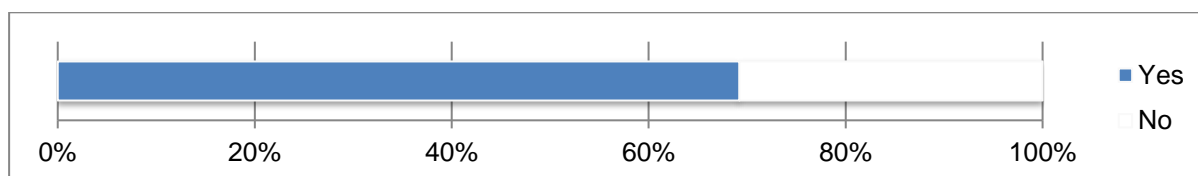
Source: Response from the UK to the Study Questionnaire.

### 2.2.3. Issue of general guidelines

Almost 70%<sup>144</sup> of the responding countries state that their prosecutors are provided with instructions of a general nature on prosecution policies, such as guidelines on whether or not to prosecute.

<sup>144</sup> Albania, Armenia, Azerbaijan, Cambodia, the Cook Islands, Estonia, Fiji (Fiji Independent Commission against Corruption), Georgia, Japan, Latvia, Lithuania, Malaysia, Moldova, Montenegro, Pakistan, the Philippines (Office of the Special Prosecutor), Serbia, and Slovenia. Instead, Bosnia and Herzegovina, Mongolia, Romania, Timor-Leste, Ukraine, and Viet Nam explicitly state that prosecutorial guidelines are not issued.

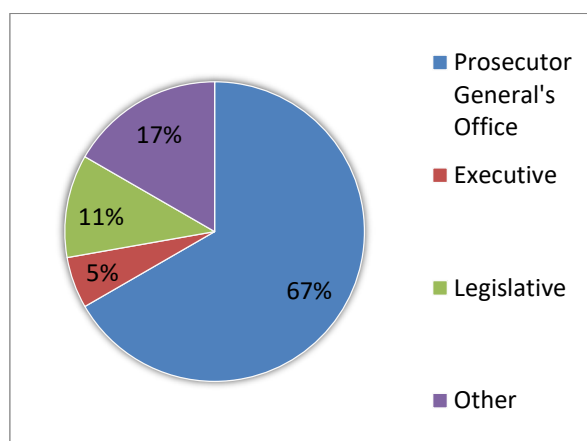
Figure 2.4. General guidelines



Note: Only data from the countries that replied to the relevant sections of the questionnaire are displayed. Data are updated as of January 2018.

In 67%<sup>145</sup> of these countries the guidelines are issued by the Prosecutor General's Office, 11%<sup>146</sup> reported that they were established through legislative proceedings. Only in **Japan** the general instructions are formed by the Minister of Justice and superior prosecutors.

Figure 2.5. Authority issuing general instructions



Note: Only data from the countries that replied to the relevant sections of the questionnaire are displayed. Data are updated as of January 2018.

In **Georgia**, the Prosecution Service proposed and the Minister of Justice approved the criminal justice policy guidelines.<sup>147</sup> **Slovenia's** State Prosecutor General adopts the prosecution policy following a preliminary reasoned opinion of the State Prosecutorial Council.

All but three respondents state that this form of guidelines is issued in writing. The **Cook Islands, Japan** and **Pakistan** informed that general instructions can be provided both in written and oral forms.

In 60%<sup>148</sup> of cases, the guidelines are publicly accessible, at least upon request. **Japan** publishes only part of the instructions which are in effect.

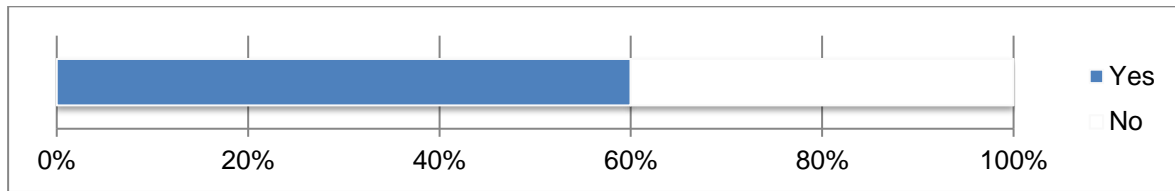
<sup>145</sup> Albania, Armenia, Azerbaijan, the Cook Islands, Estonia, Fiji (Fiji Independent Commission against Corruption), Latvia, Malaysia, Moldova, Montenegro, Pakistan, and Serbia.

<sup>146</sup> Cambodia and Lithuania.

<sup>147</sup> According to the new Organic Law of Georgia on the Prosecutor's Office, enacted on 30 November 2018, the Prosecutor General approves the criminal justice policy guidelines.

<sup>148</sup> Albania, Cambodia, Estonia, Fiji (Fiji Independent Commission against Corruption), Georgia, Lithuania, the Philippines (Office of the Special Prosecutor), Serbia, and Slovenia. Instead, Azerbaijan, the Cook Islands, Latvia, Malaysia, and Pakistan report that general instructions are not accessible to the public.

Figure 2.6. Public access to general guidelines

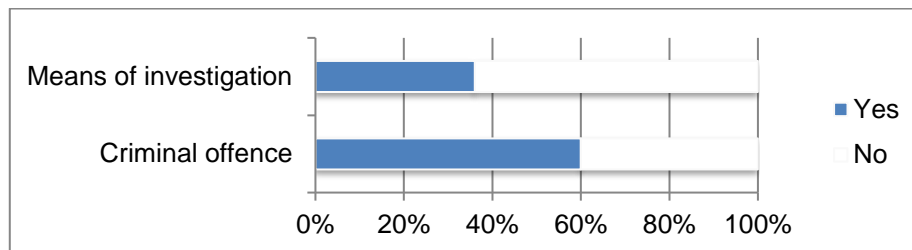


Note: Only data from the countries that replied to the relevant sections of the questionnaire are displayed. Data are updated as of January 2018.

#### 2.2.4. Guidelines on priorities

60%<sup>149</sup> of the responding countries have rules establishing priorities that prosecutors must observe concerning types of criminal violation to prosecute. Less than 40%<sup>150</sup> informed that there were guidelines concerning priorities on means of investigation to use.

Figure 2.7. Guidelines on priorities



Note: Only data from the countries that replied to the relevant sections of the questionnaire are displayed. Data are updated as of January 2018.

In 67%<sup>151</sup> of the participating countries, the Prosecutor General's Office issues such guidelines. 13%<sup>152</sup> of respondents report that priorities are set by Government and in **Cambodia** they are established by law and by instructions of the Ministry of Justice. Both **Lithuania's** Parliament and Prosecutor General can provide prosecutors with rules on priorities. Less than 60%<sup>153</sup> of the responding countries grant public access to these guidelines, either through their direct publication or upon request.

<sup>149</sup> Albania, Azerbaijan, Cambodia, the Cook Islands, Estonia, Fiji (Fiji Independent Commission against Corruption), Georgia, Latvia, Lithuania, Malaysia, Moldova, Pakistan, the Philippines (Office of the Special Prosecutor), Serbia, and Slovenia.

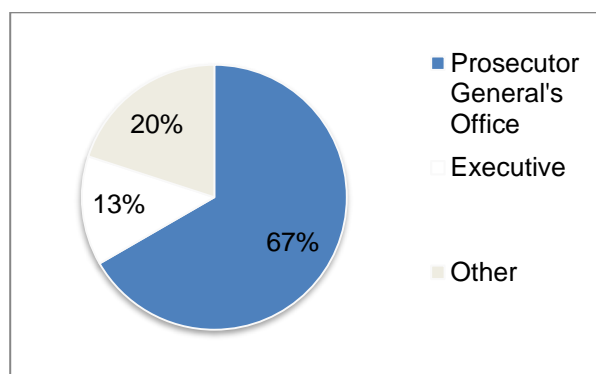
<sup>150</sup> Azerbaijan, the Cook Islands, Fiji (Fiji Independent Commission against Corruption), Lithuania, Malaysia, Moldova, Pakistan, Serbia, and Slovenia.

<sup>151</sup> Azerbaijan, the Cook Islands, Fiji (Fiji Independent Commission against Corruption), Latvia, Malaysia, Moldova, Pakistan, the Philippines (Office of the Special Prosecutor), Serbia, and Slovenia.

<sup>152</sup> Albania and Estonia.

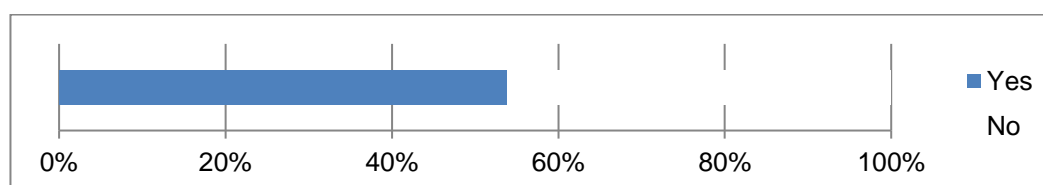
<sup>153</sup> Cambodia, Estonia, Fiji (Fiji Independent Commission against Corruption), Georgia, Lithuania, the Philippines, Serbia, and Slovenia.

Figure 2.8. Authority issuing guidelines on priorities



Note: Only data from the countries that replied to the relevant sections of the questionnaire are displayed. Data are updated as of January 2018.

Figure 2.9. Public access to the rules on priorities



Note: Only data from the countries that replied to the relevant sections of the questionnaire are displayed. Data are updated as of January 2018.

#### Box 2.4. Rules on priorities - Mexico

In accordance with Art. 19 of the Regulation of the Organic Law of the Prosecutor General's Office (LOFGR), the Prosecutor General has the power to issue agreements, circulars, instructions, bases and other general administrative provisions necessary for the exercise of the powers of the Public Prosecutors of the Federation, experts, ministerial officers and the Prosecutor General's Office in general. Through these acts the head of the institution also establishes the guidelines to be followed for the prosecution of certain types of crimes.

In addition, various mandatory 'protocols' that govern the actions of the prosecutors in the investigations, are published. There are investigation protocols that are applicable to all investigations and others concerning only certain types of crimes.

According to Art. 6 of LOFGR, the Prosecutor General issues a Criminal Prosecution Plan, enacting the national priorities as well as the objectives and goals established in the criminal policy approved by the Senate. The Plan organises the institutional attributions, the priorities in investigations and prosecutions, as well as other functions that the institution's officials must perform.

Source: Response from Mexico to the Study Questionnaire and comments to the draft Study.

**Conclusions:**

The analysis shows a balanced division between the systems that embrace discretionary prosecution, mandatory prosecution or hybrid mechanisms. Although it may seem that mandatory prosecution would better serve the protection of society against wrongdoings, in practice this high standard proves to be impossible to reach, and every country has at least a *de facto* mechanism to discontinue prosecutions. The danger of such situations is that a *de facto* mechanism is usually less controlled and may be not transparent and predictable enough. This can pave the way for abuses and corruption.

A form of discretionary prosecution should take into consideration the seriousness of the offence in the concrete context, the public interest in pursuing the case, the reparatory effects that a conviction would bring to the society and the victim. The fact that prosecutors could not get enough evidence to secure a real prospect of conviction in court should not be considered a form of discretionary prosecution. Discretionary prosecution occurs independently of the capacity to gather evidence, this model implies taking a decision not to pursue a case regardless whether it could be proven or not.

Discretionary prosecution should be regulated either in the legislation or in guidelines issued by the mandated body or official. The legislation should set requirements establishing that guidelines on discretionary prosecution should be transparent and motivated on objective grounds. At the same time, alternative mechanisms should be put in place for the victims to get effective compensation of their loss through administrative or civil means.

General policies on prioritising some areas of criminality in accordance with the concrete needs of the society in a given moment could be defined by Government or the Prosecutor General as a form of a national strategy to combat criminality. These policies should be public and in written form.

**Recommendation:**

- Where prosecutors have a discretion whether to prosecute in any particular case or on prioritisation of cases, that discretion should be exercised following principles set out either in law or in guidelines which are made public.
- Any decision not to prosecute should be reasoned, and the reasons thereof should be set out in writing by the prosecutor who made that decision.
- The right to judicial review of prosecutors' unlawful decisions should be granted to the offended party irrespective of the availability of internal review procedures.

**2.3. Direction and guidance to prosecutors in individual cases****IAP, Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors****Empowerment**

6. In order to ensure that prosecutors are able to carry out their professional responsibilities independently and in accordance with these standards, prosecutors should be protected against arbitrary action by governments. In general they should be entitled:

[...]

(i) to relief from compliance with an unlawful order or an order which is contrary to professional standards or ethics.

**Council of Europe, Recommendation Rec(2000)19**

10. All public prosecutors enjoy the right to request that instructions addressed to him or her be put in writing. [...]

13. Where the public prosecution is part of or subordinate to the government, states should take effective measures to guarantee that:

[...]

d. where the government has the power to give instructions to prosecute a specific case, such instructions must carry with them adequate guarantees that transparency and equity are respected in accordance with national law, the government being under a duty, for example:

- to seek prior written advice from either the competent public prosecutor or the body that is carrying out the public prosecution;
- duly to explain its written instructions, especially when they deviate from the public prosecutor's advices and to transmit them through the hierarchical channels;
- to see to it that, before the trial, the advice and the instructions become part of the file so that the other parties may take cognisance of it and make comments;

e. public prosecutors remain free to submit to the court any legal arguments of their choice, even where they are under a duty to reflect in writing the instructions received;

f. instructions not to prosecute in a specific case should, in principle, be prohibited. Should that not be the case, such instructions must remain exceptional and be subjected not only to the requirements indicated in paragraphs d. and e. above but also to an appropriate specific control with a view in particular to guaranteeing transparency.

16. Public prosecutors should, in any case, be in a position to prosecute without obstruction public officials for offences committed by them, particularly corruption, unlawful use of power, grave violations of human rights and other crimes recognised by international law.

**CCJE, Opinion No.12**

9. In a State governed by the rule of law, and in a hierarchical structure of prosecution service, effectiveness of prosecution is, regarding the public prosecutors, strongly linked with transparent lines of authority, accountability, and responsibility. Directions to individual prosecutors should be in writing, in accordance with the law and, where applicable, in compliance with publicly available prosecution guidelines and criteria. [...]

### Venice Commission Report

87. In order to provide for guarantees of non-interference, the Venice Commission recommends:  
[...]

8. Accountability of the Prosecutor General to Parliament in individual cases of prosecution or non-prosecution should be ruled out. The decision whether to prosecute or not should be for the prosecution office alone and not for the executive or the legislature. However, the making of prosecution policy seems to be an issue where the Legislature and the Ministry of Justice or Government can properly have a decisive role.

15. [...] Any instruction to reverse the view of an inferior prosecutor should be reasoned and in case of an allegation that an instruction is illegal a court or an independent body like a Prosecutorial Council should decide on the legality of the instruction.

More than 30%<sup>154</sup> of the responding countries allow that a higher authority orders a prosecutor to prosecute a case, while less than 70% of the countries outlawed this kind of order. However, 20%<sup>155</sup> of the countries report that a case can be reassigned to another prosecutor if there is dissent between the prosecutor handling it and his/her superior, while in almost 50%<sup>156</sup> of cases there is not such a possibility. Par. □. focuses specifically on the rules underlying the reallocation of cases. In **Moldova** prosecutors can receive instructions from superiors on investigative activities in concrete cases, but not on whether or not to prosecute.

More than 20%<sup>157</sup> of the participating countries state that prosecutors can receive mandatory instructions not to prosecute an offence. Less than 50%<sup>158</sup> report that such instructions cannot be issued, and the assigned prosecutors can continue handling the proceedings. In 20%<sup>159</sup> of the countries, higher prosecutors are entitled to strip the assigned prosecutor off of the case if they disagree with his/her choice to prosecute.

<sup>154</sup> Azerbaijan, Cambodia, Estonia, Montenegro, Pakistan, Serbia, Viet Nam, and Uzbekistan.

<sup>155</sup> Japan, Latvia, the Philippine (Office of the Special Prosecutor), Slovenia, and Timor-Leste.

<sup>156</sup> Albania, Armenia, Bosnia and Herzegovina, Fiji (Fiji Independent Commission against Corruption), Georgia, Kyrgyzstan, Lithuania, Malaysia, Moldova, Mongolia, Romania, and Ukraine.

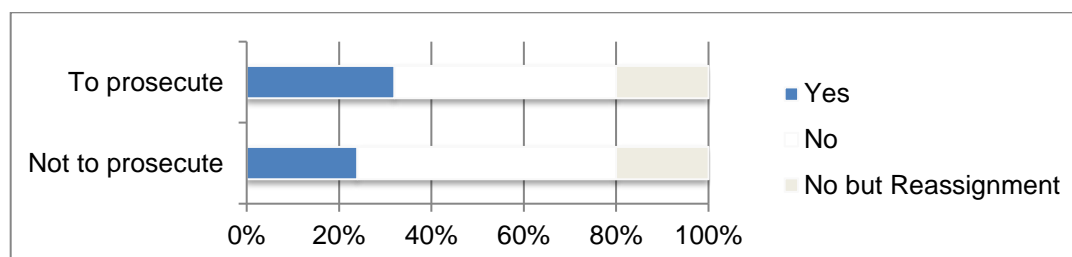
<sup>157</sup> Azerbaijan, Estonia, Montenegro, Serbia, Viet Nam, and Uzbekistan.

<sup>158</sup> Albania, Armenia, Bosnia and Herzegovina, Cambodia, Fiji (Fiji Independent Commission against Corruption), Georgia, Kyrgyzstan, Lithuania, Malaysia, Moldova, Mongolia, Pakistan, Romania, and Ukraine.

<sup>159</sup> Japan, Latvia, the Philippines (Office of the Special Prosecutor), Slovenia, and Timor-Leste.



Figure 2.10. Mandatory instructions on individual cases

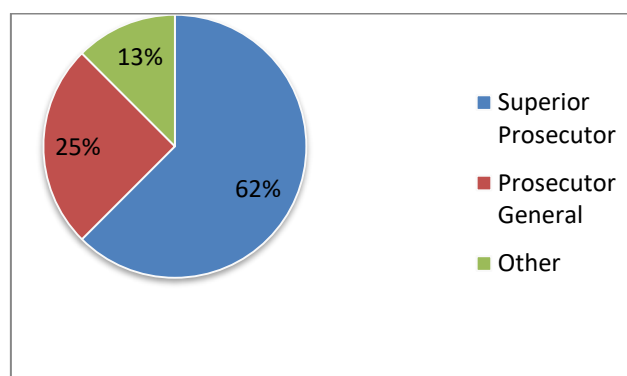


Note: Only data from the countries that replied to the relevant sections of the questionnaire are displayed. Data are updated as of January 2018.

62%<sup>160</sup> of the responding countries allowing mandatory instructions concerning individual cases grant this faculty to a superior prosecutor. The Prosecutor General is competent to issue such orders in 25%<sup>161</sup> of the participating countries. In **Cambodia**, both a superior prosecutor and the Minister of Justice have this power. Only in **Azerbaijan**, the parties to the proceedings may have access to the instructions at the end of the investigation when they are entitled to view the case file. Moreover, when instructions concern the transfer of the case to another investigator or prosecutor, the prosecution of the accused, choices on restrictive measures, the qualification of the offence, or the termination of the case, the accused is officially informed of them in a written form.

In all participating countries, the instructions are given in writing. Only in **Montenegro** and **Serbia** orders exceptionally can be given orally, but a written version has to be provided within a reasonable time.

Figure 2.11. Authority issuing mandatory instructions on specific cases



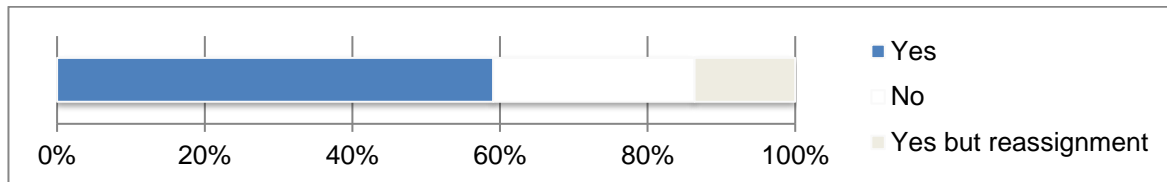
Note: Only data from the countries that replied to the relevant sections of the questionnaire are displayed. Data are updated as of January 2018.

<sup>160</sup> Azerbaijan, Estonia, Montenegro, Serbia, and Uzbekistan.

<sup>161</sup> Pakistan and Viet Nam.

In almost 60%<sup>162</sup> of the participating countries, prosecutors can challenge a specific order given by a higher authority. More than 25%<sup>163</sup> of the legal systems don't foresee this review. In less than 15%<sup>164</sup> mandatory instructions can be challenged, but the case concerned may be reassigned because of the request of review (on the reallocation of cases, see □). **Pakistan** specified that, although a complaint can be filed against an order, prosecutors usually do not do it and would recuse themselves from the case.

Figure 2.12. Challenge to an order



Note: Only data from the countries that replied to the relevant sections of the questionnaire are displayed. Data are updated as of January 2018.

All respondents refer to the illegality of the order as the main ground to seek its review. **Azerbaijan**, however, states that there are no limitations to the reasons that may found a complaint.

In more than 50%<sup>165</sup> of the participating countries, the authority competent to review the order is a superior prosecutor of the one issuing the instruction. In **Albania** and **Ukraine**, the proceedings take place before the independent national body representing prosecutors (the High Prosecutorial Council in **Albania** and the Council of Prosecutors in **Ukraine**). **Pakistan**'s national and provincial Prosecutor Generals have the competence to review.

In accordance with Art. 84.8 of **Azerbaijan**'s Criminal Procedure Code, if the prosecutor in charge of the procedural aspects of the investigation disagrees with instructions of the superior prosecutor concerning the prosecution of the accused, the restrictive measures to apply, the qualification of the offence, the entity of the sanction, or the termination of the case, he/she has the right to send his/her reasoned objection to the superior prosecutor. If the superior prosecutor agrees with the arguments, he/she may rescind his written instructions. If the superior prosecutor disagrees and maintains his/her opinion, he/she may transfer the case to another prosecutor. Objecting the superior prosecutor's written instructions does not suspend their execution.

**Kyrgyzstan**'s prosecutors can appeal to the superior prosecutor or the court. In **Lithuania**, the decisions of a higher-ranking prosecutor may be appealed before either his/her direct manager, the Prosecutor General,<sup>166</sup> or at court.

In **Armenia**, the law provides that an inferior prosecutor can object against assignments and instructions of a superior prosecutor when he or she finds them illegal or unjustified. However, this rule is not applied to the tasks or instructions that have been given by the Prosecutor General. The Fourth Round Monitoring Report in the framework of the Istanbul Anti-Corruption Action Plan recommended the country to provide

<sup>162</sup> Albania, Cambodia, Georgia, Kyrgyzstan, Latvia, Lithuania, Moldova, Mongolia, Pakistan, Romania, Serbia, Ukraine, and Uzbekistan.

<sup>163</sup> Bosnia and Herzegovina, the Cook Islands, Estonia, Malaysia, the Philippines (Office of the Special Prosecutor), and Viet Nam.

<sup>164</sup> Armenia, Azerbaijan and Montenegro.

<sup>165</sup> Armenia, Cambodia, Kyrgyzstan, Mongolia, Moldova, Montenegro, Serbia, and Uzbekistan.

<sup>166</sup> See Art. 14 of Lithuania's Law on the Prosecution Service.

prosecutors with the right to object to a body within the Prosecutor's Office against such assignments or instructions of the Prosecutor General.<sup>167</sup>

### Box 2.5. Instructions from the Ministry of Justice, a reform - Germany

On 13 December 2016, a revised version of the decree of the Federal Ministry of Justice and Consumer Protection regarding the reporting obligations of the Federal Prosecutor General entered into force. In order to ensure that instructions are transparent and revisable, the decree provides that any instructions by the Federal Ministry of Justice and Consumer Protection to the Federal Prosecutor General must now always be issued in written form. This was previously not explicitly regulated. The revised decree further points out that the right to issue external instructions is subject to legal limitations and is generally exercised by the Federal Ministry of Justice and Consumer Protection in a restrictive manner. Any such instructions would have to become part of the file.

Several Länder have already initiated measures in this regard, e.g. in North Rhine - Westphalia, Berlin and Schleswig-Holstein. Implementation at the federal level has been prepared, taking into account the transparency rules in effect in other states.

*Source:* Response from Germany to the Study Questionnaire.

### Conclusions:

Other than the general guidelines described in 2.2.3, the Prosecutor General should be entitled to issue more specific guidelines with the purpose of a better administration of the Prosecution Service. Such specific guidelines may bring uniformity to the prosecutors' practice of investigating and/or prosecuting cases, taking into consideration the courts practice or the jurisprudence of ECHR, or may aim to better use of the investigative means or observance of procedural rules and the protection of human rights, including the reasonable time of investigations. All of these specific guidelines should be written and made easily available to prosecutors as daily work instruments. They should also be accessible to the broader public by request.

In the systems where the Prosecution Service is subordinated or headed by the Minister of Justice, the Minister's specific guidelines should bear the same safeguards as mentioned above.

Apart from these guidelines, when it comes to specific investigation or prosecution strategies in individual cases, preference should be given to the independence of prosecutors in making decisions in individual cases. Such independence is directly related to the independence of courts and of the justice system as a whole. It gives credibility to the prosecution act, especially when it comes to sensitive criminal offences such as corruption, or when high-level officials may be accused of wrongdoings.

The legislation should provide for sufficient guaranties that instructions given to prosecutors by external bodies are limited in nature, transparent and consistent with the law. These instructions may be general, aiming at better defining the criminal law policy.

A hierarchical control within the Prosecution Service is also possible, as provided by law and required to ensure the quality and rightfulness of the investigation measures carried out by prosecutors and the indictments submitted to courts. It can also be established that particular decisions need to be approved

<sup>167</sup> OECD ACN, [Istanbul Action Plan, Fourth Round Monitoring Report on Armenia](#), page 90.

by a senior prosecutor, for instance when they concern decisions not to prosecute, plea bargains, or decisions in very important, complex or sensitive cases.

However, to protect the independence of the prosecutor assigned to a specific case, the decisions of a hierarchical prosecutor should be made in writing, be reasoned and included in the case file. On the other hand, one should not consider as an infringement of prosecutors' independence the setting up of a mechanism of consultations on the investigative or prosecutorial strategy within the hierarchy, or of joint investigative teams. These are instead recommended practices.

Prosecutors should also have the possibility to challenge the instruction they consider unlawful. Whenever prosecutors have reasons to believe that their independence in dealing with an individual case has been infringed, they should have a grievance procedure, preferably before a prosecutorial self-governance (PSG) body, such as a Prosecutorial Council.

**Recommendations:**

- The independence of prosecutors should include functional independence concerning decisions to prosecute or not to prosecute in individual cases as well as the conduct of prosecutions.
- Any authority external to the Prosecution Service should not be allowed, in principle, to give or influence any instructions to prosecutors concerning any individual case. Where this is possible, the law should provide for sufficient guarantees that instructions given to prosecutors by external bodies be limited in nature, transparent, in writing, and consistent with the law. The instructions should be preferably general, aiming at better defining the criminal law policy.
- Guidance or instructions in individual cases which can lawfully be given by a senior prosecutor shall be based on law, be reasoned, and in writing and should be part of the case file.
- A prosecutor should be entitled to insist that any instruction be given in writing and should not be bound by any oral instruction.
- Prosecutors should be granted the right to challenge unlawful orders in an internal independent procedure like PSG bodies.

## 2.4. Review of prosecutors' decisions

Both decisions to prosecute and not to prosecute may be subject to scrutiny. It is particularly important to establish a review of a decision not to file a charge, as such a choice discontinues the proceedings and does not allow the judicial authority to assess the case. Victims and complainants should be granted an impartial and objective remedy to challenge such a decision. In the first instance, an internal review may be appropriate with the possibility of a judicial review of unlawful decisions.

**UN, Guidelines on the Role of Prosecutors**

15. Prosecutors shall give due attention to the prosecution of crimes committed by public officials, particularly corruption, abuse of power, grave violations of human rights and other crimes recognized by international law and, where authorized by law or consistent with local practice, the investigation of such offences.

### CCJE, Opinion No.12

9. [...] Any review according to the law of a decision by the prosecutor to prosecute or not to prosecute should be carried out impartially and objectively, either within the prosecution service itself or by a judicial authority. In any case, due account shall be given to the interests of the victim.

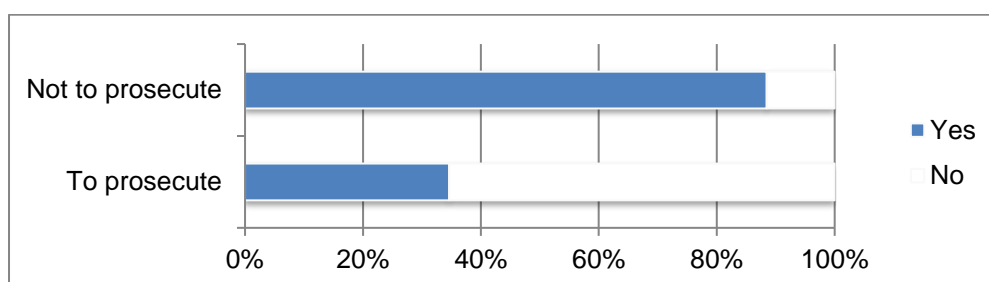
### Venice Commission Report

87. In order to provide for guarantees of non-interference, the Venice Commission recommends:

10. The biggest problems of accountability (or rather a lack of accountability) arise, when the prosecutors decide not to prosecute. If there is no legal remedy - for instance by individuals as victims of criminal acts - then there is a high risk of non-accountability.

All of the responding countries but **Estonia**, and **Viet Nam**<sup>168</sup> allow for a review of prosecutors' decision not to prosecute a case, while less than 40%<sup>169</sup> grant a revision of their choice to prosecute.

**Figure 2.13. Revision of decisions to prosecute and not to prosecute**



Note: Only data from the countries that replied to the relevant sections of the questionnaire are displayed. Data are updated as of January 2018.

Art. 291 of **Albania's** Criminal Procedure Code establishes the rules to appeal the decision to dismiss a prosecution. The prosecutor issues a reasoned decision and notifies it to the complainant and the victim who have the right to appeal with the court. When the appeal is found grounded, the court orders the prosecutor to record the proceeding and to carry out the necessary investigations, defining their direction as well. The parties may appeal against the decision to the court of appeal.

In **Armenia**, the suspect, the accused, the victim, and the complainant have the right to request a review of the decision on dismissing the criminal proceeding and terminating the criminal prosecution. The authority competent to decide upon the request is the superior prosecutor, who grants or rejects the appeal within a period of seven days. This decision may be appealed to the court.<sup>170</sup> Moreover, the decision to

<sup>168</sup> Albania, Armenia, Azerbaijan, Bosnia and Herzegovina, Cambodia, the Cook Islands, Fiji (Fiji Independent Commission against Corruption), Georgia, Japan, Kyrgyzstan, Latvia, Lithuania, Malaysia, Moldova, Mongolia, Montenegro, Pakistan, the Philippines (Office of the Special Prosecutor), Romania, Serbia, Slovenia, Timor-Leste, Ukraine and Uzbekistan.

<sup>169</sup> The Cook Islands, Fiji (Fiji Independent Commission against Corruption), Georgia, Kyrgyzstan, Malaysia, Moldova, Mongolia, Pakistan, Romania, and Uzbekistan.

<sup>170</sup> See Art. 262-263 of Armenia's CPC.

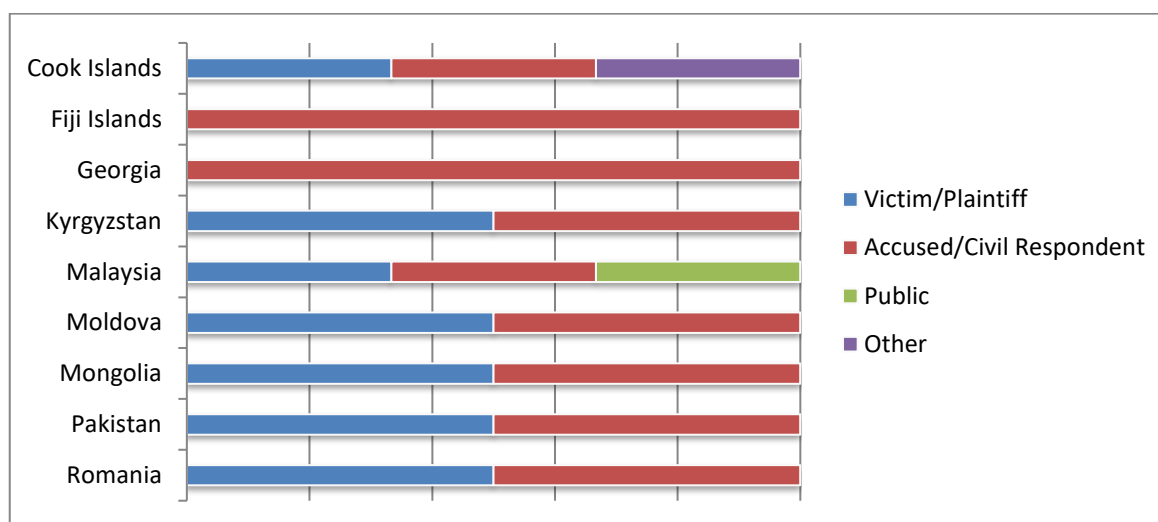
dismiss the case may also be annulled by the Prosecutor General within a period of six months from its issue.<sup>171</sup>

In accordance with Art. 212 of **Azerbaijan's** CPC the inquiry officer, investigator or prosecutor in charge of the case may decide not to file a charge. A copy of the decision is sent to the natural or legal person, or public official, who provided information about the alleged offence. A complaint about the discharge may be lodged with either the same prosecutor, the superior prosecutor or the court. The prosecutor in charge of the case or the superior prosecutor may rescind the decision and decide to initiate a criminal case following an additional examination or may uphold the first decision of dismissing the accusations. The court may annul the decision for lack of legal grounds,<sup>172</sup> or confirm it.

In **Bosnia and Herzegovina**, the affected person and the complainant can file a complaint against the dismissal of the case to the Prosecutor General, who may order the investigation to be reopened.

In **Georgia**, the decision to initiate prosecution may be appealed by the defendant to a superior prosecutor. The review of this decision may also be carried out by a superior prosecutor on his/her initiative, by ordering to close the case if he/she believes that the prosecution is not founded or contradicts the law.<sup>173</sup> According to Art. 168 §2 of the CPC, the victim may appeal the prosecutor's decree refusing to initiate a criminal prosecution to a superior prosecutor only once. The decision of a superior prosecutor is final, and it cannot be appealed, except for when the case concerns a particularly serious offence. In that case, the victim may appeal the decision of a superior prosecutor to a district (city) court, and its decision cannot be appealed.

Figure 2.14. Review of the decision to prosecute (seeker)



Note: Only data from the countries that replied to the relevant sections of the questionnaire are displayed. Data are updated as of January 2018.

The decision to prosecute of **Kyrgyzstan's** prosecutors can be appealed by the parties to the proceedings or other persons whose rights and interests are deemed infringed. The person who files the criminal charge and the victim can challenge a decision not to prosecute. The court decides on the appeals.

<sup>171</sup> See Art. 21 of Armenia's CPC.

<sup>172</sup> See Art. 207, 209 and 210 of Azerbaijan's CPC.

<sup>173</sup> See Art. 168 §4 of Georgia's CPC.

Latvia reported that, after taking a decision terminating criminal proceedings, the public prosecutor immediately informs the complainant, the victim and the accused, who have the right to appeal the decision.<sup>174</sup>

In Lithuania all parties to the proceedings are entitled to appeal a dismissing decision to the pre-trial investigation judge.

In Moldova both decisions to prosecute and not to prosecute may be appealed to a superior prosecutor or the investigative judge by any interested party. In Mongolia, the decision to terminate a case is subject to mandatory review by a superior prosecutor.

Montenegro's prosecution offices which are higher in rank can challenge decisions of lower in rank prosecutors if they think that they are wrong. Prosecutors can therefore be asked to review their decisions. This measure is functionally equivalent to an order not to prosecute (see □). The complainant has the right to request the superior prosecutor to review the decision not to prosecute made by the subordinated prosecutor.

**Romania's** criminal procedure foresees that all indictments are submitted to the Preliminary Chamber. Depending on its findings, the Preliminary Chamber can decide either to make the trial start or to send back the file to the prosecutor in case of irregularities it has found. The decisions not to prosecute are communicated to the complainant, the victim and the accused. The parties can request a review to a hierarchically superior prosecutor. If a superior prosecutor deems the decision unlawful, he/she can invalidate it by a reasoned decision, according to art. 64 of Law no. 304/2004. If this complaint has been rejected, the claimant may appeal to the judge of the Preliminary Chamber of the competent court.

According to Art. 336 and 337 of **Serbia's** Criminal Procedure Code the defendant is invited by the court to provide a written response to the indictment. The court examines the indictment together with the defendant's opinion and decides on sending the file to trial or closing the case.<sup>175</sup> According to Art. 51 of CPC, the victim can file a complaint to the head of the directly superior prosecutor's office appealing the decision to discontinue the proceedings before the indictment. If the decision to close the case is taken after that the indictment is confirmed, the victim cannot file a complaint but can continue the proceedings in place of the public prosecutor.

In **Slovenia**, the dismissal of a criminal complaint must be accounted for and explained to the victim and the police, if the case was initiated by it.<sup>176</sup> The victim is entitled to start or continue the prosecution.

In **Ukraine**, the complainant, the victim or the suspect may appeal within ten days against the dismissal to the investigative judge who reviews the decision during a hearing which is scheduled within five days from receiving the appeal. The prosecutor or the investigator (depending on who decided to dismiss the case) and the appellant attend the hearing.

Art. 41 of **Cambodia's** Code of Criminal Procedure states that when the criminal complaint is kept without processing the prosecutor notifies the complainant and the victim about his/her decision in order to allow them to request a review. If the complainant or the victim is not satisfied with the prosecutor's decision, they may and file a complaint to the Prosecutor General attached to the Appeal Court within two months.

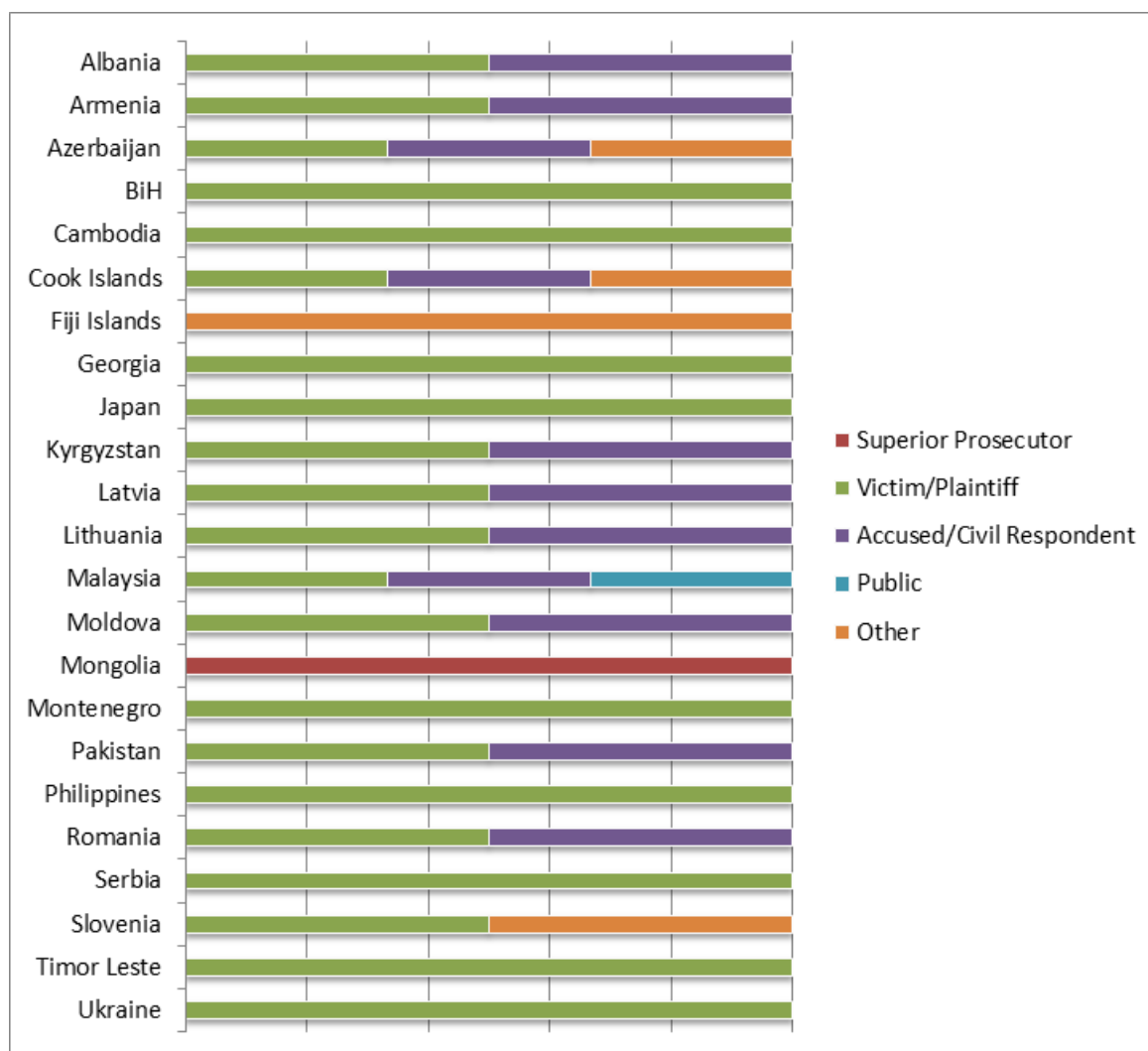
---

<sup>174</sup> See Section 3921(5) of Latvia's Criminal Code.

<sup>175</sup> For the grounds established in order to discontinue the proceedings, see Art. 338 of Serbia's CPC.

<sup>176</sup> See Art. 82 of the Prosecutorial Rules.

Figure 2.15. Review of the decision not to prosecute (seeker)



Note: Only data from the countries that replied to the relevant sections of the questionnaire are displayed. Data are updated as of January 2018.

The **Cook Islands** haven't established specific procedures to appeal prosecuting and non-prosecuting decisions, but they are developed *ad hoc* on a case by case basis. The parties to the proceedings are always granted the possibility to complain to the Ombudsman against prosecutors' decisions. Also in **Mongolia**, both the accused and the victim are entitled to seek review of pre-trial decisions.

In **Fiji**, when an indictment has been issued, the accused person can seek a review of the charges in court and request them to be dismissed. If the court finds that there is malice in the prosecution, the respective prosecutor is reported for disciplinary action. Instead, when a prosecutor decides for discontinuing criminal proceedings, the Manager Legal of FICAC reports the case to the Deputy Commissioner who will make the final decision. The Deputy Commissioner also determines whether or not to notify the complainant



about the decision. This procedure can be considered as a functional equivalent to an order to prosecute (see □)<sup>177</sup>.

In **Japan**, cases that are closed with no prosecution may be subject to review by the Committee for the Inquest of Prosecution or Quasi-prosecution procedures. The request to the Committee can be made by certain persons such as the complainant or the victim. Quasi-prosecution procedures concern certain offences such as Abuse of Authority by public officers.

**Malaysia's** Attorney General may review decisions to prosecute or not to prosecute made by public prosecutors in the case of a complaint issued by the complainant, the accused person or the public in general. The review can be requested through either a legal representative or a letter or email to the Attorney General's Office.

According to **Pakistan's** criminal procedure, any interested party to the proceedings can file a complaint against prosecutors' decisions to prosecute or not to prosecute before the court.

In the **Philippines**<sup>178</sup> and **Timor-Leste**, the decision not to prosecute is notified to the victim, who can seek its review.

### Box 2.6. Decision not to prosecute - Israel and Lebanon

In the case where a criminal investigation is initiated following a complaint submitted to the police, Art. 64 of Israel's Criminal Procedure Law states that the complainant has the right to appeal the prosecutor's decision not to prosecute. The article details which authority within the Prosecution Service is competent to review the decision, depending on the position of the prosecutor who made the initial decision. The appeal is to be submitted within 30 days, and the suspect is notified that an appeal has been lodged. Israel's Criminal Procedure Law also allows individuals to file some charges directly in court<sup>179</sup>.

In Lebanon, when a prosecutor decides to dismiss the case, the complainant can directly file charges against the defendant before the investigative or presiding judge.

Source: Responses from Israel and Lebanon to the Study Questionnaire.

<sup>177</sup> Fiji's data refer to FICAC (Fiji Independent Commission Against Corruption), a body investigating and prosecuting any alleged offences of corruption and bribery, separated from the ODPP (Office of the Director of Public Prosecutions). As Prosecutor General they refer to the Deputy Commissioner, head of FICAC.

<sup>178</sup> The replies of the Philippines consider the "Office of the Special Prosecutor" (*Tanodbayan*), created within the Office of the Ombudsman, as the Prosecution Office, and the "Special Prosecutor" as the Prosecutor General. The Office of the Special Prosecutor conducts investigations and prosecutes cases within the jurisdiction of the "*Sandiganbayan*". The *Sandiganbayan* has jurisdiction over criminal, and civil cases involving graft, corrupt practices and other offenses committed by public officers and employees, including those in government-owned or controlled corporations, in relation to their office.

<sup>179</sup> This applies to the offences listed in the second addendum to the Law (in the circumstances stipulated in the addendum).

**Conclusions:**

Prosecutors have by nature significant powers with regards to the rights of the citizens. But wherever there is power, there is the possibility to abuse of it. Therefore, the independence is not the only concern regarding prosecutors, but also accountability and safeguards against abuse should be considered.

For all the procedural acts and measures taken by a prosecutor, there should be a challenge mechanism by the defence and also by the offended party. The law should provide for the possibility of the defendant or other participants in criminal proceedings to challenge the decisions of a prosecutor before the hierarchy or the court, either separately or together with the indictment. However, one should make sure that these challenges are not regulated or applied to obstruct the course of the investigation or used as a means to procrastinate the proceedings indefinitely.

Among the decisions taken by prosecutors in a case, the most sensitive one is the decision to not prosecute. When the prosecutor decides not to bring a case to court, the case ends there with no consequences for the alleged offender. Therefore, this decision should be considered as bearing the highest risks of abuse and corruption. All the countries that made part of this analysis provide for some review mechanisms of the decisions not to prosecute. In any case, such a decision should be communicated without delay to the complainant and the victim, who should be given a reasonable deadline in order to file a complaint.

Many countries provide for mechanisms where the complaint is analysed and decided by a superior prosecutor. However, in practice, this mechanism could prove to be insufficient and may lack credibility among the larger public, who may perceive it as a non-transparent system. Therefore, a complaint to the judge, either directly or through the Ombudsman or other independent body, should be envisaged.

**Recommendations:**

- Clear and proper mechanisms for challenging prosecutor's decisions not to prosecute before higher prosecutors and before the court should be established.
- The decision not to prosecute should be communicated shortly after it has been taken to the complainant and to the offended party, and a reasonable deadline be given to them to file a complaint.

**2.5. Public prosecutors' internal accountability**

Providing public prosecutors with discretion over decisions in criminal proceedings does not entail that they are not accountable for them. Prosecutors can be required to give an account of their work to their hierarchy and in particular of how the established priorities are carried out. The decision not to prosecute should be subjected to careful review (see also □). Civil, penal and administrative liability imposed on prosecutors because of their work may occur in case of bad faith or gross negligence and has to be justified and cannot represent an excessive burden to the prosecutorial activity.

**Council of Europe, Recommendation No. R (87) 18**

I. Discretionary prosecution

b. Out-of-court settlements

3. The competence of the authorities concerned to make such a proposal and the categories of offences should be determined by law. The authority should be able, for the benefit of the alleged offender, to revise its proposal after having taken note of possible objections made by the alleged offender.

4. The authorities should specify the circumstances in which they have recourse to out-of-court settlements and should draw up guidelines and tables of amounts payable for out-of-court settlements in order to ensure, as far as possible, the principle of equality before the law. With this aim, it is useful to publish these circumstances, guidelines and tables of amounts payable.

**Council of Europe, Recommendation Rec(2000)19**

Relationship between public prosecutors and the executive and legislative powers

11. States should take appropriate measures to ensure that public prosecutors are able to perform their professional duties and responsibilities without unjustified interference or unjustified exposure to civil, penal or other liability. However, the public prosecution should account periodically and publicly for its activities as a whole and, in particular, the way in which its priorities were carried out.

**Venice Commission Report**

87. In order to provide for guarantees of non-interference, the Venice Commission recommends:

10. The biggest problems of accountability (or rather a lack of accountability) arise, when the prosecutors decide not to prosecute. If there is no legal remedy - for instance by individuals as victims of criminal acts - then there is a high risk of non-accountability.

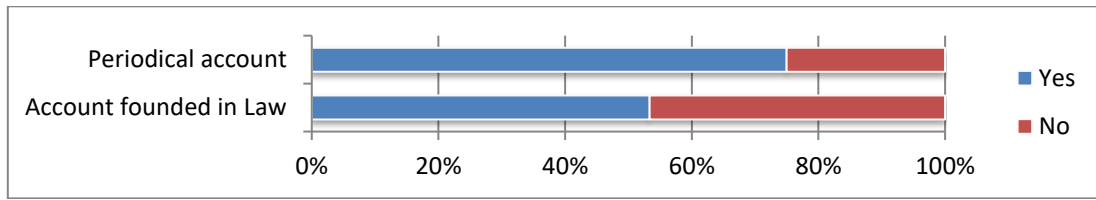
**2.5.1. Accountability for individual activity and priorities**

In almost 80%<sup>180</sup> of countries, public prosecutors account periodically for their general activity and, in particular, for the way their priorities are carried out. Less than 60%<sup>181</sup> of these countries founded this account in the law, while in more than 40% of cases the matter is regulated through internal acts, especially orders of the Prosecutor General. All countries require this form of accounts with a frequency varying from monthly (e.g. **Viet Nam**) to annual reports (e.g. **Serbia**).

<sup>180</sup> Albania, Azerbaijan, Cambodia, Georgia, Kyrgyzstan, Latvia, Lithuania, Malaysia, Moldova, the Philippines (Office of the Special Prosecutor), Serbia, Timor-Leste, Ukraine, Uzbekistan, and Viet Nam.

<sup>181</sup> Albania, Cambodia, Kyrgyzstan, Serbia, Timor-Leste, Ukraine, Uzbekistan, and Viet Nam.

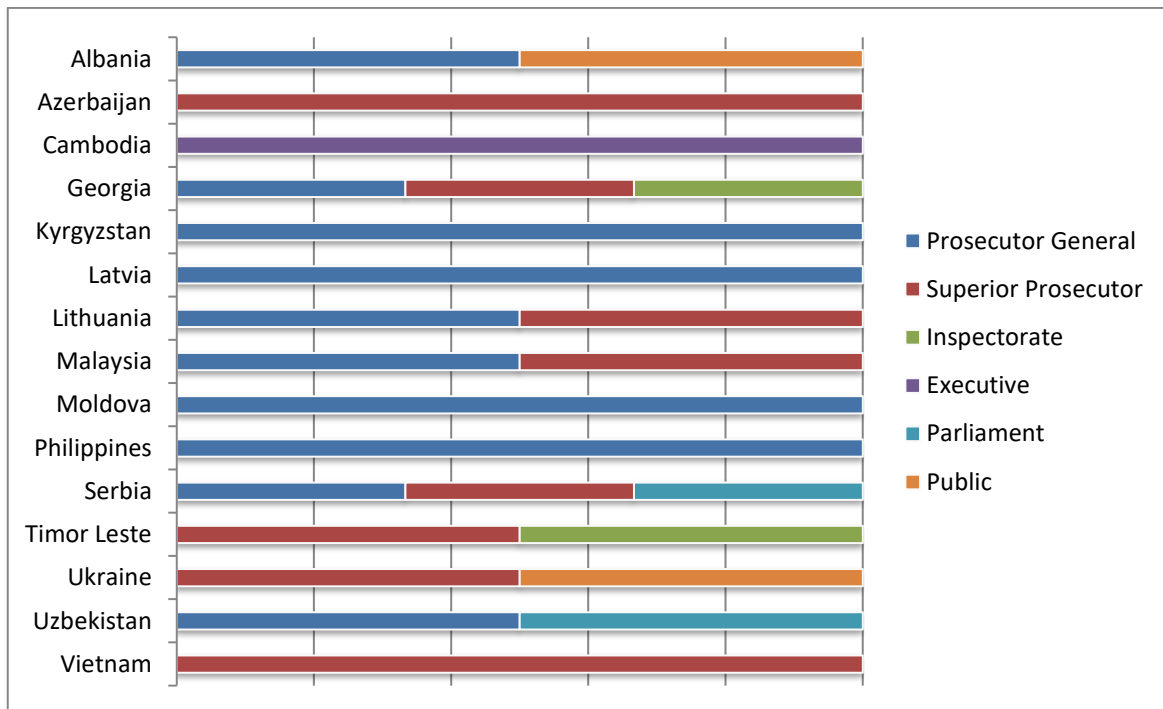
Figure 2.16. Periodical account of prosecutors



Note: Only data from the countries that replied to the relevant sections of the questionnaire are displayed. Data are updated as of January 2018.

Art. 42 of **Albania’s** law n. 97/2016 provides that the head of all prosecution offices every three months inform the Prosecutor General on the criminal acts committed in the relevant jurisdiction. Furthermore, the Prosecutor General can periodically take data and information from prosecution offices on the progress of their activities. The heads of the offices attached to the courts of appeal and first instance prepare an annual report on the progress of work in their office and submit it to the Prosecutor General. The report is published on the website of the Prosecutor General’s Office after the approval of the Prosecutor General.<sup>182</sup>

Figure 2.17. Entities receiving accounts from prosecutors on their activity



Note: Only data from the countries that replied to the relevant sections of the questionnaire are displayed. Data are updated as of January 2018.

In **Azerbaijan** and **Viet Nam**, a periodical account is given to a superior prosecutor. In **Georgia**, prosecutors give an account of their work in the course of their periodical evaluation (see □).

In accordance with **Latvia’s** Prosecutor General’s orders, the Prosecution Office ensures unified statistics as to the results of pre-trial proceedings and other activities. In order to form these statistics, public

<sup>182</sup> See Art. 50 of law n. 97/2016.

prosecutors provide monthly and annual accounts of their work, as well as monthly reports on criminal complaints received and investigations initiated. Also in **Kyrgyzstan** and **Moldova** prosecutors account to the Prosecutor General.

In **Lithuania**, direct superiors receive regular reports from prosecutors and general reports on workloads are drawn up by the Personnel and Law Division of the Prosecutor General's Office. **Timor-Leste's** prosecutors account to both their hierarchical superior and an inspectorate.

**Serbia's** prosecutors account to the head of their office. The heads of lower prosecutor's offices account to the head of the directly superior prosecutor's office, while the heads of higher offices account for their work and the work of their office to the Prosecutor General and Parliament.<sup>183</sup> Also in **Malaysia**, both the Prosecutor General and the heads of the prosecution offices (Prosecution Divisions) receive the accounts from prosecutors.

**Slovenia's** prosecutors are not bound to a general obligation to report on their activity. Nevertheless, their work and the way their priorities are carried out can be assessed during the evaluation procedure (see □).

In **Ukraine**, prosecutors account to their superiors.

### Box 2.7. Indirect accountability on individual cases - UK

The Attorney General (AG) has no involvement in the vast majority of cases. Nevertheless, the AG's responsibilities for superintendence and accountability to Parliament mean that he/she, acting in the wider public interest, occasionally needs to engage with the Director of Public Prosecutions, the Director of the Serious Fraud Office (SFO) or other Directors about an individual case. This can happen because the specific case either is particularly sensitive, has implications for prosecution or criminal justice policy or practice, or reveals some systemic issues for the framework of the law or the operation of the criminal justice system.

In these circumstances, the AG will be alerted to a case by the respective Director at the earliest opportunity, or may call for information about a case, or will discuss a case with the Director. The Directors will keep the AG informed as significant developments occur. The AG may express any concerns, but the decision in these cases remains however, with the Directors.

The AG may additionally ask for information about an individual case in order to perform another of the AG's functions, such as considering potential contempt of court, making references on the point of law, or deciding whether to refer an unduly lenient sentence.

The AG may be called upon to help prosecutors resolve cases where they have not reached an agreement, for example where prosecuting agencies have overlapping remits over the same case or adopt different approaches to the same legal question or where there is concurrent jurisdiction.

The AG's assistance may be needed to secure evidence or disclosure of material by another Government Department which is needed to ensure a fair trial.

*Source:* Response from the UK to the Study Questionnaire.

<sup>183</sup> See Art. 160 of the Constitution of Serbia.

The Prosecutor General, as well as the regional parliaments receive the periodical account of **Uzbekistan's** regional prosecutors.

**Cambodia's** prosecutors of the Court of First Instance make a report to the Minister of Justice on their activities and on offences which have been investigated. A copy of the report is sent to the Prosecutor General of the competent Court of Appeal.

### Conclusions:

Prosecutors have the role of protecting the legal order of a country and the citizens' rights. In that sense, they act for the general interest of the society. Therefore, their operational autonomy and independence in the way they deal with particular cases should come in conjunction with their accountability to the hierarchy of the Prosecution Service.

Accountability should regard the compliance with general standards of fair criminal proceedings or with internal regulations, organizational standards, the use of resources, as well as the manner in which prosecutors deal with the other subjects of the proceedings (e.g. complainants, suspects/defendants, victims, witnesses, defence attorneys, clerks, etc.). Prosecutors should be able to justify the duration of an investigation, so that the reasonable time of the proceedings is respected. In relation to particular cases, prosecutors can be requested by their superiors to explain the investigative/prosecutorial strategy, especially when the case is a complex or a very prominent one that raises a high interest in the society.

Internal reporting procedures may assist the Prosecutor General to better protect the independence of prosecutors and to prepare the general reports he/she presents to the government or Parliament, where there is such obligation.

### Recommendations:

- The modality in which prosecutors are called to report on their activities and methods internally should not hinder their activity or put pressure on them.
- The internal reporting obligations of prosecutors should be reasonable and thoroughly determined by internal regulations.

### 2.5.2. Accountability for not prosecuting

As seen in Section □, in a vast majority of countries<sup>184</sup> prosecutors have to account for their decision not to prosecute. Only **Estonia**, **Mongolia** and **Viet Nam** expressly stated that such procedures were not foreseen in their legal systems. In the **Cook Islands**, the account is given upon request of the Solicitor General. The **Cook Islands**, **Malaysia**, the **Philippines**<sup>185</sup> and **Uzbekistan** are the only countries where this accounting exists, although it is not regulated by the law. In **Mongolia**, all prosecutors' decisions to terminate a case should be reviewed by superior prosecutors.

<sup>184</sup> Albania, Armenia, Azerbaijan, Bosnia and Herzegovina, Cambodia, the Cook Islands, Fiji (Fiji Independent Commission against Corruption), Georgia, Japan, Kyrgyzstan, Latvia, Lithuania, Malaysia, Moldova, Mongolia, Montenegro, the Philippines (Office of the Special Prosecutor), Romania, Serbia, Slovenia, Timor-Leste, Ukraine, and Uzbekistan.

<sup>185</sup> The replies of the Philippines consider the "Office of the Special Prosecutor" (*Tanodbayan*), created within the Office of the Ombudsman, as the Prosecution Office, and the "Special Prosecutor" as the Prosecutor General. The Office of the Special Prosecutor conducts investigations and prosecutes cases within the jurisdiction of the "*Sandiganbayan*". The *Sandiganbayan* has jurisdiction over criminal, and civil cases involving graft, corrupt practices and other offenses committed by public officers and employees, including those in government-owned or controlled corporations, in relation to their office.

All but two respondents, **Fiji** and **Japan**, report that the decision not to prosecute is communicated to the victim of the investigated crime. In **Japan**, prosecutors must give reasons for non-prosecution when there is a request from the victim, while in **Fiji** the decision to notify the victim is with the Prosecutor General<sup>186</sup>.

Other entities and parties to the proceedings that countries established to be notified of prosecutors' decisions to drop a case can be the complainant, the accused, a superior prosecutor, the Prosecutor General and the Police (see Figure 2.18).

No country has set up a general obligation to publish a decision not to prosecute. However, in **Latvia** and **Timor-Leste** all information regarding final decisions in criminal cases is kept in the archives of the Prosecution Service, which are accessible on request.

**Bosnia and Herzegovina, Georgia, Moldova, Montenegro, and Serbia** report that they have established procedures for out-of-court settlements between defendants and the prosecutor. As a result of these agreements the case is close without the scrutiny of a judge.

Art. 283 of **Serbia's** Criminal Procedure Code provides for a deferred prosecution procedure in cases concerning crimes punished with up to five years of imprisonment. A prosecutor imposes to the defendant one or more obligations stipulated in the law, to be fulfilled within a given deadline until when the prosecution is deferred. In the case the defendant meets the obligations a case is dropped, otherwise, the prosecution continues. The obligations include the removal of the damaging consequences of a crime, the payment of a specified amount to a publicly owned account for humanitarian or other public purposes, performing socially beneficial or humanitarian work, etc.

In **Georgia, Moldova** and **Serbia** prosecutors are required to justify their recourse to out-of-court settlements.

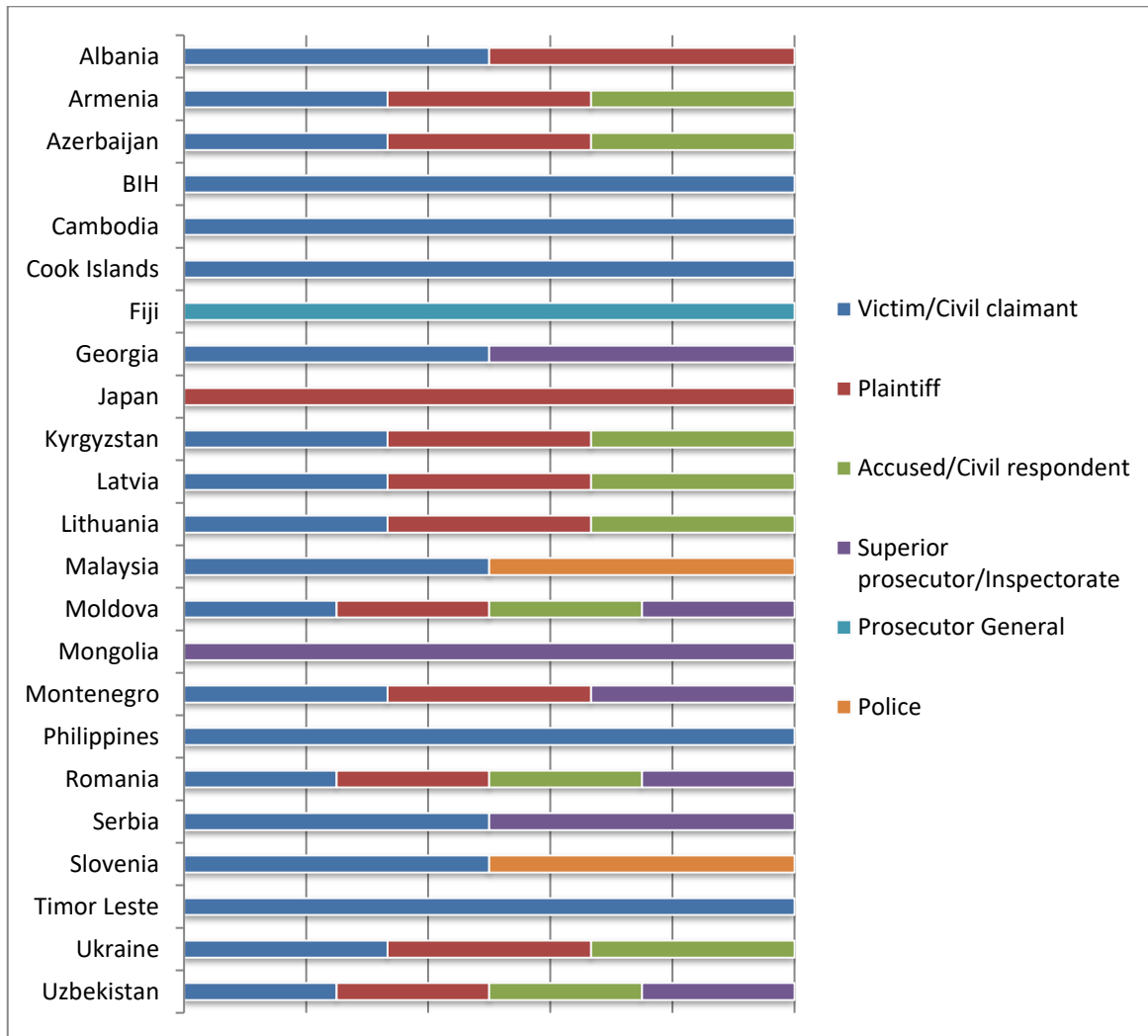
**Georgia** and **Serbia** have set guidelines on payable amounts for out-of-court settlements. In both countries, the Prosecutor General's Office issues these guidelines, which are not published, and prosecutors are required to justify their recourse to out-of-court settlements.

Only in **Serbia** and **Montenegro** the settlements are published together with the underlying motivations.

---

<sup>186</sup>Fiji's data refer to FICAC (Fiji Independent Commission Against Corruption), a body investigating and prosecuting any alleged offences of corruption and bribery, separated from the ODPP (Office of the Director of Public Prosecutions). As Prosecutor General they refer to the Deputy Commissioner, head of FICAC.

Figure 2.18. Parties and entities notified of the decision not to prosecute



Note: Only data from the countries that replied to the relevant sections of the questionnaire are displayed. Data are updated as of January 2018.



### Box 2.8. Judicial review of dismissing decisions - Mexico

Art. 258 of the National Code of Criminal Procedure establishes that the decisions of the Public Prosecutors of the Federation concerning the refusal to investigate and the non-exercise of the criminal action have to be notified to the victim or offended who may challenge them before the Control Judges. In these cases, the Control Judge convenes a hearing to decide on the matter, summoning the victim and/or offended person, the public prosecutor and, where appropriate, the accused and his or her legal representative. In the event that the victim, the offended party or their legal representatives do not appear at the hearing despite having been duly summoned, the Control Judge declares the matter uncontested. The decision of the Judge of Control cannot be appealed.

Source: Response from Mexico to the Study Questionnaire and comments to the draft Study.

### 2.5.3. Civil, penal and administrative liability of prosecutors

**Fiji** is the only participating country that does not foresee any form of liability for prosecutors in the case of wrongdoings in the carrying out of their work<sup>187</sup>. All other countries developed civil, penal and/or administrative liability for the misconducts of prosecutors (see Figure 2.19).

It is important, however, that prosecutors are held personally liable only in cases of misconduct or gross negligence. Prosecutors should not be held liable for honest decisions made in good faith in the course of their work in the absence of evidence of misconduct or gross negligence.

From the replies received, a wilful unlawful act appears to be the main ground for penal and administrative liability, while negligence and gross negligence generally found civil actions. Disciplinary liability has not been considered as administrative (see 3.8).

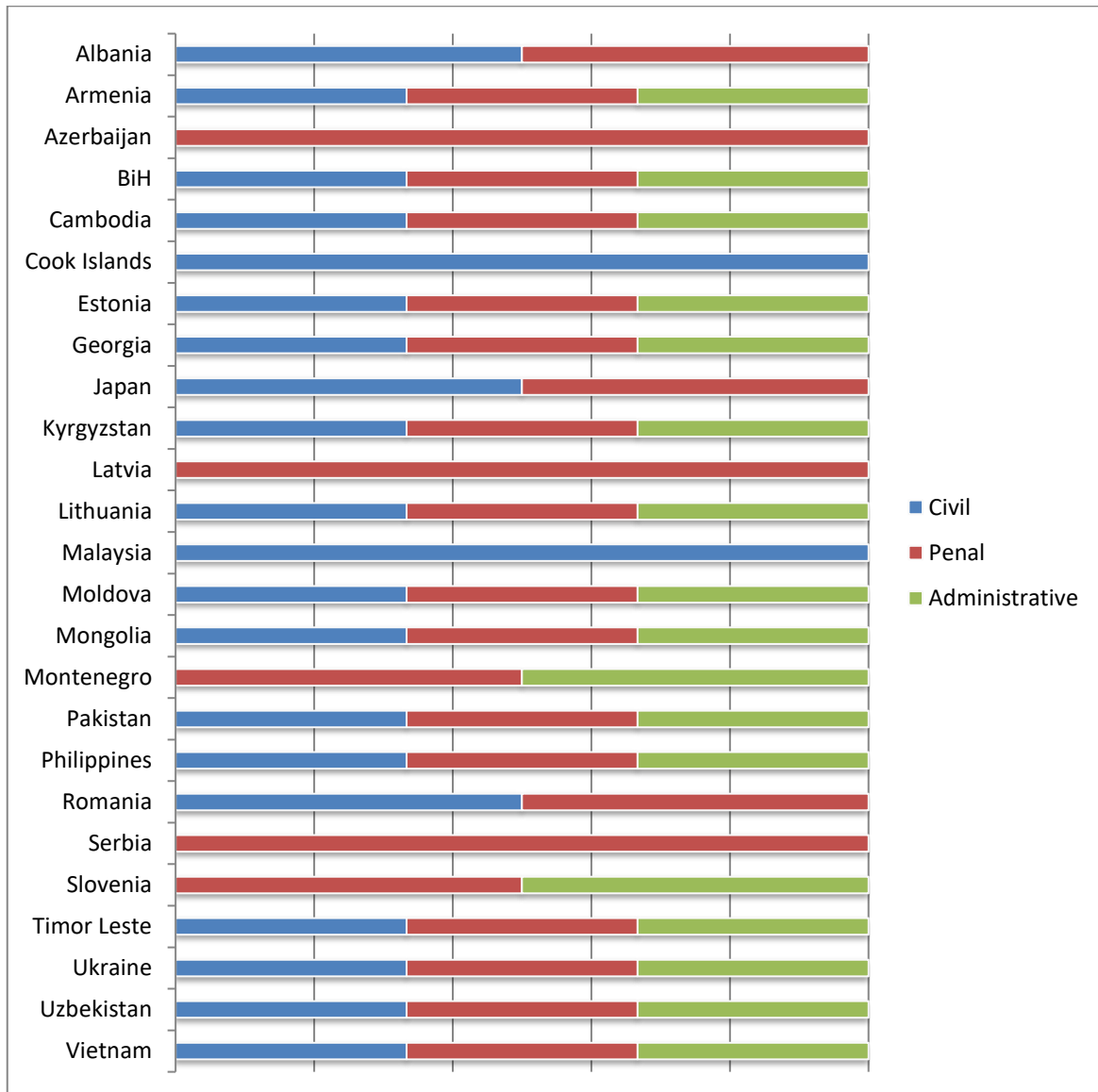
Less than 50%<sup>188</sup> of the responding countries set up special procedures concerning prosecutors' wrongdoings, under civil, penal or administrative law. In **Estonia** no particular procedure has to be followed when suing or prosecuting prosecutors, however, a specific crime is foreseen in the criminal code for knowingly indicting an innocent person.<sup>189</sup>

<sup>187</sup> Fiji's data refer to FICAC (Fiji Independent Commission Against Corruption), a body investigating and prosecuting any alleged offences of corruption and bribery, separated from the ODPP (Office of the Director of Public Prosecutions). As Prosecutor General they refer to the Deputy Commissioner, head of FICAC.

<sup>188</sup> Albania, Armenia, Azerbaijan, Cambodia, Japan, Latvia, Lithuania, Malaysia, Montenegro, Romania, and Ukraine.

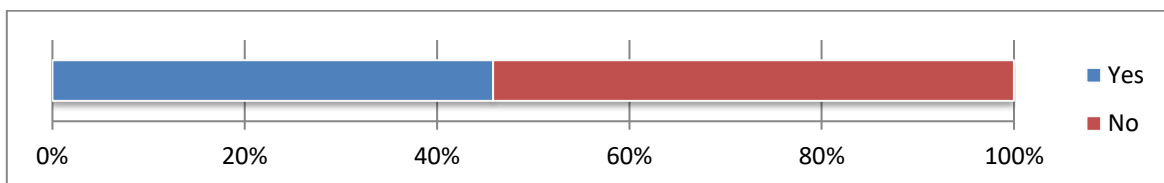
<sup>189</sup> See § 310 of Estonia's Criminal Code ("Unlawful bringing of charges").

Figure 2.19. Liability for prosecutors' wrongdoings in carrying out their work



Note: Only data from the countries that replied to the relevant sections of the questionnaire are displayed. Data are updated as of January 2018.

Figure 2.20. Special procedures for suing prosecutors



Note: Only data from the countries that replied to the relevant sections of the questionnaire are displayed. Data are updated as of January 2018.

In accordance with Section 7(4) of **Latvia's** Prosecution Office Law, the state is accountable for the damage caused in connection with illegal or unreasoned actions or decisions of prosecutors, who cannot be directly sued.

In **Montenegro**, the state is liable for any damage inflicted to the parties to criminal proceedings by public prosecutors because of illegal, unprofessional or careless work in the exercise of prosecutorial office. The State has the right to request the Public Prosecutor to refund the amount paid if the damage was deliberately caused. If the damage was caused due to gross negligence, the state has the right to claim a refund of the amount paid up to one-third of the annual net earnings of the prosecutor.

Art. 96 of **Romania's** Law no. 303/2004 establishes that the state is liable for the damage caused by judicial and prosecutorial errors. The state liability does not remove the liability of judges and prosecutors, when they have acted with bad faith or serious negligence. The Code of Criminal Procedure defines the cases where compensation can be granted for errors committed in criminal proceedings. The injured person can only bring an action against the state, represented by the Ministry of Public Finance. After the state covered the damages, it may bring an action against the judge or prosecutor who, in bad faith or serious negligence, caused those damages.

According to **Ukraine's** Law on the Prosecutor's Office, Art. 20, damage caused by the activity or inactivity of prosecutors is compensated by the state "regardless of his/her fault", therefore also beyond the legal requirements for personal culpability established by the law. Upon reimbursing the damage, the state has the right to demand the refund from the public prosecutor when his/her actions constituted a criminal offense and after final conviction.

In **Cambodia** proceedings against prosecutors are initiated by filing a complaint to the Supreme Council of Magistracy, the Minister of Justice or the Prosecutor General before the Appeal Court.

**Japan's** procedures to sue prosecutors are the same as for the other public officials.<sup>190</sup> In case of criminal acts, prosecutors are subject to both criminal and disciplinary proceedings. As regards civil liability, the state compensates the victims. In the cases of intent or gross negligence, the state has the right to obtain the reimbursement from the prosecutor. Other forms of wrongdoings can trigger disciplinary actions (see 3.8).

In **Malaysia** actions to claim damages for malicious prosecution can be brought against prosecutors before the High Court (Court of first instance).

---

<sup>190</sup> See Japan's State Redress Act.

### Box 2.9. Special procedures to try prosecutors - Lebanon

Prosecutors are prosecuted by the Prosecutor General both in the case of ordinary crimes committed in their private life, as well as for crimes related to their work (e.g. passive bribery, or the use of forged documents against or in favour of the defendant). Criminal proceedings take place before the Court of Cassation.

Civil actions regarding wrongdoings committed by prosecutors in carrying out their work are filed against the Lebanese Government, which is responsible for the actions of judges and prosecutors. The General Committee of the Court of Cassation decides on these actions.

*Source:* Response from Lebanon to the Study Questionnaire.

### Conclusions:

Prosecutors can make mistakes in the decisions they take, as well as judges can make judicial errors. However, prosecutors should not be held liable for the actions they have performed while carrying out their functions in good faith and in accordance with the professional standards defined by the law. In such cases, the responsibility should lay with the state. The state should thus protect the independent action of prosecutors so that they feel no pressure when interpreting the law and the facts in good faith.

Acting with the intent to harm a person should stay within the area of criminal law and prosecutors should be liable in the same way as the other citizens. In order to make sure that criminal proceedings started against a prosecutor are not ill-motivated, the opening of such proceedings or its approval could be reserved exclusively to the Prosecutor General, and coercive measures against a prosecutor could also be subjected to some further filter (e.g. approval of a Prosecutorial Council). However, the procedure in itself should be in principle free from excessive immunity rules.<sup>191</sup>

Prosecutors' civil liability should occur only when it is proven that they acted in bad faith or with gross negligence and thus produced damage to a person. The civil action should not be opened directly by the complainant against a prosecutor, but complainants should address their requests for compensation to the state. Any action of the state against prosecutors to recover the compensation paid should be based on a professional, judicial finding of the prosecutor's bad faith or gross negligence.

### Recommendation:

- Prosecutors should not be held liable for honest decisions made in good faith in the course of their work in the absence of evidence of misconduct or gross negligence.

## 2.6. Immunities

Immunities from criminal responsibility form an exception to the principle of equality before the law. For this reason, prosecutors should be protected by only such immunities that are necessary to enable them to perform their functions.

As a general rule, this requires functional immunity, that is to say, immunity from civil or criminal liability for acts carried out in good faith in the performance of their duties.

The width of the immunity of prosecutors differs from country to country. In some countries, the immunity covers only the intrusive measures, such as preventive arrest or search, provided that an institution such

<sup>191</sup> For further analysis on the immunity of prosecutors, see 2.6.

as a Prosecutorial Council may lift this immunity. In other countries, the immunity could be much more extensive, as it may involve a prohibition on *investigations* or *prosecutions* of prosecutors unless some institution such as a Prosecutorial Council, the Prosecutor General or a court president has authorised the initiation of investigations or proceedings. Usually, there is also an exception for crimes committed *in flagrante delicto* (for an overall analysis of prosecutors' immunities concerning criminal proceedings, see 2.5.3).

At the same time, where such wide immunities exist, care should be taken to avoid them becoming a mechanism whereby corrupt prosecutors are protected from the law. These immunities are sometimes defended on the grounds that they are necessary to protect prosecutors from dealing with trumped-up charges initiated by the executive power. In the other hand, there is a risk that such immunities may be used to impede investigations or prosecutions in cases where a reasonable suspicion of criminal misbehaviour by a prosecutor exists. In a society which is based on genuine respect for the rule of law immunities other than functional should not be necessary. Also, in some cases, prosecutors are not covered by immunities, but by special jurisdiction provisions (procedures) regarding who could investigate/prosecute them.

#### UN, Guidelines on the Role of Prosecutors

4. States shall ensure that prosecutors are able to perform their professional functions without intimidation, hindrance, harassment, improper interference or unjustified exposure to civil, penal or other liability.

#### Venice Commission Report

61. Prosecutors should not benefit from a general immunity, which could even lead to corruption, but from functional immunity for actions carried out in good faith in pursuance of their duties.

87. In order to provide for guarantees of non-interference, the Venice Commission recommends:  
[...]

17. Prosecutors should not benefit from a general immunity.

#### Rome Charter

The Consultative Council of European Prosecutors (CCPE), having been requested by the Committee of Ministers of the Council of Europe to provide a reference document on European norms and principles concerning public prosecutors, agreed on the following:

X. Prosecutors should not benefit from a general immunity, but from functional immunity for actions carried out in good faith in pursuance of their duties.

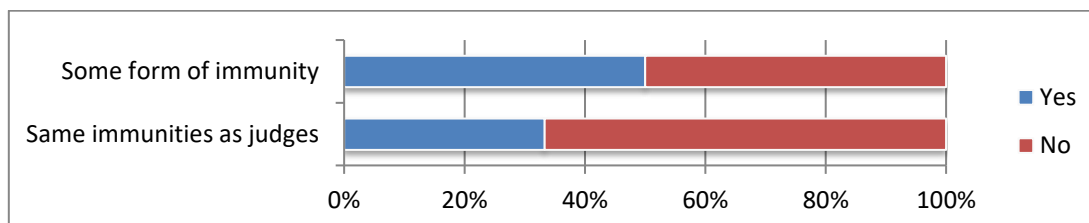
Although 50%<sup>192</sup> of the responding countries report some form of immunities for prosecutors, less than 40%<sup>193</sup> grant the same immunities to both judges and prosecutors. In the case of **Cambodia**, however,

<sup>192</sup> Armenia, Azerbaijan, Bosnia and Herzegovina, the Cook Islands, Fiji (Fiji Independent Commission against Corruption), Japan, Latvia, Lithuania, Montenegro, Pakistan, Romania, Serbia, and Timor-Leste.

<sup>193</sup> Bosnia and Herzegovina, Cambodia, Lithuania, Montenegro, Romania, Serbia, Pakistan, and Timor-Leste.

same immunities means no immunities, as neither judges nor prosecutors are conferred with any sort of institutional protection.

Figure 2.21. Immunities



Note: Only data from the countries that replied to the relevant sections of the questionnaire are displayed. Data are updated as of January 2018.

For example, Article 137 of the Constitution of **Albania** provides for immunities of judges in regard to the opinions expressed and the decisions made in the course of assuming the functions. The only exception is where the judge deliberately issues a decision as a result of self-interest or bad faith. The same immunities are not foreseen for prosecutors, who are not provided with any form of immunity. When criminal proceedings are initiated against Albania's prosecutors, the prosecution office shall immediately notify the High Council of Prosecutors.

In **Armenia**, even though immunities are not the same as those of judges, the legal protections of prosecutors are stated in article 69 of the Armenian Law on the Prosecutor's Office. According to the abovementioned article, "Criminal prosecution against the Deputy Prosecutor General or a prosecutor shall be started by the Prosecutor General, and against the Prosecutor General — by the Deputy Prosecutor General." The Prosecutor General or the Deputy Prosecutor General can be detained for acts connected to the exercise of their powers only with the authorization of the Ethics Commission.<sup>194</sup> The Prosecutor General or the Deputy Prosecutor General do not participate in the meetings of the Ethics Commission when discussing and deciding on a request of detention concerning themselves. A similar system has been established in **Latvia**, where detention, forcible conveyance, subjection to a search, arrest or subjection to the criminal liability of a public prosecutor can be performed by immediately informing the Prosecutor General.

According to Article 33 of **Azerbaijan's** Prosecutor's Office Act regulating liabilities of employees of the Prosecutor's Office, they enjoy procedural immunity in the following form: with the exception of *in flagrante delicto*, employees of the Prosecutor's Office of Azerbaijan can be subjected to administrative arrest, mandatory summoning, detention, criminal proceedings, arrest, search of an apartment, vehicle and workplace, and personal search, interception of a phone and other communication means, only upon endorsement of a motion of the Prosecutor General to the President of the Supreme Court. In this case, the President of the Supreme Court shall be immediately informed, and relevant documents shall be provided. If he/she does not give his/her consent, the detected or arrested person shall be immediately released. The Prosecutor General of Azerbaijan may be subjected to the same measures upon endorsement by the Plenary of the Supreme Court. Criminal proceedings against prosecutors may be

<sup>194</sup> The Ethics Commission comprises seven members: one Deputy Prosecutor General, three academic lawyers appointed by the Prosecutor General and three prosecutors elected by a majority of votes by the Prosecutor General, Deputy Prosecutors Generals that are not members of the Ethics Commission, heads of structural subdivisions of the General Prosecutor's Office, Prosecutor of the city of Yerevan, prosecutors of the provinces, prosecutors of administrative districts of the city of Yerevan and military prosecutors. The Ethics Commission is headed by the Deputy Prosecutor General (See Art. 23 of Armenia's Law on Prosecutor's Office).

initiated only by the Prosecutor General and investigations conducted only by the Prosecutor General's Office.

In **Lithuania**, only the Prosecutor General may commence a pre-trial investigation into criminal offences committed by a prosecutor. When the accused is the Deputy Prosecutor General, the Prosecutor General informs the President of the Republic. Only the President can authorize an investigation into the criminal offence committed by the Prosecutor General, who is previously removed from his/her post with the consent of Parliament.

In **Romania**, according to Law n. 317/2004 on the Superior Council of Magistracy, the search, preventive arrest, custody and home arrest of prosecutors, as well as of judges, need to be previously approved by the competent Section of the Superior Council of the Magistracy (the Section for Judges or the Section for Prosecutors). In **Serbia**, instead, the immunity of prosecutors is waived by the competent committee of the National Assembly (Parliament) (Art. 162 Const.), while the immunity of judges is waived by the High Judicial Council (Art. 151 Const.).

Art. 77 of **Pakistan's** Criminal Code<sup>195</sup> ensures that acts of judges cannot be considered an offence if made in good faith in the exercise of judicial power. Similarly, Art. 36 of the National Accountability Ordinance<sup>196</sup> in relation to the states that “No suit, prosecution, or any other proceedings shall lie against the Federal Government, Provincial Government, Chairman of the National Accountability Bureau (NAB), or any other member of the NAB or any person exercising any power or performing any function under this Ordinance or the Rules made hereunder for any act or thing which has been done in good faith or intended to be done under this Ordinance or the rules thereof.”

Both the **Cook Islands** and **Fiji**<sup>197</sup> foresee immunities for prosecutors, though different from those of judges. In particular, the Cook Islands' legal system provides prosecutors and judges with different kinds of protection established by constitutional common law, in the absence of any written instrument.

**Brazil, Italy and Lebanon** are among other countries granting prosecutors the same immunities as those of judges. In particular, Art. 19 of the Brazilian Complementary Law 75/1993 (“Regulates the organization, the attributions and the Statute of Federal Public Prosecution Service”) establishes that “the Attorney-General shall have the same honours and treatment as the Ministers (Members) of the Federal Supreme Court; and the other members of the institution, the honour and treatment given to the judges before whom they officiate”.

### Conclusions:

Prosecutors must carry out their functions without intimidation or fear to be held liable for decisions taken in good faith. They should, therefore, be protected by functional immunity, meaning that they cannot be investigated or be subject to civil proceedings for conducting their activities in good faith. As it is for judges, an extended immunity for prosecutors is in general discouraged by international standards and soft-law instruments. They should be held accountable for any abuse of power, for corruption and other crimes committed in relation to or outside of their official duties, like any other person.

---

<sup>195</sup> When specified, data concerning Pakistan may refer only to the Punjab province or to the National Accountability Bureau (NAB), the national body responsible for preventive measures and enforcement against corruption-related crimes and has in its structure a specialized prosecutor's office.

<sup>196</sup> Ordinance issued in 1999 setting up Pakistan's National Accountability Bureau.

<sup>197</sup> Fiji's data refer to FICAC (Fiji Independent Commission Against Corruption), a body investigating and prosecuting any alleged offences of corruption and bribery, separated from the ODPP (Office of the Director of Public Prosecutions). As Prosecutor General they refer to the Deputy Commissioner, head of FICAC.

However, as it is seen from the analysis above, most of the countries included in the study regulate various degrees of immunity for prosecutors, ranging from no immunity to only functional immunity, up to broad immunity. Some countries provide for lighter forms of protection of prosecutors against criminal responsibility, such as requiring only some procedural measures (arrest, wiretapping, and search) to be approved by either the Prosecutor General or the Judicial Council, while the investigation or prosecution *per se* can be carried out without any limit.

As a general recommendation, excessive immunity from prosecution, which goes beyond the functional immunity, should be eliminated from legislation, so that the public can perceive the prosecution system as trustworthy and accountable.

**Recommendation:**

- Prosecutors should be protected by functional immunity only to the extent necessary to enable them to perform their functions properly, meaning that they cannot be criminally investigated or be subject to civil claims for carrying out their official duties in good faith. Any immunity from prosecution that goes beyond this functional immunity should be excluded.

## 2.7. Means of protection against undue external pressure

According to international standards and good practices, prosecutors should be provided with means of protection against undue external interference and pressure. Internal grievance procedures or prosecutors' access to court procedures to appeal against improper influence are among commonly used instruments of such protection.

**UN, Guidelines on the Role of Prosecutors**

4. States shall ensure that prosecutors are able to perform their professional functions without intimidation, hindrance, harassment, improper interference or unjustified exposure to civil, penal or other liability.

**Council of Europe, Recommendation Rec(2000)19**

Safeguards provided to public prosecutors for carrying out their functions

5. States should take measures to ensure that:

[...]

f. public prosecutors have access to a satisfactory grievance procedure, including where appropriate access to a tribunal, if their legal status is affected.

**CCJE, Opinion No.12**

8. For an independent status of prosecutors, some minimal requirements are necessary, in particular:

- that their position and activities are not subject to influence or interference from any source outside the prosecution service itself.

More than 60%<sup>198</sup> of the countries that replied to the questionnaire have at least one form of complaint in case a prosecutor suffers undue pressure from within or outside the Prosecution Service. Nevertheless,

<sup>198</sup> Albania, Armenia, Azerbaijan, Georgia, Latvia, Lithuania, Moldova, Romania, Serbia, Ukraine, the Cook Islands, Fiji (Fiji Independent Commission against Corruption), Pakistan, Timor-Leste, and Viet Nam.



less than 30%<sup>199</sup> of countries declare that direct access to court is available in the case of improper influence.

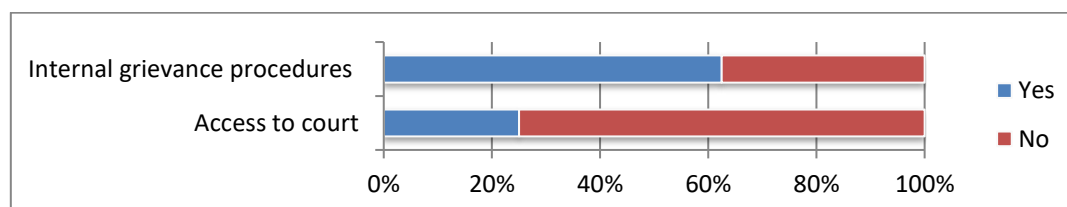
Several examples of internal grievance procedures are provided below.

Thus, Law n. 303/2004 of **Romania**, on the Statute of Judges and Prosecutors, states at its Art. 75 that the Superior Council of Magistracy has the right and obligation to protect the judges and prosecutors against any act likely to affect their independence or impartiality or give rise to suspicions thereof.<sup>200</sup> Judges or prosecutors who consider that their independence or impartiality is affected in any way by acts of interference in their professional activity may complain to the Superior Council of Magistracy. The Council may decide the verification of the facts and the publication of its results, notify the competent body to decide upon the measures to be taken or dispose any other appropriate measure, according to the law. Both in **Albania**<sup>201</sup> and **Ukraine**<sup>202</sup> prosecutors may refer to the respective national representative council any form of threat to their prosecutorial independence. Law n. 96/2016 of Albania proclaims the independence of prosecutors and judges. Any case of interference must be notified to the respective council (the High Judicial Council for judges or the High Prosecutorial Council for prosecutors), but the procedure is not detailed furthermore in the law.

A particularly positive example is **Serbia**. Art. 9 of Serbia's Rules on the Procedures of the State Prosecutorial Council (SPC, see 1.4), which was adopted on 23 March 2017, established the Commissioner for Autonomy. By decision of the SPC, the Vice-President of the SPC is entrusted to perform the functions of the Commissioner for Autonomy. The Commissioner undertakes activities for raising awareness on the importance of autonomy and professional integrity, proposes preventive measures to the SPC, and informs the SPC and the public on the existence of acts of undue pressure through reports and recommendations.

In **Pakistan**, in the event of undue pressure prosecutors of all levels can file written complaints to the Prosecutor General.

**Figure 2.22. Grievance procedures**



Note: Only data from the countries that replied to the relevant sections of the questionnaire are displayed. Data are updated as of January 2018.

Some countries also introduced criminal liability for illegal interference in prosecutors' work.

<sup>199</sup> Azerbaijan, Georgia, Latvia, Lithuania, Viet Nam, Fiji (Fiji Independent Commission against Corruption).

<sup>200</sup> According to Art. 30 of Law n. 317/2004, on the Superior Council for Magistracy, the Council is entitled and obliged to act even *ex officio* in order to protect judges and prosecutors against any acts that could affect their independence or impartiality or that could give rise to suspicion with regard to this.

<sup>201</sup> See Law n. 96/2016 of Albania, though no detailed procedure is specified.

<sup>202</sup> See Art. 16 of the Law on the Prosecutor's Office of Ukraine.

For instance, Art. 7 of **Azerbaijan's** Prosecutor's Office Act ("Inadmissibility of interference in the activity of the Prosecutor's Office and disrespect to the Prosecutor's Office") forbids any direct or indirect restriction, influence, threat or illegal interference in the lawful activities of the Prosecutor's Office, as well as any disrespect to the Prosecutor's Office. Art. 286 of the Criminal Code ("Hindrances to implementation of justice and conduct of pre-trial investigation") criminalises any form of intervention in the activities of prosecutors, investigators or inquiry officers that constitute a hindrance to their tasks. It is an aggravating factor if such acts are committed by a public official. Criminal proceedings can also be triggered in **Georgia, Latvia, Lithuania,**<sup>203</sup> **Fiji**<sup>204</sup>, and **Viet Nam**.

In total, only three countries reported having made use of internal grievance procedures since 2013. **Romania's** prosecutors filed 69 complaints to the Superior Council of Magistracy to defend their independence, impartiality or professional reputation. In **Serbia**, the Commissioner for Autonomy issued two reports and one recommendation on individual cases in 2017, as well as reviewed over 40 cases of alleged inappropriate political influence and issued several advisory opinions within the period from March 2018 to March 2019<sup>205</sup>.

**Moldova** reported having activated the procedure more than once.

---

<sup>203</sup> Article 231 of the Lithuanian Criminal Code ("Hindering the Activities of a Judge, Prosecutor, Pre-trial Investigation Officer, Lawyer or Bailiff"). "1- A person who, in any manner, hinders a judge, prosecutor, pre-trial investigation officer, lawyer or an officer of the International Criminal Court or of another international judicial institution in performing the duties relating to investigation or hearing of a criminal, civil, administrative case or a case of the international judicial institution or hinders a bailiff in executing a court judgement shall be punished by community service or by a fine or by restriction of liberty or by a custodial sentence for a term of up to two years. 2- A person who commits the act indicated in paragraph 1 of this article by using violence or another coercion shall be punished by a fine or by arrest or by a custodial sentence for a term of up to four years. 3- A legal entity shall also be held liable for the acts provided for in this article."

<sup>204</sup> Fiji's data refer to FICAC (Fiji Independent Commission Against Corruption), a body investigating and prosecuting any alleged offences of corruption and bribery, separated from the ODPP (Office of the Director of Public Prosecutions). As Prosecutor General they refer to the Deputy Commissioner, head of FICAC.

<sup>205</sup> European Commission (2019), Serbia 2019 Report, <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20190529-serbia-report.pdf>.

### Box 2.10. Undue external pressure – Italy

The Italian legislative framework considers illicit any form of undue external pressure on prosecutors, and in specific cases, such a conduct integrates a criminal offence.

Prosecutors, as all the Italian public officials, have the duty to report all crimes of which they become aware while discharging their functions. Such report is in written and must be handed out to a prosecutor or a law enforcement agent 'without delay' (Art. 331 of the Italian Criminal Procedure Code).

In order to ensure the independence of the prosecutor involved, the proceedings regarding such offence cannot be carried out in the tribunal where he/she works. Proceedings therefore follow a pre-established system of territorial referral determined by law (Art. 11 CPC).

Moreover, when a prosecutor undergoes any interference or attacks to his/her independence, the Superior Council of Magistracy (CSM) may initiate a protection procedure.

*Source:* Response from Italy to the Study Questionnaire.

### Conclusions:

The role of prosecutors is key to upholding the rule of law and keeping communities safe and stable by bringing before the courts those who commit crimes. Therefore, an independent and impartial justice depends on an independent, impartial and competent action of prosecutors. It is crucial that prosecutors do not abuse their functions and do not misuse their powers, for what they should be held accountable.

At the same time, the critical role of prosecutors also exposes them to various forms of pressure. The pressure is higher as the cases investigated or prosecuted are more sensitive, especially those about high-profile corruption cases.

Such pressure could come from the internal hierarchy of the Prosecution Service, or from outside. For example, pressure may come from the government or other political bodies, and it can wear obvious or insidious forms. Unlawful instructions to prosecute or to shield from prosecution certain people may come from the political appointees either directly or through the hierarchy. Pressure can be placed upon prosecutors by wearying them with excessive or bureaucratic controls and evaluations that interrupt them from the investigative activity. Pressure may also come from initiatives to amend legislation that regulates the status or powers of prosecutors so that it could make the prosecution system more vulnerable to political influence.

Threats to dismiss prosecutors and media intimidation campaigns may also be used as forms of pressure, especially when prosecutors deal with high-profile, sensitive cases. Excessive and unbalanced threats of liability for actions taken in their professional capacity could also wear the form of pressure on prosecutors.

Most of the countries analysed have included in their legislation the prohibition of political or other unlawful interference in the activity of prosecutors. In some countries, however, these provisions remain theoretical principles, and no implementing mechanisms put them into practice. In other countries, there are grievance procedures that can be used by prosecutors in case they consider their independence threatened. Many of them involve Prosecutorial Self-Governance (PSG) bodies, which is commendable. However, the efficacy of such grievance mechanisms depends on the powers given by the law to PSG bodies and on the independence granted to these bodies.

**Recommendation:**

- There should be effective grievance mechanisms where prosecutors complain of undue pressure or interference in their work, including the possibility for prosecutors to have access to judicial review.

**2.8. Safeguards for prosecutors**

Prosecutors and their families should be granted safeguards in order to be protected by the authorities in case they are threatened as a result of being in charge of prosecutorial functions. A sense of personal safety is essential for prosecutors to carry out their work in freedom and independence.

The International Association of Prosecutors has issued a Declaration on Minimum Standards concerning the Security and Protection of Public Prosecutors and their families.<sup>206</sup>

**UN, Guidelines on the Role of Prosecutors**

5. Prosecutors and their families shall be physically protected by the authorities when their personal safety is threatened as a result of the discharge of prosecutorial functions.

**IAP, Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors**

6. Empowerment

In order to ensure that prosecutors are able to carry out their professional responsibilities independently and in accordance with these standards, prosecutors should be protected against arbitrary action by governments. In general they should be entitled:

[...]

(b) Together with their families, to be physically protected by the authorities when their personal safety is threatened as a result of the proper discharge of their prosecutorial functions;

**Council of Europe, Recommendation Rec(2000)19**

Safeguards provided to public prosecutors for carrying out their functions

5. States should take measures to ensure that:

[...]

g. public prosecutors, together with their families, are physically protected by the authorities when their personal safety is threatened as a result of the proper discharge of their functions.

<sup>206</sup>International Association of Prosecutors, <https://www.iap-association.org/>.

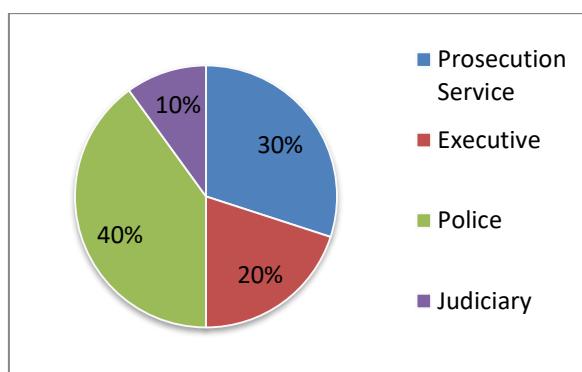
### Rome Charter

The Consultative Council of European Prosecutors (CCPE), having been requested by the Committee of Ministers of the Council of Europe to provide a reference document on European norms and principles concerning public prosecutors, agreed on the following:

XI. Prosecutors and, where necessary, their families have the right to be protected by the State when their personal safety is threatened as a result of the discharge of their functions.

**Estonia, Japan and Kyrgyzstan** are the only participating countries where no special measures of protection are in place. **Kyrgyzstan's** sole extraordinary protection measure for prosecutors is the authorization to wear a weapon.<sup>207</sup> In all other countries, specific protection is available to prosecutors. Different authorities decide on the application of these measures.

**Figure 2.23. Authority deciding protection measures**



Note: Only data from the countries that replied to the relevant sections of the questionnaire are displayed. Data are updated as of January 2018.

In 40%<sup>208</sup> of countries, the decision is made by the police department. In **Montenegro**, the police in these cases cooperates with the National Security Agency. 30%<sup>209</sup> of participating countries leave for the Prosecution Service to decide by itself on the necessity of protection for its members. In **Uzbekistan**, protection measures are ensured by the Internal Security Office of the Prosecutor's Office. The Executive is responsible for ordering the application of special protective measures in 20%<sup>210</sup> of countries. **Lithuania** established a dedicated VIP Protection Department under the Ministry of Interior. In **Georgia** and **Romania**, judges determine the application of these measures. The protection of Romanian magistrates and their family members is ensured by the Romanian Police, at the express request of the heads of courts or prosecutor's offices. The concrete measures are established by a protocol concluded between the Ministry of Administration and Interior and the Ministry of Justice, the High Court of Cassation and Justice, the Prosecutor's Office attached to the High Court of Cassation and Justice, the National Anticorruption Directorate and the Superior Council of Magistracy.

<sup>207</sup> See Art. 48 of the Law on the Prosecutor's Office.

<sup>208</sup> Bosnia and Herzegovina, Latvia, Mongolia, Montenegro, Slovenia, Timor-Leste, and Viet Nam.

<sup>209</sup> Albania, Azerbaijan, Cambodia, Fiji (Fiji Independent Commission against Corruption), the Philippines (Office of the Special Prosecutor), and Uzbekistan.

<sup>210</sup> Lithuania, Moldova, Serbia, and Pakistan.

Most countries affirm having had no threatened, injured or murdered prosecutor since 2007. A notable exception is **Ukraine**, where 30 prosecutors are reported having been murdered while 1.024 were victims of crimes. **Albania** reports four threatened and one injured prosecutors in the period, as well as an attempt of murdering a former Prosecutor General in 2013.<sup>211</sup> One prosecutor was murdered in **Malaysia** and one threatened in the **Philippines**<sup>212</sup>. It appears that many countries do not keep statistics on these events.

### Box 2.11. Security measures – Mexico

In accordance with Art. 13 of the Federal Law for the Protection of Persons Involved in Criminal Proceedings, the Federal Program for the Protection of Persons of the Prosecutor General's Office (FGR) is applied when people are in a situation of risk due to their direct or indirect participation in a criminal procedure related to serious crimes. The same procedure may be applicable to other crimes when it is considered necessary by the Attorney General. The criteria applied to the decision are the specific characteristics of the act, the circumstances of execution, the social relevance thereof, and the existence of security reasons or other reasons that prevent the proper development of the procedure. Likewise, such protection is also provided when expressly established by International Treaties that Mexico has ratified.

Art. 15 of the same Law lists the persons who may be protected by the Program: victims, offended, witnesses, collaborating witnesses, experts, police, public prosecutors, judges and members of the Judiciary, as well as those who have collaborated effectively in the investigation or during the trial and other persons with a close relationship to those indicated.

The Federal Centre for the Protection of Persons is in charge of providing the protection measures.

*Source:* Response from Mexico to the Study Questionnaire.

### Conclusions:

The independence of prosecutors means also that they should be free to take decisions without the fear that their life, health or physical integrity or those of their relatives are endangered because of the discharge of their functions. The extent of the phenomenon of physical threats against prosecutors is unknown, but history has recorded several notorious and tragic cases of this kind.

States should ensure by law the right of prosecutors to effective means of protection against threats related to their work whenever they provide the competent authorities with reasoned requests.

<sup>211</sup> Attempted assassination of former Prosecutor General Theodhori Sollaku's wife and daughter, resulted in the killing of the driver of their escort.

<sup>212</sup> The replies of the Philippines consider the "Office of the Special Prosecutor" (*Tanodbayan*), created within the Office of the Ombudsman, as the Prosecution Office, and the "Special Prosecutor" as the Prosecutor General. The Office of the Special Prosecutor conducts investigations and prosecutes cases within the jurisdiction of the "*Sandiganbayan*". The *Sandiganbayan* has jurisdiction over criminal, and civil cases involving graft, corrupt practices and other offenses committed by public officers and employees, including those in government-owned or controlled corporations, in relation to their office.

**Recommendations:**

- The law should contain all necessary elements for the effective protection of prosecutors and their families against any threats related to their work whenever they provide competent authorities with reasoned requests.
- Comprehensive and consistent statistics should be maintained on cases where prosecutors or their families are harmed because of their professional activities, as well as concerning the means of protection which are provided.

**2.9. Integrity of prosecutors**

The integrity and independence of prosecution professionals are strictly related. The integrity of prosecutors implies their institutional, political, economic and individual independence, while strong independence entails a high level of integrity, both factual and perceived.

**2.9.1. Codes of Conduct and ethical standards**

Prosecutors should carry out their work with impartiality, objectivity, transparency, and independence. Codes of Conduct should be issued in order to strengthen the integrity of the Prosecution Service. These codes should be publicly accessible, and sanction should be imposed in the case of their breach.

**IAP, Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors**

## Professional conduct

## 1. Prosecutors shall:

- (a) At all times maintain the honour and dignity of their profession;
- (b) Always conduct themselves professionally, in accordance with the law and the rules and ethics of their profession;
- (c) At all times exercise the highest standards of integrity and care;
- (d) Keep themselves well-informed and abreast of relevant legal developments;
- (e) Strive to be, and to be seen to be, consistent, independent and impartial;
- (f) Always protect an accused person's right to a fair trial, and in particular ensure that evidence favourable to the accused is disclosed in accordance with the law or the requirements of a fair trial;
- (g) Always serve and protect the public interest;
- (h) Respect, protect and uphold the universal concept of human dignity and human rights.

## 3. Impartiality

Prosecutors shall perform their duties without fear, favour or prejudice. In particular they shall:

- (a) Carry out their functions impartially;
- (b) Remain unaffected by individual or sectional interests and public or media pressures and shall have regard only to the public interest;
- (c) Act with objectivity;
- (d) Have regard to all relevant circumstances, irrespective of whether they are to the advantage or disadvantage of the suspect;
- (e) In accordance with local law or the requirements of a fair trial, seek to ensure that all necessary and reasonable enquiries are made and the result disclosed, whether that points towards the guilt or the innocence of the suspect;
- (f) Always search for the truth and assist the court to arrive at the truth and to do justice between the community, the victim and the accused according to law and the dictates of fairness.

## 4. Role in criminal proceedings

4.1 Prosecutors shall perform their duties fairly, consistently and expeditiously.

**Council of Europe, Recommendation Rec(2000)19**

35. States should ensure that in carrying out their duties, public prosecutors are bound by “codes of conduct”. Breaches of such codes may lead to appropriate sanctions [...].

**United Nations Convention Against Corruption (UNCAC)**

Article 11.

Measures relating to the judiciary and prosecution services

1. Bearing in mind the independence of the judiciary and its crucial role in combating corruption, each State Party shall, in accordance with the fundamental principles of its legal system and without prejudice to judicial independence, take measures to strengthen integrity and to prevent opportunities for corruption among members of the judiciary. Such measures may include rules with respect to the conduct of members of the judiciary.

2. Measures to the same effect as those taken pursuant to paragraph 1 of this article may be introduced and applied within the prosecution service in those States Parties where it does not form part of the judiciary but enjoys independence similar to that of the judicial service.

**Rome Charter**

The Consultative Council of European Prosecutors (CCPE), having been requested by the Committee of Ministers of the Council of Europe to provide a reference document on European norms and principles concerning public prosecutors, agreed on the following:

VII. Transparency in the work of prosecutors is essential in a modern democracy. Codes of professional ethics and of conduct, based on international standards, should be adopted and made public.

Prosecutors of all the responding countries are bound to professional Codes of Conduct, established in the law (e.g. in **Armenia** and **Japan**) or through acts of the Prosecutorial or Bar Councils (e.g. in **Albania** and **Pakistan**), the Prosecutor General’s Office (e.g. in **Latvia**), or the Executive.

Countries were asked whether their respective Codes of Conduct binding prosecutors explicitly mention impartiality, objectivity, transparency and independence. **Japan** is the sole respondent stating that neither of these principles is expressly reported in the National Public Service Ethics Act or the National Public Service Ethics Code.

Impartiality and independence are reportedly cited in all of the other countries’ Codes of Conduct. Only **Japan**, **Lithuania** and **Slovenia** have no explicit reference to objectivity in their ethical rules for prosecutors. Transparency is named in a bit more than 60%<sup>213</sup> of countries (see Figure 2.24).

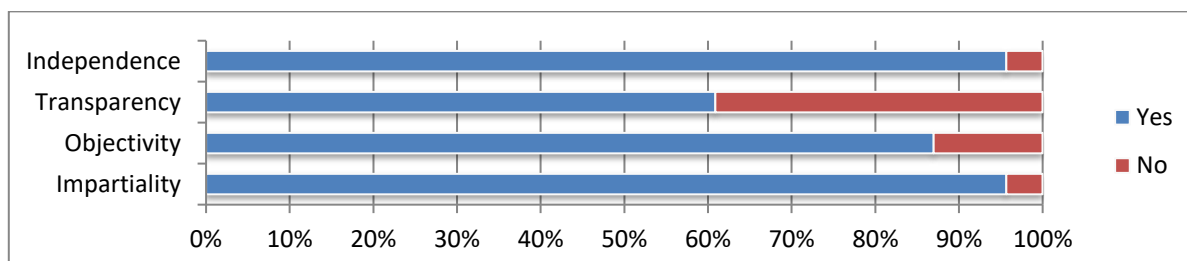
In all countries, except **Serbia** and **Slovenia**, prosecutors who violate the Code of Conduct are sanctioned, generally through disciplinary proceedings.

<sup>213</sup> Azerbaijan, Bosnia and Herzegovina, Estonia, Fiji (Fiji Independent Commission against Corruption), Malaysia, Moldova, Pakistan, the Philippines (Office of the Special Prosecutor), Romania, Serbia, Timor-Leste, Ukraine, Uzbekistan, and Viet Nam.



**Malaysia** and **Pakistan** are the only countries where the Codes of Conduct are not publicly accessible. In all other countries the public has access to these Codes, at least under request. In **Albania**, **Azerbaijan**, **Moldova**, **Ukraine**, and **Slovenia** these Codes are even published online.<sup>214</sup>

Figure 2.24. Mentions in prosecutors' Codes of Conduct



Note: Only data from the countries that replied to the relevant sections of the questionnaire are displayed. Data are updated as of January 2018.

Another aspect in terms of the content of Codes of Conduct is the scope and level of details, especially in relation to advice on how to behave in concrete situations. For example, in the framework of the Fourth Evaluation Round of **Armenia** GRECO highlighted that the Code of Conduct for Prosecutors remains general and appears insufficient to properly guide prosecutors in the handling of concrete situations. The evaluation report further noted that answers to ethical questions need to be provided – for example, as regards conflicts of interest or how to behave in situations where prosecutors are faced with pressure from politicians. As GRECO has highlighted on numerous occasions, a code of conduct is most valuable when it provides practical guidance on how principles apply in daily practice and helps solve concrete dilemmas.<sup>215</sup> In 2019, a new mechanism of confidential consultations on ethics dilemmas was established.

What is more important is to ensure proper enforcement of Codes of Conduct. This process has to include two components: the first one is the monitoring of prosecutors' compliance with the established rules (sometimes it is combined with examination and investigation of ethics violations) and providing confidential consultations or advice in concrete situations. With regard to the institutional model, there are jurisdictions that imposed one or both of these tasks on specially created Ethics Councils for prosecutors or units/inspectors in the structure of their prosecutor's offices.

<sup>214</sup> Albania, [http://pp.gov.al/web/rregullat\\_e\\_etikes\\_dhe\\_sjelljen\\_e\\_prokuroreve\\_820.pdf](http://pp.gov.al/web/rregullat_e_etikes_dhe_sjelljen_e_prokuroreve_820.pdf); Azerbaijan, <http://genprosecutor.gov.az/project/139/etik-davranis-kodeksi>. Moldova, <http://www.procuratura.md/file/Codul%20de%20Etica%20al%20procurorului%20modificat.pdf>; Slovenia, <http://www.drzavnotozilski-svet.si/code-of-ethics-of-state-prosecutors>. Ukraine, [http://www.kdkp.gov.ua/ua/dokuments\\_vkp.html](http://www.kdkp.gov.ua/ua/dokuments_vkp.html).

<sup>215</sup> GRECO, [Fourth Round Evaluation Report on Armenia](#), paragraph 198.

### Box 2.12. The Code of Conduct of the Crown Prosecution Service - UK

Employees of the Crown Prosecution Service are subject to the “CPS Code of Conduct”, which sets out the expected standards of behaviour both at work and in employees’ private lives. The Code takes into account the requirements of the Civil Service Code, the Civil Service Management Code and the general law, including Human Rights legislation, as well as what is regarded as good practice.

The CPS Code of Conduct covers any aspects of the professional-related activities of prosecutors and all other CPS employees. Policy principles are established in the Code, as well as rules concerning conflicts of interest, other employment, political activities, writing and speaking publicly, and other subjects. Impartiality, objectivity, transparency and independence are all referred to in the Code of Conduct.

A breach of the Code may lead to disciplinary action, and serious breaches may lead to summary dismissal, in accordance with the Disciplinary Policy.

The CPS Code of Conduct is publicly available and accessible on <https://www.cps.gov.uk/publication/cps-code-conduct>.

*Source:* Response from the UK to the Study Questionnaire.

### 2.9.2. Legislation on conflicts of interest and other anti-corruption restrictions

Conflicts of interest deeply affect the impartiality of prosecutors and the general trust in the Prosecution Service. Countries should set up legislation to prevent real, potential and perceived conflicts of interest related to the holding of concurrent offices or functions, as well as prosecutors’ personal interest in the case they have been assigned to.

#### Venice Commission Report

87. In order to provide for guarantees of non-interference, the Venice Commission recommends:  
[...]

18. A prosecutor should not hold other state offices or perform other state functions, which would be found inappropriate for judges and prosecutors should avoid public activities that would conflict with the principle of their impartiality.

#### Rome Charter

The Consultative Council of European Prosecutors (CCPE), having been requested by the Committee of Ministers of the Council of Europe to provide a reference document on European norms and principles concerning public prosecutors, agreed on the following:

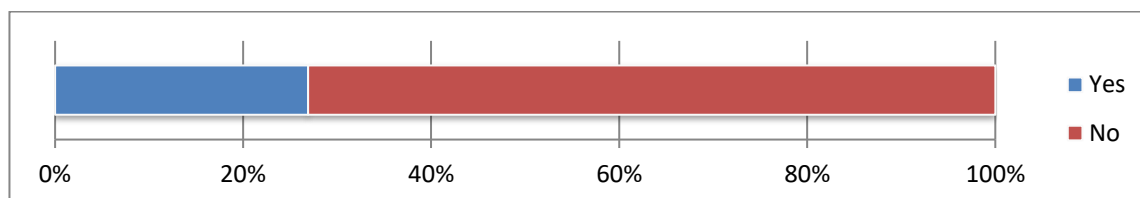
VI. Prosecutors should adhere to the highest ethical and professional standards, always behaving impartially and with objectivity. They should thus strive to be, and be seen as, independent and impartial, should abstain from political activities incompatible with the principle of impartiality, and should not act in cases where their personal interests or their relations with the persons interested in the case could hamper their full impartiality.

All of the countries have developed legislation preventing prosecutors from acting in cases where their personal interests or their relations could hamper their full impartiality.

In less than 30%<sup>216</sup> of countries restrictions to prosecutors' post-retirement activities have been established. In **Japan**, getting employment after the retirement of a prosecutor is restricted as well as other national public employees in regular services.<sup>217</sup> **Kyrgyzstan's** prosecutors, for one year after the termination of their service, cannot act on behalf of a natural or legal person in cases that were under his or her jurisdiction during the period of his/her service.<sup>218</sup>

For one year from their retirement or termination of activity, **Ukraine's** prosecutors are prohibited from being employed in or do business with legal entities and private entrepreneurs if during the office they exercised powers of control or supervision in relation to these persons, or took decisions on their activities. Prosecutors can never disclose or otherwise use for their interest information received in connection with their performance of official duties, except for the cases stipulated by law.<sup>219</sup>

**Figure 2.25. Restrictions after retirement**



Note: Only data from the countries that replied to the relevant sections of the questionnaire are displayed. Data are updated as of January 2018.

In no responding country prosecutors can generally hold other offices or perform other public or private, paid or unpaid functions. Nevertheless, in most countries activities such as teaching and creative work are allowed upon authorisation.

Art. 9 of **Albania's** Law No. 96/2016 allows prosecutors to perform activities in accordance with the dignity of the exercise of the function that do not create perceptions of influence or bias during the exercise of the function. The remuneration for these activities cannot exceed the usual market value. Except for scientific publications or training activities, prosecutors are prohibited from using their title of magistrate. Before initiating a paid activity out of function, prosecutors notify the Prosecutorial Council that gives its approval.

**Armenia's** Law on the Prosecutor's Office states that prosecutors can perform academic, educational and creative work, provided that it does not hinder the fulfilment of their duties.<sup>220</sup>

According to Art. 30 of **Azerbaijan's** Prosecutor's Office Act the role of prosecutors is incompatible with any other public, private, elected or political activity, or any other activity and related remuneration, except for academic, pedagogical or creative activity, which requires an official consent. Also, **Bosnia and Herzegovina** only entitles prosecutors to perform academic and teaching functions.

<sup>216</sup> Cambodia, Japan, Kyrgyzstan, Mongolia, Moldova, Pakistan, and Ukraine.

<sup>217</sup> See Art. 106-2 to 106-27 of the National Public Service Act.

<sup>218</sup> See Law on Civil and Municipal Service.

<sup>219</sup> See Law on Corruption Prevention.

<sup>220</sup> See Art. 49 of the Law on the Prosecutor's Office.

**Georgia's** prosecutors can only undertake scientific, creative or educational activities. All Prosecutor Service's employees are not allowed to be members of a political organisation or to carry out political activities.<sup>221</sup> Similarly, in **Kyrgyzstan**, **Moldova**<sup>222</sup> and **Uzbekistan** only academic, educational and creative work is allowed to prosecutors.

Prosecutors of **Ukraine** can perform teaching, research, creative work, medical practice, refereeing and coaching in sports. Prosecutors cannot become members of any executive or supervisory body of a company or organisation that seeks profit unless otherwise stipulated by the laws or the Constitution. Prosecutors are prevented from being members of political parties and engaging in political activities.

Section 7(3) of **Latvia's** Law on Prevention of Conflict of Interest in Activities of Public Officials establishes that prosecutors may freely combine their office only with activities within a representative organisation of prosecutors. Prior consent is requested to work as a consultant for the administration of another state or an international organisation, or to take office in a society or a religious organisation.

In **Lithuania** prosecutors may hold only academic or pedagogical posts in the area of Law in establishments of higher education, in legislation drafting groups or commissions. The consent of the Prosecutor General is required.

Art. 11 of **Romania's** Law no. 303/2004 establishes that prosecutors may participate in the drafting of published materials, scientific works and may take part in audio-visual broadcasts, except those with political character. Prosecutors may be members of examining commissions or commissions for drafting laws, as well as national or international documents. They can be members of scientific or academic societies and non-profit private legal entities. In addition, prosecutors can take on teaching offices in the higher education, as well as the training offices within the National Institute of Magistracy and in the National School for Court Clerks.

**Serbia's** prosecutors cannot hold other public functions, be members of political parties, do a public or private paid job or provide paid legal services, except for being members of the Steering Committee of the Judicial Academy. Outside of working hours, prosecutors can, without any special approval, perform remunerated training and scientific activities.

The Constitution prevents **Slovenia's** prosecutor from holding offices in other state authorities, in local authorities, and in political parties.<sup>223</sup> Also, state prosecutors cannot perform any activity precluded to judges by the Constitution and the Statute.<sup>224</sup> (Article 47 of SPOA).

Art. 90 of **Cambodia's** Law on the Status of Judges and Prosecutors obliges prosecutors to be temporarily removed from office when required to perform duties in the administration, public enterprises or international organisations. The permission to be removed from the cadre of prosecutors is given upon request of the concerned person. During the period of discharge from duty, prosecutors do not receive their salary.

Additional activities of **Japan's** prosecutors are restricted as well as for any other national public employee. Extraordinary permission can be granted by the National Personnel Authority, the Prime Minister or the Minister of Justice.

---

<sup>221</sup> See Art. 30 of the PSG Law.

<sup>222</sup> Detailed rules are established by Moldova's High Council of Prosecutors.

<sup>223</sup> See Art. 136 of Slovenia's Constitution.

<sup>224</sup> See Art. 47 of the State Prosecutor's Office Act (SPOA).

In **Malaysia**, prosecutors who wish to perform public or private, paid or unpaid functions have to obtain prior written approval from the Head of Department.

In the **Philippines**<sup>225</sup> the only derogation to the general prohibition to undertake external activities concerns teaching, which is allowed with the prior authorisation from superior prosecutors.

According to **Timor-Leste**'s Statute of Public Prosecution Services, prosecutors are not allowed to have other functions except for unpaid teaching at the Law Faculty and scientific research.

### **Conclusions:**

A code of professional ethics is one of the essential tools to make prosecutors commit to high levels of integrity. Therefore, prosecutors should be subject to a code of conduct or ethics that prescribes the standards of behaviour and offers guidance on the handling of concrete situations.

Legislation should regulate actual, potential and apparent conflicts of interest, including those related to holding functions inconsistent with the office of prosecutor. In addition, codes of conduct should deal with the circumstances in which a prosecutor should seek recusal from the assignment of a particular case.

At the same time, even good codes of ethics and rules on conflicts of interest are far from enough to ensure prosecutors' integrity. Much more important is to guarantee that these codes and rules are implemented and properly enforced. This is to be supported with training activities, as well as work of internal bodies and officers (ethics inspector, inspector general etc.) responsible for monitoring prosecutors' compliance with ethics and conflict of interest rules. Prosecutors should also be provided with confidential advice when facing an ethical dilemma. Such internal bodies and officers should be free from undue influence. Training, both initial and advanced, should pay particular attention to the subject of ethics and in particular to conflicts of interests.

Violations of professional ethics or conflict of interest rules should be subject to disciplinary liability, unless they constitute more serious offences.

### **Recommendations:**

- Clear ethical standards, codes of professional conduct, and rules on conflict of interest applicable to all prosecutors should be set. These instruments should be complemented by guidance and confidential advice on the handling of concrete situations.
- Effective mechanisms of detection and investigation of violations of professional ethics and rules on conflict of interest should be established.
- Initial and advanced training activities for prosecutors should regularly cover the subject of professional ethics and conflict of interest.
- Bodies and officials supervising prosecutors' ethics should be free from undue political or any other external influence.

---

<sup>225</sup> The replies of the Philippines consider the "Office of the Special Prosecutor" (*Tanodbayan*), created within the Office of the Ombudsman, as the Prosecution Office, and the "Special Prosecutor" as the Prosecutor General. The Office of the Special Prosecutor conducts investigations and prosecutes cases within the jurisdiction of the "*Sandiganbayan*". The *Sandiganbayan* has jurisdiction over criminal, and civil cases involving graft, corrupt practices and other offenses committed by public officers and employees, including those in government-owned or controlled corporations, in relation to their office.

### Box 2.13. A comprehensive regulation of conflicts of interest - Mexico

Art. 45 of Mexico's Organic Law of the Prosecutor General's Office prevents all public officials of the institution from

- performing remunerated employment of any nature, whether public or private, national or international, except those of an academic, cultural, charity nature, and unless they have the authorisation of the Prosecutor General's Office;
- attending matters when they can incur in conflicts of interest;
- exercising the legal profession by themselves or by an interposed person;
- performing the duties of legal guardian, curator or judicial executor, unless it has the character of heir or legatee, or it concerns close relatives;
- performing the functions of depositary or legal representative, trustee, administrator, bankrupt or insolvency auditor, notary, broker, commission agent or arbitrator.

Art. 225, Sections I, II, III and VII, of the Federal Criminal Code criminalises the conduct of all public officials (including prosecutors) performing any other official employment or a particular position that the law prohibits, as well as sanctions prosecutors who grant undue advantage to any of the parties to criminal proceedings.

In accordance with Art. 43 of the National Code of Criminal Procedures, prosecutors cannot be assigned to or participate in proceedings where a cause of impediment exists, including where they or their close relative have any interests.

Likewise, the New Code of Conduct of the Attorney General's Office, in its Commitment 6 states "I Identify, avoid and denounce all forms of corruption and conflict of interest." Base 28 of the New Code (titled "Conflicts of Interest") establishes that "The public officials of the Attorney General's Office shall excuse themselves from intervening in any form of attention, processing or resolution of matters in which they have personal, family or business interests and these may affect the independent and impartial performance of their employment, position, commission or function. Likewise, every public official must inform their immediate boss in writing about the attention, processing or resolution of such matters."

When prosecutors have knowledge of a cause of impediment, they inform the immediate superior, asking to be exempted from participating in the case.

Finally, Art. 58 of the General Law of Administrative Responsibilities determines that a public servant incurs in a conflict of interest when he/she intervenes on account of his employment, position or commission in any form, in the attention, processing or resolution of matters and if he/she finds himself/herself in this case he will have to make known the legal impediment to his superior so that he is excused from participating in any form of attention, processing or resolution of the same.

*Source:* Response from Mexico to the Study Questionnaire and comments to the draft Study.

## 3. Recruitment and Career

---

The independence of prosecutors is affected by the rules underlying their appointment and career management. Politically influenced recruitments, promotions and dismissals could undermine the autonomy of individual prosecutors and the Prosecution Service as a whole, leading to a less efficient fight against corruption. This chapter analyses all main aspects of the career of prosecutors and assesses the level of political and internal interference they could be subjected to. Procedures for recruitment are examined in 3.1, tenure and promotion are the subject of □, and comparative data on remuneration are showed in □. The dismissal of prosecutors is also assessed (□) as well as the procedures for their transfer without consent (□), the training obligations (□) and the systems to evaluate their performance (□). Disciplinary proceedings are analysed in 3.8.

---

### 3.1. Recruitment

There is a close link between the independence of prosecutors and the way they are recruited. Appointments should be founded on high professional qualifications and regulated by fair and impartial procedures according to the law. No specific political group or institution should influence the recruitment and the participation in the process of third experts would be beneficial.

**UN, Guidelines on the Role of Prosecutors**

1. Persons selected as prosecutors shall be individuals of integrity and ability, with appropriate training and qualifications.

2. States shall ensure that:

(a) Selection criteria for prosecutors embody safeguards against appointments based on partiality or prejudice, excluding any discrimination against a person on the grounds of race, colour, sex, language, religion, political or other opinion, national, social or ethnic origin, property, birth, economic or other status, except that it shall not be considered discriminatory to require a candidate for prosecutorial office to be a national of the country concerned.

IAP, Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors

Empowerment

6. In order to ensure that prosecutors are able to carry out their professional responsibilities independently and in accordance with these standards, prosecutors should be protected against arbitrary action by governments. In general they should be entitled:

[...]

(e) To recruitment and promotion based on objective factors, and in particular professional qualifications, ability, integrity, performance and experience, and decided upon in accordance with fair and impartial procedures.

**Council of Europe, Recommendation Rec(2000)19**

5. States should take measures to ensure that:

a. the recruitment, the promotion and the transfer of public prosecutors are carried out according to fair and impartial procedures embodying safeguards against any approach which favours the interests of specific groups, and excluding discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth, or other status.

**Venice Commission Report**

87. In order to provide for guarantees of non-interference, the Venice Commission recommends:

[...]

11. In order to prepare the appointment of qualified prosecutors other than the prosecutor general, expert input will be useful.



### Rome Charter

The Consultative Council of European Prosecutors (CCPE), having been requested by the Committee of Ministers of the Council of Europe to provide a reference document on European norms and principles concerning public prosecutors, agreed on the following:

XII. The recruitment and career of prosecutors, including promotion, mobility, disciplinary action and dismissal, should be regulated by law and governed by transparent and objective criteria, in accordance with impartial procedures, excluding any discrimination and allowing for the possibility of impartial review.

Art. 148/ç of the Constitution of **Albania** states that prosecutors are appointed by the High Council of Prosecution after the completion of the School of Magistrates and a preliminary process of verification of their assets and their knowledge, according to the law. The other criteria for the selection and appointment of prosecutors are provided for by the law.

The process for prosecutors' selection in **Armenia** is set forth in Art. 38 of the Law on the Prosecutor's Office. The lists of candidates for the prosecutors' office are created through open and closed competitions. An open competition is held by the Qualification Commission<sup>226</sup> of the Prosecutor's Office once a year. A closed competition may be held during the year, upon the decision of the Prosecutor General. The procedure for open and closed competitions is established by order of the Prosecutor General. In open competitions, the Qualification Commission announces the open competition at least one month beforehand on national newspapers and the website of the Prosecutor's Office. Applicants are requested to submit all necessary documents and letters of recommendation. The decision of the Qualification Commission on rejecting an application may be appealed against by the applicant through judicial review. If the rejection by the Qualification Commission is declared unlawful, the application is submitted to the Commission. If the competition has commenced, the applicant has the right to participate in the competition or, where the competition has ended, in an extraordinary competition. The Qualification Commission examines the applicants' level of professionalism, professional skills and his or her personal qualities and merits (self-control, conduct, listening skills, communication skills, analytical abilities, etc.). The candidacies that pass the Qualification Commission's selection are submitted to the Prosecutor General. The Prosecutor General includes the applicants in the list of candidates for prosecutors or renders a reasoned decision on not including the applicant in the list. The decision is subject to judicial review. When included in the list, the candidates complete a training course at the Academy of Justice before being officially appointed.

In **Azerbaijan**, the recruitment procedure is governed by the Decree No. 509 of the President of the Republic on "Rules for the recruitment of employees into the Prosecutor's Office" and the Ordinance No. 10/01-11/410- k of the Prosecutor General on "Rules for the competitive recruitment of candidates to the Prosecutor's Office". The provisions of the Civil Service Act on competitive and transparent recruitment and regular evaluation also apply. Vacancies are announced in the media. The initial selection is overseen by a special Examination Commission composed of seven members, including prominent lawyers and academics, appointed by the Prosecutor General with the involvement of the Collegial Board.<sup>227</sup> The

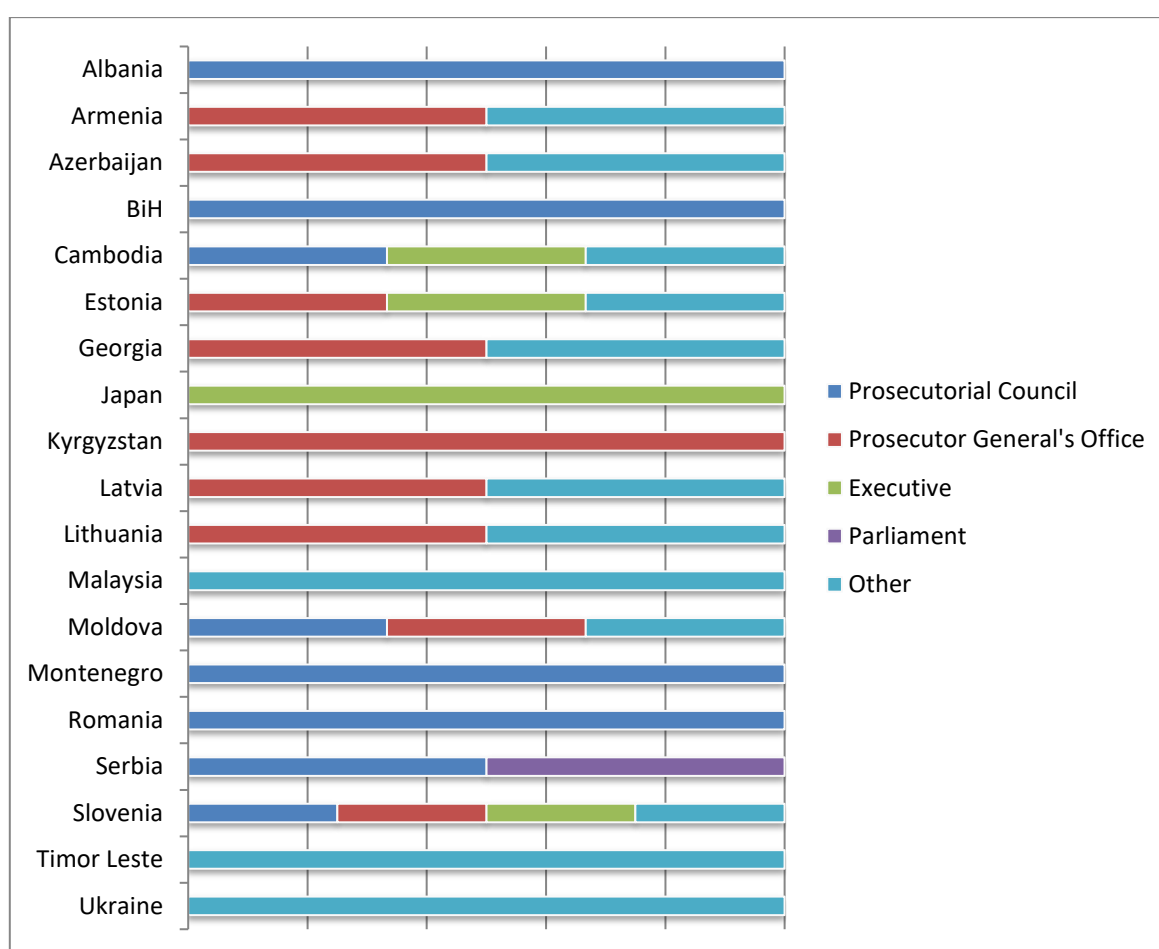
<sup>226</sup> Art 23 of the Law on the Prosecutor's Office. "The Qualification Commission shall comprise nine members. The Qualification Commission shall be composed of the Rector of the Academy of Justice, one Deputy Prosecutor General, four prosecutors and three academic lawyers appointed by the Prosecutor General. The Qualification Commission shall be headed by the Deputy Prosecutor General."

<sup>227</sup> In Azerbaijan, there is no Prosecutorial Council (see 1.3), but a Collegial Board within the Prosecutor General's Office. The Collegial Board of the Prosecutor General's Office is a consultative body whose composition is approved

competition comprises four stages, including two written tests and an interview. Successful candidates undergo mandatory one-year training in the Scientific-Educational Centre under the Prosecutor General's Office. Then, after a probationary period within the Prosecutor's Office they become eligible for permanent recruitment. As a rule, persons with at least five years' experience in the Prosecutor's Office may be appointed as a prosecutor. In the case of specific operational needs and other exigencies, candidates can also be recruited by the Examination Commission directly from other law enforcement bodies, bypassing the standard recruitment procedure.

**Bosnia and Herzegovina's** High Judicial and Prosecutorial Council oversees the recruitment procedure, which includes a public announcement, the nomination of an examining sub-council, a competitive written examination, and interviews.<sup>228</sup>

**Figure 3.1. Authorities involved in prosecutors' recruitment**



Note: Only data from the countries that replied to the relevant sections of the questionnaire are displayed. Data are updated as of January 2018.

by the President of the Republic. It is presided over by the Prosecutor General and comprises his/her deputies and other senior employees *ex officio*.

<sup>228</sup> See Art. 35-47 of the Law on the High Judicial and Prosecutorial Council of Bosnia and Herzegovina.

**Estonia** has set up different recruiting procedures for the different levels of prosecutors. The Minister of Justice appoints the chief state prosecutor, state prosecutors and chief prosecutors, on the proposal of the Prosecutor General. The Prosecutor General appoints senior prosecutors, on the proposal of chief prosecutors. The Prosecutor General also appoints specialised prosecutors, district prosecutors and assistant prosecutors, on the proposal of the prosecutors' Competition Committee (see 1.3.3).<sup>229</sup> A decision not to appoint a person as a prosecutor has to be justified. Specialised prosecutors, district prosecutors and assistant prosecutors are appointed to office on the basis of a public competition. The Competition Committee assesses the suitability of applicants for the open position. The prosecutor higher in rank than the vacant position presents reasoned opinions on the applications to the Committee. The Prosecutor General, chief state prosecutors, state prosecutors, chief prosecutors and senior prosecutors are appointed to the office without a public competition.

In **Kyrgyzstan** the hiring procedure is prescribed by the Regulation on the Service in the Prosecutor's Office, approved by the President. The process is led by a Commission within the HR Division of the Prosecutor General's Office. The procedure starts with computer testing to check candidates' knowledge, competences and logical thinking, then they have to submit a written essay. Candidates undergo medical and psychological examinations, as well as a polygraph test. The selected persons attend an interview. The Commission proposes successful candidates to the Prosecutor General, who forms the reserve list.

In **Latvia**, the candidates to a position of prosecutor take an exam assessing their general and legal knowledge. The Qualification Commission<sup>230</sup> evaluates the knowledge of the candidates and recommends those who have successfully passed the test for further assessment before the Prosecutor Certification Commission. Before it is decided whether the candidates are eligible for the position of prosecutor, they have to complete an internship within the Prosecution Service. The Prosecutor General can exempt especially qualified persons from undergoing the qualification examination.<sup>231</sup>

Art. 26 of **Lithuania's** Law on the Prosecution Service establishes the procedure for the appointment to a prosecutor's post. The List of Prosecutor Positions is created with including all the vacant positions of the Prosecution Service and approved by the Prosecutor General. Candidates to a position submit an application for the admission to the Prosecution Service and take a qualification examination unless they own the qualifications listed in Par. 4 of Art. 26.<sup>232</sup> The Prosecutor Selection Commission or the Chief Prosecutor Selection Commission<sup>233</sup> create the final list of candidates on the basis of the assessment

---

<sup>229</sup> See § 16-19 of the Prosecutor's Office Act.

<sup>230</sup> See 1.3.1.

<sup>231</sup> See Section 33(2) of the Prosecution Office Law.

<sup>232</sup> Par. 4 of Art. 26 of Lithuania's Law on the Prosecution Service. "A person shall be exempted from the qualification examination of candidates for a prosecutor's post subject to: 1) his passing of the judicial qualification examination, if less than three years have passed from the passing of the examination; 2) his record of at least three years of service as a prosecutor or a judge, if less than five years have passed after he last held that post; 3) his holding of a doctorate or *doctor habilis* in social sciences (law)."

<sup>233</sup> Article 10 of Lithuania's Law on the Prosecution Service. "Commissions Formed by the Prosecutor General. 1. The Prosecutor General shall form the Prosecutor Selection Commission, the Chief Prosecutor Selection Commission, the Prosecutor Performance Evaluation Commission, the Prosecutors' Ethics Commission and the Candidate Examination Commission. 2. The Prosecutor Selection Commission shall be formed for the selection of candidates for any vacant prosecutor's post or a prosecutor's post to be vacated, except for the post indicated in paragraph 3 of this Article. 3. The Chief Prosecutor Selection Commission shall be formed for the selection of candidates for the post of a chief prosecutor/deputy chief prosecutor [...] 6. The Prosecutor Selection Commission, the Chief Prosecutor Selection Commission, the Ethics Commission and the Performance Evaluation Commission shall be formed of seven members for a three-year term. Two member prosecutors shall be nominated for each of these Commissions by the Collegiate

criteria set by the Prosecutor General. Decisions of the Examination Commission are subject to review according to the Law on Administrative Proceedings. Candidates are appointed by an order of the Prosecutor General based on the conclusions of the Selection Commission, which are not binding.

**Moldova's** High Council of Prosecutors periodically announces on its web site about vacancies or positions that will become vacant within the next three months. These positions are filled through an open competition involving an exam at the National Institute of Justice and an evaluation from the Board for Selection and Career of Prosecutors.<sup>234</sup> The Board, instituted within the High Council of Prosecutors, evaluates candidates' professional knowledge and skills, ability to apply knowledge in practice, professional experience, quality and effectiveness of work, as well as compliance with the rules of ethics. The final evaluation is based for 50% on the rating received at the exam attended at the National Institute of Justice and for 50% on the marks given by the Board. The High Council of Prosecutors nominates the selected candidates to be appointed by the Prosecutor General. The Prosecutor General can reject the proposed candidates, and the High Council of Prosecutors may propose the rejected candidates by vote of three fifth of its members again. In this case, the President has to appoint the proposed candidate.

In **Montenegro**, vacancies for the positions of public prosecutors in the Basic Public Prosecutor's Offices are filled through internal advertising of vacancies for voluntary relocation. If the vacancy is not filled, prosecutors are appointed on the basis of a public contest composed of a written test and an interview. The Prosecutorial Council decides on the selection of the candidates, who undergo training before being appointed.<sup>235</sup>

**Romania** has set forth the rules underlying the recruitment of new prosecutors in Law no. 303/2004 on the Status of Judges and Prosecutors. The admission to the magistracy of prosecutors is made through a contest, based on professional competence, aptitude and good reputation. The admission to the magistracy and the initial professional training for the position of prosecutor is performed through the National Institute of Magistracy. The admission to the National Institute of Magistracy is made in compliance with the principles of transparency and equality, exclusively on the basis of a contest. The duration of professional training is two years.<sup>236</sup> After the first year of courses, the candidate chooses, in the order of his/her results and in relation to the number of posts, the position of judge or prosecutor. The professional training program of the auditors of justice is approved by the Superior Council of Magistracy, at the proposal of the National Institute of Magistracy.<sup>237</sup> The same law also provides for direct recruitment

---

Council, two member prosecutors shall be nominated by the Prosecutor General, including one member who must be proposed by prosecutors' trade unions, and one member of good repute shall be nominated by each the President of the Republic, the Speaker of the Seimas and the Prime Minister. 7. The Candidate Examination Commission (hereinafter: 'the Examination Commission') shall be formed to assess the professional qualification of candidates for a prosecutor's post. 8. The Examination Commission shall be formed of seven members for a three-year term. Two prosecutors shall be nominated by each the Prosecutor General and the Collegiate Council. One member of good repute holding a degree in social sciences (law) shall be nominated by each the President of the Republic, the Speaker of the Seimas and the Prime Minister."

<sup>234</sup> See Art. 87 of the Law on the Prosecutor's Office.

<sup>235</sup> See Art. 57-67 of the Law on Public Prosecution Office.

<sup>236</sup> A recent amendment of the Law no. 303/2004 on the status of judges and prosecutors increased the duration of the professional training for the students of the National Institute of Magistracy to 4 years, starting with the year 2019/2020 (Emergency Government Ordinance no. 12/2019).

<sup>237</sup> See Art. 16 of the Law no. 303/2004.

in the magistracy without undergoing the two-year period of preparation at the National Institute of Magistracy, when the candidate has particular qualifications.<sup>238</sup>

**Serbia's** recruitment procedure starts with the State Prosecutorial Council (SPC) announcing the job vacancies in the prosecutor's offices. The Council then follows the examining procedure stipulated in the relevant Rulebook, issued by the SPC itself for assessing the criteria set by the law. The SPC prepares the list of proposed candidates for the appointment and submits it to Parliament, which recruits them for a period of three years. Once the first appointment expires, if the prosecutors performed well, he/she is hired permanently by the SPC.

**Slovenia's** Minister of Justice issues a call for applications for every vacant post, on the proposal of the head of the concerned state prosecutor's office and following preliminary approval by the Prosecutor General. The Minister makes a first selection of the applications and submits them to the head of the prosecutor's office. The head of the office formulates a reasoned opinion on the suitability of each candidate. The candidate can submit his reasoned remarks on the head's opinion. In the case of remarks, the head of the office formulates his final opinion and submits it to the State Prosecutorial Council. The State Prosecutorial Council is not bound by the opinion of the head of the prosecutor's office. The State Prosecutorial Council evaluates the candidate through different tests assessing his/her expertise, personal characteristics and other skills. The State Prosecutorial Council communicates its opinion on the selection to the candidate and the head of the office, who can submit their reasoned remarks. The State Prosecutorial Council forms its final opinion and sends it to the Minister of Justice. State prosecutors are appointed by the government upon the Minister's proposal.<sup>239</sup>

The selection procedure for the appointment and professional training of **Cambodia's** prosecutors is the same as that for judges.<sup>240</sup> The determination of the number of prosecutors to be appointed is made by the Minister of Justice, following consultation with the Supreme Council of Magistracy. The examination procedure is determined by the Minister of Justice. The examination may also be conducted internally, among government officers and clerks who hold a Bachelor in Law, have at least five years of working experience in the legal and judicial field. This kind of selection is also opened to lawyers who hold a bachelor in law and have at least five years of working experience in the legal and judicial field. Candidates who pass the examination receive a professional training organized by the Ministry of Justice.<sup>241</sup> After completing the internship, the intern prosecutors are appointed as full subordinate prosecutors of the first grade. The Supreme Council of Magistracy proposes the full appointment to the King, upon the request by the Minister of Justice.<sup>242</sup>

---

<sup>238</sup> Former judges and prosecutors who have ceased their activity for non-imputable reasons, the legal personnel with the status of judges and prosecutors, lawyers, notaries, legal assistants, legal advisers, probation officers with higher legal education, judicial police officers with higher legal education, court clerks with higher legal education, persons who have performed legal positions in the apparatus of Parliament, Presidential Administration, Government, Constitutional Court, Ombudsman, the Court of Accounts or the Legislative Council, the Institute of Legal Research of the Romanian Academy and the Romanian Institute for Human Rights, the teachers from the accredited higher legal education, as well as the assistant magistrates from the High Court of Cassation and Justice, with a seniority in the field of at least 5 years may be appointed in magistracy, on a contest basis, if they meet the conditions expressly provided by the law.

<sup>239</sup> See Art. 28-36 of SPOA.

<sup>240</sup> See Art. 81 of the Law on the Status of Judges and Prosecutors.

<sup>241</sup> See Art. 20-23 of the Law on the Status of Judges and Prosecutors.

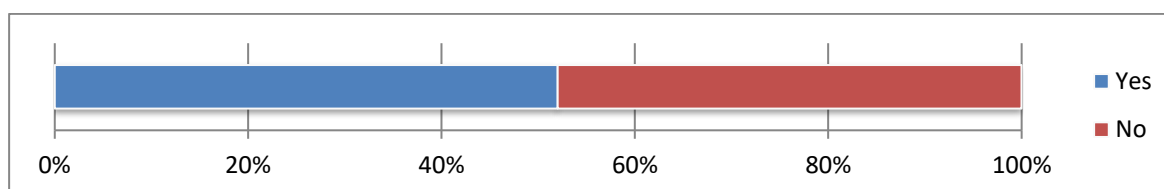
<sup>242</sup> See Art. 84 of the Law on the Status of Judges and Prosecutors.

**Japan's** prosecutors are appointed through a ministerial procedure from among those who have passed examinations such as the National Bar Examination, which measures their knowledge and ability in the legal field. Applicants are selected among those considered competent through interviews and other selection methods.

Any person interested in joining **Malaysia's** Judicial and Legal Service has to apply for the position of legal officers through the Public Service Commission of Malaysia. The recruitment of prosecutors is carried out by the Judicial and Legal Service Commission, set up under Art. 138 and in accordance with Art. 144 (1) of the Federal Constitution of Malaysia.<sup>243</sup> Candidates are interviewed and, if successfully selected, assigned to the Prosecution Division of the Attorney General's Chambers, the State Prosecution Service, Federal Ministries or Agencies.

In **Timor-Leste**, candidates attend an exam to enter the Judicial Training Centre, where the selected ones undergo a final examination after 18-month courses. Those who pass the final exam choose among the position of judge, prosecutor or public defence. They are appointed after one year of practising the chosen profession.

**Figure 3.2. Same recruitment prerequisites between prosecutors and judges**



Note: Only data from the countries that replied to the relevant sections of the questionnaire are displayed. Data are updated as of January 2018.

All of the responding countries state that formal prerequisites have been established by law or regulations, in order to be appointed as a prosecutor. The main reported requirements concern candidates' nationality, age, legal education, professional experience and qualification (such as having passed the bar exam), as well as the lack of a criminal record. **Moldova** includes among the prerequisites also the fact of being subject to verification and testing with a simulated behaviour detector (polygraph).<sup>244</sup> A bit more than 50%<sup>245</sup> of respondents have established for prosecutors the same prerequisites as those applying to judges.

<sup>243</sup> Art. 138 of the Federal Constitution of Malaysia. "(1) There shall be a Judicial and Legal Service Commission, whose jurisdiction shall extend to all members of the judicial, and legal service. (2) The Judicial and Legal Service Commission shall consist of - (a) the Chairman of the Public Services Commission, who shall be Chairman; (b) the Attorney General or, if the Attorney General is a member of Parliament or is appointed otherwise than from among members of the Judicial and Legal Service, the Solicitor General; and (c) one or more other members who shall be appointed by the Yang di-Pertuan Agong (King), after consultation with the Lord President of the Federal Court, from among persons who are or have been or are qualified to be a judge of the Federal Court or a High Court or shall before Malaysia Day have been a judge of the Federal Court or a High Court or shall before Malaysia Day have been a judge of the Federal Court. (3) The person who is secretary to the Public Services Commission shall be secretary also to the Judicial and Legal Service Commission."

<sup>244</sup> See Art. 20 of the Law on the Prosecutor's Office.

<sup>245</sup> Albania, Bosnia and Herzegovina, Cambodia, Estonia, Latvia, Malaysia, Mongolia, Montenegro, Serbia, Slovenia, Romania, Timor-Leste, Viet Nam.

### Box 3.1. Public examination of prosecutor candidates - Brazil

Complementary Law 75/1993

#### SECTION II

##### The Public Examination for Admittance in Office

Article 186. The public examination of tests and titles for admittance to the career of the Federal Public Prosecution Service will have national scope, aiming at the filling of all the existing vacancies and the vacancies occurring in the period of validity.

Sole paragraph. The public examination will be earned out, obligatorily, when the number of vacancies exceeds ten percent of the respective staff and, optionally, at the discretion of the pertinent Superior Council.

Article 187. Bachelors of law, of proven good character, who have graduated from law school for at least two years may sign up for the examination.

Article 188. The examination will follow the regulation elaborated by the pertinent Superior Council, pursuant to the provisions in Article 31.

Article 189. The Commission of Admission Examination for Public Office will be constituted by the Attorney-General, its President, by two members of the respective branch of the Public Prosecution Service and by a jurist of stainless reputation, appointed by the Superior Council, and by a lawyer appointed by the Federal Council of the Brazilian Bar Association.

Article 190. The public notice of opening public examination will include the list of offices vacant, with the respective assignment, and will set forth, for the registrations, a period superior to thirty days, from the day of its publication in the Official Gazette.

Article 191. The candidates approved in the examination who reach sixty-five or who may come to be deemed inapt in mental and physical health tests for the exercise of the duties of office will not be appointed to take office.

Article 192. The pertinent Attorney-General, after consulting the Superior Council, shall decide on the homologation of the public examination for admittance in office, within thirty days, from the publication of the final result.

Article 193. The period of validity of the public examination for admittance in office, for the purpose of appointment to office, shall be of two years from the publication of the homologation act, renewable once for the same period.

Article 194. The appointment of the candidates qualified in the public examination for admittance in office will follow the classification order.

Paragraph 1. The approved candidates, in the classification order, will choose the place of preference for assignment, from the list of the vacancies that, after the result of the public examination, the Superior Council decides that must be initially granted.

Paragraph 2. The approved candidate may renounce the assignment related to his classification, in advance or until the final term of the period for taking office, case in which the renouncer will be placed in the last place in the list of the classified candidates.

*Source:* Response from Brazil to the Study Questionnaire.

### Conclusions:

The appointment of prosecutors should follow a fair, impartial and competitive examination, based on criteria of professional competence and integrity. The recruitment process should be transparent and regulated according to the law.

Those countries that allow for a non-competitive procedure for appointment should ensure that such procedures be extremely exceptional and limited to candidates who have demonstrated high qualities in other legal professions. Objective criteria for recruitment should be set in the law, and the appointment to the profession should be reasoned.

As a matter of principle, probation periods for newly appointed prosecutors should be limited to a reasonable period (e.g. one or two years) so as to avoid them being or being perceived as vulnerable to undue influences while seeking for a permanent position.

#### Recommendations:

- The recruitment of prosecutors should be based on a fair, impartial, and competitive selection, based on criteria of professional competence and integrity, in compliance with the following rules:
  - the recruitment procedure should be regulated by law
  - the selection procedure and criteria should be publicly available within a reasonable time before the competition takes place
  - the selection should be based on high professional qualifications
  - no specific political group or institution should influence the recruitment and the participation in the process of outside legal experts would be beneficial
  - the power to appoint prosecutors should not rest solely with the Prosecutor General or senior prosecutors but should involve an independent body of prosecutors whose experience will qualify them to propose appropriate candidates for appointment
  - the appointment should be based on evidence that applicants meet the criteria for office as well as a competitive process including an examination and possibly an interview
  - processes and decisions should be subject to judicial review.

### 3.2. Tenure, promotion and retirement

Tenure, promotion procedures and retirement of prosecutors should follow fair and objective rules and criteria, regulated by law. Even when prosecutors enjoy a stable tenure, procedures of promotion influenced by political institutions can decrease the structural independence of the Prosecution Service. Political representatives should not be involved in the decisions concerning the career management of prosecutors.

#### IAP, Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors

##### Empowerment

6. In order to ensure that prosecutors are able to carry out their professional responsibilities independently and in accordance with these standards, prosecutors should be protected against arbitrary action by governments. In general they should be entitled:

[...]

(d) To reasonable and regulated tenure, pension and age of retirement subject to conditions of employment or election in particular cases;

(e) To recruitment and promotion based on objective factors, and in particular professional qualifications, ability, integrity, performance and experience, and decided upon in accordance with fair and impartial procedures.



Council of Europe, Recommendation Rec(2000)19

5. States should take measures to ensure that:

- a. the recruitment, the promotion and the transfer of public prosecutors are carried out according to fair and impartial procedures embodying safeguards against any approach which favours the interests of specific groups, and excluding discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth, or other status;
- b. the careers of public prosecutors, their promotions and their mobility are governed by known and objective criteria, such as competence and experience;
- c. the mobility of public prosecutors is governed also by the needs of the service;
- d. public prosecutors have reasonable conditions of service such as remuneration, tenure and pension commensurate with their crucial role as well as an appropriate age of retirement and that these conditions are governed by law.

CCJE, Opinion No.12

8. For an independent status of prosecutors, some minimal requirements are necessary, in particular:  
- that their recruitment, career development, security of tenure including mobility – only according to the law or by consent – as well as remuneration be safeguarded through guarantees provided by the law.

Venice Commission Report

87. In order to provide for guarantees of non-interference, the Venice Commission recommends:  
12. Prosecutors other than the Prosecutor General should be appointed until retirement.

### **3.2.1. Tenure and retirement of prosecutors**

All respondents<sup>246</sup> but the **Cook Islands** regulate the tenure of prosecutors by law. Only the **Cook Islands**, **Montenegro** and **Uzbekistan** have not established the rules for prosecutors' retirement in the law but through internal acts.

In **Azerbaijan** only district prosecutors enjoy a mandate of five years, renewable once, while in **Moldova** all prosecutors are appointed for a renewable term.

When appointed for the first time, prosecutors in **Montenegro** enjoy a tenure of four years. At the expiration of this term, the appointment can be renewed for life through a selection procedure which is the same as the one of the first appointment (see 3.1).

In **Serbia**, prosecutors lower in the hierarchy are appointed until retirement. Similarly, in the **Cook Islands** police prosecutors are recruited for life, and Crown Counsels of the Crown Law Office enjoy a renewable term (see note 12). In **Pakistan**, provincial prosecutors have a permanent mandate while that of the employees of the National Accountability Bureau is periodically renewed (see note 196).

**Malaysia's** public prosecutors who are legal officers of the Attorney General's Chambers (AGC) are appointed for life. Persons who have been authorized to conduct criminal prosecutions or criminal appeals under Section 379 of the Criminal Procedure Code, including lawyers employed on behalf of Government,

<sup>246</sup> Albania, Armenia, Azerbaijan, Bosnia and Herzegovina, Cambodia, Estonia, Fiji (Fiji Independent Commission against Corruption), Georgia, Japan, Latvia, Lithuania, Malaysia, Moldova, Mongolia, Montenegro, Pakistan, the Philippines (Office of the Special Prosecutor), Romania, Serbia, Slovenia, Timor-Leste, Ukraine, Uzbekistan and Viet Nam.

enjoy a renewable mandate. Decisions on the renewal of these contracts of service are taken by the Attorney General/Public Prosecutor.

### 3.2.2. Promotion

The criteria that countries apply to decide over the promotion of prosecutors are mainly related to seniority, positive professional evaluation, good discipline, or the completion of a competitive examination.

The **Cook Islands** are the only country which has no written regulation of prosecutors' promotion procedures. Only four responding countries<sup>247</sup> expressly report that prosecutors are not allowed to challenge the decisions concerning their promotion. ACN countries where the decision can be appealed generally ensure a judicial review. Only in **Uzbekistan** decisions are appealed to the Prosecutor General. Asia-Pacific countries have diversified the competent authorities, as described below.

In **Albania**, promotions follow an examination procedure where prosecutors apply for a higher vacant position and undergo a selection led by the High Prosecutorial Council.<sup>248</sup>

The Qualification Commission<sup>249</sup> and the Prosecutor General are **Armenia's** authorities deciding on the promotion of prosecutors. Art. 39 of the Law on the Prosecutor Office establishes that the Qualification Commission creates "promotion lists" either in the course of prosecutors' regular evaluation (see □) or, in extraordinary cases, upon request of the Prosecutor General concerning individual prosecutors. In any case, prosecutors are included in the official promotion list upon the positive conclusion of the Qualification Commission.

**Azerbaijan's** prosecutors are promoted through a competitive selection. Applications for any vacant position are assessed by the Personnel Department of the Prosecutor General's Office, which also takes into account applicants' performance indicators and references from superiors. The selected applications are submitted to the Prosecutor General, who formalises the final decision on the promotion in a reasoned written order.<sup>250</sup>

**Bosnia and Herzegovina** follows for promotions the same procedure established for recruitment, based on the public announcement of vacant positions, the nomination of a Sub-Council of the High Judicial and Prosecutorial Council (HJPC), and competitive written and oral examinations. Also, **Estonia** applies the same rules to recruitments and promotions, with competitions and comprehensive assessments. The decision concerning chief state prosecutors, state prosecutors or chief prosecutors is taken by the Minister of Justice on the proposal of the Prosecutor General. The Prosecutor General decides on promotions to the position of senior prosecutor, on the proposal of chief prosecutors.<sup>251</sup> Similarly, after carrying out a competitive selection, **Latvia's** Certification Commission gives a conclusion on the eligibility of prosecutors who applied for the higher position. The Prosecutor General decides the promotion on the basis of the Commission's opinion (see 3.1).

---

<sup>247</sup> Georgia, Latvia, Montenegro, and Serbia.

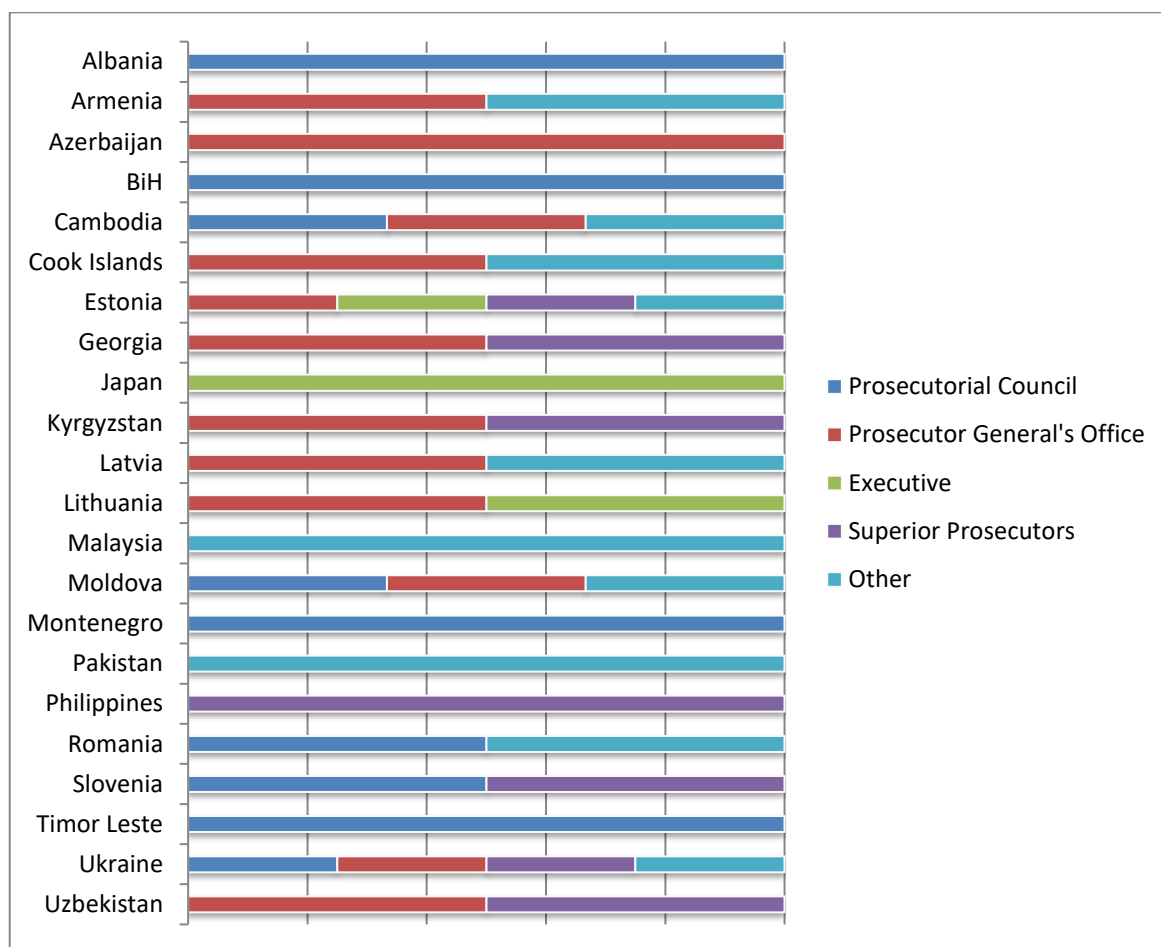
<sup>248</sup> See Art. 48 of Law 96/2016.

<sup>249</sup> See note 226.

<sup>250</sup> See Art. 11 of the Prosecutor's Office Act.

<sup>251</sup> See Art. 16 of the Prosecutor's Office Act.

Figure 3.3. Authorities involved in prosecutors' promotions



Note: Data concerning Pakistan refer to the Punjab province. Only data from the countries that replied to the relevant sections of the questionnaire are displayed. Data are updated as of January 2018.

Promotions in **Georgia** are the outcome of the periodical evaluation of prosecutors. They are proposed by the prosecutor's supervisor and decided by the Prosecutor General, under the recommendation of the Consultative Council (see □).<sup>252</sup>

In **Kyrgyzstan** the Order of the Prosecutor General No. 77, of 19.11.2010, establishes the Rules on the Development of the HR Reserve for Promotion to Managerial Positions in the Prosecutor's Office. Only the most qualified, competent and motivated prosecutors with high managerial and personal potential, as well as sufficient professional and life experience, are suggested to be included in the HR Reserve. The criteria applied include professional evaluation (see □), training, organizational skills, experience, and ability to perform duties in a higher position. Candidates are preliminarily selected within the respective prosecutor's office and then shortlisted by the Collegium of the regional prosecutor's office. The lists of candidates are submitted by the regional prosecutor's offices to the HR Department of the General

<sup>252</sup> According to the new Organic Law of Georgia on the Prosecutor's Office, enacted on 30 November 2018, the Prosecutor General decides on evaluations under the recommendation of the Career Management, Ethics and Incentives Council.

Prosecutor's Office, which checks if candidates meet the formal criteria. The final HR Reserve list is approved by the Prosecutor General.

In **Lithuania**, the proposal to promote a prosecutor is submitted to the Prosecutor General by the immediate superior. Proposals for promotion can also be issued by the Performance Evaluation Commission together with its conclusion over the prosecutor's performance, after a regular or extraordinary evaluation (see 3.7.2). The Prosecutor General is the ordinary competent authority over promotions, though in exceptional cases Government can decide a promotion.<sup>253</sup>

According to **Moldova's** Regulation on Including Candidates in the Register for Vacant Posts, approved by the High Council of Prosecutors, prosecutors seeking promotion have to be included in the Register. Prosecutors who passed the performance evaluation during the previous two years may be included. Candidates to the promotion then participate in a competition, which is the same as for prosecutors' recruitment (see 3.1). The Board for Selection and Career evaluates candidates listed in the Register. The High Council of Prosecutors proposes the successful candidates to the Prosecutor General for the appointment to the higher positions. In the case the Prosecutor General refuses to appoint the proposed candidates, the High Council of Prosecutors may request their appointment to the President by three-fifth of votes of its members. The President has no discretion on the appointment.

**Romania's** prosecutors are promoted only by means of a competitive exam held at a national level, within limits set by the vacancies existing in the prosecutor's offices. The competitive exam for the promotion is held annually or any time considered necessary by the Superior Council for Judiciary, through the National Institute of Magistracy. The Board for the Promotion of Prosecutors is composed of prosecutors from the Prosecutor's Office attached to the High Court of Cassation and Justice, prosecutors from prosecutor's offices attached to courts of appeal and trainers from the National Institute of Magistracy. Members are appointed by decision of the Superior Council for Judiciary, at the proposal of the National Institute of Magistracy. Date, location and manner of holding the exam, as well as the number of vacancies are notified to all prosecutors and published on the web pages of the Superior Council of Judiciary, the National Institute of Magistracy, the Prosecutor Offices attached to the High Court of Cassation and Justice and on three central daily newspapers, at least 60 days before the date established for the exam.<sup>254</sup> Similarly, in **Montenegro** announcements are published regarding the senior prosecutorial position and applying prosecutors are examined and selected by the Prosecutorial Council.<sup>255</sup>

In **Slovenia**, the heads of the prosecutor's offices may issue a proposal for promotion as an outcome of the evaluation procedure (see □). The Prosecutorial Council decides on the proposal.

According to **Uzbekistan's** Law on the Prosecutor's Office and the Regulation on the Service in the Prosecutor's Office,<sup>256</sup> prosecutors are promoted by the Prosecutor General upon selection of the heads of the regional prosecutor's offices. General criteria applied are outlined in the Constitution, the Labour Code and the Law on the Prosecutor's Office.

---

<sup>253</sup> The matter is regulated in the Law on the Prosecution Service. Besides, the Government of Lithuania has approved the Procedure of Provision of Incentives to the Officers and Civil Servants who were Directly Involved in the Detection (Investigation) of Crimes and Other Violations of Law that Caused (Could Cause) Property Damage to the State.

<sup>254</sup> See Art. 43-47 of Law no. 303/2004.

<sup>255</sup> See Art. 75-77 of the Law on the Public Prosecution Office.

<sup>256</sup> Approved by the Decree of the President No. ПП-2036, of 12.09.2013.

**Cambodia** applies the same rules to promote in grade prosecutors and judges. The criteria applied to promotion are determined by a Royal Decree.<sup>257</sup> The Commission oversees the promotion procedure.<sup>258</sup> The Commission prepares a list with the prosecutors who are eligible for promotion in order of precedence and submits it to the Supreme Council of Magistracy. The general secretariat of the Supreme Council of Magistracy drafts the final list of prosecutors who are decided for promotion. The list is communicated to the Minister of Justice, who prepares the Royal Decree officialising the promotions and submits it to the King. Appeals against decisions of promotions can be lodged with the Supreme Council of Magistracy.

In **Japan**, the promotion to the role of Prosecutor General, Deputy Prosecutor General and Superintending Prosecutor is determined by the Cabinet of Ministers and attested by the Emperor. The Minister of Justice decides on promotions to Chief Prosecutor.<sup>259</sup> The decisions can be challenged before the National Personnel Authority.

Prosecutors' promotions in **Malaysia** are decided through an administrative procedure led by the Judicial and Legal Service Commission and the Public Service Commission.<sup>260</sup> Appeals may be filed to the Attorney General's Chambers.

In **Pakistan's** province of Punjab, the promotion procedure is carried out under the supervision of the Secretary Public Prosecution, who is the leadership of the provincial Prosecution Service. The Secretary's decisions can be challenged in courts.

In the **Cook Islands**, the competent authority over the promotion of prosecutors is the Solicitor-General, and in **Fiji** - the Public Prosecution Council.

### Conclusions:

Guarantees of independence of prosecutors should be reflected in the rules of their tenure, promotion and retirement. In order to have a body of experienced professionals in the Prosecution Service, it is preferable to give prosecutors a permanent tenure. The possibility of renewing the mandate could give the wrong message to the prosecutor, especially if the final decision is in the hands of a political body.

Prosecutors' promotion should follow in principle the same competitive procedure as for the recruitment and be based on merit.

### Recommendations:

- Prosecutors should hold their status of prosecutor until reaching the retirement age.
- The promotion of prosecutors should be based on a fair, impartial, and competitive selection, based on criteria of professional competence and integrity, in compliance with the following rules:
  - the promotion procedure should be regulated by law;

---

<sup>257</sup> See Art. 27 of the Law on the Status of Judges and Prosecutors.

<sup>258</sup> Art. 33 of the Law on the Status of Judges and Prosecutors. "The composition of the Commission of promotion in rank and grade comprises of the Secretary of State of the Ministry of Justice (Chairman), the Vice-President of the Supreme Court (Vice-Chairman), the Deputy Prosecutor-General of the Supreme Court (Vice-Chairman), and the President of the Court of Appeal (Member). The Minister of Justice may appoint any other compositions if necessary to assist this Commission.

<sup>259</sup> The requirements to be appointed as the PG, the Deputy PG, Superintending Prosecutor or Chief Prosecutors are provided for in Art. 9, 15 and 19 of the Public Prosecutor's Office Act (PPOA).

<sup>260</sup> See Art. 144(1) of the Federal Constitution.

- the promotion procedure and criteria should be made publicly available within a reasonable time before the competition takes place
  - the promotion should be based on merit and high professional qualifications;
  - no specific political group or institution should influence the promotion and the participation in the process of outside legal experts would be beneficial;
  - the power to promote prosecutors should not rest solely with the Prosecutor General or senior prosecutors but should involve an independent body of prosecutors whose experience will qualify them to propose appropriate candidates for promotion;
  - the promotion should be based on evidence that applicants meet the criteria for promotion as well as a competitive process including an examination and possibly an interview.
- The promotion processes and decisions, as well as decisions on forced retirement, should be subject to judicial review.

### 3.3. Remuneration

Prosecutors need to be paid adequately, and in line with the essential role they play in the criminal justice system. Their salaries should be comparable to those of judges, especially at the beginning of their career in order to attract the most qualified students and professionals. The grant of benefits other than the basic salary should be regulated by law, and non-political authorities should take decisions on the conferral of these emoluments.

IAP, Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors

Empowerment

6. In order to ensure that prosecutors are able to carry out their professional responsibilities independently and in accordance with these standards, prosecutors should be protected against arbitrary action by governments. In general they should be entitled:

[...]

(c) To reasonable conditions of service and adequate remuneration, commensurate with the crucial role performed by them and not to have their salaries or other benefits arbitrarily diminished.

Venice Commission Report

87. In order to provide for guarantees of non-interference, the Venice Commission recommends:

21. Remuneration of prosecutors in line with the importance of the tasks performed is essential for an efficient and just criminal justice system.

**Montenegro, Uzbekistan** and the **Cook Islands** are the only countries that have not determined the remuneration of prosecutors by law but through internal acts.

In **Malaysia** and **Viet Nam**, prosecutors at the beginning of their career enjoy an annual salary which is inferior to the national average income (-27% in **Malaysia** and -33% in **Viet Nam**). In **Cambodia**, the first annual salary of prosecutors is the same as the average income. **Azerbaijan's** prosecutors after recruitment receive a salary which overcomes the average income of 27%. Conversely, the countries with the widest spreads between the national average income and the first annual salary of prosecutors are **Timor-Leste** (900%), **Georgia** (314%) and **Mongolia** (190%).

In **Moldova, Mongolia, Albania** and the **Philippines**<sup>261</sup>, there are the smallest differences between the salary of just recruited prosecutors and that of superiors. In **Moldova**, the increase of the salary from junior to senior prosecutors is of 9%. The Prosecutor General earns 20% more than junior prosecutors. **Mongolia's** senior prosecutors enjoy a 14% higher income than subordinate prosecutors, while the leadership of the Prosecution Service receives only 27% more. In both **Albania** and the **Philippines** senior prosecutors receive 25% more than just hired ones, while the difference with the income of the Prosecutor General is 66% in **Albania** and 56% in the **Philippines**.

The four countries which present the most significant difference between junior and senior prosecutors are **Japan, Ukraine, Malaysia, and Viet Nam**, where the spread is 283% in **Japan**, 272% in **Ukraine**, 255% in **Malaysia**, and 250% in **Viet Nam**. The leadership of the Prosecution Service receives 588% more than prosecutors at their first year in **Ukraine**, 450% in **Viet Nam**, 438% in **Pakistan**, and 383 in **Japan** (for a general overview, see Figure 3.4).

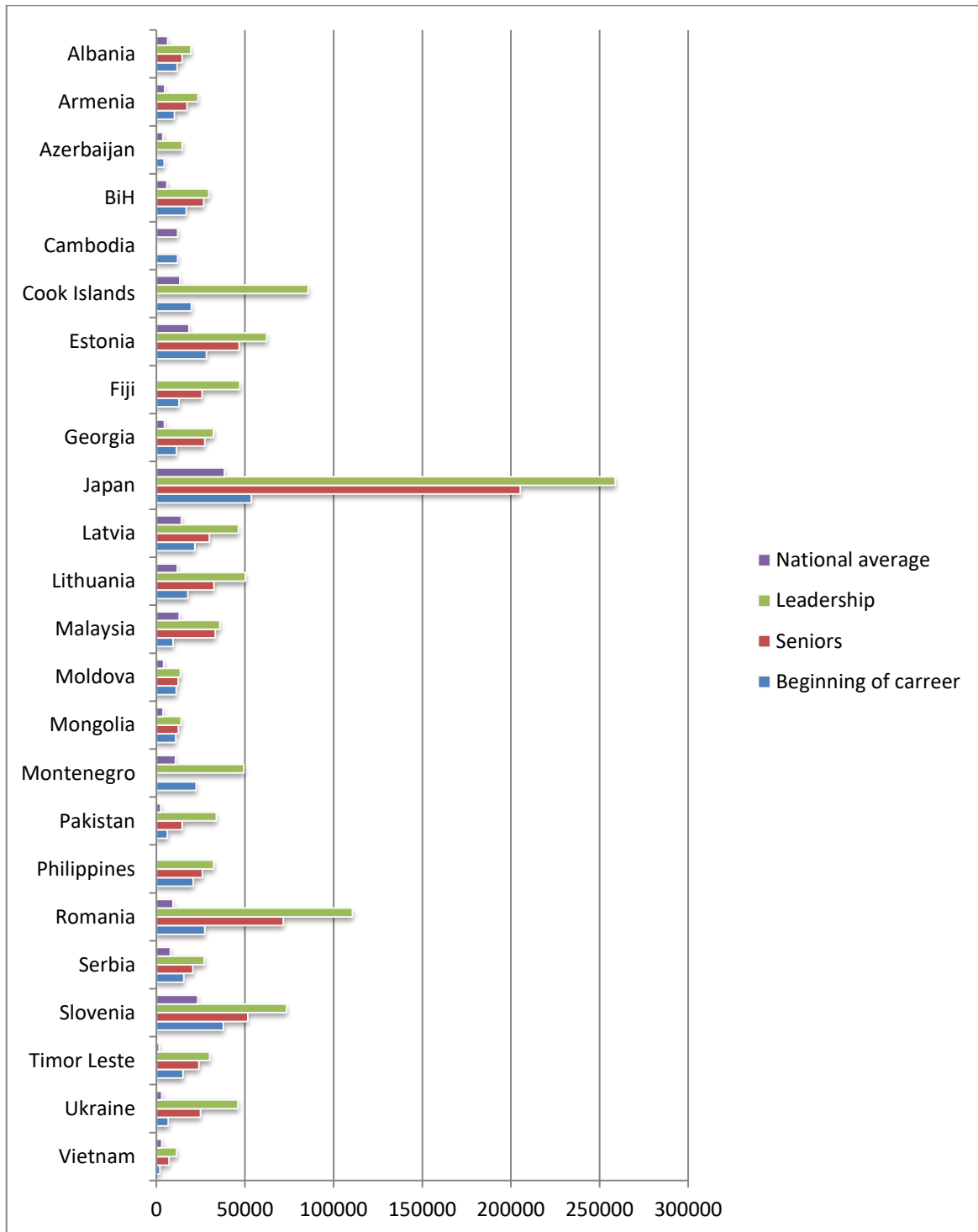
Ten countries<sup>262</sup> established the same salary for prosecutors and judges at the beginning of their career, while no country pays prosecutors more than judges, at any stage of their career. Just recruited judges receive 750% more than just recruited prosecutors in **Malaysia**, 84% in **Azerbaijan**, 75% in **Armenia** and 70% in **Estonia**, (for a general overview, see Figure 3.5).

---

<sup>261</sup> The replies of the Philippines consider the "Office of the Special Prosecutor" (Tanodbayan), created within the Office of the Ombudsman, as the Prosecution Office, and the "Special Prosecutor" as the Prosecutor General. The Office of the Special Prosecutor conducts investigations and prosecutes cases within the jurisdiction of the "Sandiganbayan". The Sandiganbayan has jurisdiction over criminal, and civil cases involving graft, corrupt practices and other offenses committed by public officers and employees, including those in government-owned or controlled corporations, in relation to their office.

<sup>262</sup> Albania, Bosnia and Herzegovina, Cambodia, Japan, Montenegro, the Philippines (Office of the Special Prosecutor), Romania, Serbia, Slovenia, and Viet Nam.

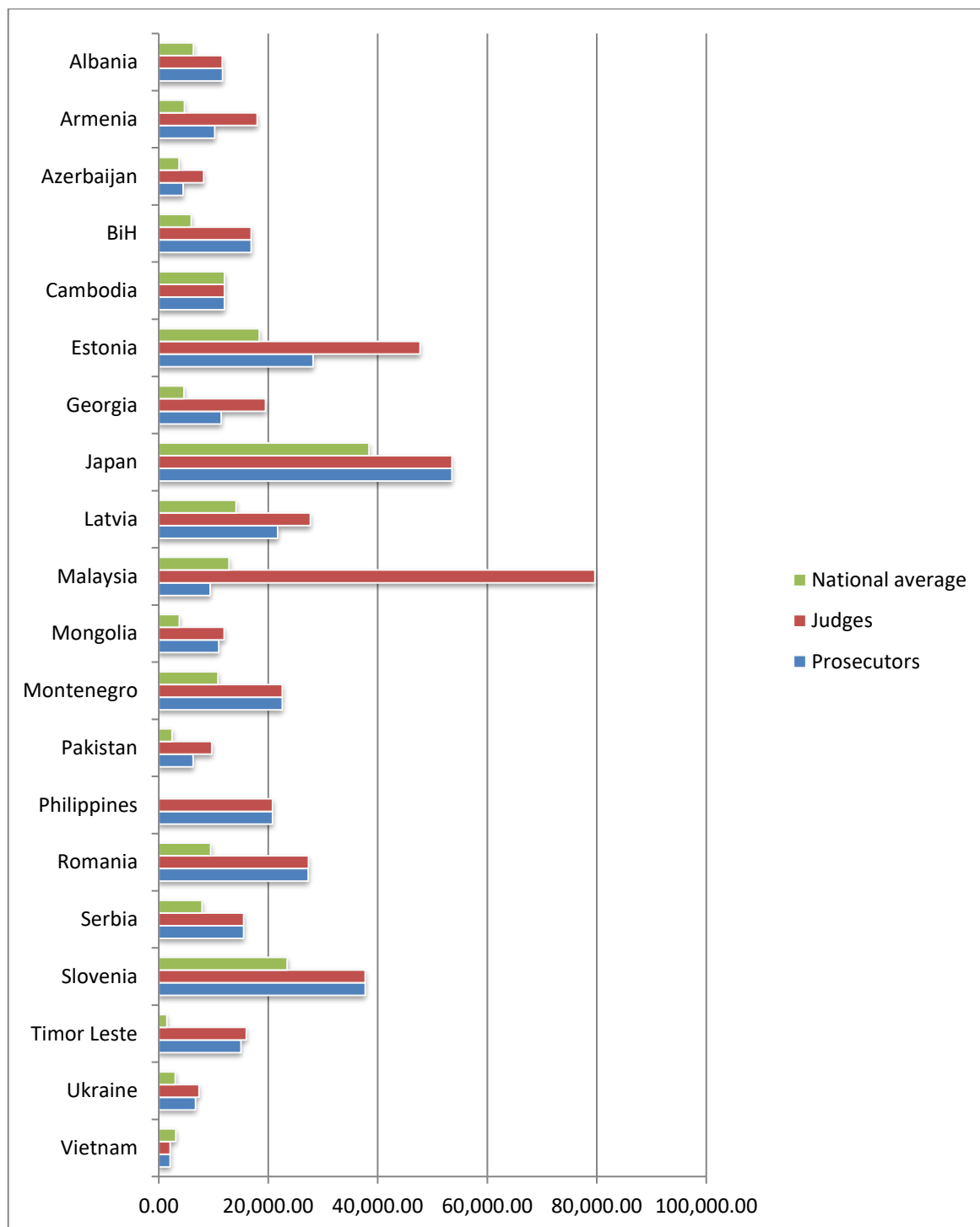
Figure 3.4. Prosecutors' annual salaries and national average income



Note: Figures are reported in USD. Only data from the countries that replied to the relevant sections of the questionnaire are displayed. Data are updated as of January 2018.  
 Source: Data have been provided by countries.



Figure 3.5. Prosecutors' and judges' annual salaries (beginning of the career)



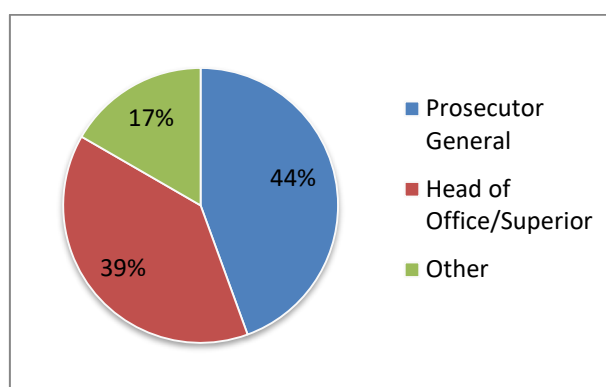
Note: Figures are reported in USD. Only data from the countries that replied to the relevant sections of the questionnaire are displayed. Data are updated as of January 2018.

Source: Data have been provided by countries.

**Bosnia and Herzegovina, Romania and Timor-Leste** are the only countries that have not set up any form of additional benefits other than the basic salary of prosecutors. While the matter is generally regulated by law, in the **Cook Islands** and **Estonia** bonuses and other emoluments are granted only based on internal administrative acts. In **Uzbekistan** prosecutor's benefits are regulated by a Decree of the President.

The main criteria applied to provide prosecutors with additional benefits are seniority, excellent performance evaluation, specific needs of the prosecutor (e.g. housing), the carrying out of special duties, and the lack of disciplinary sanctions.

**Figure 3.6. Authority deciding on additional benefits**



*Note:* Only data from the countries that replied to the relevant sections of the questionnaire are displayed. Data are updated as of January 2018.

In 44%<sup>263</sup> of the responding countries, the authority entitled to decide on the grant of additional benefits is the Prosecutor General, while 39%<sup>264</sup> report that the head of the office or the direct superior of the concerned prosecutor order the emolument.

Art. 16 and 17 of **Albania's** Law no. 96/2016 establish strict objective requirements that make the allowances automatic, leaving no discretion to any authority over their grant.

In the **Cook Islands** and **Malaysia**, the authorities competent for the matter are the Public Service Commissioner's Office in the **Cook Islands** and the Judicial and Legal Service Commission in **Malaysia**.

<sup>263</sup> Armenia, Azerbaijan, Estonia, Fiji (Deputy Commissioner of the Independent Commission against Corruption), Lithuania, Moldova, Mongolia, and Pakistan.

<sup>264</sup> Georgia, Pakistan, the Philippines (Office of the Special Prosecutor), Slovenia, Ukraine, Uzbekistan, and Viet Nam.

### Box 3.2. Salaries and benefits – Brazil and Lebanon

At the beginning of the career, prosecutors in Brazil and Lebanon receive an annual remuneration that is 3,085% and 39% higher than the national average salary, respectively. Senior prosecutors earn 5.5% more than the just hired ones in Brazil and 10% more in Lebanon. The respective Prosecutor Generals of Brazil and Lebanon are paid 11% and 51% more than prosecutors initiating their career.

*Source:* Response from Brazil and Lebanon to the Study Questionnaire.

#### Recommendations:

- The remuneration of prosecutors should be established by law and be proportionate to the importance of the functions performed by them.
- Prosecutors should be entitled to an adequate pension on retirement.

### 3.4. Dismissal and forced retirement

The behaviour of prosecutors toward high-level public officials might be influenced by the role of political authorities in determining prosecutors' career. Decisions on dismissals determined by politicians can decrease personal independence. If prosecutors may be removed by representatives of the Executive or the Legislature, both direct and indirect political pressure is enhanced.

#### Rome Charter

The Consultative Council of European Prosecutors (CCPE), having been requested by the Committee of Ministers of the Council of Europe to provide a reference document on European norms and principles concerning public prosecutors, agreed on the following:

XII. The recruitment and career of prosecutors, including promotion, mobility, disciplinary action and dismissal, should be regulated by law and governed by transparent and objective criteria, in accordance with impartial procedures, excluding any discrimination and allowing for the possibility of impartial review.

All of the responding countries have established cases where prosecutors can be dismissed. This section focuses on the authorities involved in and the grounds founding the dismissal of prosecutors.

In **Albania**, dismissals of prosecutors are decided through disciplinary proceedings, according to Art. 111 of Law No. 96/2016 (see 3.8).<sup>265</sup> The High Prosecutorial Council oversees the procedure, and its decisions are subject to judicial review. A comparable system is applied in **Bosnia and Herzegovina**, as stated in

<sup>265</sup> Art. 111 of Law No. 96/2016: "1. Discharge of the magistrate from office is granted as a disciplinary measure only in these cases: a) when the violation is very serious; (b) when the Council considers that the nature and circumstances of the offence render the magistrate ineligible or unworthy of exercising his function due to the punishment for committing a crime because of serious and apparent incapacity or for because of a behaviour that is carried out at least with gross negligence, according to article 101, letter "b", of this law, and which violates openly the fundamental values of the judicial system and the prosecutor's office. 2. Where the Special Judicial Trustee for the Prosecution of Criminal Offences of Organized Crime or the Special Prosecution extends sensitive information, such as gross negligence, under Article 101, letter "b" of this Law, or deliberately, or when commits another serious offence, he or she is subjected to disciplinary dismissal."

Art. 57 and 60 of the Law on the High Judicial and Prosecutorial Council. Dismissals are the highest disciplinary sanction, which is applicable only in the case of serious disciplinary offences when the severity of the offence “makes it clear that the offender is unfit or unworthy to continue to hold his or her office”.<sup>266</sup> Dismissals can be appealed before the Court of Bosnia and Herzegovina.

According to Art. 62 of **Armenia’s** Law on the Prosecutor’s Office, prosecutors can be dismissed following the imposition of serious disciplinary sanctions,<sup>267</sup> but also in the case of reduction in force of the Prosecution Service, refusal to be transferred after the dissolution or reorganisation of a subdivision, emergence of any restrictions to be a prosecutor,<sup>268</sup> as a result of negative evaluation,<sup>269</sup> and other reasons. The procedure is established by the Prosecutor General, who also takes the final decision over the dismissal. An appeal before a court is available.

Decisions on the dismissal of **Azerbaijan’s** prosecutors are adopted by the Prosecutor General and formalized in a written and reasoned order. The grounds are stated in Art. 29 of the Service in the Prosecutor’s Office Act, which includes among other things the inability to perform official duties due to certified sickness for more than six months, inaptitude for the post as decided by the Attestation Commission (see □), a gross and systematic disciplinary breach, and criminal convictions. The Prosecutor General is in charge of dismissals, and his/her decisions can be appealed in court.

The discharge of prosecutors is in **Estonia** a disciplinary sanction (see 3.8). The Minister of Justice is entitled to release from service chief state prosecutors, state prosecutors and chief prosecutors, while the Prosecutor General is the competent authority in any other case of dismissal, on the proposal of the Disciplinary Committee.<sup>270</sup> Appeals can be lodged with the administrative court.

Art. 34 of **Georgia’s** Prosecution Service Law establishes the grounds on which prosecutors’ removals can be founded. They include the non-performance or improper performance of official duties, inaptitude to the position held, gross or systematic misconduct at work, staff reduction, and criminal convictions. When other grounds found the discharge, the decision is made by the Prosecutor General, based on the information provided by the HR Department of the Prosecutor General’s Office. In any case, decisions can be challenged before the administrative court.<sup>271</sup>

Prosecutors in **Kyrgyzstan** are dismissed through disciplinary proceedings on the grounds stated in the Law on the Prosecutor’s Office, the Law on Civil and Municipal Service and the Regulation on Service in the Prosecutor’s Office.<sup>272</sup> Criteria for removal include termination of citizenship, violations of the oath of the prosecutor, incompatibility, and misconducts. The Prosecutor General is the authority competent to decide on dismissals.

---

<sup>266</sup> See Art. 59 the Law on the High Judicial and Prosecutorial Council.

<sup>267</sup> See Art. 54 of the Law on the Prosecutor’s Office.

<sup>268</sup> See Art. 34 of the Law on the Prosecutor’s Office.

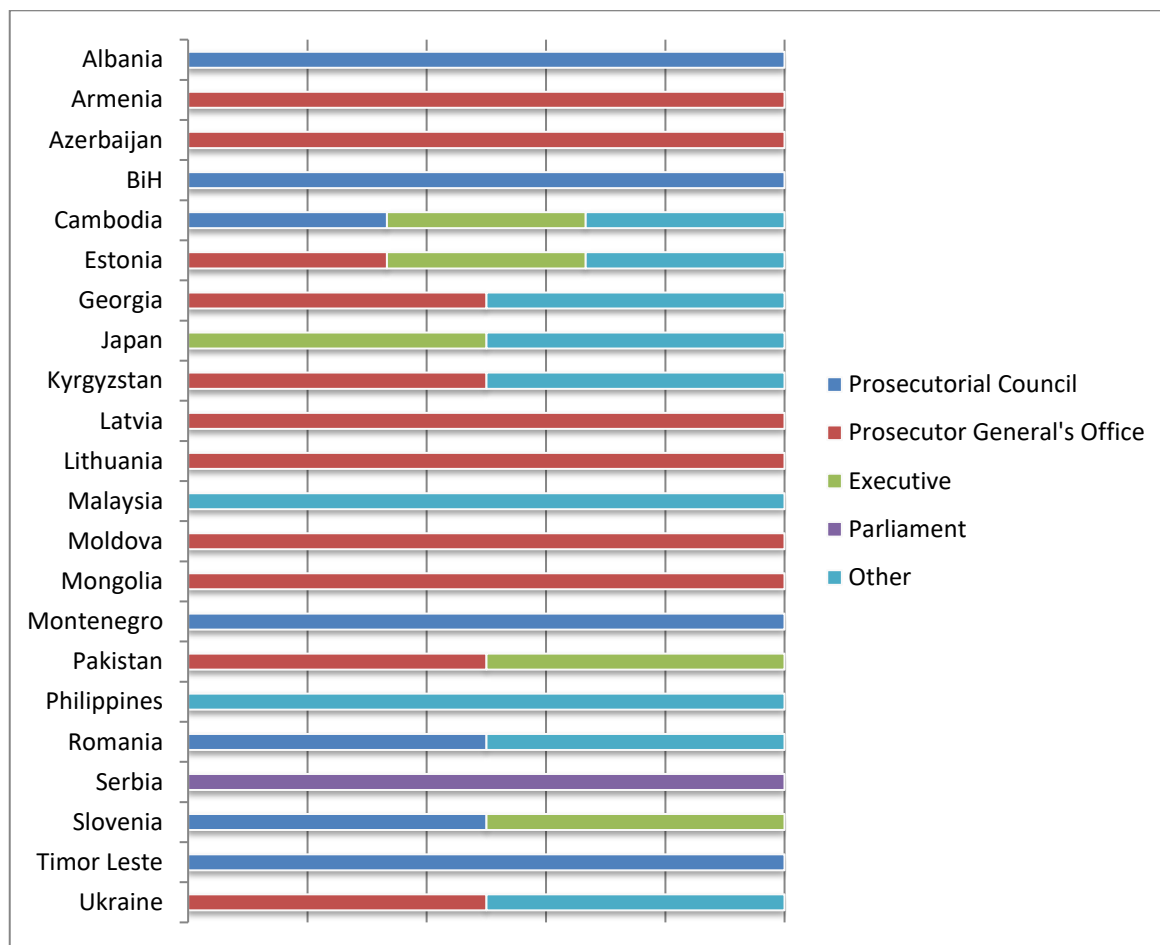
<sup>269</sup> See Art. 50 of the Law on the Prosecutor’s Office.

<sup>270</sup> See § 42 of the Prosecutor’s Office Act.

<sup>271</sup> Art. 37 of the new Organic Law of Georgia on the Prosecutor’s Office, enacted on 30 November 2018, establishes the grounds on which prosecutors’ removals can be founded.

<sup>272</sup> Approved by the Decree of the President No. 48 of 06.02.2001.

Figure 3.7. Authorities involved in prosecutors' dismissal



Note: Only data from the countries that replied to the relevant sections of the questionnaire are displayed. Data are updated as of January 2018.

**Latvia** has listed two different groups of misconducts for mandatory and discretionary dismissal of prosecutors.<sup>273</sup> The discharge is decided through either disciplinary proceedings (see 3.8) or other procedures. However, the Prosecutor General is always the authority in charge of the decision. When the dismissal is the outcome of disciplinary proceedings, it can be challenged before the Disciplinary Court (see 3.8.2), in all the other cases an appeal can be submitted to the administrative court. Similarly, Art. 44 of **Lithuania's** Law on the Prosecution Service enumerates the cases where prosecutors have to or may

<sup>273</sup> Section 40 of the Prosecution Office Law. "Basis of Dismissal of Prosecutors. (1) A prosecutor shall be dismissed from office: 1) if the Prosecutor General has determined the fact that any of the conditions referred to in Section 37 of this Law has not been observed; 2) if the Prosecutor General has determined the fact that any of the restrictions provided for in the Prevention of Corruption Law has not been observed; 3) if the prosecutor refuses to discontinue his or her membership in a party or political organisation; or 4) if the prosecutor has been convicted and the judgment of the court has come into legal effect. (2) A prosecutor may be dismissed from office: 1) for intentional violation of the law or negligence related to his or her professional activity and causing significant consequences; 2) for a shameful act, which is incompatible with the office of a prosecutor; 3) if he or she has reached the age of retirement determined by the State; 4) if the qualifications commission determines that his or her professional skills do not suffice; 5) for intentional failure to fulfil duties of office; and 6) for failure to observe the provisions of the Code of Ethics of Prosecutors."

be removed.<sup>274</sup> Disciplinary proceedings are the procedure followed to apply this form of sanction, and the Prosecutor General takes the final decision, which can be appealed to the administrative court.

Art. 57 and 58 of **Moldova's** Law on the Prosecutor's Office list the cases where prosecutors can be discharged from office. These include dismissal as a disciplinary sanction, "unsatisfactory" rating in two consecutive performance evaluations, criminal convictions, the candidature in elections for a political party or a socio-political organization, incompatibility, medical inability to work, and violation of the rules preventing from conflicts of interest. The Prosecutor General orders prosecutors' dismissal. The order can be appealed in courts.

In **Mongolia**, the grounds to remove prosecutors are established in the Law on the Prosecutor's Office and the Law on Civil Service, which mainly make reference to a poor evaluation of their performance. The Prosecutor General decides on dismissals.

**Montenegro's** Law on the Public Prosecution Office, in its Art. 108-117, refers to disciplinary offences and permanent incapacity as grounds founding prosecutors' discharge. The main procedure applied is the disciplinary proceedings, led by the Prosecutorial Council. Dismissals can be challenged before the administrative court.

**Romania's** prosecutors can be removed from office as a disciplinary sanction or following either a criminal conviction or the waiver of criminal prosecution.<sup>275</sup> Once the disciplinary proceedings are concluded, the dismissal of prosecutors is ordered by a decree of the President of Romania, at the proposal of the Superior Council of Magistracy. An appeal can be filed to a panel of three judges of the Administrative and Fiscal Court of the High Court of Cassation and Justice.

The Law on Public Prosecutions sets **Serbia's** grounds for the dismissal of prosecutors. They include final convictions to at least six months of imprisonment, incompetent discharge of functions and the commission of serious disciplinary offences. The National Assembly takes the final decision on the removal from office,

---

<sup>274</sup> According to Art. 44 Law on the Prosecution Service, a prosecutor is dismissed from service in the following cases: 1) voluntary resignation; 2) imposition of a service-related penalty in the form of dismissal; 3) taking effect of a court judgement of conviction; 4) loss of the citizenship of the Republic of Lithuania; 5) his failure to withdraw from, the activities of political parties or political organisations or other breaches of Article 21 paragraph 2 of this Law; 6) his objection to being transferred to a lower post due to the imposition of a service-related penalty; 7) cancellation of his post due to changes in the organisation of work of the Prosecution Service and his objection to the transfer to another post offered to him or absence of a post that could be offered to him; 8) his unsuitability to serve as a prosecutor (based on a conclusion of a medical commission); 9) his unsuitability for the prosecutor's post according to the conclusion of the Performance Evaluation Commission; 10) establishing any circumstances due to which the person could not have been admitted to the Prosecution Service and appointed to a prosecutor's post; 11) his resignation after becoming entitled to a state pension of officers and civil servants; 12) his reaching 65 years of age; 13) his objection to being transferred to another post after the expiry of the appointment.

A prosecutor may be dismissed from service in the following cases: 1) breach of oath by their conduct; 2) imposition of a new service-related penalty before the expiry of a previous service-related penalty; 3) absence from service twice a year for a full working day without a solid reason or absence from service without a solid reason for two days in succession; 4) absence from two meetings of the Performance Evaluation Commission without a solid reason; 5) absence from service by reason of temporary incapacity for work for over 120 calendar days in succession or over 140 calendar days during the last twelve months, except in cases where it is established by law that he shall retain his office for a longer period due to certain illnesses or health impairment in service; 6) breach of the Law on the Adjustment of Public and Private Interests in the Civil Service; 7) failure to obtain an authorisation to handle classified information, where such authorisation is required by the Regulations of Rem; 8) reaching the age entitling to a state pension of officers and servicemen.

<sup>275</sup> See Law no. 303/2004.

upon the proposal of Government, after the State Prosecutorial Council establishes the existence of the legal grounds for dismissal. The decision can be challenged before the Constitutional Court.

Art. 72 and 75 of **Slovenia's** State Prosecutor's Office Act state the grounds on which prosecutors' functions cease and those founding their dismissal. Art. 72 ("Cessation of Function") includes the cases where the concerned prosecutor's office is abolished, the incompatibility with other activities, insufficient performance, and disciplinary sanctions. The head of the office notifies Government on the existence of reasons for the termination of prosecutorial function. Government issues a declaratory decision on the termination. Art. 75 ("Dismissal") refers to criminal convictions and distinguishes cases where prosecutors either have to or may be dismissed.<sup>276</sup> When a prosecutor is convicted, the court sends the final judgment to the Ministry, the Prosecutorial Council and the Prosecutor General. If the discharge is not mandatory, the Prosecutorial Council and the Prosecutor General submit to the Minister of Justice their opinion on the suitability of the convicted prosecutor to perform the prosecutorial office. On the basis of these opinions, prosecutors are dismissed by Government on the Minister's proposal. An appeal can be submitted to the administrative court.

**Ukraine's** prosecutors can be dismissed in the cases established in the Law on the Prosecutor's Office. The main grounds concern medical inability, incompatibility, criminal convictions or the imposition of administrative liability for corruption-related offences, inability to transfer to another position, liquidation or reorganization of the office where the prosecutor works.

Prosecutors' removals in **Uzbekistan** can be ordered by the Prosecutor General or the heads of regional prosecutor's offices.<sup>277</sup> The grounds for dismissal include insufficient qualifications, systematic disciplinary misconduct, and a single gross violation of the official duties.

**Cambodia's** prosecutors may be dismissed in the case of second-degree disciplinary sanctions, abandonment of his/her duty, absence from work for over 30 days, or requested resignation.<sup>278</sup> The Supreme Council of Magistracy proposes dismissals to the King upon the request of the Minister of Justice.<sup>279</sup> The Minister prepares a draft Royal Decree regarding this case and submits it to the King. Prosecutors can challenge the decision to the Supreme Council of Magistracy.

In the **Cook Islands**, dismissals can be the outcome of the evaluation process carried out over time.

**Japan** distinguishes between dismissals due to disciplinary actions, regulated in Art. 82 of the National Public Service Act, and the removal prosecutors, as established in Art. 23 of the Public Prosecutor's Office Act. Disciplinary actions can lead to dismissals in the case of violation of the National Public Service Act and the National Public Service Ethics Act, when the official has breached the obligations in the course of duties, has neglected duties, or if the official is guilty of malfeasance rendering him/her unfit to fulfil his/her

---

<sup>276</sup> Art. 75 of State Prosecutor's Office Act. "Dismissal. (1) A state prosecutor shall be dismissed if he is convicted by a final judgment: for a criminal offence committed by abusing the state prosecutorial function; or for an intentional criminal offence to a prison sentence of more than six months. (2) A state prosecutor can be dismissed if he is convicted by a final judgment: for an intentional or unintentional criminal offence to a prison sentence up to six months or other sentence or if a conditional judgment was passed on him; or for an unintentional criminal offence to a prison sentence of more than six months and this conviction makes him unsuitable as a personality to perform the state prosecutorial function. [...]"

<sup>277</sup> See the Law on the Prosecutor's Office and the Regulation on the Service in the Prosecutor's Office, approved by the Decree of the President No. ПП-2036, of 12.09.2013.

<sup>278</sup> See Art. 90 of the Law on the Statute of Judges and Prosecutors.

<sup>279</sup> See Art. 89 of the Law on the Statute of Judges and Prosecutors.

role. Removals can be decided when prosecutors are incompetent to perform their duties due to mental or physical disorder, inefficiency, or other reasons. The Prosecutor General, Deputy Prosecutor-General and Superintending Prosecutors are removed from office by the Cabinet of Ministers, upon a resolution of the Public Prosecutors' Qualification Examination Committee and a recommendation of the Minister of Justice. All other prosecutors are removed by the Minister of Justice, upon a resolution of the Public Prosecutors' Qualification Examination Committee. Dismissals ordered as disciplinary sanctions can be challenged before the National Personnel Authority (see 3.8). When prosecutors are dismissed upon a resolution of the Public Prosecutors' Qualification Examination Committee, they are entitled to file a request for review to the Minister of Justice,<sup>280</sup> and to file an action before an administrative court.<sup>281</sup>

Art. 144(1) of **Malaysia's** Federal Constitution establishes the dismissal of prosecutors as a disciplinary sanction. Prosecutors are therefore discharged through disciplinary proceedings and can challenge a dismissal decision before the Judicial & Legal Service Commission (see 3.8).

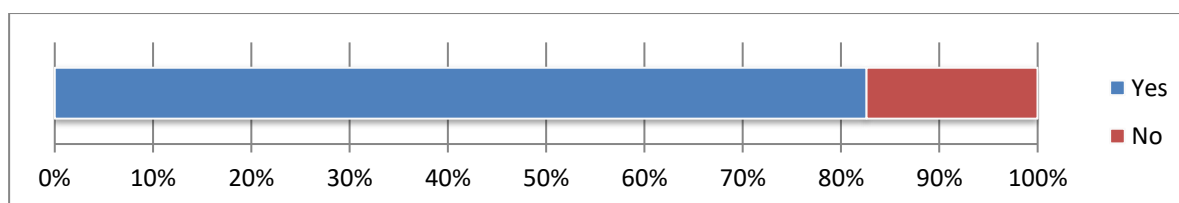
In **Pakistan**, both the Provincial Prosecution Services and the National Accountability Bureau have established Codes of Conduct and Standing Operating Procedures, which define the criteria to dismiss prosecutors. At the provincial level, prosecutors are discharged by Provincial Prosecutor Generals with the approval of Provincial Government. A judicial review is granted up to the Supreme Court.

**Timor-Leste** reports that the Statute of Public Prosecution Services establishes criteria and procedures for dismissals. The Public Prosecution Council is the competent authority over the matter, and judicial review is granted.

Art. 88 and 89 of **Viet Nam's** Law on the Organization of the People's Procuracy establish that, among other things, prosecutors can be discharged for any reason which renders them unable to fulfil their assigned tasks or in the case of violations while exercising their duties. Prosecutors are automatically dismissed when they are convicted by a court judgment which has taken legal effect. Appeals can be lodged with a higher prosecutor.

All of the responding countries have established procedures in order to allow prosecutors to challenge the decision over their removal. As seen above, a vast majority provide for judicial review.<sup>282</sup>

**Figure 3.8. Judicial review of dismissal decisions**



Note: Only data from the countries that replied to the relevant sections of the questionnaire are displayed. Data are updated as of January 2018.

<sup>280</sup> See Art. 18 of the Administrative Complaint Review Act.

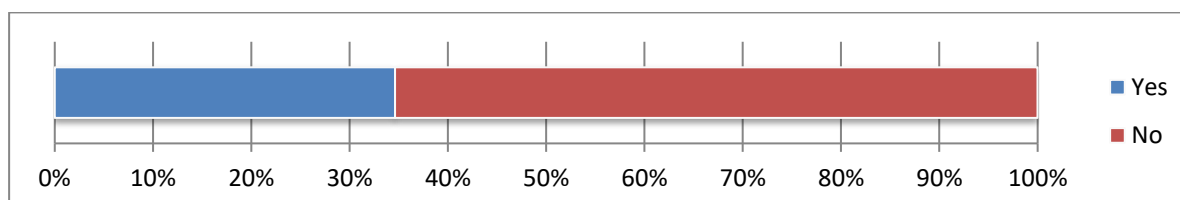
<sup>281</sup> See Art. 14 para. (1) of the Administrative Case Litigation Act.

<sup>282</sup> Albania, Bosnia and Herzegovina, Armenia, Azerbaijan, Estonia, Fiji (Fiji Independent Commission against Corruption), Georgia, Japan, Kyrgyzstan, Latvia, Lithuania, Montenegro, Moldova, Pakistan, Romania, Serbia, Slovenia, Timor-Leste, and Ukraine.



In addition to dismissal procedures, prosecutors may be forced to retire, as reported by more than 30%<sup>283</sup> of the responding countries. In **Romania**, prosecutors cannot be forced to retire and are allowed to remain in function after the retirement age provided by the law until the age of 70. Nevertheless, after turning 65 prosecutors who wish to remain in office have to request for approval annually by the Superior Council of Magistracy.<sup>284</sup> In **Kyrgyzstan** and **Moldova**, prosecutors can be forced to retire only after reaching the age of 65.

Figure 3.9. Forced retirement



Note: Only data from the countries that replied to the relevant sections of the questionnaire are displayed. Data are updated as of January 2018.

15 countries<sup>285</sup> report at least one prosecutor's removal from office since 2007. Figures vary substantially from one in **Fiji**<sup>286</sup> and **Serbia**<sup>287</sup> to 1,151 in **Romania** and 13,610 in **Ukraine**.<sup>288</sup> **Uzbekistan** reported 998 dismissals, **Lithuania** - 40 dismissals and **Azerbaijan**<sup>289</sup> - 39. In **Lithuania**, 32 prosecutors were forced to retire, and the **Philippines** at least one prosecutor was forced to retire<sup>290</sup>. During the period 2008-2017 **Moldova** experienced 11 cases of forced retirement. **Kyrgyzstan** reports that information about prosecutors' dismissal and forced retirement is classified.

<sup>283</sup> Azerbaijan, Fiji (Fiji Independent Commission against Corruption), Kyrgyzstan, Lithuania, Malaysia, Moldova, Pakistan, the Philippines (Office of the Special Prosecutor), and Viet Nam.

<sup>284</sup> See Art. 83 of Law no. 303/2004.

<sup>285</sup> Albania, Armenia, Azerbaijan, Estonia, Fiji (Fiji Independent Commission against Corruption), Georgia, Japan, Latvia, Lithuania, Moldova, the Philippines (Office of the Special Prosecutor), Romania, Serbia, Ukraine, and Uzbekistan.

<sup>286</sup> Fiji's data refer to FICAC (Fiji Independent Commission Against Corruption), a body investigating and prosecuting any alleged offences of corruption and bribery, separated from the ODPP (Office of the Director of Public Prosecutions). As Prosecutor General they refer to the Deputy Commissioner, head of FICAC.

<sup>287</sup> Serbia specifies that in 2010, due changes to the Constitution, a general appointment of all prosecutors was conducted by the State Prosecutorial Council and some previous prosecutors were not re-appointed. Serbia's Constitutional Court found procedural shortcomings in the process and ordered that all prosecutors were re-appointed.

<sup>288</sup> However, figures concerning Romania and Ukraine refer to all cases of termination of prosecutors' office, including removals for retirement, resignation, conviction, exclusion from the magistrates' body, and death.

<sup>289</sup> Figures concerning Azerbaijan refer to the period 2012-2017.

<sup>290</sup> The replies of the Philippines consider the "Office of the Special Prosecutor" (*Tanodbayan*), created within the Office of the Ombudsman, as the Prosecution Office, and the "Special Prosecutor" as the Prosecutor General. The Office of the Special Prosecutor conducts investigations and prosecutes cases within the jurisdiction of the "Sandiganbayan". The *Sandiganbayan* has jurisdiction over criminal, and civil cases involving graft, corrupt practices and other offenses committed by public officers and employees, including those in government-owned or controlled corporations, in relation to their office.

### Box 3.3. Dismissals through only disciplinary proceedings – Lebanon

Lebanon's prosecutors can be removed from office only as a result of disciplinary proceedings. The Law on the Judiciary sanctions with dismissal certain disciplinary offences, such as non-compliance with professional duties, discrimination among parties of proceedings, unethical conduct, and breach of secrecy.

When misconducts are reported, an investigation is carried out by the Judiciary Inspectorate, and its results are submitted to the Disciplinary Board, together with recommendations on the disciplinary measures to take. The Disciplinary Board decides on the sanction to apply. Prosecutors have the right to be heard before the Disciplinary Board.

Prosecutors are entitled to challenge a decision concerning their dismissal before the Superior Disciplinary Board.

*Source:* Response from Lebanon to the Study Questionnaire.

#### Conclusions:

As a guarantee of their independence and impartiality, prosecutors should enjoy stability in their career, and not be vulnerable to the political changes.

#### Recommendations:

- The dismissal of prosecutors should be strictly regulated by law and be determined by objective criteria related either to serious misbehaviour, including but not limited to committing a grave disciplinary misdemeanour or a criminal offence, or to the loss of the ability (e.g., medical ability) or competence to act in such position.
- Prosecutors should be protected from undue forced retirement.
- The occurrence of the situation conducive to dismissal should be acknowledged by a professional body, and the decision of dismissal should be challengeable in court.
- Dismissal procedures should include appropriate safeguards to prevent abuses, at least comparable to those recommended for disciplinary proceedings.

### 3.5. Transfer without consent

A transfer to another office can be a form of heavy pressure if it is ordered against the will of the prosecutor. For this reason, the principle of immovability against the will is often established for judges, as part of the judicial independence. The same principle usually is not applied to prosecutors. However, decisions over prosecutors' mobility should not be taken by political authorities, and they should be subject to review before an impartial body.

CCJE, Opinion No.12

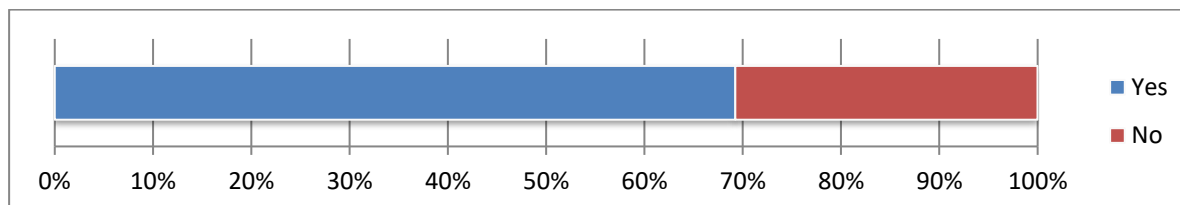
8. For an independent status of prosecutors, some minimal requirements are necessary, in particular:  
- that their recruitment, career development, security of tenure including mobility – only according to the law or by consent – as well as remuneration be safeguarded through guarantees provided by the law.

Venice Commission Report

87. In order to provide for guarantees of non-interference, the Venice Commission recommends:  
16. Threats of transfers of prosecutors can be used as an instrument for applying pressure on the prosecutor or a “non obedient” prosecutor can be remove from a delicate case. An appeal to an independent body like a Prosecutorial Council or similar should be available.

Almost 70%<sup>291</sup> of responders allow that prosecutors are transferred to other offices without their consent. The **Cook Islands**, **Latvia** and **Japan** are the only countries which have not regulated the transfer of prosecutors in the law. In **Uzbekistan**, the rules on prosecutors’ rotation are prescribed by the Regulation on the Service in the Prosecutor’s Office, approved by decree of the President.

**Figure 3.10. Forced transfer**



Note: Only data from the countries that replied to the relevant sections of the questionnaire are displayed. Data are updated as of January 2018.

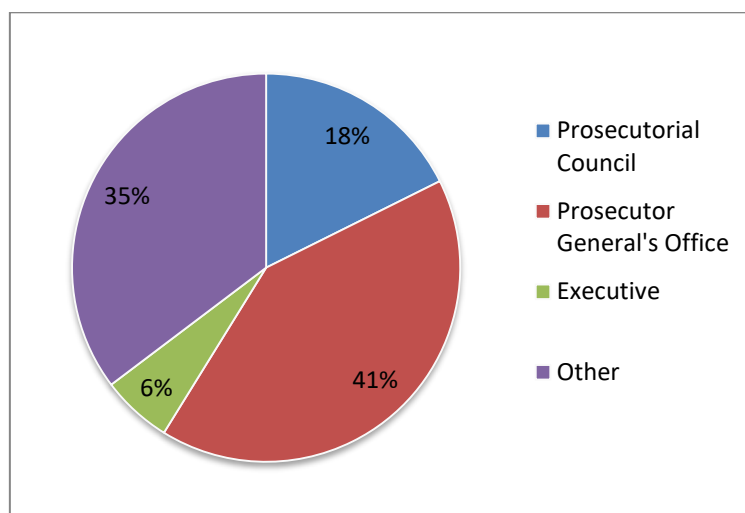
41%<sup>292</sup> of countries have entitled the Prosecutor General’s Office to take the decision over prosecutors’ transfers without consent, while in 18%<sup>293</sup> of cases the Prosecutorial Council decides. In **Japan**, the Minister of Justice is the competent authority. **Cambodia**’s Supreme Council of Magistracy makes the proposal of transfer to the King, upon the request of the Minister of Justice. In **Serbia** and **Slovenia**, the Prosecutorial Council decides the transfer of prosecutors, while the Prosecutor General orders prosecutors’ secondment. **Moldova**’s Prosecutor General is the competent authority for forced transfers, but a written consent of the High Council of Prosecutors is needed. In **Uzbekistan** rotations of prosecutors are decided by the President, the Prosecutor General or the heads of regional prosecutor’s offices.

<sup>291</sup> Albania, Armenia, Azerbaijan, Bosnia and Herzegovina, Cambodia, Fiji (Fiji Independent Commission against Corruption), Japan, Kyrgyzstan, Lithuania, Malaysia, Moldova, Montenegro, Pakistan, the Philippines (Office of the Special Prosecutor), Serbia, Slovenia, Uzbekistan, and Viet Nam.

<sup>292</sup> Armenia, Azerbaijan, Fiji (Fiji Independent Commission against Corruption), Kyrgyzstan, Lithuania, Malaysia, Pakistan, and Viet Nam.

<sup>293</sup> Albania, Bosnia and Herzegovina, Montenegro.

Figure 3.11. Authorities deciding prosecutors' transfer without consent



Note: Only data from the countries that replied to the relevant sections of the questionnaire are displayed. Data are updated as of January 2018.

**Albania's** prosecutors are transferred without consent only in the cases listed in Art. 44 Law 96/2016, including as a disciplinary measure and when their position is suppressed due to administrative changes (after conducting an objective assessment). The prosecutor whose position was suppressed is transferred to a position of the same degree or, when this is not possible, has the right to choose to be transferred to any position that is free or is expected to become vacant within six months. The High Prosecutorial Council decides the transfer and prosecutors are entitled to a review before the court.

Art. 59 and 60 of **Armenia's** Law on the Prosecutor's Office distinguish between secondment and transfer. Prosecutors may be seconded to an equivalent or higher position in another office due to temporary absence or vacant positions of prosecutors. Secondments do not require the consent of prosecutors and can last for up to one year. A prosecutor may be transferred to a lower position as a disciplinary penalty or following a negative evaluation. Both secondment and transfer are decided by the Prosecutor General.

Article 11 par. 4 of **Azerbaijan's** Service in the Prosecutor's Office Act establishes that the Prosecutor General may transfer prosecutors against their consent as an outcome of disciplinary action, for incompatibility, or due to staff reduction.

In **Bosnia and Herzegovina**, prosecutors' transfers without consent are a disciplinary sanction that can be applied by the High Judicial and Prosecutorial Council (see 3.8).

**Kyrgyzstan's** prosecutors are subject to a mechanism of rotation among positions of the same level. The purpose of mandatory rotation is to avoid corruption within the staff and develop professional skills of prosecutors and investigators. Unjustified refusal to undergo mandatory rotation can be a ground for dismissal (see □). The rotation process is organised by the HR Department of the General Prosecutor's Office.

**Lithuania's** prosecutors may be transferred to an equivalent post in the event of cancellation of his post due to changes in the organisation of work. A prosecutor may be permanently transferred without his/her consent in the case of organisational changes (where the transfer to an equivalent post is impossible), upon request of demotion from the Performance Evaluation Commission (see 3.7.2), or when subject to the disciplinary sanction of demotion.<sup>294</sup> The decision over transfers is taken by the Prosecutor General.

<sup>294</sup> See Art. 36 of the Law on the Prosecution Service.

Temporary transfers without consent can also be ordered by the Prosecutor General “for exigencies of the service.”<sup>295</sup> The decision takes into account prosecutors’ qualification, length of service, specialisation, distance from the current workplace, the opinion of the concerned prosecutor and other major conditions. The temporary transfer does not last more than one year, transferred prosecutors’ salary does not vary, and they receive compensation for the expenses related to the transfer.

**Moldova’s** prosecutors can only be temporarily transferred without their consent to another office due to a lack of staff. The transfer may last up to one month during a year. For the purpose of investigating a particular case, the prosecutor nominated as a member of a criminal prosecution group may be seconded for a term up to six months without his/her consent. The Prosecutor General decides on the transfers, upon the proposal of the chief prosecutor of the concerned office and with the written consent of the High Council of Prosecutors.

Art. 84 of **Montenegro’s** Law on the Public Prosecution Office states that the Prosecutorial Council can reassign a prosecutor to another office without his/her consent in the case of reorganisation of an office that reduces the number of prosecutors’ positions.

Prosecutors in **Serbia** cannot be transferred without their consent unless their prosecutor’s office is closed due to reorganisation the Prosecution Service or the number of prosecutors in an office is decreased. The decision is taken by the Prosecutorial Council.<sup>296</sup> By exception, prosecutors may be assigned without their consent to a lower office, due to insufficient staff. The assignment does not exceed one year and is ordered by the Prosecutor General.<sup>297</sup>

Only exceptionally **Slovenia’s** prosecutors are transferred to another office without their consent. This happens by the decision of the Prosecutorial Council, when the office where they perform their service is abolished if the office’s workload is significantly reduced, in the case of reorganisation of the office or in other cases provided for by law.<sup>298</sup> Prosecutors may also be temporarily seconded without their consent by order of the Prosecutor General, in the case of an enormously increased workload or elimination of significant backlog at work in the receiving office. The secondment may last up to two years with one possible extension for not more than two years, with the state prosecutor’s approval. The seconded prosecutor may appeal against the decision on secondment to the State Prosecutorial Council.

In **Uzbekistan**, obligatory transfers of prosecutors are ordered following a rotation system of the Prosecution Service’s staff. Also, transfers to higher positions do not require the consent of prosecutors. The President, the Prosecutor General or the heads of the regional prosecutor’s offices decide on the transfers.<sup>299</sup>

Art. 55 of **Cambodia’s** Statute of Judges and Prosecutors mentions the transfer among the second degree disciplinary sanctions. The Supreme Council of Magistracy proposes the application of these sanctions to the King, upon the request of the Minister of Justice.

**Japan** allows the transfer without the consent of prosecutors only in the case of reorganisation of the offices. The criteria for transfers are not established by law, but prosecutors are heard before the decision is taken by the Minister of Justice.

---

<sup>295</sup> See Art. 37 of the Law on the Prosecution Service.

<sup>296</sup> See Art. 62 of the Law on Public Prosecution.

<sup>297</sup> See Art. 63 of the Law on Public Prosecution.

<sup>298</sup> See Art. 60 of the State Prosecutor’s Office Act.

<sup>299</sup> For the promotion procedure, see 3.2.2.

**Malaysia's** prosecutors are transferable without their consent to another office, division, ministry, department or agency, by order of the Prosecutor General.

Art. 60 of **Viet Nam's** Law on the Organization of the People's Procuracy establishes that prosecutors can be transferred against their consent by order of the Prosecutor General, "when necessary".

**Montenegro** is the only respondent that does not allow prosecutors to challenge an order of transfer. All other countries grant at least one form of appeal, the majority ensuring judicial review.

Since 2007, prosecutors' transfers without consent have been ordered in at least six countries. **Albania** reports 205 cases, **Lithuania** - 172, **Ukraine** - 4593 and **Uzbekistan** - 96 cases. The **Philippines**<sup>300</sup> and **Slovenia** state that at least one case of forced transfer took place in the last ten years.

### Box 3.4. Obligatory rotation of all prosecutors - Lebanon

The only form of forced transfer of Lebanese prosecutors is through their periodical rotation among the country's prosecutor's offices. The rotation is carried out by the Superior Judiciary Council.

Since 2007 almost all of the acting prosecutors have been transferred to other offices or reassigned to other courts as presiding judges, in a due process of rotation.

*Source:* Response from Lebanon to the Study Questionnaire.

### Conclusions:

Decisions on the mobility of prosecutors should be made following a transparent and reasoned procedure, taking into consideration the needs of the service and the concrete situation of the prosecutor.

The tenure and career of prosecutors should be protected from political changes and undue political pressure. This includes the transfer of a prosecutor from one prosecutor's office to another. In order to avoid the use of transfers as a means to remove prosecutors from sensitive investigations, a general rule should be to require the prosecutor's consent for his/her transfer.

However, organizational changes could justify or require the non-consensual mobility of prosecutors. In such situations, precautionary measures should be taken in order not to hamper ongoing investigations that would require the continuity of work of the same prosecutor. Non-consensual transfers could also be applied as a form of rotation of staff, under the condition that the rules for rotation are transparent and clear and applied in a non-discriminatory manner.

Transfers without consent should be subject to review, including judicial review.

<sup>300</sup> The replies of the Philippines consider the "Office of the Special Prosecutor" (*Tanodbayan*), created within the Office of the Ombudsman, as the Prosecution Office, and the "Special Prosecutor" as the Prosecutor General. The Office of the Special Prosecutor conducts investigations and prosecutes cases within the jurisdiction of the "*Sandiganbayan*". The *Sandiganbayan* has jurisdiction over criminal, and civil cases involving graft, corrupt practices and other offenses committed by public officers and employees, including those in government-owned or controlled corporations, in relation to their office.

**Recommendations:**

- Transfers of prosecutors from one office to another without their consent should be prohibited unless such transfers are caused by necessary organisational changes or apply in the framework of a transparent and precise mechanism of mandatory rotation.

**3.6. Training**

The professional capability of the Prosecution Service is a crucial factor for its effectiveness. Prosecutors have the right and the duty to undergo both initial and continuing training with taking into account their specialisation. The law should regulate the training obligation and an independent and expert body, such as the Prosecutorial Councils or the Prosecutors Academies, which will determine what training activities are provided to prosecutors.

Council of Europe, Recommendation Rec(2000)19

7. Training is both a duty and a right for all public prosecutors, before their appointment as well as on a permanent basis. States should therefore take effective measures to ensure that public prosecutors have appropriate education and training, both before and after their appointment. In particular, public prosecutors should be made aware of:

- a. the principles and ethical duties of their office;
- b. the constitutional and legal protection of suspects, victims and witnesses;
- c. human rights and freedoms as laid down by the Convention for the Protection of Human Rights and Fundamental Freedoms, especially the rights as established by Articles 5 and 6 of this Convention;
- d. principles and practices of organisation of work, management and human resources in a judicial context;
- e. mechanisms and materials which contribute to consistency in their activities.

Furthermore, states should take effective measures to provide for additional training on specific issues or in specific sectors, in the light of present-day conditions, taking into account in particular the types and the development of criminality, as well as international co-operation on criminal matters.

Venice Commission Report

87. In order to provide for guarantees of non-interference, the Venice Commission recommends:

22. An expert body like a Prosecutorial Council could play an important role in the definition of training programmes.

Rome Charter

The Consultative Council of European Prosecutors (CCPE), having been requested by the Committee of Ministers of the Council of Europe to provide a reference document on European norms and principles concerning public prosecutors, agreed on the following:

XIII. The highest level of professional skills and integrity is a pre-requisite for an effective prosecution service and for public trust in that service. Prosecutors should therefore undergo appropriate education and training with a view to their specialisation.

All of the responding countries provide prosecutors with continuous training during their career. **Estonia** and **Georgia** are the only countries that report not to have established prosecutors' training as an obligation. **Cambodia**, the **Cook Islands** and **Malaysia** have not founded prosecutors' mandatory training in the law, but the matter is regulated through internal acts. In Cambodia, the Ministry of Justice provides

continuing legal training for judges and prosecutors on specific matters such as wild-life cases, drug cases, and relevant procedural rules. **Uzbekistan's** prosecutors are obliged to undergo continuous training<sup>301</sup>.

**Albania's** High Prosecutorial Council organises and funds training courses provided by the School of Magistrates, as established in Art. 5 of Law No. 96/2016.

Art. 51 of **Armenia's** Law on the Academy of Justice imposes prosecutors to undergo periodical training every two years. The Prosecutor General prepares the lists of prosecutors subject to mandatory training, ensured through the Academy of Justice.

In **Azerbaijan**, the Scientific-Educational Centre of the Prosecutor General's Office provides and finances mandatory training regulated by law.<sup>302</sup>

**Bosnia and Herzegovina** has established two Centres for Judicial and Prosecutorial Education, funded separately from the Prosecution Service with their own budget.

**Estonia** has not established any obligatory training for prosecutors. However, various private and public entities organise courses and seminars addressed to prosecutors, which are also financed with the Prosecutor's Office budget.

Although **Georgia** does not impose mandatory training to all prosecutors, they may undergo specific activities and courses in order to upgrade their qualifications.<sup>303</sup> Foreign and international organisations fund part of the provided training. Also in **Montenegro**, the Evaluation Committee, appointed by the Prosecutorial Council (see □), decides the content of periodical training according to the outcome of the evaluation procedure. Funds are from the Prosecutorial council.

Mandatory training in **Kyrgyzstan** is regulated in Point 14 of the Regulation on the Service in the Prosecutor's Office, approved by the Decree of the President No. 48 of 06.02.2001. The Skills Development Centre of the General Prosecutor's Office establishes the content of training, which is funded by the state and through international assistance.

Section 5 of **Latvia's** Prosecution Office Law and the Prosecutors' Rules of Conduct impose to prosecutors an obligation to continuous training. Activities are financed with the State Budget and established by order of the Prosecutor General, upon suggestions of the Chief Prosecutors of the departments and the permanent divisions of the Prosecutor General's Office. Similarly, in **Mongolia**, the Prosecutor General decides the content of training provided to prosecutors.

In **Lithuania**, the activities that form the state funded mandatory training are decided by the Prosecutor General's Office and the Ministry of Justice.

**Moldova's** Law on the Prosecutor's Office and Law on the National Institute of Justice regulate prosecutors' training, which is provided and funded by the National Institute of Justice.

**Romania's** judges and prosecutors have to participate, at least once in 3 years, in professional training programmes organised by the National Institute of Magistracy, Romanian or foreign universities, or other

---

<sup>301</sup> According to the Decree of the President of Uzbekistan No. 5438 of 08.05.2018 prosecutors are obliged to undergo training at least once per three years.

<sup>302</sup> See Art. 13 of the Prosecutor's Office Act.

<sup>303</sup> See Art. 44 of the Prosecution Service Law, now Art. 62 of the new Organic Law of Georgia on the Prosecutor's Office (enacted on 30 November 2018).



entities.<sup>304</sup> Similarly, training in **Ukraine** and **Uzbekistan** is provided by the respective Academy of the Prosecutor's Office<sup>305</sup>.

Art. 54 of **Serbia's** Law on Public Prosecution establishes the prosecutors' obligation to undergo periodic training. The Judicial Academy provides the training approved by the State Prosecutorial Council and the Prosecutor General's Office. The state budget and donations from international partners fund prosecutors' training.

**Slovenia's** prosecutors have the right and the obligation to be trained.<sup>306</sup> The Judicial Training Centre within the Ministry of Justice is the authority establishing the training provided. The Office of the Prosecutor General and the Prosecutors' Association can make proposals over the training to provide to prosecutors.

In **Cambodia** prosecutors have to participate in training activities, although the obligation is not established in the law. The Ministry of Justice, the Royal Academy of Judicial Professions and other bodies and institutions may organise training, which is funded with the state budget and donations from sponsoring partners.

Similarly, the **Cook Islands** foresee an obligation for prosecutors to undergo training, but this is not founded in the law. Training is financed by the Crown Law Office budget or overseas grants.

**Fiji's** FICAC Act regulates prosecutors' obligation to update their knowledge and competences. Training Teams are created within the Fiji Independent Commission against Corruption.<sup>307</sup> Immediate supervisors and the Deputy Commissioner may order prosecutors to undergo training. Funding is ensured by the Commission<sup>308</sup>.

The National Public Service Act states that **Japan's** Minister of Justice formulates training plans for officials and supervises its execution.

In **Malaysia**, training is required by the Attorney General's Chambers (AGC), although the obligation is not established by law. Training is part of prosecutors' continuing legal education provided by the AGC themselves, the Judicial and Legal Training Institute and other agencies. The AGC and different ministries fund the training programmes.

The Federal Judicial Academies<sup>309</sup> organise and finance prosecutors' training in **Pakistan**.

The Mandatory Continuing Legal Education is the **Philippines's** training programme. The Rules on Mandatory Continuing Legal Education are established in the Resolution of the Supreme Court B.M. No.

---

<sup>304</sup> See Art. 36 of the Law no. 303/2004.

<sup>305</sup> In March 2020, the Academy of the Prosecutor's Office of Ukraine was reorganized into the Training Centre of Prosecutors.

<sup>306</sup> See Art. 98 of the Prosecutorial Rules.

<sup>307</sup> See note 197.

<sup>308</sup> Fiji's data refer to FICAC (Fiji Independent Commission Against Corruption), a body investigating and prosecuting any alleged offences of corruption and bribery, separated from the ODPP (Office of the Director of Public Prosecutions). As Prosecutor General they refer to the Deputy Commissioner, head of FICAC.

<sup>309</sup> Federal Judicial Academy was established under a Government Resolution in September 1988. For general supervision of the affairs of the Academy and the achievement of its aims and objects, a Board of Governors has been constituted under the chairmanship of the Chief Justice of Pakistan. The management of the Academy is carried on under the general directions of the Board, by the Director General, who is the Principal Accounting Officer as well as the academic and administrative head of the Federal Judicial Academy.

850, of 22 August 2000. Training is also provided by the Office of the Ombudsman and the National Integrity Centre for the Trial Advocacy Courses<sup>310</sup>.

In **Timor-Leste** and **Viet Nam**, the content of mandatory prosecutors' training is decided by the respective Prosecutor General's Offices and funded by the state budget.

### Box 3.5. Training, specialisation and career management of prosecutors - Italy

Italian prosecutors must attend periodical training, as established by the Superior Council of Magistracy (CSM). The CSM funds training programmes and directly provides courses through the Superior School of Magistracy.

Recurrent evaluations of the professional performance and diligence of prosecutors also concern their participation in conferences and meetings organised by the heads of the prosecution offices in order to debate and analyse legislative innovations and the case-law evolution.

Prosecutors' specialisation and knowledge update through training are taken into consideration during selections for filling vacancies at high-level prosecution offices.

Source: Response from Italy to the Study Questionnaire.

### Conclusions:

Regular training activities are required to maintain and develop the professional capacities of prosecutors. This work should be based on an internal assessment of training needs and regularly updated training programmes. It is essential to ensure that such programmes include sessions on international standards, best practices and national rules on the independence of prosecutors.

### Recommendations:

- Prosecutors should have both the right and the duty to receive initial and regular continuing training in view of their specialisation, with an independent and expert body participating in the determination of the training provided to prosecutors.
- Training courses for prosecutors should include components covering prosecutorial independence.

## 3.7. Evaluation

Similarly to other aspects of the organisation of the Prosecution Services, there are various approaches applied by different jurisdictions to assess the performance of individual prosecutors. Ideally, this instrument is intended to maintain a high standard of quality and efficiency of prosecutors' work and ensure their professional development. The evaluation of prosecutors' performance is often related to promotions and salary increase.

<sup>310</sup> The replies of the Philippines consider the "Office of the Special Prosecutor" (*Tanodbayan*), created within the Office of the Ombudsman, as the Prosecution Office, and the "Special Prosecutor" as the Prosecutor General. The Office of the Special Prosecutor conducts investigations and prosecutes cases within the jurisdiction of the "*Sandiganbayan*". The *Sandiganbayan* has jurisdiction over criminal, and civil cases involving graft, corrupt practices and other offenses committed by public officers and employees, including those in government-owned or controlled corporations, in relation to their office.

It is important to guarantee that such evaluation is not used to interfere in the prosecutors' autonomy. Objective and transparent criteria should underlie evaluation procedures, and political authorities should not influence the individual assessment of prosecutors' activity.

However, good evaluation systems are rare. Too many systems have an over-dependence on quantitative measures such as the number of cases disposed of without always comparing the relative difficulty and weight of cases. Such systems may also reward hasty decision-making and penalise a more considered approach. Systems which count the number of actions taken by a prosecutor may encourage the making of unnecessary applications. Counting the number of "successful" outcomes is also hazardous and can encourage prosecutors to act unfairly in order to secure a conviction in breach of their fundamental ethical duty.

Council of Europe, Recommendation Rec(2000)19

35. [...] The performance of public prosecutors should be subject to regular internal review.

### **3.7.1. Institution of evaluation procedures**

All of the countries have established evaluation procedures in order to assess the performance of prosecutors. The **Cook Islands** are the only country not to have regulated prosecutors' evaluation in the law but through internal acts.

The frequency of Prosecutors' performance assessment ranges between one and five years. **Ukraine's** prosecutors are evaluated monthly in order to decide on the grant of bonuses (see □).

The responding countries report that good evaluations are usually a prerequisite for prosecutors' promotions, increases of salaries and grants of bonuses and benefits. Conversely, negative evaluations can lead to demotions and even the dismissal of the concerned prosecutor. In **Georgia**, past evaluations are also taken into consideration when disciplinary sanctions have to be imposed.

**Romania's** prosecutors who receive "unsatisfactory" rating, as well as those who receive "satisfactory" rating for two consecutive evaluations, have to attend special courses during three to six months at the National Institute of Magistracy and take a final exam. Prosecutors whose performance is considered "unsatisfactory" for two consecutive evaluations, or who have not succeeded in the mentioned examination, are released from office for professional incapacity by the President of Romania, on the proposal of the Superior Council of Magistracy (see □). Only prosecutors who are rated "very good" in the last evaluation may attend a promotion exam for a position in the immediately superior prosecutor's office (see 3.2.2).

### **3.7.2. Evaluation's criteria and procedures**

The leading authorities involved in the evaluation of prosecutors are the Prosecutorial Council, the Prosecutor General Office and superior prosecutors (see Figure 3.12). The criteria applied in the evaluation process are generally related to professional knowledge, workload management, ethics and case outcomes in trial. All of the responding countries state that prosecutors can challenge their appraisal. Only five countries<sup>311</sup> report at least one case where the appraisal has been challenged since 2012.

According to Art. 71 of **Albania's** Law 96/2016 prosecutors' evaluations assess their professional and organisational skills, their ethics and commitment to the professional values, as well as the personal skills and professional engagement. The procedure begins with a self-assessment of the assessed prosecutor

<sup>311</sup> Albania, Lithuania, Moldova, the Philippines (Office of the Special Prosecutor), and Romania.

and opinion from the head of the office on his/her activity, in accordance with the standards established by the Prosecutorial Council. The two documents are sent to the Prosecutorial Council together with two court decisions or two acts drafted by the prosecutor selected by him/her, a record of the hearings attended and the possible objections of the prosecutor to the superior's opinion. After receiving the acts, the High Prosecutorial Council assigns a rapporteur to every evaluated prosecutor, who assesses the prosecutor's activity by selecting random cases carried out during the evaluation period. Information is gathered from other institutions such as the School of Magistrates, High Justice Inspector and High Inspectorate for the Declaration and Audit of Assets and Conflict of Interests. The rapporteur drafts an evaluation report with a detailed analysis of the collected data. Prosecutors can oppose the draft report before the High Prosecutorial Council.<sup>312</sup> The High Prosecutorial Council issues the final appraisal, after inviting the concerned prosecutor to a hearing, upon his/her request.

The assessment of the activities of **Armenia's** prosecutors is carried out every three years and focuses on their professional knowledge, practical skills and work skills. All prosecutors prepare annual reports on their activities and submit them to their superior prosecutors, who prepare comprehensive, detailed appraisals every three years. Prosecutors may express disagreement in writing with regard to this evaluation to the immediate superior prosecutor or other superior, as well as to the Qualification Commission.<sup>313</sup> On the basis of this evaluation, the Qualification Commission decides the final appraisal among the following: (1) competent for the position held; (2) competent for the position held, to be included in the list of official promotion of prosecutors; (3) competent for the position held, under the condition of undergoing additional training; (4) competent for the position held, with a motion to grant a class rank on extraordinary basis; (5) not competent for the position held, with a motion to transfer the prosecutor to a lower position; (6) not competent for the position held, with a motion of dismissal (see also □).<sup>314</sup> Prosecutors have the right to appeal against the decision to the Prosecutor General. The decision of the Prosecutor General to reject the appeal is subject to judicial review.

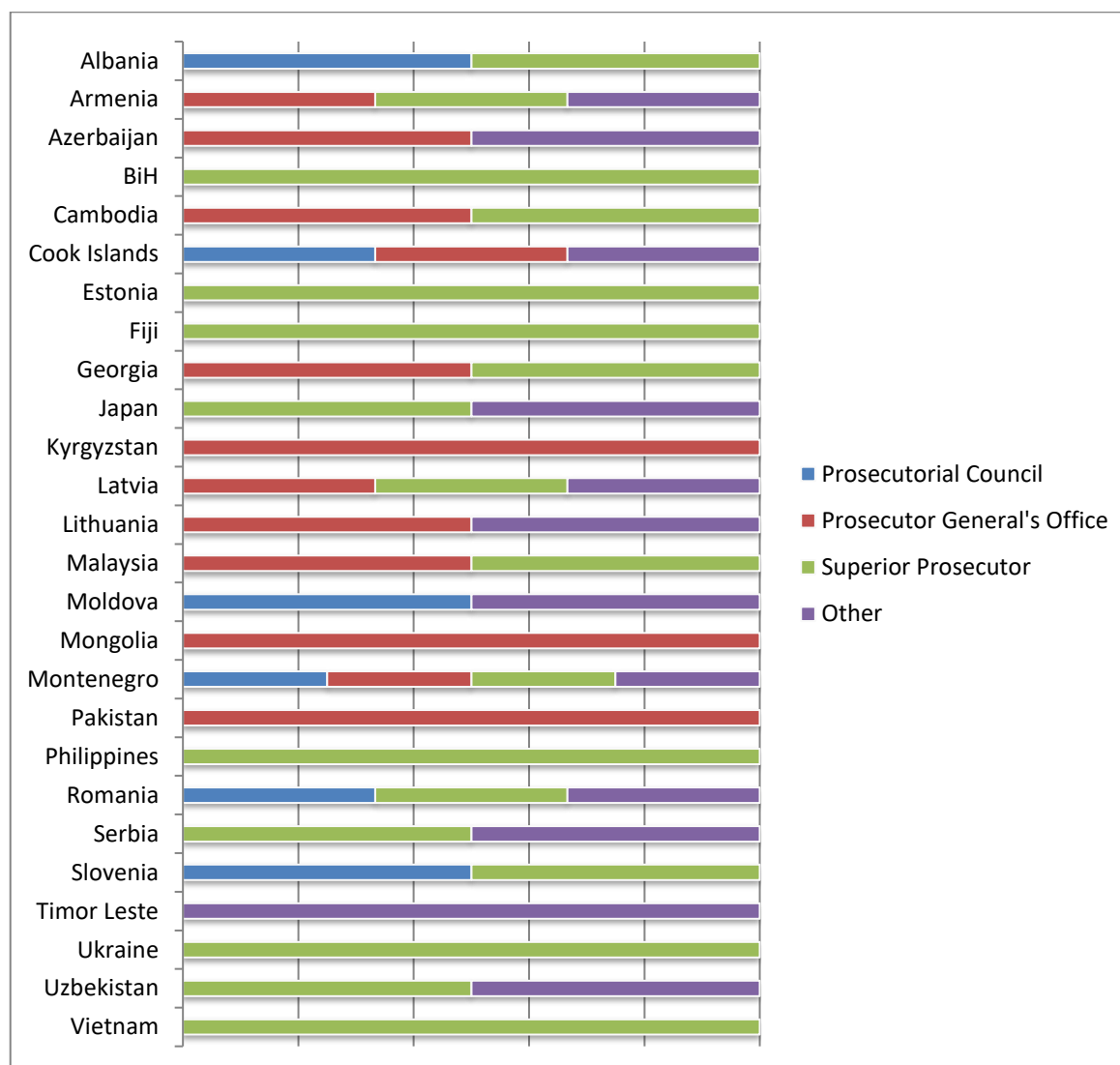
---

<sup>312</sup> See Art. 94 of the Law 96/2016.

<sup>313</sup> See note 226.

<sup>314</sup> See Art. 50 of the Law on the Prosecutor's Office.

Figure 3.12. Authorities involved in prosecutors' evaluation



Note: Only data from the countries that replied to the relevant sections of the questionnaire are displayed. Data are updated as of January 2018.

In **Azerbaijan**, the appraisal of prosecutors is based on 39 criteria, including the internal division of tasks, the level of criminality in a district/city, the crime prevention dynamics, the results of prosecutions in court, the quality of quarter/semi-annual/annual reports, the implementation of the Prosecutor General's orders, the quality of oversight of investigations, and others. Exceptional evaluations can be conducted in the cases of promotion, demotion, impossibility to exercise one's duties, negligent attitude to work, or upon request. Evaluations are carried out every five years by the Attestation Commission of the respective office, composed of prosecutors representing the Prosecutor General's Office, the Military Prosecutor's Office, the Baku Prosecutor's Office, and the Nakhchivan Autonomous Republic Prosecutor's Office. In the case of disagreement with the opinion of the Attestation Commission, prosecutors are entitled to challenge it before the Prosecutor General.

The High Judicial and Prosecutorial Council of **Bosnia and Herzegovina** assesses prosecutors' activity through a combination of self-evaluation and evaluation by the superiors.

**Estonia's** prosecutors have their performance, professional development and training needs assessed once a year through an interview with their superior prosecutor.

**Georgia's** Department of Prosecutorial Activities Supervision and Strategic Development of the Prosecutor General's Office evaluates prosecutors' procedural guidance, legal writing, use of software, performance in court and workload. The evaluation is sent to the Human Resources Management and Development (HR Department) of the Prosecutor General's Office. Prosecutors' direct supervisors prepare an additional report on their activity and send it to the HR Department. The Department of Prosecutorial Activities Supervision and Strategic Development monitors court skills of prosecutors on a daily basis throughout the year and submits its assessments to the HR Department. The HR Department also gathers information concerning the participation in training, crime prevention activities and disciplinary sanctions (if any) and issues the final general evaluation. Prosecutors can challenge their appraisal before the Complaints Commission, established by order of the Prosecutor General. The Commission's decision can then be appealed to the Consultative Council.<sup>315</sup>

In **Kyrgyzstan**, the purpose of attestation is to determine prosecutors' suitability for their position, their level of professional training, and career prospects. All prosecutors are subject to evaluation. The procedure is defined by the Prosecutor General in accordance with the Regulation on the Attestation of Employees of the Prosecutor's Office.

**Latvia's** Regulations on the Evaluation of the Professional Performance of Public Prosecutors set the procedure for evaluating prosecutors' activity, which involves the Certification Commission<sup>316</sup> and superior prosecutors. Quality of performance, work organization, participation in qualification-raising events, and performance statistics are taken into consideration for the purpose of the assessment. The final evaluation is limited to a positive or negative note issued by the Prosecutor Certification Commission. Reiterated negative conclusions of the Certification Commission can be appealed in accordance with the procedure provided for in the Prosecution Office Law.

Criteria founding prosecutors' activity assessment are not established by **Lithuania's** laws but by internal acts. The appraisal procedure has been set by the Prosecutor General. The Performance Evaluation Commission, appointed by the Prosecutor General,<sup>317</sup> assesses prosecutors who are listed for evaluation by every Division of the Prosecutor General's Office. The participation of prosecutors in the meeting of the Commission concerning their appraisal is mandatory only in the case of extraordinary evaluation, or the evaluation carried out after the expiry of the traineeship period (see 3.1). The assessment is focused on prosecutors' procedural and non-procedural activities as well as and the professional characteristics. Prosecutors may appeal against the conclusions of the Commission to the Prosecutor General, whose decision is can be subject to judicial review.

Art. 28-31 of **Moldova's** Law on the Prosecutor's Office describe prosecutors' evaluation process. The established procedures are led by the Board for Prosecutors' Performance Evaluation, a body subordinated to the Supreme Council of Prosecutors, and aim at assessing prosecutors' performance, level of knowledge and professional skills. Two forms of evaluation have been established, one periodic and the other extraordinary. Prosecutors are subject to periodic evaluations every four years, while extraordinary appraisals are performed upon prosecutors' request, when they participate in a contest for the post of chief prosecutor or get the "unsatisfactory" rating on their performance. The detailed procedure and criteria for the prosecutors' performance evaluation are stipulated in a regulation approved by the

---

<sup>315</sup> The new Organic Law of Georgia on the Prosecutor's Office, enacted on 30 November 2018, establishes that the Complaints Commission's decisions may be appealed before the Career Management, Ethics and Incentives Council.

<sup>316</sup> See 1.3.1.

<sup>317</sup> See Art. 10 of the Law on the Prosecution Service.

Supreme Council of Prosecutors, published on its official website. The Board for Prosecutors' Performance Evaluation adopts "unsatisfactory", "good", "very good" or "excellent" ratings, or states the failure in the performance evaluation. The decision on the performance evaluation also specifies the recommendations on performance improvement. The evaluated prosecutors are dismissed if they receive the "unsatisfactory" rating in two consecutive performance evaluations or when they fail (see □).

**Mongolia's** Prosecutor General is the authority competent to evaluate prosecutors. The procedure and criteria are set forth in the Law on the Prosecutor's Office, the Law on Civil Service and other acts.

The criteria for evaluating the performance of **Montenegro's** prosecutors include their expert knowledge and ability to exercise the prosecutorial office.<sup>318</sup> In practice, assessments are focused on the number of opened cases, the number of ongoing investigations, and cases and investigations that led to a guilty verdict. The evaluated prosecutor drafts a report on his/her own activity. The decision on the evaluation is made by the Evaluation Committee on the proposal of the Councils of Public Prosecutors for Evaluating the Performance.<sup>319</sup> Final decisions can be challenged before the administrative courts.

**Romania's** prosecutors are evaluated with taking into consideration the quality of their activity as well as their effectiveness, integrity and obligation to attend continuous training and specialisation courses. For the leading position the fulfilment of management duties is an additional criterion. The procedure for the appraisal is set forth in the Regulation on the Evaluation of the Professional Activity of Judges and Prosecutors, approved by Decision no. 676/04.10.2007 of the Superior Council of Magistracy. The assessment is performed by the Boards for Evaluation, which are set up by the Superior Council of Magistracy. The Boards are composed of the head of the prosecutor's office/section/directorate and two prosecutors designated by the leading board of the prosecution unit. The respective Board for Evaluation prepares a file for each prosecutor containing statistical data on his/her work and efficiency, a self-evaluation and an evaluation report, which can rate the prosecutor's activity "very good", "good", "satisfactory" or "unsatisfactory". An interview might take place when requested by the prosecutor or considered necessary by the Board. The evaluated prosecutor can access to the file and make remarks and comments, after which the Board issues the final appraisal. According to Art. 40 of the Law no. 303/2004, prosecutors who disagree on the ratings awarded may lodge a complaint before the prosecutors' section of the Superior Council of Magistracy. The decision rendered by the section may be appealed before the Plenum.

In **Serbia**, the criteria applied to assess prosecutors' work are stipulated in the Rulebook on Criteria and Measures for the Evaluation of Work of Head of Prosecutor's Offices and Prosecutors. These include efficiency (basically a comparison between the number of received and processed cases), professionalism and successfulness (number of final convictions, as compared to the number of final judgments), professional commitment and cooperation. For the heads of the offices, management capacity, supervision capacity and overall results of prosecutor's office are additionally assessed. The heads of the prosecutor's offices evaluate the work of subordinate prosecutors. The heads of directly superior prosecutor's offices assess the activity of the heads of lower prosecutor's offices. Before giving their assessment, the heads receive an opinion from the board of the concerned office (so-called "Collegium"). Prosecutors can file complaints on appraisal decisions to the Prosecutorial Council.

---

<sup>318</sup> See Art. 88-90 of the Law on the Public Prosecution Office.

<sup>319</sup> The Evaluation Committee is appointed by the Prosecutorial Council and comprises the Prosecutor General and five members of the Prosecutorial Council, three of which from among the public prosecutors and two eminent jurists. The Councils of Public Prosecutors for Evaluating the Performance of Public Prosecutors consist of the head of the office in which the evaluated public prosecutor works and four prosecutors from the senior prosecutors' offices (see Art. 87 of the Law on the Public Prosecution Office).

The evaluation of **Slovenia's** prosecutors is ordered by the Prosecutor General every three years. The assessment is performed by a superior prosecutor focuses on working skills, professional knowledge, personal characteristics and social skills. The supervising prosecutor prepares a peer review report, to which the supervised prosecutor can object. The Prosecutor General appoints a different superior prosecutor to decide on possible objections. The final report, along with the opinion of the head of the state prosecutor's office, is then sent to the State Prosecutorial Council, which is competent in making the evaluation.

**Ukraine's** evaluation procedures are conducted by prosecutors' supervisors and aimed at deciding the monthly grant of pecuniary bonuses that the subordinate prosecutors receive (see □). Evaluations focus on the conscientious performance of official duties, the timely and high-quality execution of tasks and instructions, as well as the compliance with disciplinary rules.

Superior prosecutors, as well as the HR and Internal Security Departments of the Prosecutor's Office, evaluate **Uzbekistan's** prosecutors. The main criteria applied for their assessment are the observance of the rights and freedoms of citizens, the effectiveness of measures put in place to investigate and prevent violations of the law, the precise and uniform implementation of the law, the timeliness and completeness of the identification of violations of the law, the identification of persons who violated the law, the effectiveness in courts of public prosecution.

In the first week of January every year, **Cambodia's** prosecutors complete a series of questionnaires on their past activity. Their replies are rated with reasoned scores issued by the superior in rank.<sup>320</sup> The criteria used for appraisals are not specified in the law.

The **Cook Islands'** evaluations of prosecutors are carried out by the Solicitor-General, who consults with senior lawyers of the Crown Law Office, the Public Service Commission and the Prime Minister (acting Attorney-General).<sup>321</sup> The procedure includes a meeting with the evaluated prosecutor.

The assessment of **Fiji's** prosecutors is based on the Job Description and the other requirements provided by the Deputy Commissioner.<sup>322</sup> The immediate superior evaluates the performance of subordinate prosecutors after a meeting with the assessed prosecutor.

**Japan's** prosecutors are subject to two different forms of the appraisal. One is performed by superior prosecutors according to the National Public Service Act, and the other is carried out by the Examination Committee, as stated in the Public Prosecutor's Office Act.<sup>323</sup> Superior prosecutors evaluate subordinates comprehensively on their ability at investigation and trial, ability as a manager, attitude toward duty, etc. The Examination Committee conducts regular examinations every three years of all prosecutors, examinations of individual prosecutors upon request of the Minister of Justice, and by virtue of the office held examinations. The Examination Committee examines physical/mental disabilities, inefficiency in the course of duty or any other reasons that would render the prosecutor unfit for duty. The Minister of Justice receives a report with the Committee's evaluation. In case of a negative assessment, prosecutors can be dismissed (see □).

---

<sup>320</sup> See Art. 87 of the Law on the Status of Judges and Prosecutors.

<sup>321</sup> See 1.4.1.

<sup>322</sup> Fiji's data refer to FICAC (Fiji Independent Commission Against Corruption), a body investigating and prosecuting any alleged offences of corruption and bribery, separated from the ODPP (Office of the Director of Public Prosecutions). As Prosecutor General they refer to the Deputy Commissioner, head of FICAC.

<sup>323</sup> The Examination Committee is established in the Ministry of Justice and has 11 members, including MPs, judges, lawyers, members of the Japan Academy and academics (see Art. 23(4) of the Public Prosecutor's Office Act).



The performance of **Malaysia's** prosecutors is evaluated on the basis on their level of competency, knowledge and professional skills. The procedure involves the Attorney General/Public Prosecutor and the head of the Prosecution Division.<sup>324</sup>

In **Pakistan**, the overall performance of prosecutors is evaluated by the Attorney General and the concerned Provincial Prosecutor Generals.

Prosecutors' work in **Viet Nam** is assessed by a superior prosecutor, while in **Timor-Leste** an Inspectorate of the Public Prosecution Service has been established for this purpose. According to the Statute of public Prosecution Service, Timor-Leste's prosecutors have the right to appeal their evaluation.

### Box 3.6. Evaluations fully overseen by the Supreme Council of Magistracy - Italy

Legislative Decree no. 160/2006, as amended by Law no. 111/2007, establishes that Italian prosecutors (and judges) are evaluated every four years, for up to seven evaluations during their career. The Deliberation of the Supreme Council of Magistracy, no. 20691 of 4 October 2007, regulates criteria, sources and parameters for their professional appraisals.

The main indicators of the professional evaluation of the magistrates are professional capacity, laboriousness, diligence, and commitment. The professional capacity, inter alia, consists of juridical preparation, scientific contributions in legal reviews, the capability of using legal reasoning, and the correct management of investigative techniques. Prosecutors' laboriousness includes the number and quality of the cases settled, considering the complexity of the cases, the pending cases, as well as the structural and organisational conditions of the offices. The diligence mainly refers to the continued and timely presence in the office and in the hearings, the respect of deadlines, the number of hearings held, and the participation in meetings convened for debating and analysing the legislative innovations and the case-law evolutions. The criterion of commitment concerns the willingness to substitute absent magistrates and the attendance to training organised by Superior School of Magistracy.

The Supreme Council of Magistracy (CSM) expresses "positive", "non-positive" or "negative" appraisals. A positive evaluation is given when the assessed magistrate receives positive remarks for each of the four parameters.

Decisions regarding the evaluation of prosecutors may be challenged before the administrative courts, up to the Council of State. Nevertheless, courts cannot modify or replace CSM decisions, which can only be annulled. The CSM is hence called to adopt a new decision taking into consideration the indications of the administrative courts.

*Source:* Response from Italy to the Study Questionnaire.

<sup>324</sup> See note 57.

**Conclusions:**

Evaluation systems must be based on objective criteria which should aim to assess the quality of prosecutors' performance. While quantitative measurements may be useful as a starting point of the evaluation and a practical tool for comparison, they should not play a determining role without any more in-depth assessment. Quantitative measurements may be open to manipulation by managers who impose a heavy burden that cannot be met as well as by the prosecutor who learns how to influence statistics. Quantitative data should also be very thoroughly determined in order to provide precise assessments.

A sound system should rely much more on qualitative evaluation, although this is more time-consuming. Instead of simply counting the cases which are won and lost, evaluators should examine why the case was lost, whether it could have been won, whether the loss was due to poor performance of the prosecutor, and whether the case should have been brought to court in the first place.

It is essential that evaluation be carried out by a body independent of the day-to-day management such as a Prosecutorial Council or a sub-group of it, or an independent inspectorate. Prosecutors must always have an opportunity to respond to any criticisms of their performance.

**Recommendations:**

- Performance evaluation of prosecutors should be based primarily on objective qualitative criteria.
- Evaluation proceedings should be carried out by a body independent of the day-to-day management and provide prosecutors with an opportunity to respond to a negative assessment.

**3.8. Discipline**

The power to sanction prosecutors might be leveraged in order to unduly influence their professional behaviour and decisions on specific cases. This section focuses on the legal frameworks and rules concerning disciplinary offences and proceedings as well as the review of disciplinary decisions. Some relevant figures on concrete applications of sanctions are provided.

**3.8.1. Authorities and legal framework of disciplinary proceedings**

Prosecutors' disciplinary offences and sanctions should be regulated by law. Prosecutors should be granted the right to be heard during disciplinary proceedings, which should be conducted by an authority independent from political institutions.

UN, Guidelines on the Role of Prosecutors

## Disciplinary Proceedings

21. Disciplinary offences of prosecutors shall be based on law or lawful regulations. Complaints against prosecutors which allege that they acted in a manner clearly out of the range of professional standards shall be processed expeditiously and fairly under appropriate procedures. Prosecutors shall have the right to a fair hearing. The decision shall be subject to independent review.

22. Disciplinary proceedings against prosecutors shall guarantee an objective evaluation and decision. They shall be determined in accordance with the law, the code of professional conduct and other established standards and ethics and in the light of the present Guidelines.

IAP, Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors

6. In general they [prosecutors] should be entitled: [...]  
 (f) To expeditious and fair hearings, based on law or legal regulations, where disciplinary steps are necessitated by complaints alleging action outside the range of proper professional standards;  
 (g) To objective evaluation and decisions in disciplinary hearings;

Council of Europe, Recommendation Rec(2000)19

5. States should take measures to ensure that:  
 [...]  
 e. disciplinary proceedings against public prosecutors are governed by law and should guarantee a fair and objective evaluation and decision which should be subject to independent and impartial review;

Venice Commission Report

87. In order to provide for guarantees of non-interference, the Venice Commission recommends:  
 [...]  
 13. In disciplinary cases the prosecutor concerned should have a right to be heard.

All of the responding countries have established disciplinary offences and sanctions in their legislation and have regulated disciplinary proceedings in the law.

The authorities that are mainly involved in disciplinary proceedings are the Prosecutorial Council (e.g. in **Albania, Bosnia and Herzegovina** and **Timor-Leste**), the Prosecutor General's Office (e.g. in **Azerbaijan, Georgia** and **Mongolia**), the courts (e.g. in the **Cook Islands**), and the Executive (e.g. in **Japan**).

In **Armenia**, the competent authorities over disciplinary proceedings are the Ethics Commission and the Prosecutor General.

In accordance with Art. 27 para. 1 of **Azerbaijan's** Service in the Prosecutor's Office Act (POSA), the Prosecutor General has competence over the application of disciplinary sanctions.

The First Instance Disciplinary Panel, appointed within the High Judicial and Prosecutorial Council, conducts the disciplinary proceedings in **Bosnia and Herzegovina**.

Art. 42 of **Estonia's** Prosecutor's Office Act establishes that the Minister of Justice applies disciplinary sanctions to prosecutors appointed by the Executive (see 3.1), while the Prosecutor General has the right to impose sanctions to all prosecutors.

The General Inspectorate of the Prosecutor General's Office of **Georgia** is in charge of investigating disciplinary, administrative and criminal offences committed by prosecutors. The disciplinary proceedings against prosecutors start with the inquiry of the General Inspectorate regarding the alleged violation. The person subject to investigations is interviewed and can submit a written explanation of the facts. The General Inspectorate drafts a written conclusion concerning the applicable sanction, if any, and submits it to the Prosecutor General. The Consultative Council of the Prosecutor General's Office<sup>325</sup> issues a

---

<sup>325</sup> See 1.3.1.

recommendation on either imposing disciplinary sanctions or dismissing the allegation.<sup>326</sup> The Prosecutor General decides the application of sanctions or the dismissal of the allegations.

**Kyrgyzstan's** Prosecutor General, as well as the heads of regional and local prosecutor's offices, conduct disciplinary proceedings. Dismissal as a disciplinary sanction can be imposed only by the Prosecutor General.

The chiefs of **Latvia's** prosecutor's offices may impose disciplinary punishments on subordinate prosecutors, while the Prosecutor General is allowed to sanction all the employees of the Prosecution Service. The Certification Commission of the Prosecutor General's Office<sup>327</sup> issues a reasoned opinion before the application of the disciplinary sanctions of reduction in the grade of office, demotion in office or dismissal of a prosecutor.

In **Lithuania**, the Prosecutor General adopts a decision to initiate an inspection and assigns it to the Service-Related Inspection Commission, if the inspection is complex or of considerable extent, to the Division of Internal Investigations of the Prosecutor General's Office, or to the chief prosecutor of the concerned prosecutor's office.

Art. 113 of **Moldova's** Law on the Prosecutor's Office entrusts the Disciplinary Board with the supervision of the cases of disciplinary liability of prosecutors. The Disciplinary Board is created within the High Council of Prosecutors<sup>328</sup> for a mandate of four years. It consists of nine members: three are elected from among the prosecutors of the General Prosecutor's Office by their peers, six members are elected by and from among prosecutors of regional and specialised offices.<sup>329</sup> The members of the Superior Council of Prosecutors and the Qualification Board cannot be part of the Disciplinary Board.

**Montenegro's** procedure for the establishment of disciplinary responsibility is conducted by the Disciplinary Committee, based on the summary indictment of the Disciplinary Prosecutor.<sup>330</sup> The Disciplinary Committee consists of three members of the Prosecutorial Council, two members from among prosecutors and one member from among eminent lawyers - the Chairman of the Committee. The Prosecutor General cannot be a member of the Disciplinary Committee. The procedure for the establishment of disciplinary responsibility for the most serious disciplinary offences is conducted directly by the Prosecutorial Council, on summary indictment of the Disciplinary Prosecutor.

As provided for in **Romania's** Law No. 303/2004, the Judicial Inspection is a body with operational independence set up within the Superior Council of Magistracy, having the competence of carrying out the disciplinary investigation and exercising the disciplinary action against judges and prosecutors. It has two sections, one for judges and one for prosecutors. Members of the section for judges of the Judicial Inspection are judges, and members of the section for prosecutors are prosecutors. The Superior Council of Magistracy, through its dedicated sections, acts as a court in the disciplinary proceedings of judges and prosecutors.

---

<sup>326</sup> The new Organic Law of Georgia on the Prosecutor's Office, enacted on 30 November 2018, established that the Career Management, Ethics and Incentives Council issues a recommendation on either imposing disciplinary sanctions or dismissing the allegation.

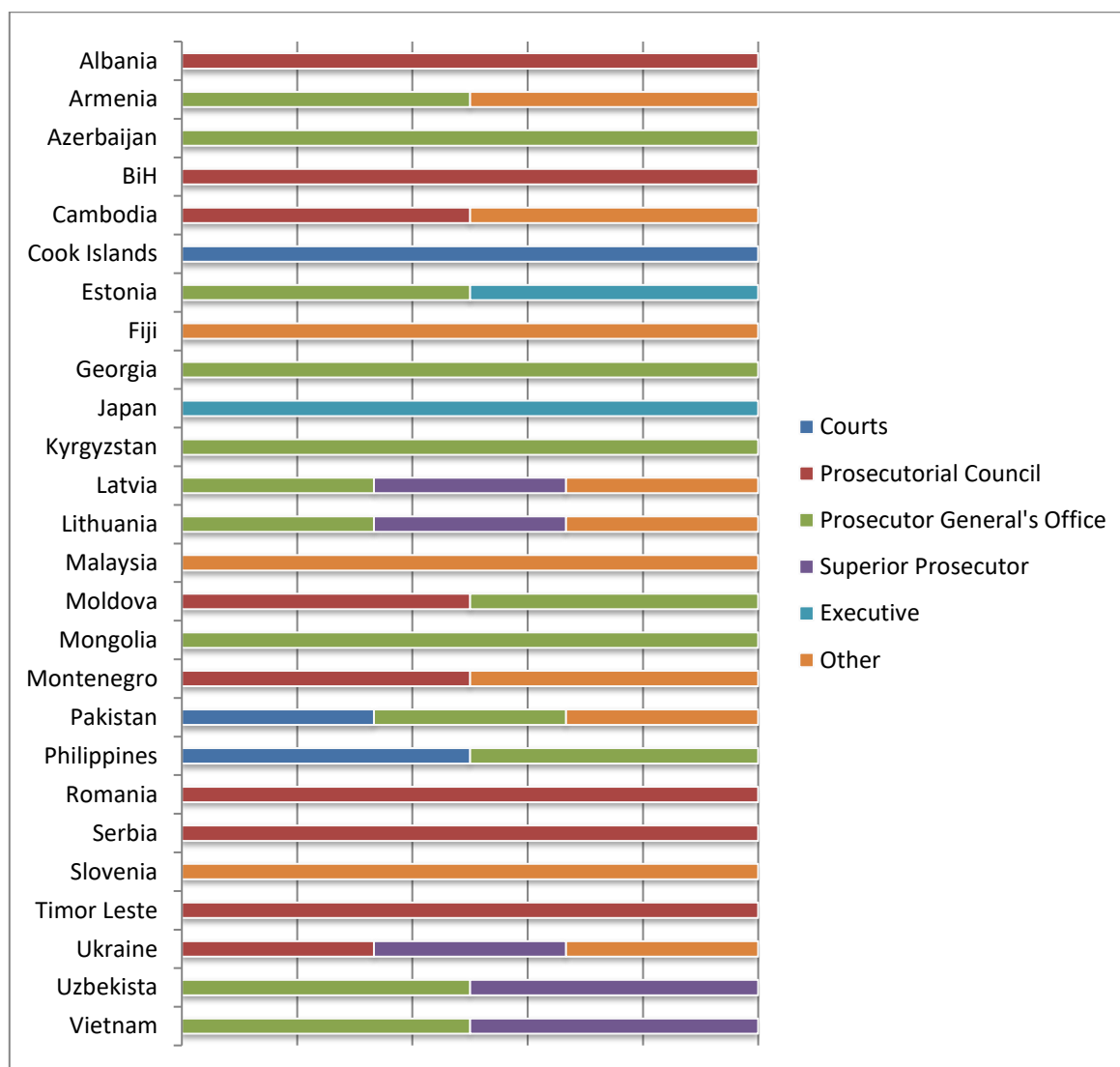
<sup>327</sup> See 1.3.1.

<sup>328</sup> See 1.3.1

<sup>329</sup> See Art. 114 of the Law on the Prosecutor's Office.

<sup>330</sup> See Art. 114 of the Law on the Public Prosecutor's Office.

Figure 3.13. Authorities involved in disciplinary proceedings (first instance)



Note: Only data from the countries that replied to the relevant sections of the questionnaire are displayed. Data are updated as of January 2018.

Art. 106 of **Serbia's** Law on Public Prosecutors institutes the Disciplinary Commission, the authority competent over disciplinary proceedings. The three members of the Commission are appointed by the State Prosecutorial Council from among Serbian prosecutors.

In **Slovenia**, disciplinary sanctions are imposed by the Disciplinary Courts of First and Second Instance. The Disciplinary Court of First Instance has nine members: six prosecutors appointed by the Prosecutorial Council upon the proposal of the Prosecutor General, three judges appointed by the Prosecutorial Council upon the proposal of the President of the Disciplinary Court of First Instance. The Court decides individual cases through a panel of three members. The president of the panel is the President of the Court or one of his/her deputies. One member is a judge, and the other member a prosecutor.

Prosecutors of **Uzbekistan** are sanctioned by the Prosecutor General or the heads of regional prosecutor's offices.

Art. 20 of **Cambodia's** Law on the Organization and Functioning of the Supreme Council of Magistracy states that, in order to carry out disciplinary actions against prosecutors, the Supreme Council of Magistracy creates a Disciplinary Council under the Chairmanship of the General Prosecutor attached to the Supreme Court. His Majesty the King and the Minister of Justice cannot take part in the Disciplinary Council. In the case of a disciplinary action concerning the General Prosecutor attached to the Supreme Court, the meetings of the Disciplinary Council are presided over by His Majesty the King or his royal representative. Also the Minister of Justice can attend these meetings of the Disciplinary Council. In the case a second-class sanction has to be applied, the Supreme Council of Magistracy makes a request to His Majesty the King. Prosecutors are allowed to provide evidence and can be heard during disciplinary proceedings.

The **Cook Islands'** High Court, in the person of the Chief Justice, is the authority conducting disciplinary proceedings.

The Legal Practitioners Unit (LPU) of **Fiji** has been set up within the Judicial Department under the control and direction of the Chief Registrar<sup>331</sup> to effectively and expeditiously investigate and process complaints against legal practitioners, including prosecutors. If the Legal Practitioners Unit proceeds against the legal practitioner under the Legal Practitioners Decree 2009, the relevant charges are filed with the Independent Legal Service Commission. The practitioner is advised accordingly and is referred to the Commission for prosecution. The Commission operates in a similar manner as to the courts. A hearing date is given in respect of the matter against the particular practitioner. Upon notification of the hearing date, summons are issued to the complainant and witnesses to attend the hearing and give evidence before the Commission.

According to Art. 84 paragraph (1) of the National Public Service Act **Japan's** Cabinet of Ministers or the Minister of Justice are competent over prosecutors' discipline.

**Malaysia's** Disciplinary Authority, established under the Public Officers (Conduct & Disciplinary) Regulations 1993, has the competence over disciplinary sanctioning.

In **Pakistan**, the authorities conducting disciplinary proceedings against prosecutors are the Attorney General, the Provincial Prosecutor Generals, the Bar Councils, and the Supreme Court.

Disciplinary proceedings against **Viet Nam's** prosecutors are led by the heads of offices or the Prosecutor General.

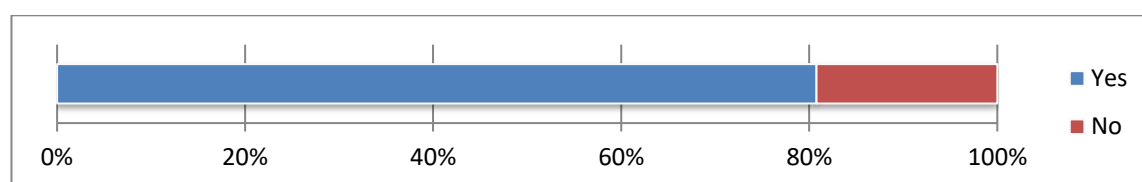
More than 80%<sup>332</sup> of countries grant prosecutors the right to be heard during disciplinary proceedings. Prosecutors in **Azerbaijan, Latvia, Lithuania** and **Japan** do not have the right to a fair hearing, but they are entitled to provide written explanations.

---

<sup>331</sup> Fiji's Chief Registrar is the Chief Accounting Officer of the Judicial Department and heads the Court Support Staff.

<sup>332</sup> Albania, Bosnia and Herzegovina, Cambodia, the Cook Islands, Estonia, Fiji (Fiji Independent Commission against Corruption), Georgia, Kyrgyzstan, Malaysia, Moldova, Mongolia, Montenegro, Pakistan, the Philippines (Office of the Special Prosecutor), Romania, Serbia, Slovenia, Timor-Leste, Ukraine, Uzbekistan, and Viet Nam.

**Figure 3.14. Prosecutors' right to be heard during disciplinary proceedings**



Note: Only data from the countries that replied to the relevant sections of the questionnaire are displayed. Data are updated as of January 2018.

### Box 3.7. The Crown Prosecution Service's Disciplinary Policy - UK

The Crown Prosecution Service's disciplinary procedure provides a framework for dealing with employees whose conduct appears to fall short of the expected standards. Any decisions to impose disciplinary sanctions against an employee are based on 'the balance of probabilities'; that is to say, that it is more likely than not that the employee committed the alleged misconduct.

All employees are responsible for ensuring that they undertake their duties in accordance with required standards. Within a normal working relationship, a line manager may from time to time have to remind an employee of workplace rules or appropriate standards, particularly where minor breaches of conduct have taken place.

Line managers must always discuss conduct issues with their employees at the earliest opportunity. Informal actions can range from a brief discussion through to reminders confirmed to the employee in writing, which should clarify or restate expectations, the reasons for these and possible consequences of the employee failing to apply them. This includes informing the employee of the possibility of formal action.

Any disciplinary investigation must be proportionate to the matter under investigation. In some cases, a simple fact gathering exercise establishes the facts, and in others, the matter may be more complex and require a greater level of inquiry in order to discover what actually occurred.

An employee who is the subject of an investigation is invited to attend an interview with the investigating officer. The letter informs the employee of the substance of the allegations setting out the areas to be discussed.

An employee who has been formally charged by the police in respect of actions inside or outside of work may face formal disciplinary action following an internal investigation either before the conclusion of any court case or at the conclusion regardless of the outcome of the court case. The circumstances of any case must be kept under close review and any action taken is after full consultation with the Human Resources Adviser (HRA).

Line managers normally conduct disciplinary hearings unless they do not have the required level of authority where the outcome of the case could result in dismissal. The manager invites the employee, in writing, to attend a formal meeting to discuss the allegations.

A disciplinary sanction cannot be normally decided until the manager hearing the case has given the employee an opportunity to respond to the allegation(s) and to state their own case at the disciplinary hearing.

The employee must be notified of the outcome either at the end of the formal disciplinary hearing with written confirmation within five working days or in writing within five working days of the hearing.

The possible disciplinary sanctions are a written warning, a final written warning, an action short of dismissal, or the dismissal.

The decision to impose a particular disciplinary sanction or none at all depends upon the manager's assessment of the seriousness of the allegation and the extent to which it is proven on the balance of probabilities after all the evidence and representations have been considered.

All employees involved in any capacity within the disciplinary procedure must ensure that confidentiality is maintained at all times. Records are kept of any disciplinary warnings on an employee's file until the time limit has elapsed. The line manager informs the employee in writing when their formal warning has expired and instruct the HRA to remove this from the employee's employment file (both paper and electronic). The employee is informed in writing by the HRA when warnings have been removed.

An employee who receives a disciplinary sanction must always be notified of the right of appeal and the name of the person to whom an appeal should be made. Employees who decide to appeal against a disciplinary decision must do so in writing within five working days of receiving the decision of the manager who conducted the disciplinary hearing. Employees must set out clearly their grounds for appeal.

Appeals are heard by a manager more senior to the manager who carried out the disciplinary hearing, except where this is not possible due to the seniority of the post holder involved. The manager cannot be previously involved in the case. In appeals against dismissal, a member of the HRD is present. However, the decision is that of the manager.

The HRA ensures that all documentation from the disciplinary hearing is passed to the manager hearing the appeal. An employee with 12 months or more continuous service, who has been dismissed, has the right to appeal to the Civil Service Appeal Board. The letter of dismissal informs the employees of their right to appeal and the procedure to be followed.

*Source:* Response from the UK to the Study Questionnaire.

### ***3.8.2. Review of disciplinary decisions and figures on disciplinary proceedings***

Decisions on prosecutors' disciplinary offences should be subject to an independent review before a court of law. Figures from participating countries on disciplinary offences committed and sanctions applied are displayed in this section.

#### UN, Guidelines on the Role of Prosecutors

##### Disciplinary Proceedings

21. [...] The decision shall be subject to independent review.

#### Venice Commission Report

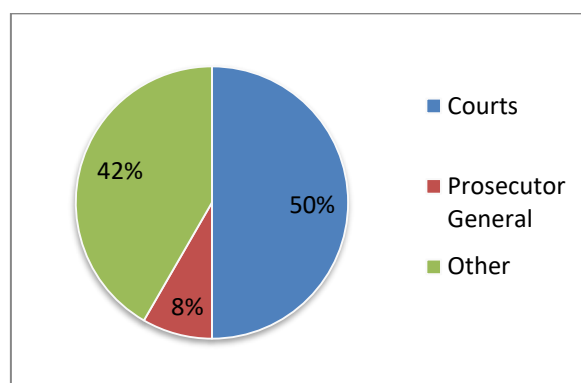
87. In order to provide for guarantees of non-interference, the Venice Commission recommends:  
[...]

14. An appeal to a court against disciplinary sanctions should be available.



All of the responding countries except **Cambodia** entitle prosecutors to have a review of disciplinary decisions. In 50%<sup>333</sup> of cases, the courts have been entrusted this review. In **Uzbekistan** and **Viet Nam**, prosecutors challenge disciplinary sanctions before the Prosecutor General.

**Figure 3.15. Authorities reviewing disciplinary decisions**



Note: Only data from the countries that replied to the relevant sections of the questionnaire are displayed. Data are updated as of January 2018.

According to Art. 27 of **Azerbaijan's** Service in the Prosecutor's Office Act, when employees of the Prosecution Service disagree with the application of disciplinary sanctions they may appeal to a superior prosecutor or the courts. The superior prosecutor decides within a month and provides a reasoned written answer. Similarly, **Kyrgyzstan's** prosecutors are allowed to appeal to a superior prosecutor or a court.

**Bosnia and Herzegovina's** Second Instance Disciplinary Panel, appointed within the High Judicial and Prosecutorial Council reviews the disciplinary decisions of the First Instance Disciplinary Panel. The Plenary of the Council may further receive appeals against the Second Instance Disciplinary Panel's resolutions. Dismissals as disciplinary sanctions can be challenged before the Court of Bosnia and Herzegovina.

Section 45(8) of **Latvia's** Prosecution Office Law establishes that a disciplinary punishment imposed by a Chief Prosecutor can be appealed to the Prosecutor General, while the Prosecutor General's decisions can be appealed to the Disciplinary Court.

Sanctions imposed by **Moldova's** Disciplinary Board (see 3.8) are challenged before the High Council of Prosecutors, which refers the case to the Prosecutor General.

**Serbia's** prosecutors can appeal disciplinary decisions to the State Prosecutorial Council (SPC). Complaints to the administrative court and appeals to the Constitutional Court are available against the SPC's decision.

The Disciplinary Court of Second Instance receives the appeals of **Slovenia's** prosecutors against the judgements of the Disciplinary Court of First Instance (see 3.8). The Court of Second Instance is composed of six members: four judges appointed by the State Prosecutorial Council and two supreme state prosecutors appointed by the State Prosecutorial Council on the proposal of the Prosecutor General.

<sup>333</sup> Albania, Armenia, Estonia, Fiji, Georgia, Lithuania, Mongolia, Montenegro, the Philippines (Office of the Special Prosecutor), Romania, Timor-Leste, and Ukraine.

**Japan's** National Personnel Authority is competent over the re-examination of disciplinary actions. Prosecutors may file a request for reviewing a disciplinary sanction within three months from its notification.<sup>334</sup>

**Malaysia's** Disciplinary Appeal Board has the function to receive, consider and decide on any appeal filed against decisions concerning the conduct and discipline of prosecutors.

Prosecutors of **Pakistan** may challenge disciplinary sanction before either the Prosecution Departments of each province, tribunals or the Supreme Court.

The main final disciplinary sanctions that countries report to have imposed to prosecutors are reprimands, demotions, suspensions, salary reductions, fines, transfers, and dismissals. The most common offences that have been reported are improper performance of duties, violation of the law, violation of moral standards, breach of orders, disclosure of classified information, unreasonable delay, and corruption.

The **Cook Islands**, **Fiji**<sup>335</sup> and **Malaysia** report not to have applied any disciplinary sanction since 2012. The **Philippines** mention “at least one” sanction imposed in the concerned period<sup>336</sup>.

The countries with the highest absolute number of sanctions imposed are **Ukraine** with 2867, **Uzbekistan** with 1501 and **Kyrgyzstan** 784 disciplinary convictions. **Uzbekistan**, **Moldova** and **Ukraine** have the highest rate of sanctioning, as they report that 61%, 27% and 26% of the total number of prosecutors have been sanctioned during the last five years (see Figure 3.17). These high figures may signal about non-compliance of the disciplinary systems with international standards in terms of independence of prosecutors.<sup>337</sup>

---

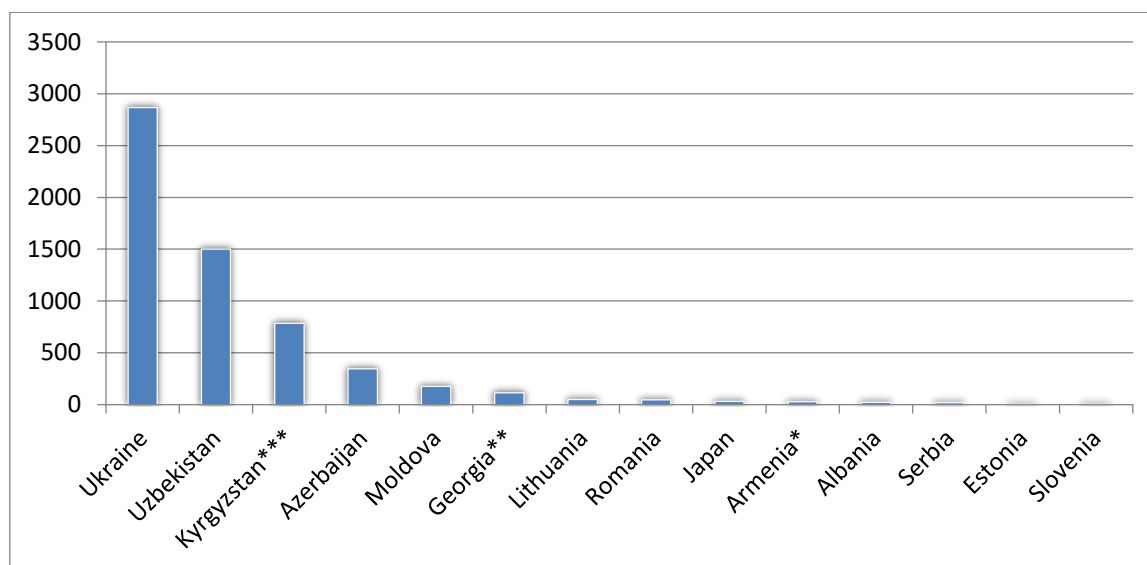
<sup>334</sup> See Art. 90 of the National Public Service Act, Rules of the National Personnel Authority No.13-1.

<sup>335</sup> Fiji's data refer to FICAC (Fiji Independent Commission Against Corruption), a body investigating and prosecuting any alleged offences of corruption and bribery, separated from the ODPP (Office of the Director of Public Prosecutions). As Prosecutor General they refer to the Deputy Commissioner, head of FICAC.

<sup>336</sup> The replies of the Philippines consider the “Office of the Special Prosecutor” (*Tanodbayan*), created within the Office of the Ombudsman, as the Prosecution Office, and the “Special Prosecutor” as the Prosecutor General. The Office of the Special Prosecutor conducts investigations and prosecutes cases within the jurisdiction of the “*Sandiganbayan*”. The *Sandiganbayan* has jurisdiction over criminal, and civil cases involving graft, corrupt practices and other offenses committed by public officers and employees, including those in government-owned or controlled corporations, in relation to their office.

<sup>337</sup> For example, the Istanbul Action Plan Fourth Round Monitoring Report in Uzbekistan highlighted the following problems in the country's regime of disciplinary liability of prosecutors: 1) Issues of disciplinary responsibility of prosecutors and their dismissal from the service are governed by the Regulations on serving in the bodies and institutions of the prosecutor's office, approved by the Decree of the President of the Republic of Uzbekistan; 2) The grounds for disciplinary responsibility are defined very broadly, which leaves virtually unlimited discretion in these matters for the heads of the prosecutor's office; 3) The decision on disciplinary action is imposed solely by the head of the prosecution authority. In this case, an internal investigation is not required. The Prosecutor General of the Republic of Uzbekistan has the right to cancel any disciplinary action, apply a more severe penalty or mitigate it; 4) The legislation does not provide guarantees of fair consideration of disciplinary cases; the appeal is limited to the Attorney General; 5) The disciplinary system provides for disproportionate measures, namely the possibility of dismissal from the service, even for one-time minor violations.

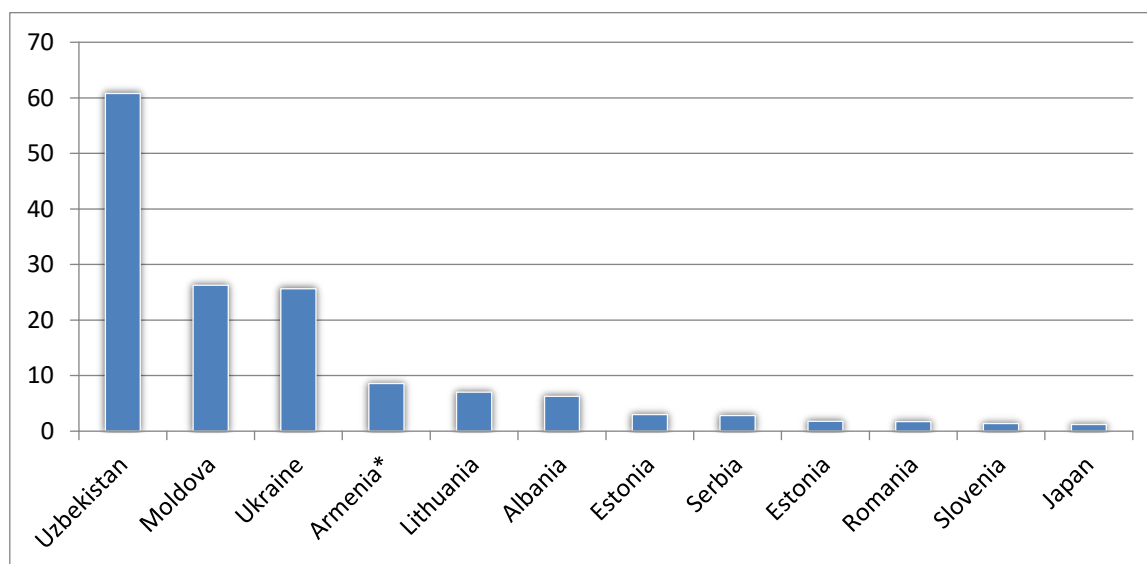
**Figure 3.16. Number of imposed disciplinary sanctions (2012-2017)**



Note: Only data from the countries that replied to the relevant sections of the questionnaire are displayed. Countries that have not applied disciplinary sanction are not displayed. Data are updated as of January 2018. \*Figures concerning Armenia refer to the period 2013-2017. \*\*Figures concerning Georgia refer to all the Prosecution Service's employees, including prosecutors, investigators, specialists, advisers. \*\*\*Figures concerning Kyrgyzstan refer to the period 2015-2017.

Source: Data have been provided by countries.

**Figure 3.17. Number of imposed disciplinary sanctions every 100 prosecutors**



Note: Only data from the countries that replied to the relevant sections of the questionnaire are displayed. Countries that have not applied disciplinary sanction are not displayed. Data are updated as of January 2018. \*Figures concerning Armenia refer to the period 2013-2017.

Source: Data have been provided by countries.

### Box 3.8. A criminal-like disciplinary procedure - Poland

In Poland, disciplinary offences and sanctions are described in the Law on the Prosecution Service. Disciplinary proceedings follow the procedure established in the same Law and, in a subsidiary way, for the matters not regulated the rules of the Criminal Procedure Code also apply. Prosecutors, therefore, enjoy full procedural rights of defence (right to be heard, access to evidence, right to appoint a defence counsel, etc.).

A Disciplinary Court of First Instance decides on the imposition of disciplinary sanctions. When the alleged acts may also trigger criminal liability, the Supreme Court is competent over the disciplinary proceedings. All decisions can be appealed before the Supreme Court.

*Source:* Response from Poland to the Study Questionnaire.

#### Recommendations:

- Disciplinary actions against prosecutors should be regulated by law and governed by transparent and objective criteria, in compliance with fair and impartial procedures, excluding any discrimination and allowing for unbiased review, including judicial review.
- In systems where a self-governing body exists, states should consider empowering this body or a disciplinary committee within it to handle disciplinary cases.
- The following rights of the prosecutor subject to disciplinary action should be ensured: to be informed of the case, to be heard, to have a representative, to make submissions and to produce evidence, and to challenge adverse evidence.
- The disciplinary body should be able to choose among a wide range of sanctions appropriate to deal with any sort of cases.
- Persons responsible for investigating and preparing the disciplinary case may present it to the disciplinary body but should not take part in the deliberations and sanctioning.
- The disciplinary body should give a reasoned decision that should be made available to the prosecutor and, at least in serious cases, should be subject to judicial review.

## 4. Specialised anti-corruption prosecutor's offices

---

This chapter examines standards, rules and practices related to the independence of specialised anti-corruption prosecutors.

---

### 4.1. International standards

The specialisation of law enforcement staff dealing with the fight against corruption is one of the international anti-corruption standards set in UNCAC and a number of instruments of the Council of Europe, with independence and autonomy listed among the main benchmarks for such specialisation. While these acts do not include direct references to the Prosecution Service, their explanatory materials lead to the conclusion that the term “law enforcement” has a broad meaning and covers prosecutors.

Thus, according to Article 36 of UNCAC each State Party shall, in accordance with the fundamental principles of its legal system, ensure the existence of a body or bodies or persons specialised in combating corruption through law enforcement. Such body or bodies or persons shall be granted the necessary independence, in accordance with the fundamental principles of the legal system of the State Party, to be able to carry out their functions effectively and without any undue influence.

The Technical Guide to UNCAC explains that the Article mandates the need for entities or persons whose core focus must be that of law enforcement, i.e. investigative and possibly prosecutorial functions. However, it does not specify any particular institutional shape, although it raises procedural and resource issues necessary to guide States.<sup>338</sup>

A similar provision is contained in Article 20 of the Council of Europe Criminal Law Convention, according to which each Party shall adopt such measures as may be necessary to ensure that persons or entities are specialised in the fight against corruption. The Explanatory Report to the Council of Europe Convention elaborates that this provision is inspired, among other things, by the need to improve both the specialisation and independence of persons or entities in charge of the fight against corruption, which was stated in numerous Council of Europe documents. The requirement of specialisation is not meant to apply to all levels of law enforcement. It does not require, in particular, that in each prosecutor's office or in each police

---

<sup>338</sup> [Technical Guide to UNCAC](#), p. 113.

station there is a special unit or expert for corruption offences. At the same time, this provision implies that wherever it is necessary for combating effectively corruption there are sufficiently trained law-enforcement units or personnel.<sup>339</sup>

The Council of Europe guiding principles for the fight against corruption provide that States should ensure that those in charge of the prevention, investigation, prosecution and adjudication of corruption offences, enjoy the independence and autonomy appropriate to their functions, are free from improper influence and have effective means for gathering evidence, protecting the persons who help the authorities in combating corruption and preserving the confidentiality of investigations; and to promote the specialisation of persons or bodies in charge of fighting corruption and to provide them with appropriate means and training to perform their tasks.<sup>340</sup>

Finally, the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions requires to ensure independent and impartial investigation and prosecution of foreign bribery. According to Article 5 of the Convention, investigation and prosecution of the bribery of a foreign public official shall be subject to the applicable rules and principles of each Party. They shall not be influenced by considerations of national economic interest, the potential effect upon relations with another State or the identity of the natural or legal persons involved considerations of national economic interest, the potential effect upon relations with another State or the identity of the natural or legal persons involved<sup>341</sup>.

Commentaries on the Convention further explain that the mentioned provision recognises that, in order to protect the independence of prosecution, its discretion is to be exercised on the basis of professional motives and is not to be subject to improper influence by concerns of a political nature<sup>342</sup>.

This provision of the Convention is complemented by the Annex I to the 2009 OECD Recommendation for Further Combating Bribery of Foreign Public Officials in International Business Transactions, which recommends, among other things, that Member countries should be vigilant in ensuring that investigations and prosecutions of the bribery of foreign public officials in international business transactions are not influenced by considerations of national economic interest, the potential effect upon relations with another State or the identity of the natural or legal persons involved. In addition, the document stresses the need to provide adequate resources to law enforcement authorities so as to permit effective investigation and prosecution of bribery of foreign public officials in international business transactions<sup>343</sup>.

## 4.2. Institutional and legal framework

The establishment of various types of specialised anti-corruption agencies or units, including law enforcement and prosecutorial ones, has become a trend in the past decade. Many countries made this issue an essential component of their reforms aimed at combating corruption.

From all the participating countries different types of specialised prosecutor's offices dealing with corruption and related offences have been created in **Albania, Moldova, Montenegro, Romania, Serbia, Slovenia, Ukraine, Pakistan, the Philippines, Fiji, Mexico** and the **UK**. Some of these, besides prosecution of

<sup>339</sup> [Explanatory Report to the Criminal Law Convention on Corruption](#), § 95, p.19.

<sup>340</sup> [Twenty Guiding Principles for the Fight against Corruption](#), Principles 3 and 7.

<sup>341</sup> OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, Art. 5

<sup>342</sup> Commentaries on the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, Commentary to Art. 5, [https://www.oecd.org/daf/anti-bribery/ConvCombatBribery\\_ENG.pdf](https://www.oecd.org/daf/anti-bribery/ConvCombatBribery_ENG.pdf)

<sup>343</sup> Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions, Annex I, D, <https://www.oecd.org/corruption/anti-bribery/OECD-Anti-Bribery-Recommendation-ENG.pdf>

corruption offences, are also empowered to deal with organised crime, economic, financial and other serious offences. For instance, high-level corruption, organised crime, money laundering, terrorism and war crimes fall under the jurisdiction of the Special States Prosecutor's Service in **Montenegro**. At the same time, in some jurisdictions, like **Ukraine** and **Romania**, their specialised offices deal only with high-level and high-profile corruption.

In most cases, the status of these institutions, their authorities, as well as guarantees of their independence, are provided by law. For example, in **Albania**, **Moldova**, **Montenegro** the respective regulations are prescribed in special laws defining the anti-corruption institutional framework, while in **Ukraine** and **Slovenia** they constitute a part of the laws governing the operation of the overall Prosecution Service. In **Serbia**, the respective regulations are included in the legislation on suppressing organised crime, terrorism and corruption.

In **Albania**, a general rule on the appointment of the Head of the Special Prosecution Office that deals with high-level corruption and organised crime cases is envisaged by the Constitution. The Constitution of **Mexico** also includes a reference to the Specialized Anti-Corruption Prosecution Office.

In **Romania** legal framework of the National Anti-Corruption Directorate (DNA) is provided by Government Ordinance no. 43/2002, which was later approved by law and subsequently amended. In the **UK** the Serious Fraud Office was established by the Criminal Justice Act 1987 that also envisages its authorities and other regulations on its operation.

In terms of general institutional set-up, these offices are usually parts of the Prosecution Services. Many of them are provided with different level of organisational and structural autonomy, as well as guarantees of independence.

Thus, in **Moldova**, **Montenegro**, **Romania**, **Serbia**, **Slovenia** and **Mexico**, the specialised prosecutor's offices are autonomous bodies within the countries' Prosecution Services. In **Ukraine**, such office operates as an autonomous department within the structure of the Prosecutor General's Office, located however in a separate premise.

Different institutional models are applied in **Pakistan** where specialised prosecutor's office is placed in the anti-corruption agency – National Accountability Bureau (NAB).

Similarly, in **Fiji** FICAC (Fiji Independent Commission against Corruption), which is separated from the ODPP (Office of the Director of Public Prosecutions), deals with investigating and prosecuting any alleged offences of corruption and bribery. The prosecution belongs to the mandate of the Commission's Legal & Prosecution Department.

In the **Philippines**, the Office of the Special Prosecutor is under the supervision and control of the Ombudsman<sup>344</sup>. The law and acts of the Ombudsman provide prosecutors with guidance, also on priorities. The structure and staffing of the Office of the Ombudsman, including the Office of the Special Prosecutor, are approved and prescribed by the Ombudsman. The Ombudsman appoints all officers and employees of the Office of the Ombudsman, including those of the Office of the Special Prosecutor, and its prosecutors account to the Ombudsman for their general activities through a monthly submission concerning the cases which have been followed. Every year the Office of the Ombudsman sends a report of its activities and performance to the President and Parliament, within thirty days from the start of the regular annual sessions of the Congress.

---

<sup>344</sup> The Office of the Special Prosecutor conducts investigations and prosecutes cases within the jurisdiction of the "Sandiganbayan". The Sandiganbayan has jurisdiction over criminal and civil cases involving graft, corrupt practices and other offences committed by public officers and employees, including those in government-owned or controlled corporations, in relation to their office.

In **Albania** instructions in concrete cases may be given to prosecutors of the Special Prosecution Office by the Head of the Office; however, these instructions are not mandatory. The Head of the Office also separately from the Prosecutor General reports to Parliament on the state of crime and the effectiveness of prosecution in the respective areas.

The Head of the Specialised Prosecutor's Office of **Moldova** organises the work of the Office and reports annually about the Office's operation to the Prosecutor General who also approves the structure of the Office at the proposal of its Head and upon written consent of the High Council of Prosecutors.

In **Ukraine**, the Prosecutor General and the deputies other than the Head of the Specialised Anti-Corruption Prosecutor's office may not give any instructions to the prosecutors of this Office. Moreover, all administrative orders related to the organisation of work of the Office should be endorsed by its Head.

In **Romania**, the DNA is headed by the Prosecutor General through the Chief Prosecutor of the DNA, who has the rank of First Deputy Prosecutor General. The Minister of Justice has a role in the procedure for appointment of the Prosecutor General, of the Chief prosecutors of the specialised prosecution offices, including the DNA, their deputies and the chief of sections of these prosecution offices. Apart from that, the Minister of Justice may exercise his or her oversight over prosecutors through specially appointed prosecutors, as well as may give written guidelines as to the measures to be adopted in order to prevent and combat crime in an efficient manner.<sup>345</sup> However, the Minister of Justice can never give instructions to prosecutors on particular cases. The Chief Prosecutor of DNA has to provide the High Council of Magistracy and the Minister of Justice with annual activity reports. These reports are presented to the public and posted on the DNA's website.

The Head of the Special State Prosecutor's Service of **Montenegro** is accountable and subordinated to the Supreme State Prosecutor.

In **Serbia**, the Organised Crime Prosecution Office is subordinated to the Republic Public Prosecutor (Prosecutor General).

In **Slovenia**, detailed instructions on assigning cases and organising work of the Specialised State Prosecutor's Office are determined by the State Prosecutor's Office.

Some of participating jurisdictions ensured anti-corruption specialisation of their prosecutors by the establishment of special anti-corruption units or designating specialised personnel within their Prosecution Services, however without envisaging any special rules of their autonomy and independence. For example, such units operate in **Armenia, Bosnia and Herzegovina, Georgia, Lithuania, Uzbekistan, Viet Nam**,<sup>346</sup> and **Poland**.

**Armenia's** Prosecutor General's Office has a specialised anti-corruption unit, the Department for Crimes against Corruption and Economic Activities (Specialized Subdivision) with 10 prosecutors. In the cases about corruption offences committed by officials, the supervision is carried out by the Department for Investigation of Especially Important Cases of the Prosecutor General's Office, in which there are 15 prosecutors.<sup>347</sup>

There is no specialised anti-corruption prosecution body or unit, nor are there specialised prosecutors in **Azerbaijan**. Corruption cases are taken to court by the prosecutors from the Department of Public

---

<sup>345</sup> Art. 69, Law no. 304/2004.

<sup>346</sup> Department of public prosecutions and supervision over the investigation of corruption and related offences.

<sup>347</sup> OECD (2018) Istanbul Action Plan [Fourth Round Monitoring Report on Armenia 2018](https://www.oecd.org/corruption/acn/OECD-ACN-Armenia-4th-Round-Monitoring-Report-July-2018-ENG.pdf), OECD Publishing, Paris, page 149, <https://www.oecd.org/corruption/acn/OECD-ACN-Armenia-4th-Round-Monitoring-Report-July-2018-ENG.pdf>.



Prosecutions of the Prosecutor General's Office. However, there is "informal" specialisation, i.e., a group of prosecutors that for the most part prosecute corruption cases.<sup>348</sup>

Similarly, in **Mongolia**, a unit 10 prosecutors in the Capital City Prosecutor's Office is responsible for overseeing cases of the Independent Authority against Corruption, as well as cases investigated by the intelligence services<sup>349</sup>.

The Special Department for Organized Crime, Economic Crime and Corruption (Special Department II) operates within the structure of the Prosecutor's Office of **Bosnia and Herzegovina**. The Head of the Special Department is also the country's Deputy Chief Prosecutor.

### 4.3. Appointment and dismissal of the leadership and subordinated prosecutors

Most of the jurisdictions that have established specialised anti-corruption prosecutor's offices prescribed special procedures of the appointment and dismissal of their heads with less involvement of political bodies or officials comparing to the respective procedures in relation to the Prosecutor Generals. In some cases, a special procedure of the appointment is also applied to the superior or all prosecutors of specialised offices.

For example, in **Albania** the Chief Special Prosecutor of the Special Prosecution Office shall be elected from the ranks of the prosecutors of this Prosecution Office by a majority of the members of the High Prosecutorial Council for a three-year term, without the right to reappointment. All prosecutors of the Office are appointed for a 9-year term without the right to reappointment and all candidates for positions in this Office and their family members are subject to the vetting procedure that includes assets and background checks. At the same time, bank accounts and personal communication of the anti-corruption prosecutors and their family members will be checked during their time in office. While this rule is aimed at ensuring the integrity of respective prosecutors, it is no less important to ensure its careful application to not impede their independence.

At the same time, in **Moldova**, the Head of the Specialised Prosecutor's Office is selected through a general competition organised by the High Council of Prosecutors and is appointed for a renewable 5-year term by the Prosecutor General based on the Council's submission. There are no special safeguards related to the grounds and procedure of dismissal of the Head of the Anti-Corruption Prosecutor's Office.

In **Romania**, the Chief Prosecutor of the DNA, the deputies, and the chief prosecutors of the DNA's sections are appointed by the President at the proposal of the Minister of Justice, with the prior opinion of the Superior Council of Magistracy, for a 3-year renewable tenure (the number of mandates is limited to two). In 2018, the issue of dismissal of the Chief Prosecutor of DNA was under examination by the country's Constitutional Court, which ruled that the President did not have the right to oppose a dismissal request of the Minister of Justice. The ruling eventually led to the prosecutor's removal from office.<sup>350</sup>

---

<sup>348</sup> OECD (2016), Istanbul Action Plan Fourth Round Monitoring Report on Azerbaijan 2016, OECD Publishing, Paris, page 83, [https://www.oecd.org/corruption/acn/Azerbaijan\\_Report.pdf](https://www.oecd.org/corruption/acn/Azerbaijan_Report.pdf).

<sup>349</sup> OECD (2019) Istanbul Action Plan Fourth Round Monitoring Report on Mongolia 2019, OECD Publishing, Paris, pages 119-120, <https://www.oecd.org/corruption/acn/OECD-ACN-Mongolia-4th-Round-Monitoring-Report-2019-ENG.pdf>.

<sup>350</sup> Reuters (2018), <https://uk.reuters.com/article/uk-romania-corruption/romanas-president-signs-decree-to-remove-chief-anti-corruption-idUKKBN1JZ0MK> (accessed 30 September 2020).

#### Box 4.1. Judgement of the European Court of Human Rights concerning Romania

In its judgement of 05.05.2020 the European Court of Human Rights concluded that Romania violated the rights of the DNA Chief Prosecutor when dismissing her before the end of her mandate.

The Court found in particular that there had been no way for the applicant to bring a claim in court against her dismissal as such proceedings would only have been able to examine the formal aspects of the presidential decree for her removal and not her substantive argument that she had been incorrectly removed for criticising the legislative changes in corruption law.

According to the judgement, her right to freedom of expression had been violated because she had been dismissed for those criticisms, which she had made in the exercise of her duties on a matter of great public interest. One of her duties as anticorruption chief prosecutor had been to express her opinion on legislative reforms which could have an impact on the judiciary and its independence, and on the fight against corruption.

The Court also emphasised that that her premature removal had defeated the very purpose of maintaining judicial independence and must have had a chilling effect on her and other prosecutors and judges in taking part in public debate on legislative reforms affecting the judiciary and judicial independence.

Source: Press Release of the European Court of Human Rights, <https://hudoc.echr.coe.int/eng-press#%7B%22itemid%22:%5B%22003-6689193-8900232%22%7D>

In **Slovenia**, the Head of the Special State Prosecutor's Office is appointed in the same order as the heads of the district prosecutor's offices – by the State Prosecutor's Council upon proposal of the State Prosecutor General. And the prosecutors of the Special State Prosecutor's Office are appointed by the State Prosecutors Council on the proposal of the State Prosecutor General and the opinion of the Head of the Office.

In **Ukraine**, the Head of the Specialised Anti-Corruption Prosecutor's Office, is also ex-officio Deputy Prosecutor General. The Head of the Office, his deputy and other superior prosecutors are appointed by the Prosecutor General following an open competition carried out by a special panel composed of four members designated by the Council of Prosecutors and seven members – by Parliament from among highly-reputable sound professionals with high moral qualities, public credibility and considerable experience in the area of anti-corruption. The panel members may not hold political or public office. Inferior prosecutors are selected by a panel composed of the Head of the Office and other members designated by him and the Prosecutor General and appointed by the Head of the Office.

In **Pakistan**, the Prosecutor General of the National Accountability Bureau (NAB), who is the chief of a specialised prosecutor's office in the structure of the Bureau, is appointed by the President in consultation with the Chairman of the Bureau for a non-extendable three-year term. Last year the appointment of the incumbent NAB Prosecutor General was appealed to a court because of his previous work as a judge, but the case has been dismissed.<sup>351</sup> The NAB Prosecutor General may be removed by the decision of two senior judges of the Supreme Court, misconduct and neglect of duty may serve as grounds for the

<sup>351</sup> The Nation (2019), <https://nation.com.pk/11-May-2019/ihc-rejects-petition-against-nab-pg-appointment> (accessed 30 September 2020).

dismissal. The mandate of employees of the NAB, including prosecutors, is periodically renewed while that of provincial prosecutors is permanent.

The Ombudsman Act of the **Philippines** establishes that the Special Prosecutor<sup>352</sup> shall be appointed by the President from a list of at least 21 nominees prepared by the Judicial and Bar Council. The Special Prosecutor is appointed for a non-renewable term of seven years, and may be removed from office by the President on any of the grounds provided for the removal of the Ombudsman, namely on impeachment for, and conviction of, culpable violation of the Constitution, treason, bribery, graft and corruption, other high crimes, or betrayal of public trust. Prosecutors' work is assessed by a superior prosecutor, while promotions managed by the heads of the offices, who assign prosecutors to available higher-level positions. Decisions take into account the outcome of periodical evaluations and can be challenged before the Civil Service Commission. The heads of offices also order prosecutors' transfers and are entitled to take decisions on dismissals, which can be challenged before the mentioned Commission. The Commission Rules, as well as internal rules of the office, state the grounds applied to remove prosecutors from office.

In **Fiji**, the head of FICAC Legal and Prosecution Department is the Deputy Commissioner who is appointed and dismissed by the President<sup>353</sup>. The dismissal grounds of are set by terms and conditions of the recruitment contract. All prosecutors are appointed for a renewable term. The FICAC Act established the criteria on promotions and dismissals, which are included in prosecutors' recruiting contracts. In case of disputes, actions can be filed to the Employment Tribunal.

There are no specific rules of the appointment of prosecutors of the Organised Crime Prosecution Service in **Serbia**, where the procedure involves political bodies. The Head of the Office is elected by the National Assembly (Parliament) following nomination by the government based on a proposal of the State Prosecutorial Council for a six-year renewable term. Neither Parliament nor the government has the competence to nominate or elect a candidate who has not been proposed by the State Prosecutorial Council. The Deputy Head of the Office is elected for the first time by the National Assembly based on a proposal by the State Prosecutorial Council, for a term of three years. Following this term, deputy prosecutors are elected by the Council for a permanent office.

In **Mexico**, the Special Prosecutor's Office for Corruption-Related Offences was established in 2014. However, the Office could not become operational until the election of the Head of the Office by Parliament following a proposal of the Attorney General.

In 1988 a specialised investigating and prosecuting authority tackling the top level of serious or complex fraud, bribery and corruption – the Serious Fraud Office (SFO) – was created in the **UK**.<sup>354</sup> The SFO is an independent government department, which is superintended by the Attorney General in accordance with a protocol<sup>355</sup> which sets out the relationship between the Attorney and the Law Officers' Departments. The Director of the SFO is appointed by the Attorney General and is required to report annually on the discharge

---

<sup>352</sup> The Office of the Special Prosecutor conducts investigations and prosecutes cases involving graft and corrupt practices and such other offenses committed by public officers and employees, including those in government-owned or controlled corporations, in relation to their office.

<sup>353</sup> See section 6 of the FICAC Act and Section 115 of the Constitution of Fiji.

<sup>354</sup> The SFO was created and given its powers under the Criminal Justice Act 1987 and was established in 1988.

<sup>355</sup> Attorney General's Office (2009), Protocol between the Attorney General and the Prosecuting Departments, [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/825219/WITHDR\\_AWN\\_Protocol\\_between\\_the\\_Attorney\\_General\\_and\\_the\\_Prosecuting\\_Departments.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/825219/WITHDR_AWN_Protocol_between_the_Attorney_General_and_the_Prosecuting_Departments.pdf) (accessed 30 September 2020).

of his/her functions. The Attorney General lays the Annual Report and Accounts before Parliament, and they are also published on the SFO's website.

#### 4.4. Financial independence

Some countries introduced additional guarantees of financial independence or autonomy of their specialised anti-corruption prosecutor's offices. Below are provided several examples of such measures.

As an additional guarantee of financial independence, the Specialised Anti-Corruption Prosecutor's Offices in **Moldova** has a separate budget line in the state budget. While the general budget proposal is prepared by the Prosecutor General, the Head of the Office has to present the budget request to the Prosecutor General.

**Romania's** National Anti-Corruption Directorate is financially independent. The funds are assured from the state budget and are distinctively earmarked within the budget of the Prosecutor's Office. The DNA's Chief Prosecutor is the secondary credit accountant.

In **Ukraine**, minimum wages of specialised anti-corruption prosecutors are protected by law, which determines them in specific proportion to minimum subsistence<sup>356</sup>.

#### Conclusions:

The anti-corruption specialisation of prosecutors is one of the recent trends followed by many jurisdictions through the establishment of the respective prosecutors' offices or units. The establishment of such branches usually involves providing them with certain guarantees of independence, as well as organisational and structural autonomy. However, it is far from a common practice yet, and in some countries anti-corruption prosecutors are not provided with any stronger guarantees of independence compared with their other colleagues. Moreover, in several participating jurisdictions, political bodies are directly involved in the appointment of prosecutors handling corruption cases or in making other important decisions related to their work, which poses a risk of undue influence.

Given the nature of cases that specialised anti-corruption prosecutors deal with, it is essential to guarantee their institutional, functional and financial independence. The institutional component may be addressed by creating a specialised unit, office, or a group of prosecutors with organisational and structural autonomy.

Procedures on the appointment of anti-corruption prosecutors, their promotion and removal from the office should be appropriately regulated and provide for necessary transparency and safeguards, with no involvement of political bodies or officials.

In addition, anti-corruption prosecutors should be provided with considerable functional autonomy in the performance of their duties that prevents any forms of undue external and internal interference with corruption prosecutions, unjustifiable removal from cases and other forms of hierarchical pressure.

Particular precautions should be taken with regard to the reporting obligations of the prosecution units competent to investigate and/or prosecute high-level corruption offences. In order to preserve their independence, anti-corruption prosecutors should not be called to report before political bodies. Instead, they should report before the Prosecutor General or Prosecutorial Council, while the Prosecutor General should serve as an interface between them and the government or Parliament.

Moreover, it also is essential to provide specialised anti-corruption prosecutors with sufficient resources and salaries that adequately reflect the nature and specificities of their work.

#### Recommendations:

---

<sup>356</sup> Law of Ukraine on the Prosecutor's Office, Art. 8, para 6.

- Specialised anti-corruption prosecutors should be provided with guarantees of institutional, functional, and financial autonomy envisaged by law. These guarantees should be sufficient to prevent undue external and internal interference with the work of specialised anti-corruption prosecutors, unjustifiable removal from cases, and other forms of hierarchical pressure.
- Any undue influence in the procedures of appointment, promotion, and dismissal of specialised anti-corruption prosecutors should be prohibited.
- Specialised anti-corruption prosecutors should not be subject to instructions from the political institutions or individuals that are under their jurisdiction.
- Specialised anti-corruption prosecutors should be provided with sufficient resources and salaries that adequately reflect the nature and specificities of their work.

# Bibliography

- Aaken, A., E. Salzberger and S. Voigt (2004), “The Prosecution of Public Figures and the Separation of Powers. Confusion within the Executive Branch – A Conceptual Framework”, *Constitutional Political Economy*, Vol. 15/3, pp. 261-280, <http://dx.doi.org/10.1023/B:COPE.0000040432.45537.3f>.
- Davis, A. (2000), “The American Prosecutor: Independence, Power, and the Threat of Tyranny”, *Iowa Law Review*, Vol. 86, <https://heinonline.org/HOL/Page?handle=hein.journals/ilr86&id=405&div=&collection=> (accessed on 21 September 2018).
- Devins, N. (1994), “Unitariness and Independence: Solicitor General Control over Independent Agency Litigation”, *California Law Review*, Vol. 82, <https://heinonline.org/HOL/Page?handle=hein.journals/calr82&id=269&div=&collection=> (accessed on 21 September 2018).
- Federico, G. (1998), *PROSECUTORIAL INDEPENDENCE AND THE DEMOCRATIC REQUIREMENT OF ACCOUNTABILITY IN ITALY Analysis of a Deviant Case in a Comparative Perspective*, <https://academic.oup.com/bjc/article-abstract/38/3/371/410369> (accessed on 20 September 2018).
- George, B. (1984), “Discretionary Authority of Public Prosecutors in Japan”, *Law in Japan*, Vol. 17, <https://heinonline.org/HOL/Page?handle=hein.journals/lij17&id=48&div=&collection=> (accessed on 21 September 2018).
- Hodgson, J. (2017), “The Democratic Accountability of Prosecutors in England and Wales and France: Independence, Discretion and Managerialism”, in *Prosecutors and Democracy*, Cambridge University Press, <http://dx.doi.org/10.1017/9781316941461.004>.
- Krajewski, K. (2012), “Prosecution and Prosecutors in Poland: In Quest of Independence”, *Crime and Justice*, Vol. 41/1, pp. 75-116, <http://dx.doi.org/10.1086/665611>.
- Langer, M. and D. Sklansky (2016), *Prosecutors and Democracy — Themes and Counterthemes (Epilogue)*, [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2880538](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2880538) (accessed on 21 September 2018).
- Langer, M. and D. Sklansky (n.d.), *Prosecutors and democracy : a cross-national study*, [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3055151](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3055151) (accessed on 21 September 2018).
- Nelken, D. (2014), *Can Prosecutors Be Too Independent? An Italian Case-Study*, [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2465067](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2465067) (accessed on 21 September 2018).

- Richman, D. (2016), "Accounting for Prosecutors", *SSRN Electronic Journal*, <http://dx.doi.org/10.2139/ssrn.2757811>.
- Rosen, R. (1986), "Disciplinary Sanctions against Prosecutors for Brady Violations: A Paper Tiger", *North Carolina Law Review*, Vol. 65, <https://heinonline.org/HOL/Page?handle=hein.journals/nclr65&id=717&div=&collection=> (accessed on 21 September 2018).
- Rossetti, C. (2000), "The Prosecution of Political Corruption: France, Italy and the USA - A Comparative View", *Innovation: The European Journal of Social Science Research*, Vol. 13/2, pp. 169-181, <http://dx.doi.org/10.1080/713670512>.
- Schwartz, L. (1948), "Federal Criminal Jurisdiction and Prosecutors' Discretion", *Law and Contemporary Problems*, Vol. 13/1, p. 64, <http://dx.doi.org/10.2307/1190103>.
- Spaulding, N. (2007), "Professional Independence in the Office of the Attorney General", *Stanford Law Review*, Vol. 60, <https://heinonline.org/HOL/Page?handle=hein.journals/stflr60&id=1939&div=&collection=> (accessed on 21 September 2018).
- Tiefer, C. (1983), "The Constitutionality of Independent Officers as Checks on Abuses of Executive Power", *Boston University Law Review*, Vol. 63, <https://heinonline.org/HOL/Page?handle=hein.journals/bulr63&id=67&div=&collection=> (accessed on 21 September 2018).
- van Aaken, A., L. Feld and S. Voigt (2010), "Do Independent Prosecutors Deter Political Corruption? An Empirical Evaluation across Seventy-eight Countries", *American Law and Economics Review*, Vol. 12/1, pp. 204-244, <http://dx.doi.org/10.1093/aler/ahq002>.
- Wright, R. and M. Miller (2010), "The Worldwide Accountability Deficit for Prosecutors", *Washington and Lee Law Review*, Vol. 67, <https://heinonline.org/HOL/Page?handle=hein.journals/waslee67&id=1595&div=&collection=> (accessed on 21 September 2018).

[www.oecd.org/corruption](http://www.oecd.org/corruption)

