Performance of the Prosecution Services in Latvia

A COMPARATIVE STUDY

OECD

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Foreword

The complexity and risk of economic and financial criminality is growing in a majority of countries, fostered by a global context marked by digitalisation and the fragile economy prompted by the COVID-19 emergency. At the same time, effective prosecution practices play a key role in protecting society from a culture of impunity, and have the potential to secure citizen trust, foster investment and ensure necessary tax revenues. In recognition of their importance, Latvia has embarked on an ambitious agenda to strengthen its criminal justice system and succeed in the fight against financial and economic crimes.

This report takes stock of Latvian efforts to date to improve performance of its criminal justice sector. It identifies results achieved so far, and it makes policy recommendations to support Latvia in driving the performance of its prosecution system towards excellence, particularly in tackling financial and economic crimes. It draws on years of OECD analysis in collaboration with its Member and Partner countries in the areas of justice, integrity and sound public management policy, all of which are key pillars that sustain effective prosecution practices.

Building on comparative analysis, it suggests ways to improve the performance of prosecution in Latvia by strengthening accountability mechanisms, committing to strategic management tools and leveraging data to design evidence-based policy. It formulates recommendations to improve staff management including exploring opportunities for training, specialisation, and increased use of simplified procedures. The report also highlights the potential for better co-operation across the whole of the justice chain, including with judges, investigators and the ministry of justice.

Looking ahead, Latvia's strategies should stay committed to strengthening its criminal justice system as a whole. As demonstrated by OECD analysis, investing in strong justice institutions provides the necessary basis for the prosecution to deliver on its mandates. The OECD stands ready to support Latvia in tackling economic and financial crime and developing a justice system that promotes excellence.

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- Association of Judges
- Association of Prosecutors
- Corruption Prevention and Combating Bureau (KNAB)
- Latvian Judicial Training Centre
- Ministry of Finance
- Ministry of Interior
- Ministry of Justice
- Prosecutor General's Office
- Regional, district and city prosecutors' offices
- Specialised public prosecutor's office in financial and economic crime
- State Police
- Tax and Customs Police of the State Revenue Service

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Executive summary

Like many OECD countries, Latvia is facing the growing complexity of criminality in a digital world, with increased risks of organised economic and financial crime, cybercrime and identity-related crime, among others. This trend is coupled with rising citizen expectations in terms of public service delivery, including justice services. Tackling such complicated types of crime constitutes a global challenge not unique to Latvia. It requires new thinking and innovation as well as more efficient and effective prosecution practices.

Latvia has developed a dynamic financial sector in the last few years, opening itself to more foreign customers and heightening the risk of economic and financial crime. Evidence of growing exposure to these crimes has emerged in several national and international studies. In addition, perceived corruption has led to a loss of public confidence in the civil service. Vulnerability to these types of crimes has been recognised as a threat to the national economy by the Latvian Parliament, which in 2019 embedded in the National Security Strategy the need to strengthen the capacity of law enforcement institutions, including prosecution services, to detect and investigate economic and financial crimes. The Prosecutor General Office's operational Strategy 2017-2021 has also identified effective and high-quality performance as a priority to fight against economic and financial crime. The new Prosecutor General has highlighted that specialised training in these areas will be a prime concern during his mandate, which commenced in 2020.

This study seeks to benchmark the current practices of public prosecutions in Latvia against a selection of OECD member countries (Czech Republic, Denmark, Finland, France, Italy, Ireland, Netherlands, New Zealand, Portugal and Sweden), with a view of identifying recommendations that could support Latvia's ongoing efforts to achieve more effective prosecution practices.

While current efforts are critical to strengthening the overall performance of the prosecution in Latvia, including in relation to economic and financial crimes, a number of challenges remain. These include the excessive length of pre-trial investigations and significant backlogs of cases not reaching the prosecution stage. For example, in 2019, 12% of the total of criminal proceedings in the records of the Economic Crime Combating Board of the State Police were sent for prosecution. This percentage has changed little in recent years, at 13% in 2018 and 10% in 2017. In Latvia, the average number of prosecutions per 100 thousand inhabitants per year is 0.66, compared to an average of 3.4 prosecutions across the membership of the Council of Europe. At the same time, the overall number of prosecutors in Latvia is among the highest in Europe.

In order to reap the full benefits of Latvia's modernisation efforts in public prosecution, it is important to further strengthen accountability mechanisms, while fully respecting the independence of the Prosecutor General's Office, which is part of the judiciary. Latvia has already taken significant steps in this regard by introducing an obligation of the Prosecutor General to report annually to Parliament on its office's performance. In addition, in order to make the most of strategic planning, the Prosecutor General's Office could focus more strongly on increasing the efficiency of work processes. Leveraging existing data and increasing collection of qualitative data on criminal cases to provide a nationwide picture of performance would help support a sound evidence-based management policy. On the other hand, there is scope to improve co-ordination between prosecutors and investigators and harmonise the understanding of the evidentiary threshold to be reached

among prosecutors, investigators and judges. Mandatory training and specialisation would also close expertise gaps that affect Latvian prosecutors when prosecuting complex crimes.

Moreover, promoting increased use of the broad spectrum of procedural choices and the principle of opportunity offered by the criminal procedure framework could reduce the prosecutors' workload, thereby reducing case backlogs and improving timeliness. It would also enable prosecutors to focus on more complex cases. More generally, stronger incentives could be introduced to attract and retain the best human talent in the investigation and prosecution professions.

Latvia's efforts to enforce its Code of Ethics -- in particular, giving the Attestation Commission an accountability function and establishing a whistleblowing channel -- are positive steps toward controlling corruption. Nonetheless, further institutionalisation would help consolidate these efforts. Developing a comprehensive integrity and anticorruption strategy could support early identification of risks and mitigating measures.

Building on positive developments to date, Latvia's future strategies should be underpinned by a clear and evidence-based understanding of the existing bottlenecks, challenges posed by modern types of crimes, and the impediments faced by the Prosecution's personnel. Systemic abuse of otherwise legitimate economic and financial avenues can lead to breakdowns in citizens and investors' trust, undermining investment flows and tax revenues and hence weakening the national economy and the public sector. Latvia should keep the improvement in prosecution performance at the heart of its justice reform strategy, including for inclusive recovery from the COVID-19 pandemic.

Assessment and recommendations

This section outlines the policy recommendations resulting from the OECD analysis that can contribute to ongoing efforts in Latvia to strengthen the criminal prosecution system. They are designed to support the Latvian Prosecution in leveraging the experience of OECD benchmarking countries and international prosecution standards to achieve its strategic objectives.

This Report analyses the current state and recent developments in relation to performance and management of the prosecution system in Latvia. Based on this analysis, this section summaries key policy recommendations that aim to support the ongoing efforts in the country to strengthen the criminal prosecution system, and enable the Latvian Prosecution to take advantage of the experience of other OECD countries and international prosecution standards to achieve its strategic objectives.

Promote transparency and accountability while safeguarding independence of prosecutors

The Prosecutor General's Office is part of the judiciary in Latvia and is independent from the legislative and executive branches. While this is an essential element to ensure the separation of powers, there is scope to draw clearer lines around the concept of prosecution independence in the line with the Constitutional Court's understanding of the purpose of independence, which is to prevent the centralisation of power in the hands of one institution or official. Latvia is already taking steps in the direction of promoting transparency and accountability and introduced an obligation for the Prosecutor General to report to Parliament on the performance of the institution during the preceding year. This could strengthen the notions of efficiency and effectiveness of prosecution services, facilitate reform and help the PGO establish robust performance monitoring mechanisms, without undermining the constitutional provisions for independence. To further deepen the orientation towards results, there is scope to clarify the content of the report to Parliament, possibly through amendments to the Law on the Office of the Public Prosecutor. Similarly, there could be scope for strengthening the legal framework to enable larger involvement of the Prosecution in criminal policy making, by providing them with a stronger and more formalised stance in the implementation of criminal law and policy, with a view of driving performance of the overall system. These steps should in no way aim at and lead to jeopardising the independence of prosecutors, including through reporting on and interference in individual cases.

Tighten co-operation and co-ordination between prosecutors and investigators

The current legal framework appears to encourage prosecutors to intervene in the pre-trial investigation process only as necessary. This creates a situation where investigators often work autonomously and prosecutors appear detached, especially from the beginning of the investigation, despite having the supervisory authority from the outset. Such authority includes a possibility to rule on the admissibility of evidence and on the need of additional/different investigative actions, which in many creates a co-ordination and co-operation challenge and can lead to the loss of time on investigations.

To address this situation, Latvia could review the co-operation and co-ordination mechanisms between investigators and prosecutors. For example, an initial encounter between the prosecutor and the responsible investigators could be held to decide on the steps to be carried out for the investigation, which is a usual practice in several benchmarked countries. In addition, there is scope to create venues for robust information sharing, dialogue and common training, as well as to develop common guidelines (e.g. to harmonise evidentiary thresholds) to approach various typologies of criminal investigations. These measures could create a smoother flow of criminal procedures and consequently a more agile criminal justice.

Scale-up performance data collection and analysis in the prosecution

The prosecutors' services have developed a mature system for data collection on prosecutorial and investigative activities as part of its Information System of the Prosecution Office, primarily focusing on

gathering data on an individual or office basis. This system provides the basis for the performance analysis and service improvement over time. Moving forward, the system could benefit from collection of more data sufficient to sustain the design of sound evidence-based management policy. In particular, the prosecutors' data collection and analysis system could be enhanced to include: (1) nation-wide aggregated data and (2) annual analysis, and to embed them in the elaboration of its strategic plans and legal procedure reform proposals submitted to the Ministry of Justice.

Moreover, Latvia could benefit from increased use of quality indicators to assess progress made in the prosecution. For example, there is scope to strengthen the collection of qualitative information on criminal cases to analyse empirically the practical application of criminal procedure legislation, and to record information on reduction of case backlogs, criminality rates and satisfaction of court users, among others.

Strengthen use of strategic management tools in the system, especially planning, monitoring and evaluation

Efforts in the direction of strategic planning have been made by the Prosecutor General's Office (PGO) through Strategic Plans, the latest being the Strategy of the Prosecution Office for 2017-2021. Looking ahead and to further strengthen implementation and performance orientation, such plans could benefit from outlining a practical roadmap for bringing about the desired results and for measuring the level of attainment of such results afterwards. In order to introduce more effective strategic management, the PGO could leverage its existing strategic plan as a guiding beacon by introducing a stronger focus on increasing efficiency of work processes and procedures.

The PGO could also consider undertaking functional monitoring of its organisational structures and work processes to detect potential causes for delays. This could include analysing where and why there is lack of prosecution of relevant cases that are investigated for long periods, and stimulating the introduction of measures for improving the speed and the number of prosecutions. Some of the policies that have worked in benchmarked OECD countries to achieve this have been stronger standardisation, training, specialisation and prioritisation, increased use of alternative ways of ending investigations, as permitted by legislation, and investment in sound diversionary measures. These are all discussed below.

Invest in developing world-class human resources management system for prosecutors

Review workforce composition in prosecutorial services and investigative police

While Latvia has a larger number of prosecutors per inhabitant than most European countries, many prosecutors are currently assigned to non-prosecutorial functions, mainly to supporting and managerial tasks. Such distribution of tasks could be detrimental to effective prosecution, especially when it comes to prosecuting high-level corruption, organised crime and corporate financial criminality. The prosecution system should be able to rely on administration professionals for a larger number of tasks, including on assistant prosecutors where required, and to concentrate prosecutor resources on prosecuting cases before the courts. In addition, Latvia could consider reviewing the workforce composition (in terms of numbers and required competencies) of the investigative police, in order to ensure sufficient capacity to deal with serious crimes.

Review the individual performance assessment system in line with international standards

The current individual performance appraisal as set in the existing Prosecutor General Order benefits from strong data collection on individual prosecutors. Transparency of the performance appraisal system could be further strengthened and aligned with international standards by explicitly embedding the criteria used for assessing the data as positive or negative performance. In addition, stakeholder interviews highlighted that the performance appraisal system seems *de facto* to rely on conviction rates as positive performance, whereas a failure to prosecute is not regarded as negative. This seems to result in very high conviction rates (cited by stakeholders to be about 99%), likely because cases are not brought to court unless there is a near certainty that they will result in a conviction. This is a much higher threshold than that applied in the rest of Europe. Finally, performance appraisals are only carried out at least once every five years, with the majority of OECD countries carrying them out at least annually (for example Denmark, Finland, or the Netherlands) or biennially (as in the Czech Republic). In this context, the PGO could consider strengthening both the individual and the system-wide performance assessment criteria and methodology, as well as integrating them within the strategic management priorities in order to measure progress of the system at all levels.

Enhance training opportunities for the prosecution and police

The Prosecutor General's Office has set as one of its strategic priorities for 2017-2021 to increase training and knowledge for prosecutors by implementing professional continuing education, creating adequate training plans, and introducing insightful use-cases in the ProIS module "Methodological tools". While some trainings for prosecutors are currently imparted by senior prosecutors on areas of priority, OECD stakeholder interviews confirmed the need and willingness of prosecutors to receive more training, particularly for complex and new types of crime. In order to strengthen these efforts, Latvia could benefit from practices of the benchmarked OECD countries. A common practice in the benchmarked countries is to institute training as mandatory for prosecutors, police officers and judges both as an induction to the profession and as a continuous training for improving skills and knowledge all along the career. This is a practice that could be considered by the prosecution services in Latvia, where training for prosecutors appears to be primarily dependent on the engagement of an individual prosecutor. This engagement and willingness are necessary, but not always sufficient for good performance. Joint trainings could be especially useful in the case of Latvia to ensure further co-ordination in the approach to each type of crime and strengthen respective capabilities (while preserving independence of the participating stakeholders at any time). Several benchmarked countries channel this through Judicial Training centres, such as France or Italy; and some organise it through the Prosecutor General's Office, such as Finland's "Prosecutor's Start" programme. In addition, Latvia could consider strengthening investments in training the body of investigators in order to ensure effective prosecutions (which appear to have declined since the liquidation of the Police Academy in 2010 as highlighted by stakeholder interviews).

Enhance specialisation in financial, economic and corruption crimes

The prosecution of financial and economic crimes lies at the district level prosecution offices, which supervise the investigation of these crimes conducted by the relevant police force only within the boundaries of the district territory. At present, there are no special requirements for prosecutors supervising such investigations (e.g. in terms of skills, experience, knowledge or selection procedure), with the expectation that necessary expertise will be acquired through in-service practising. At the same time, it appears to be commonplace in Latvia to signal the lack of capacity of the criminal justice machinery for prosecuting complex, financial, corruption or cybercrimes. As such, focused specialisation of certain groups of prosecutors and associated specialised training for them could serve as a necessary capacity-building exercise in Latvia to enable prosecution in the most effective manner.

Enhance attractiveness of the prosecution and investigation as a profession

Another priority issue is the importance of attracting and retaining the right human talent to the profession. The prosecutor career as an employment of choice is generally considered to be less attractive than private practice, an issue that was only partly remedied by the recent salary increases for prosecutors.

Similarly, it emerged during the interviews that salaries of assistant prosecutors and investigators are low with respect to the national average, generating a high turnover rate, reducing the numbers of qualified applicants significantly, and delaying investigations due to new employees having to learn investigation techniques and case background from scratch. Good training, international exchanges, prospective integration into EU police and prosecutorial task forces, knowledge management techniques and appropriate remuneration could be the additional motivation drivers to attract talent to the investigative and prosecutorial services. Creating a more attractive promotion strategy for prosecutors by enhancing the appearance of transparency could also foster a merit culture that would improve prosecutor performance and help draw more human talent to the profession.

Maximise the use of current opportunities in the legal framework to drive performance

Increase the use of simplified procedures available in the criminal law framework

The criminal justice legal framework in Latvia offers a broad spectrum of procedural choices that can be used by prosecutors. The police and prosecutorial services should fully avail themselves of the opportunities the Latvian legal framework offers to treat small cases differently than more complex and sophisticated ones. In practice, innovative choices on the way simpler cases could be closed could be achieved by exploring alternatives to court and diversionary measures. Insofar as some elements of the opportunity principle are applicable in the Latvian system, they could provide avenues to adequately address the most simple cases or archive dead-end supervisions of investigations swiftly, thus reducing the workload of prosecutors, so that they may focus on addressing the most complex crimes.

For example, currently, the Criminal Procedure Law allows for simplified criminal proceedings such as the prosecutor's penal order without court approval for less serious crimes (article 420) or urgent procedures for flagrant crimes (article 424). These allow a prioritisation of resources, as opposed to the longer ordinary procedure, which is largely used in practice. Likewise, the Law provides for summary procedures for investigations if completed within ten days and if the perpetrator is identified (article 428); and enables an investigator, with authorisation of the supervising prosecutor, to terminate criminal proceedings for minor offences if suspects cannot be identified. Plea bargaining concluded by the prosecutor and approved by the court is also admitted by article 433 of the Latvian Criminal Procedural Law. The Prosecutor General's Office has taken an important step in this regard by awarding positive assessment points to offices for making use of simplified procedures, and could keep supporting the proactivity of prosecutors to promote a more generalised awareness and use of these legal opportunities. In addition, new options to simplify proceedings will enter into force on January 2021.

Foster prioritisation of relevant cases through the opportunity principle and standardise prosecutorial work

Prosecutors in Latvia currently have high workloads that could benefit from further streamlining to ensure proportional resources are allocated to the most pressing types of crime. For this purpose, there is scope to strengthen prioritisation, which could become part of the standard prosecutorial work procedure. Whereas the principle of legality is enshrined in the legal framework of Latvia, the principle of opportunity is not alien to the system either. For example, articles 373 and 379 of the Criminal Procedural Law allow for

taking certain discretionary decisions of the investigating police in co-ordination with the supervising prosecutor concerning the refusal to initiate criminal proceedings or to stop an already ongoing investigation if the harm caused by the criminal offense is not serious. To this end, and in line with the practices in several of the benchmarking countries, Latvia is encouraged to consider further strengthening prioritisation of cases that would be submitted for prosecution.

In parallel, Latvia could consider institutionalising the standardisation of some aspects of prosecutorial work, in line with the practice in several benchmarked countries. Standardisation and diversionary mechanisms are key to reduce the courts' workload and the pressure over the criminal justice system of a country, including the penitentiary sub-system. Harmonisation of the understanding of evidentiary thresholds between the prosecution and investigators is highly recommended to enable faster processing of similar cases.

Develop a whole-of-justice-chain approach to the improvement of prosecution performance

Overall effectiveness of the criminal justice system and ability to address serious crimes depend on the performance of the entire justice chain. Relevant justice actors all play a part in the successful flow of criminal trials, and thus should be taken into account as a whole in an integrated manner when envisaging procedural reforms. For instance, it has emerged during the study that the courts appear to schedule hearings on the basis of the defendant's counsel availability, leading to fragmented trials where hearing flows can be interrupted and last for months. All this could potentially prolong the trials unnecessarily and may warrant consideration of some amendments to the Criminal Procedural Law.

Build an integrity system responding to prosecutors' integrity and corruption risks

Institutionalise integrity

While the Attestation Commission plays an accountability function in relation to the Code of Ethics, the Latvian prosecution service does not appear to have a dedicated area entrusted to co-ordinate, mainstream, and promote integrity-related activities in the prosecutorial entities. The Latvia PGO could thus create an integrity office or appoint an integrity officer in charge of promoting and co-ordinating relevant initiatives as well as providing guidance, advice and awareness to prosecutors on integrity issues such as when faced with dilemmas on gift or conflict of interest policies.

Develop an integrity and anticorruption strategy

As part of its efforts to build an integrity system tailored to the Latvian prosecutors' reality, the PGO of Latvia could develop a comprehensive integrity and anticorruption strategy identifying risks and mitigating measures together with corresponding roles and responsibilities as well as a timeline to measure progress. The development process, the final strategy and its monitoring would also be a way of demonstrating high-level commitment and show progress within the prosecution service and externally to other institutions and citizens, thereby promoting trust in the judiciary.

Provide guidance and opportunity to reassess integrity standards

The Code of Ethics for Latvian prosecutors of 1998 develops around a number of principles and details some expected behaviours with respect to professional growth, relationships outside work and mutual relations among prosecutors. However, interviews showed that the Code is perceived as a formal document without any actual impact in guiding prosecutors' behaviour so it could be complemented with

additional guidance and examples in relation to possible practical situations. At the same time, the PGO could promote a participative discussion among all prosecutors on the Code's responsiveness to the current challenges and ethical situations/dilemmas in view of its possible revision.

Scale up and tailor training for integrity activities

Latvian prosecutors are offered only a few yearly activities focused on illustrating and discussing integrity issues within the prosecution service such as on the Code of Ethics or the management of possible conflict of interest situations. The PGO could scale up its capacity-building efforts and organise mandatory integrity training activities both at the beginning of the career and on a regular basis. In addition, tailored-made activities should be organised for prosecutors in at-risk positions, e.g. those with higher responsibilities or those involved in high-level financial and economic cases, which is one of the objectives of the national anticorruption strategy. (Guidelines for the Corruption Prevention and Combating 2015-2020, 2015)

Promote an open culture, also through raising awareness on whistleblowing

The set-up of a whistleblowing channel in 2019 and the appointment of a dedicated contact person is a step forward in developing a culture of integrity in the Latvian prosecution service. As of November 2020, the Prosecutor´s Office received and examined a significant number of reports. However, since only a few of them related to prosecutors´ duties and led to disciplinary liability, a campaign could be organised to clarify and raise awareness on the scope, purpose and functioning of this reporting mechanism. In order to create an open organisational culture the PGO of Latvia could also clarify or define channels that prosecutors could turn to in case of integrity questions or dilemmas since interviews during the fact-finding mission highlighted the lack of such typology of discussions.

Provide guidance on disciplinary liability to integrity breaches and leverage the potential of disciplinary data

According to the information provided by the PGO, in the last three years, no disciplinary proceedings were initiated due to violations of integrity-related regulations. Such situations could raise concern on the capability of the disciplinary system to respond to integrity-related violations, especially those related to the Code of Ethics. The loss of administrative immunity of prosecutors since June 2020 may provide greater accountability towards the integrity framework. At the same time, the PGO could provide bodies responsible for the enforcement of the Code of Ethics with a compendium of relevant decisions from the Attestation Commission and national Courts to support the understanding of the scope, rationale and sanction for each obligation. In order to promote trust, awareness and deterrence of the disciplinary system, the Latvian Prosecutor Office could also expand the collection of the disciplinary data and raise their visibility by communicating some regular information about cases, breaches and sanctions both internally and with public.

The following Table of main findings summarises the above recommendations:

Table 0.1. Main findings and key recommendations

Main findings	Key recommendations
Institutional position	
Need to strengthen accountability mechanisms of prosecution performance	Promote transparency and accountability through performance reporting mechanisms
Strategic management of the prosecution services	
Scope exists to strengthen co-ordination and co-operation of prosecutors and investigators	• Tighten co-operation and co-ordination between prosecutors and investigators by establishing common guidelines and evidentiary thresholds for crimes
Need for increased data collection for annual, nationwide analysis and on qualitative aspects, as well as quality indicators	• Scale-up performance data collection and analysis in the prosecution, including in relation to quality indicators and aggregated annual data
Improvement is needed in embedding quantifiable milestones and roadmaps into strategic plans	• Strengthen use of strategic management tools in the system, especially planning, monitoring and evaluation • Define specific, quantifiable targets and steps in strategic plans
Human resources management	
Need to improve capacity of the criminal justice machinery to prosecute complex, financial, corruption or cybercrimes; in addition, there is scope to establish mandatory and continued training	• Increase and institutionalise training opportunities for the prosecution and investigators • Enhance specialisation in financial, economic and anti-corruption crimes
Room exists to increase clarity of the criteria used in individual performance appraisals	• Expressly embed in an Order the criteria used for evaluating performance of individual prosecutors as positive or negative, using professional merit and integrity principles • Ensure conviction rates are not used as a standalone positive indicator of performance
There is scope to promote the prosecution as a more attractive career option over private sector practice. Investigator bodies experience high turnover rates of staff	• Improve attractiveness of the prosecution and investigation as a profession • Review employment terms of investigator staff to lower turnover and encourage qualified applicants
Efficiency of the prosecution	
Prosecutors in Latvia currently have heavy workloads and suffer from significant case backlogs	• Increase the use of simplified procedures available in the criminal law framework • Foster prioritisation of relevant cases through the opportunity principle • Standardise aspects of prosecutorial work • Increase reliance on non-prosecutorial staff for administrative and managerial tasks
Several actors of the justice chain play key roles in the efficiency of prosecution services	• Involve the whole of the justice chain in improving prosecution performance, including judges and criminal counsel • Review workforce composition and improve attractiveness of the investigator profession to attract and retain talent
The integrity framework and the Code of Ethics	
While the Attestation Commission has an accountability function in relation to the Code of Ethics, the Latvian prosecution service would benefit from developing a dedicated area entrusted to integrity-related activities	Institutionalise integrity by considering the establishment of a specialised integrity office within the prosecution
Need for a comprehensive integrity and anticorruption strategy in the prosecution services	Develop an integrity and anticorruption strategy that identifies risks, mitigating measures and corresponding roles and responsibilities
Few reports related to integrity breaches and the Code of Ethics have been filed and processed, despite the mechanisms available	• Scale up and tailor training for integrity activities • Promote an open culture, also through raising awareness on whistleblowing • Provide guidance on disciplinary liability to integrity breaches, including examples in relation to possible practical situations

1 Latvia's prosecution system: Opportunities and challenges

This chapter introduces the opportunities and challenges of the Latvian public prosecution system encountered in its pursuit to tackle criminality, with particular emphasis on fighting economic and financial crimes. It outlines the Latvian and global context, the Report's methodology and related international standards. The chapter also introduces the OECD benchmarking countries through which comparative analysis is carried out: the Czech Republic, Denmark, Finland, France, Italy, Ireland, Portugal, the Netherlands, New Zealand and Sweden.

Prosecutors play a pivotal role in the administration of criminal justice. They are ascribed a noble title as "Ministers of Justice" because they are not advocates taking sides on a case; instead, they seek to achieve justice, and with their professional activity uphold the rule of law. As expressed by the Special Rapporteur, the United Nations' Human Rights Council on the independence of judges and lawyers, prosecutors also play a key role in "protecting society from a culture of impunity" and function as gatekeepers to the judiciary (UNHRC Special Rapporteur on the independence of judges and lawyers, 2019[1]).[1] A prosecutor's client can be considered society as a whole, and thus is a figure on which the public places their trust (UNODC/IAP, 2014[2]). In playing such a vital role, it is essential that the prosecutor act according to high standards of diligence, efficiency and effectiveness. A growing international trend signals towards the need to improve the quality and performance of court services, including those of the prosecution, in order to increase satisfaction and trust of the public in the justice system (Ivan-Cucu, 2015[3]).

Indeed, effective prosecutor services are essential to tackle criminality, including economic and financial crimes. This is especially important in Latvia, as it had developed an important financial sector which has been highly exposed to foreign customers, with this situation contributing to create a number of vulnerabilities to economic and financial crimes. At the beginning of 2019, the Latvian government designated Latvia as a regional financial transaction centre, attracting significant transit flows of financial resources, as well as deposits from non-residents. The 2018 Moneyval report rated the country´s risk to money laundering as "medium high" with the main sources of criminal proceeds – mainly generated abroad - being corruption, bribery, tax offences, fraud and smuggling. Other risk factors identified by the report are the influence of international organised crime groups and the significant size of shadow economy, estimated to be 20-25% of GDP. As a result, economic crimes were considered more common than other ones generating proceeds such as drug trafficking (Moneyval, 2018[4]). The Latvian government has been taking active steps to control and reduce risks in the financial sector, including the withdrawal of licences for several banks. The authorities report that these efforts led to a significant reduction of the volume of cross-border payments, in particular payments in foreign currencies and payments made by non-residents (Ministry of Justice of Latvia, 2020[5]).

Risks of economic and financial crimes also emerged from the evaluation carried out in the Phase 3 Report of the OECD Working Group on Bribery in International Business Transactions, highlighting how shell companies are often used to move illegal funds through Latvian banks into the international financial system. The report analysed the nine known allegations of bribery of foreign public officials and, while it welcomes the law enforcement activity on those, it also raises concerns that none of the allegations that had surfaced have reached the prosecution stage, with four cases that have either not been opened or were terminated and five ongoing investigations. As of December 2020, two of the cases have been sent for prosecution. On top of that, the report notes that no financial institution was ever held criminally liable in Latvia for its role in a foreign bribery scheme or for money laundering. More generally, it concludes that Latvia's enforcement results should be more commensurate with the country's exposure to foreign bribery and subsequent money laundering risks. (OECD, 2019[6]).

The exposure to these typologies of crimes has been recognised as a threat to the national economy by the Latvian Parliament, which in 2019 included the need to strengthen the capacity of law enforcement institutions in detecting and investigating economic and financial crimes within the national security strategy. The Prosecutor General Office's operational strategy 2017-2021 has also identified as a priority the effective and high-quality performance of the functions of the Prosecutor's Office in the fight against financial and economic crime, together with a set of goals and corresponding activities (Box 1.1).

At the same time, there have been a number of general concerns expressed about the effectiveness and performance of the Latvian prosecution service, in particular in relation to the investigation and prosecution of economic and financial crimes, where a number of challenges appear to exist. While Council of Europe statistics show an average of 3.1 prosecutions per 100 000 inhabitants among the evaluated countries, they show 0.68 cases per 100 000 inhabitants in Latvia (in contrast with, for example, 2.61 cases in Lithuania and 2.06 cases in Estonia), despite the fact that the number of prosecutors in Latvia appear to be among the highest in Europe (CEPEJ, 2020[7]).In particular, in accordance with the State Audit of Latvia, there appear to be difficulties when it comes to bringing and holding charges before the courts. According to the data provided by the State Police to the State Audit Office (Latvia State Police, 2019[8]), in 2018, only less than 13% of the criminal proceedings in the records of the Economic Crime Combating Board of the State Police (i.e., 74 criminal proceedings out of 587 pending criminal cases) were sent for prosecution, 10% in 2017, and 13% in 2016 (Latvia Court Administration[9]). The Ministry of the Interior has pointed out the problem in its submissions to the government that only 12 out of 399 money laundering criminal cases were prosecuted between 2013 and 2016, and judges often criticise even those cases that go to court because there is a lack of sufficient evidence to reach a judgement of conviction at the same time (Ministry of Interior, 2018[10]). Research by the State Audit Office suggests that an insignificant number of criminal cases have been initiated in courts for money laundering during the last decade, namely, 95 cases, of which 57 cases (or 60%) have been resolved. There was a judgement of conviction given in 39.5% of cases and a judgement of acquittal given in 7% of cases (Ministry of Interior, 2018[10]).

An additional issue is the length of pre-trial proceedings and subsequent generation of backlogs, sometimes enabling perpetrators to ask the court to mitigate the sentence when the right to complete the criminal proceedings within a reasonable time has, in their view, not been observed pursuant to Section 49.1 of the Criminal Law. For example, the 3rd Bureau of the Criminal Police Board of the Riga Regional Board of the State Police still has 4 230 criminal proceedings pending (that is, 51% of all those under investigation) initiated more than five years ago and still not even sent for prosecution; and out of the criminal offences in financial and economic areas previously pending before the investigating authorities[2] between 2009 and 31 December 2019, prosecution still continues in 19.2% of cases.

In parallel, corruption is also estimated to be relatively common, leading to a loss of public confidence in the civil service and criminal justice system, thereby creating a feeling of impunity within the country. (Moneyval, 2018[4]) This view is echoed in the 2020 Eurobarometer on Corruption, where 84% of respondents consider it widespread, 61% of them that there are not enough successful prosecution to deter people from corrupt practices, and 71% that high-level corruption cases are not pursued sufficiently (European Commission, 2020[11]). Indeed, corruption convictions usually relate to low to mid-level officials and small amounts, while final judgments on high-level cases are rare, supposedly for their complexity and delays. In particular, the largest share of cases in 2016 concerned bribes to traffic police, and categories of most convicted officials belonged to the state police, customs, and border controls. According to GRECO (2018), that year the largest bribes were one of approximately EUR 70 000 offered to an anticorruption official and another one of EUR 500 000 in connection with a public procurement tender. (GRECO, 2018[12]). Additional cases have been submitted for prosecution, including one which involved a bribe of EUR 2 262 339.35 to a public official of Belarus to ensure beneficial decisions in favour of a legal person registered in Latvia that caused over EUR 513 000 losses to the State in company income tax; and a bribe was offered to a police officer in the amount of EUR 1 000 000 (KNAB, 2020[13]).

Box 1.1. The Prosecutor General Office's strategy to improve performance against financial and economic crimes

Priority: Effective and high-quality performance of the functions of the Prosecutor's Office in the fight against financial and economic crime.

Goal 1 – Ensuring control of the work of prosecutors in pre-trial criminal proceedings

Tasks:

- Chief prosecutors of the Prosecutor's Offices at all levels shall continue the regular discussion of the course and progress of supervision of the investigations, investigation, and prosecution on economic crimes.
- Include inspections of the effectiveness and quality of supervision of the investigations and prosecution of financial and economic crime periodically in the work plan of the Prosecutor's Office.
- Organise joint meetings of chief prosecutors and investigation authorities concerning the investigations of financial and economic crime.

Goal 2 – The imposition of proportionate penalties for financial and economic crimes

Tasks:

- Prepare internal regulations for ensuring the uniformity of actions of prosecutors in trials of criminal cases regarding serious and very serious financial and economic offences.
- Elaborate a mechanism for the control of the actions of prosecutors in courts so that the chief prosecutor of the Active Criminal Cases Division of the Criminal Justice Department of the Office of Prosecutor General could decide on the necessary response measures.
- Collect information on the actions of prosecutors in courts regularly.

Goal 3 – Training and knowledge acquisition

Tasks:

- Implement the professional continuing education programme by identifying and including in the training necessary for prosecutors into the curricula.
- Compile, analyse, and place information on topical court rulings in the module "Methodological Materials" of the information system of the Prosecutor's Office available to prosecutors, to provide information on topical issues of case-law and legislation.
- Foster the participation of prosecutors in international events for exchange of experience.

Source: Operational Strategy of the Prosecutor's Office 2017-2021, available at http://www.prokuratura.gov.lv/media/newsfiles/Latvijas_Republikas_Prokuraturas_darbibas_strategija_2017_2021_gadam.pdf.

In this context, assessments carried out by several international organisations, in particular by the OECD Working Group on Bribery in International Business Transactions and the FATF-GAFI, and GRECO and Moneyval of the Council of Europe, among others, have identified the need to strengthen performance of the prosecutorial services in Latvia, in particular in relation to economic and financial crimes. This need has also been identified by the State Audit Office as a result of the audits over the last several years. In that vein, this report aims to analyse the legal status and managerial performance of the prosecution services of Latvia, benchmarking against the practices of a selection of OECD countries, with a view of generating recommendations to support improvements in the performance of the Latvian Prosecution system.

Study background and methodology

The OECD criteria for people-centred justice services point to the need to ensure justice services, including prosecution, are effective and continually improved through evaluation, evidence-based learning and the development and sharing of best practices (OECD, 2019[14]). In such light, this study has been carried out with the aim to identify good practices available in the prosecution field that lead towards prosecution excellence, including in the areas of management and leadership, prosecution policies and plans, efficient prosecution procedures, effective co-operation with relevant justice and police authorities, a high quality of prosecution case files (indictments), a high level of user satisfaction and public trust and a high level of accessibility (Albers, 2016[15]).

This study, therefore, aims to identify areas tools that the Latvian prosecution system can use to its advantage to improve performance by benefitting, on the one hand, from the experiences in the selected OECD peer countries (which include the **Czech Republic, Denmark, Finland, France, Italy, Ireland, Portugal, the Netherlands, New Zealand and Sweden**); and on the other, from the most **important international and regional standards for the performance of prosecutors** and for judicial performance generally.

In addition, the benchmarking study´s analysis and recommendations also address the specific challenges in the prosecution of economic and financial crimes while duly considering the key factors favouring its effectiveness, which may include, among others:

- A legal framework allowing prosecution to act as an independent and autonomous institution free of any undue political or other external influence.
- A merit-based recruitment system safeguarding autonomous, independent and transparent decision making.
- Appropriate human, financial and technical capacity to address complex cases in a timely way, including support from external experts.
- Mechanisms for swift co-operation and co-ordination between prosecutors and investigators at the national and international level.
- The availability of procedural tools to address the economic dimension of crimes such as freezing, seizing, confiscating and asset recovery.
- The use of technology for investigating complex economic and financial schemes.
- Objectivity in the allocation of cases based on criteria of knowledge and experience.
- Transparency in the exercise of prosecutors' functions.
- Highest standards of integrity of prosecutors, acting – and appearing to act – impartially and without any conflict of influence.
- Regular training programmes providing multidisciplinary skills.
- Respect for defendants' rights throughout all the phases of the proceedings (Council of Europe, 2019[16]).

Information about the performance of the Latvian system has been gathered through fact-finding interviews with key stakeholders (Prosecutor General's Office and Administrative Director of the General Prosecutor's Office, Specialised public prosecutor's office in financial and economic crime, regional, district and city prosecutors' offices, Latvian Judicial Training Centre, Corruption Prevention and Combating Bureau (KNAB), Ministries of Interior, Justice and Finance, the State Police, and the Tax and Customs Police of the State Revenue Service, and civil society representatives, among others) carried out throughout the months of June to August 2020, and the information they submitted; information provided by the State Audit Office of Latvia (State Audit Office, 15 May 2020[17]) (State Audit Office, 15 May 2020[18]); data gathered by international organisations' reports; and finally, input provided by local NGOs and professional

associations (in particular, the Association of Prosecutors and the Association of Judges, as well as Transparency International Latvia). In order to carry out the benchmarking study, peer countries have generously provided the necessary information about their respective systems.

The rest of the report is structured as follows: the report firstly brings together the key recommendations from throughout the report in an Assessment and Recommendations section. It then dives into the content of the report, offering an overview of the Latvian criminal justice system (Chapter 2); it then provides an account of the structure and constitutional position of the Latvian prosecution system in respect of the benchmarked countries, assessing the possibilities offered by the legality and opportunity principles to the prosecution (Chapter 3). Next, the report zooms into the ways to measure and improve performance of prosecution systems as a whole, focusing on the achievement of excellence in the prosecution through strategic management (Chapter 4), and drivers to assess and improve individual performance of prosecutors (Chapter 5). Finally, it analyses integrity policies and culture in Latvia (Chapter 6). Comparisons on the basis of the selected peer OECD countries is offered on a topical basis, throughout the full report. A comprehensive overview of each of the peer prosecution systems can be found in Annex C. In the Assessment and Recommendations section, targeted recommendations are offered for the improvement of performance of the Latvian prosecution services, based on conclusions drawn from the research conducted.

The selection of OECD benchmarking countries has followed two main lines of reasoning, namely their institutionalisation and the management practices, which together can explain many of the features of a given prosecutorial system:

1. **The institutional location** of the prosecutorial services, which bears a systemic component linked to a specific understanding of democracy, the rule of law and the public interest. It can impact the prosecutors' independence, ethical standards, administrative culture and their perception of their own role within a national criminal justice system. The relationship between investigators and prosecutors has largely to do with this institutional component as well as the policy-making function of prosecutorial services where they have one. In the backdrop, there is the dual facet of the prosecutors' role, which involves an accusatory function and the objective defense of legality, both at once. As the decision to prosecute is made, what follows can be a psychological shift whereby prosecutors set the objective to get defendants convicted (Lidén, Grans and Juslin, 2019[19]).
2. **The management practices**, which may or may not be a consequence of the institutional location, as they can be tributary to various factors which could have developed independently. The experience of OECD countries suggests that the institutional location is not enough per se to support certain management values, such as efficiency and effectiveness, but may obstruct their change in a considerable way. Specialisation is deemed to be linked to efficacy, whereas prosecutorial accountability and their legitimacy in the public eye is reinforced or weakened by managerial practice. Reforms of internal structure and management of prosecutors' offices, as well as improved human resources management, have been highlighted as an area that could improve prosecutor behaviour and accountability (Bibas, 2009[20]). A number of additional considerations in the assessment of prosecutorial services have been summarised in Annex A.

Prosecutorial services in OECD benchmark countries show a wide variety of combinations of those two components, which in turn produce a variety of outcomes. Given the heterogeneity in approaches, the combination of the proposed countries for benchmarking, taken together, can offer a valuable account of that variety of country profiles while bringing about valuable insights for Latvia. Neither civil law prosecutorial systems nor common law ones are homogeneous groupings. Each national system is the result of a specific political, constitutional and legal history.

International standards for the prosecution and prosecutors

Numerous international institutions and associations produce instruments and reports for monitoring and measuring various aspects of the performance of different segments of countries' justice systems. This report will include a selection of instruments relevant for addressing the performance of the prosecutorial services, primarily European (e.g. promoted by the Council of Europe) and global (e.g. mainly promoted by the United Nations and the International Association of Prosecutors). These two groups of instruments should provide a basis for the self-assessment of the Latvian prosecutorial service from a managerial viewpoint.

Box 1.2. Selected international standards and indicators on prosecutorial performance

European standards and indicators - In Europe, the Recommendation Rec(2000)19 on "The Role of Public Prosecution in the Criminal Justice Systems" was adopted by the Committee of Ministers of Justice of the Council of Europe on 6 October 2000, which was the first Europe-wide document aimed at setting standards for prosecutorial services. The Committee of Ministers aimed to improve the quality and efficiency of the European judicial systems and strengthening the court users' confidence in such systems. The European Commission for the Efficiency of Justice (CEPEJ) was created and started operations at the end of 2002. The CEPEJ reports are relevant resources that incorporate important comparative indicators on measuring the performance of the public prosecutors in European countries.

The United Nations Guidelines on the Role of Prosecutors, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders (1990), complemented by a relevant guide (The Status and Role of Prosecutors: A United Nations Office on Drugs and Crime and International Association of Prosecutors Guide, 2014, "the UNODC/IAP Guide"), also illustrate international standards. They set international Guidelines in relation to, among other topics:

- prosecutor qualifications, selection and training, including promotions
- status and conditions of service
- freedom of expression and association for prosecutors
- the role in criminal proceedings and the scope of discretionary functions.

The Standards of professional responsibility and statement of the essential duties and rights of prosecutors, 23 April 1999 by the International Association of Prosecutors ("IAP Standards") which relate to professional conduct, independence, impartiality, role in criminal proceedings, co-operation and empowerment are an important source of international good practices guidelines.

Further international practices and standards can be drawn from:

- Opinions of Consultative Council of European Judges;
- Opinions of Consultative Council of European Prosecutors; and
- Documents created by the Venice Commission, including the Report on European Standards as regards the Independence of the Judicial System: Part II - the Prosecution Service.

Sources: (Committee of Ministers of Justice of the Council of Europe, 2000[21]) (United Nations, 1990[22]) (UNODC/IAP, 2014[2]).

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Notes

[1] The report also states that training is essential in order to maintain a competent and skilled prosecution service with the confidence and capability to operate autonomously with the support and confidence of the public (para. 89).

[2] Corruption Prevention and Combating Bureau, Financial and Customs Police Boards of the State Revenue Service, Economic Crime Combating Division of the Criminal Police Headquarters of the State Police, Criminal Police Offices of State Police Regional Boards.

2 Overview of the Prosecution System in Latvia

This chapter provides an overview of the Prosecution System in Latvia. It outlines the national context, role and institutional position of the prosecution and describes its structure and main actors. It also provides a comparative analysis of structure of prosecution services in the benchmarking countries' systems, diving deeper into independence, accountability and reporting mechanisms and the application of good governance principles to the prosecution.

Introduction

The institutional design and status of public prosecution services play a key role in prosecutorial performance. In this context, this chapter provides an introductory approach to the configuration of the prosecution system in Latvia, ranging from its institutional position and roles to a description of the actors involved and its organisational structure. The Chapter also provides an analysis of several aspects of prosecution performance, including the regulation of independence, reporting mechanisms, transparency and the application of good governance principles to the prosecution, among others. In addition, the Chapter integrates comparative analysis of the related practices in the OECD benchmarking countries participating in this study.

National context, role and institutional position of the prosecution

The Prosecution Office in Latvia was established soon after the independence of the country and the abolition of the Soviet Union rule, in which the prosecution (*prokuratura*) had a different function than that of prosecutors in liberal western democracies. On 26 September 1990, the Supreme Council of the Republic of Latvia (*Latvijas Republikas Augstākā Padome*) passed the Law "On Prosecutor's supervision in the Republic of Latvia". This law allowed establishing the first prosecutor general office of the independent Latvia as a new institution. Since 1990, the Prosecution Office is composed of the Prosecutor General's Office, Prosecution Offices of regions, districts (cities) and the Regional Prosecution Offices. The system of the Prosecution Office institutions includes also specialised Prosecution Offices which are equal to districts (cities) Prosecution Offices.

The current Law on the Prosecution Office was passed on 2 June 1994 and entered into force on the 1 of July of the same year. This Law has been amended a number of times, the last one in 2020. The Prosecution Office has now the exclusive criminal prosecution competence in the country. The current Prosecutor General is the Fourth one since the Latvian statehood restoration and he was appointed by the Parliament in July 2020.

Main actors in the Latvian Criminal Justice System

Apart from the judges, the main responsibilities on criminal justice in Latvia are allocated as follows in this synoptic table:

Table 2.1. Main actors in the Latvian Criminal Justice System

Institutions	Responsibilities/powers
Ministry of Justice	• Leading public authority in justice (legal framework, the judicial system, and court administration). • Policy making in criminal law and criminal procedural law. • Chair of the Working Group on Development of Criminal Procedure based on the 2006 Cabinet of Ministers' Decree for solving Criminal Procedure Law enforcement problems of an organisational nature. • Chair of the Permanent Working Group on Criminal Law. • No role at all in the regulation of the prosecutorial service.
Ministry of the Interior	• Leading public authority in home affairs, which develops policies and implements policing against crime. • Drafting sectoral legislation and policy-planning documents. • Implementation of the sectoral policy in the public authorities subordinated to the Ministry. • Conducts performance inspections and other inspections in public bodies subordinated to the Ministry.
Ministry of Finance	• Leading public authority in the financial sector, which, inter alia, develops a policy for anti-money laundering and terrorism financing measures in accordance with the defined area of responsibility, together with the Ministry of Justice.
Prosecutor's Office	• Institution of the judiciary that supervises the respect of legality independently within the area of responsibility specified in the Law on the Prosecutor's Office and the Law on Criminal Procedure:

Institutions	Responsibilities/powers
	supervises and conducts a pre-trial investigation, initiates and conducts criminal prosecution, maintains charges of the State, etc.
Investigation Bodies and authorities	• State Police. • Corruption Prevention and Combating Bureau. • Tax and Customs Police of the State Revenue Service. • Security Police. • Internal Security Board of the State Revenue Service. • Military Police. • Prison Administration. • State Border Guard. • Internal Security Office. **ROLES:** • Executive-depending bodies examining data indicating the commitment of an alleged criminal offence in accordance with the established area of responsibility and initiate the criminal procedure. • Detect criminal offences. • Search for criminal offenders. • Carry out investigative actions pursuant to the Criminal Procedure Law to ascertain whether a criminal offence has occurred and who has committed it. • Obtain evidence that gives grounds for indicting an offender for a crime. • Select and perform such procedural actions to ensure the achievement of the purpose of the criminal proceedings as soon and economically as possible.

Source: Initial understanding of the State Audit Office, Republic of Latvia of factors affecting effectiveness of investigations of economic and financial crime. Drafted by the Second Audit Department, State Audit Office on 15th May 2020.

Prosecutor General

The Prosecutor General is appointed by Parliament through an open vote. The candidate is nominated by senior members of the judiciary. The Law on the Prosecution Office (LPO) (Sections 33, 36-37) specifies the eligibility criteria which include, for example, experience as a judge or prosecutor and a "good reputation". The Prosecutor General is appointed for five years and can be reappointed by Parliament for one additional term. He/she can be dismissed only if a Supreme Court judge (chosen by the Chairman of the Court) finds grounds for dismissal.

Institutional Position of the Prosecutor's Office in Latvia

In Latvia, the Prosecutor's office is part of the judiciary, meaning that they operate independently of the legislative and executive branches. The *Saeima* (Parliament), Cabinet and President may instruct a Public Prosecutor's Office to verify facts relating to infringements and receive explanations from the Prosecutor-General's Office. They may not, however, interfere with the work of the Public Prosecutor's Office in question. Guarantee of the prosecutors' independence is established both in the Law on Judicial Power (Law on Judicial Power, Section 106.1) in the Law on Prosecutor's Office (Law on Prosecutor's Office, Section 1, 6) and also in the Criminal Procedural Law (Section 459). In particular, Article 6 of the Prosecutors Office Law states that a prosecutor is obliged only by the law. The law explicitly rules that the Parliament, the Cabinet of Ministers, public and local government institutions, public and local government officials, enterprises and organisations of all types as well as individuals shall be prohibited from intervening into the work of the Prosecution Office in the investigation of cases or during the performance of any other functions of the Prosecution Office. A person shall be liable as provided for by law for attempts to exert unlawful influence on the Prosecutor or to intervene into the work of the Prosecution Office. In addition, Letter No. 1/1-11- 72-16 of 1 June 2016 from the Chief Prosecutor of Department of Analysis and Management of the Prosecutor General's Office reminded all chief prosecutors of the language of Article 5 of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (´Anti-Bribery Convention´) and that prosecutorial 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. Yet, the Prosecutor's office is not incorporated into the structural and organisational responsibilities of the judiciary, which generally implies that it is not subordinated to the Judicial Council or the High Judicial Council. Due to its position under the judiciary power, the Ministry of Justice cannot have a say in the affairs of the prosecutorial service. The Constitution does not mention the prosecutorial services. Only the courts have a constitutional standing and regulation in chapter VI (articles 82-86). Prosecutors are also not mentioned within the court system described in the Constitution. It is the Law on the Prosecution Office (article 1) that describes it as an institution of the judicial power, which shall independently exercise supervision over the law compliance within the limits of competence prescribed by this Law.

This arrangement appears to depart from the mainstream models of OECD countries within the civil law tradition, which may have had an impact on how Latvian prosecutorial services have functioned over the years. In most benchmarking countries, the independence and professional autonomy of a prosecutor is guaranteed by the constitution or by the law. Within the benchmarked peers, 40% of prosecution systems are part of the executive branch of government, whereas 30% belong to the judiciary, and the rest are not part of any branch. In countries where the prosecutorial services are part of the executive, this does not necessarily imply that individual prosecutors follow executive instructions concerning their prosecutorial responsibilities. In countries where the prosecutorial service is part of the judiciary, it is primarily managed by the judicial council or by a specific prosecutorial council. For example, France and Italy have the prosecutorial services within the judiciary and governed by the High Judicial Council. Portugal has a specific High Prosecutorial Council in charge of governing the prosecutorial service, along with a Prosecutor General (See Box 2.1).

Box 2.1. The Executive and the separate council prosecution system models

The Executive Model

This model includes those countries where the prosecutorial services fall within the ambit of responsibility of the executive branch of the governments. It does not necessarily mean that the government is entitled to give instructions to prosecutors in specific cases, but there often is a Director or General Prosecutor in whose appointment the executive has a relatively considerable sway. In this model, it is also usual that the prosecutors do not investigate crimes, but supervise the investigations carried out by the police. In some of these countries prosecutors only prosecute serious crimes or crimes related to financial activities or corruption, whereas the police prosecute less serious crimes.

Denmark has district prosecutors embedded in the district police. It means that lower level crimes are prosecuted by the police. Highest levels of prosecutors are independent, even if they are under the umbrella of the Ministry of Justice. Strong specialisation in fraud, organised crime and corruption prevails in either country. They emphasise strategic management of the prosecutorial service through the Director of the Prosecution Service. Finland shows a separation between the investigative police and the prosecutor, but a strong "collaboration" model is currently under construction between police and prosecutors. The Ministry of Justice is the sponsor of prosecutors and Ministry of the Interior is the sponsor of the police. Denmark, Sweden and the Netherlands did a deep reform of the Public Prosecution Service management in mid-1990s and 2000s. The objectives were manifold: to improve the performance and results, especially by introducing the notion of strategic management and prioritisation of resource allocation in certain areas (cross-border criminality, serious crime, management of the prosecutor office, etc.) and adopting diversionary measures to decongest the court and penitentiary systems. In Ireland, it is the police which conduct the investigations and the prosecutor decides only to prosecute or not in more serious crime cases (known as 'indictable offences' as opposed to 'summary offences' or less serious crimes which are prosecuted by the police). In New Zealand, a country also within the common law tradition, the prosecution service is dispersed among several

agencies legally empowered to prosecute and Crown Solicitor offices, but the investigation is reserved either to the police or the prosecuting agency. The police or other prosecuting agency conduct prosecutions of less serious crimes or matters that are not heard before a jury. The Crown Solicitors (prosecutors) are private lawyers warranted by the Governor-General to prosecute serious matters (known as Crown prosecutions, as defined by regulation 4 of the Crown Prosecutions Regulations 2013) under the guidance of the Solicitor-General. They do not investigate but may provide legal advice to the police. Crown prosecutors are lawyers employed at Crown Solicitor firms. All prosecutors must follow the Prosecution Guidelines issued by the Solicitor-General. The Czech Republic, also falls within the executive model. Other OECD countries such as Austria, Australia, Canada, Germany and Spain could also be classified within this category. As can be seen, we have selected a sample of countries responding to various legal traditions. It is our hope that some good lessons can be drawn from those various traditions and experiences.

The Separate Council Model

This model includes a group of OECD countries where the prosecutorial service is part and parcel of the judiciary and is managed by the judicial council or by a specific prosecutorial council. In these countries, prosecutors are generally much more involved in crime investigation in close liaison with the police. In France, the prosecutor service is part of the magistracy. The Judicial council manages aspects of both. However, the Ministry of Justice plays the major role in court and prosecutors management. The prosecutorial service is part of the judiciary but not organisationally separate from the executive. However, the French prosecutors are functionally and generally independent from the Ministry in practice.

In Italy, the Council of the Judiciary manages both the judges and prosecutors. Prosecutors have extensive powers in pre-trial investigation along with the various kinds of police. Most new democracies of central and eastern Europe have embraced this ‘separate council model’ for their judiciary and for their prosecutorial services under recommendations from the Council of Europe (in particular the Venice Commission) and the European Commission in the EU enlargement negotiations, although the effectiveness of the model has varied across countries, depending on the historical and socio-economic factors. In Portugal, the institutionalisation is set up through a High Council of the Prosecutors, integrated into the judicial branch, while being completely independent from the two Judicial councils that exist (judiciary and administrative). It is a two-faced institutional arrangement. It is presided over by a General Prosecutor endowed with large executive powers, but the strategic decisions are taken by the High Council of Prosecutors. The investigative police are the judicial police under the Ministry of Justice, although the police are working autonomously on behalf of the prosecutors and investigating magistrates. Belgium could also be classified within this category as the authority over the prosecutorial services lies in the College of Prosecutors General, which is made up of prosecutors general attached to the courts of appeal. The College decides on all the appropriate steps for the implementation and co-ordination of criminal policy and the functioning and co-ordination of the prosecution service.

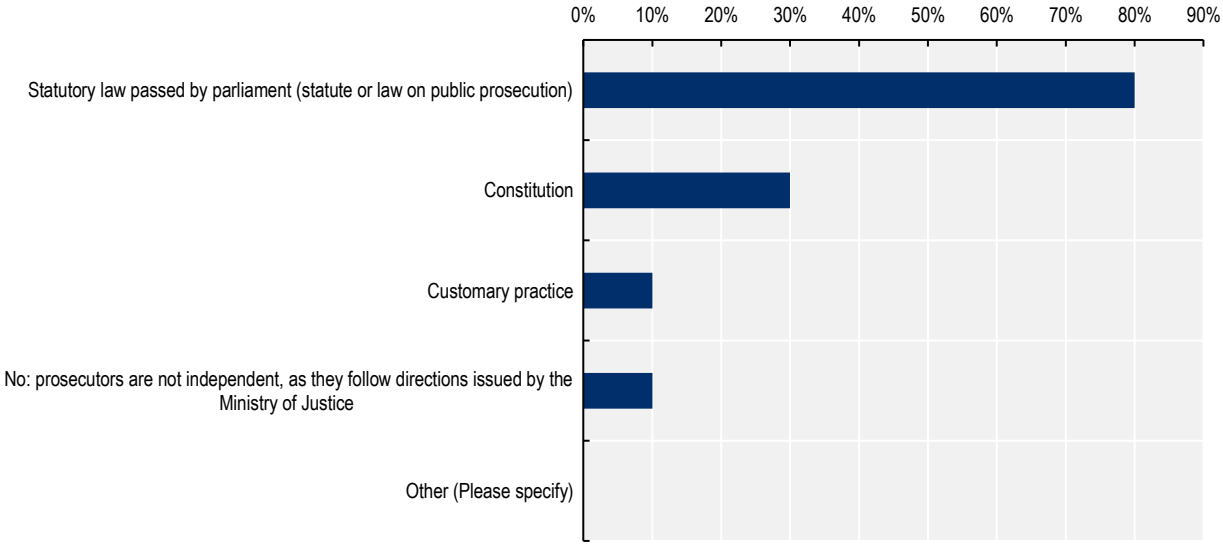
Source: Author.

Currently, several considerations could be highlighted with regard to the institutional position of prosecutors in order to identify space for strengthening efficiency and effectiveness of the Latvian prosecution services, including:

Understanding of independence and accountability

In a majority of benchmarked OECD countries, the prosecution is an independent institution pursuant to statutory law passed by parliament, as happens in Latvia.

Figure 2.1. Independence basis for prosecutors in OECD benchmarking countries



Note: The following question was asked as part of the ad hoc OECD Questionnaire on Prosecution Service to benchmarking countries: Are prosecutors functionally independent? If so, which is the legal basis for that independence?
Source: Benchmarking country responses to ad hoc OECD Questionnaire on Prosecution Service.

Box 2.2 offers a comparison with other OECD countries when it comes to the institutionalisation and independence[1] of prosecutorial services.

Box 2.2. Independence and autonomy in OECD prosecution systems

In terms of comparison, the prosecution service in the Netherlands (Openbaar Ministerie) has a special autonomous position. It is part of the judicial organisation, but not of the judiciary. The prosecution service is separate from the ministry of Justice, but there is a (limited) hierarchical relationship with the minister of Justice. The prosecution service reports and is accountable to the government through the Ministry of Justice. Prosecutors are in theory not independent, as the minister of justice has the power to give instructions to the prosecution service in certain cases, be it under strict conditions. However, in practice the minister has never made use of this power.

The Swedish Prosecution Authority (SPA) is an independent organisation. It is an autonomous agency accountable to the Government and it is independent both from the police and the courts. The autonomy is guaranteed by the Swedish Constitution. The Swedish Prosecution Authority, like all government agencies within the Swedish judicial system, falls within the area of responsibility of the Ministry of

Justice. The Government determines the general mandate, guidelines and the allocation of resources for the agencies' activities. The Government appoints the Prosecutor-General. The Prosecutor-General is the head of the Swedish Prosecution Authority. The Prosecutor-General is also the highest-ranked prosecutor in the country and the only public prosecutor in the Supreme Court.

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

In Finland, the independent National Prosecution Authority is a state authority and part of the judicial system. Its task is to ensure the realisation of criminal liability, i.e. that the proper statutory punishment is attached to a criminal act. The National Prosecution Authority operates within the administrative branch of the Ministry of Justice. However, neither the Ministry of Justice, nor any other government body, have authority over the internal matters of the prosecution service, or over individual prosecutions. A prosecutor's independence and autonomy mean that no one can give orders to a prosecutor on how he/she should decide an individual, pending criminal case.

In Italy, the Prosecution Service is an independent institution. Each public prosecutor is also independent. Such an independence is guaranteed by the Constitution. Public prosecutors are magistrati, as they belong – together with judges – to the judiciary. Their independence is safeguarded by the Consiglio Superiore della Magistratura (CSM – the High Council for the Judiciary). The latter has full authority on appointments, transfers, careers and discipline of judges and public prosecutors. The High Council for the Judiciary is mostly composed of magistrati (judges and public prosecutors) who are elected by vote of all the judges and public prosecutors. Their independence is further guaranteed by their non-removability and guarantee of tenure. They can only be removed or suspended from their functions or transferred to another workplace if the CSM so decides and respecting the guarantees of the law.

In Portugal, public prosecutors are judicial officials, who form part of, and are subject to, a hierarchy, and who may not be transferred, suspended, retired or removed from office except in the cases provided for by law. The powers to appoint, assign, discipline, transfer and promote public prosecutors pertain to the High Council of the Public Prosecution Service.

Source: Author.

In Latvia, further to existing guarantees in the law, there appear to be sufficient safeguards for protecting prosecutors' independence in both the external and internal standpoints. The OECD Report *Implementing the OECD Anti-Bribery Convention in Latvia*, *Phase 3* pointed out that the growing criticism by the Executive power of Latvia's Prosecutor General's performance amid a number of high-profile corruption investigations created a risk of actual or perceived political interference (thus, threats to external independence), and country's non-compliance with Article 5 of the OECD Anti-Bribery Convention. Evolution in this regard must be monitored (OECD, 2019[1]).[2] In particular, it noted that:

> *Management of the [*Oligarch*] case raised strong disapproval by civil society that were echoed in discussion with representatives from NGOs and media at the Phase 3 on-site visit. This criticism has been accompanied by the government's repeated and public comments on the Prosecutor's General's performance and the PPO's activities in general. The PPO's management of the investigation of allegations of corruption and ML of the governor of Latvia's Central Bank also drew harsh criticism by the Executive. The Minister of Justice has publicly stated that he pushes for the Prosecutor General's removal. In June 2019, Latvia's Supreme Court opened an inquiry into the Prosecutor General's job performance. The authorities clarify that Minister of Justice's intervention stems from his general responsibility for ensuring the effective functioning of the judicial system. It follows the publication of the 2018 Annual Report of the Office of the Prosecutor of the Republic of Latvia by the State Audit Office and the suspicion that the Prosecutor General might be in breach to his financial duties under the Office of the Prosecutor Law. This contrasts very much with the information published in the press reporting that the Executive challenges the Prosecutor General's performance, professionalism and reputation for facts unrelated to the State Audit Office's report. The lead examiners are of the view that this creates a risk of actual or perceived political interference in the PPO and noncompliance with Article 5 of the Convention. This Article stipulates that foreign bribery investigations and prosecutions must 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. Commentary 27 of the Convention further recognises that foreign bribery cases should not be subject to improper influence by concerns of a political nature.*

At the same time, necessary protection of prosecutors' independence from external interference must not be construed as a lack of accountability. As stated in the OECD's Anti-Corruption Network Thematic Study on the Independence of Prosecutors in Eastern Europe, Central Asia and Asia Pacific (OECD, 2020[2]), autonomy of the Prosecution Service and the discretion granted to public prosecutors should be generally counterbalanced by a certain level of accountability towards the political branches of power, the judiciary, the public, or within the service itself. The Consultative Council of European Prosecutors articulated that "accountability does not contradict the concept of independence; on the contrary, the more independence there is, the more accountability is required" (Consultative Council of European Prosecutors, 2018[3]). To this end, in Latvia, the need for accountability must be balanced with what appears to be a broad understanding of prosecutorial independence by the Latvian PGO. Currently, in Latvia understanding of independence of prosecutors seems to extend beyond the principle that the prosecutor should not receive external instructions as to the decision of whether and whom to prosecute and how the prosecution should be conducted. It appears to be primarily understood as removing prosecutorial services from external appraisal or consideration of how the prosecution service conducts or carries on its business.

On the contrary, most of the benchmarked countries have developed robust accountability and transparency mechanisms to ensure high-levels of performance and public value. A well-balanced obligation to general reporting can benefit the perception of efficiency and fairness for the public and the rest of powers. As stated, 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; and this is not a deterrent for the establishment of accountability mechanisms. In the benchmarked countries, a majority (40%) of respondent prosecution systems are accountable or report to the Executive power; 20% to the Judiciary; a smaller 10% to Parliament, while the remaining are accountable before the General Prosecutor only (30%) with the prosecutorial powers clearly established in the law. For example, the accounting officer of the Director of Public Prosecution's office in Ireland (usually the Deputy Director) is answerable to the Public Accounts Committee of Dail Eireann (the lower house of parliament) for its expenditure and for the efficiency of its operations, but not for any prosecutorial decision; the Comptroller and Auditor General report to this Committee on an annual basis. In the Czech Republic the Prosecutor General submits to the Government, through the Ministry of Justice, a report on the activities of the previous calendar year; in Denmark, the Ministry of Justice and the prosecution services, under the auspices of the Prosecutor General, have defined mission and vision statements, which are published in the yearly reports on targets; in Finland, the prosecution service draws up an annual report, and a biannual interim report every six months to assess whether the performance targets that were set have been

attained, and if targets have not been attained, the most important reasons for this are evaluated. The most important topics to report on are: Statistics on number and types of cases, evolving caseload and data on ratios between resources employed and results achieved (resource data). Table 2.2 below illustrates the existing accountability and reporting mechanisms envisioned for prosecutors' offices to be accountable to other institutions on their performance.

Importantly, the Latvian Constitutional Court has consolidated the notion that the principle of separation of powers arising from the concept of a democratic republic included in the *Satversme* (Constitution) ought not to be understood dogmatically and formally, but rather, as a notion whose purpose is to prevent the centralisation of power in the hands of one institution or official. The Constitutional Court has acknowledged that no constitutional power can be independent in an absolute way. Otherwise, it is not possible to ensure the existence of the principle of separation of powers, which also envisages mutual control and interaction of power. The functions of state power tend to be distributed among several institutions, and almost each of the key institutions of the state participates in the implementation of several functions of a state power in a system with sound checks and balances.

Table 2.2. Reporting mechanisms of prosecutors in OECD benchmarked countries

Country	Prosecutor general reports to	Contents and purpose of the report
Czech Re public	Government via Ministry of Justice	• Section 12 of the Public Prosecutor's Office Act states that within six months of a calendar year at the latest the Prosecutor General submits to the Government, through the Ministry of Justice, a report on the activities of the previous calendar year to guarantee the governing and control of the various instances of Public Prosecutor's Offices and inside individual Public Prosecutor's Offices (Section 12c).
Denmark	Ministry of Justice	• As part of monitoring and evaluating performance in the justice sector, both the Ministry of Justice and the prosecution services, under the auspices of the Prosecutor General, have defined mission and vision statements, which are published in the yearly reports on targets. • The most important topics to report on are: Statistics on number and types of cases, evolving caseload and data on ratios between resources employed and results achieved (resource data). • The administration of the Prosecution Service is externally audited by the National Audit Office of Denmark (*Rigsrevisionen*), by the Ministry of Finance and by the Ministry of Justice. The Prosecution Service and the Police have set up a joint, internal audit mechanism.
Finland	Ministry of Justice	• The general strategies concerning the prosecution service are included in the Government Programme and the strategies of the Ministry of Justice. The Ministry of Justice has approved a strategy on criminal policy, which includes considerations on how the resources allotted have been used. The prosecution service has also its own strategy. Criminal justice statistics are provided by the Prosecutor General Office, the Judiciary and Statistics Finland (https://www.stat.fi/til/oik_en.html). • The prosecution service draws up an annual report, and a biannual interim report every six months. In these documents, it is evaluated whether the performance targets that were set have been attained. If targets have not been attained, the most important reasons for this are assessed. Local prosecution offices draw up their corresponding reports. The report shall contain statistics on number and types of cases, caseload, aggregated data on individual performance of prosecutors, resource data (ratios between resources employed and results achieved), analyses of the impact of prosecutorial activity on criminality, and training activities and attendance records. • There is an internal auditing in the prosecution service. It is used to chart the risks related to operations each year, and to evaluate the chance that they will be realised. Corrective measures are then devised based on the evaluation. The external audit is carried out by the State Audit Office. • The Finnish Prosecution Service employs performance guidance indicators which measure productivity and economy. They also systematically monitor the prosecutors' decision profiles (i.e. the prosecutors' course of action in similar matters) and the processing times of cases which the prosecutors' have taken up for consideration. • According to section 27 of Law 32/2019, claims and charges against the Prosecutor General and the Deputy Prosecutor General for offences in office are brought in the Supreme Court. The Chancellor of Justice or the Parliamentary Ombudsman serves as the prosecutor in such a case. Claims against a State Prosecutor, a Chief District Prosecutor, a District Prosecutor and a Junior Prosecutor for offences in office are brought in a court of appeal. Such a case is prosecuted by the Chancellor of Justice or the Parliamentary Ombudsman or by a prosecutor assigned by the Chancellor of Justice or the Parliamentary Ombudsman.

Country	Prosecutor general reports to	Contents and purpose of the report
France	Parliament and Ministry of Justice	• Organic law n° 2001-692 of 1 August 2001 on finance laws provided the Parliament with assessment tools to evaluate the performance of public policies in return for the autonomy granted to managers. The "annual performance projects", attached to the bill finance laws, specify the programme strategy, the objectives, the performance assessment indicators and the effectiveness of the action, and the expected results. These commitments are assessed in the year following the budget execution using "annual performance reports" where programme managers report their results • Legislation passed at the end of 2016 introduced an obligation for reporting on the evaluation and monitoring the work of public prosecutors. General Prosecutors (i.e. those attached to courts of appeal) must, within six months of taking office, "define the objectives of their activity". These prosecutors must also publish a report every two years of their activities (article 38-1 of the Ordonnance of 22 December 1958, as amended in 2016). • The General Inspection of the Justice (*Inspection générale de la justice*) was created by Decree n° 2016-1675 of 5 December 2016 entering into force on the 1st of January 2017. Its role is the inspecting, controlling, studying, advice and evaluation of all the bodies and institutions of the Ministry of Justice, the judges (only *juges judiciaires* not administrative judges) and prosecutors. Among its responsibilities is the performance evaluation of court administrations, individual judges and prosecutors and issue recommendations to the Minister.
Ireland	Parliament	• Although there is no binding legal obligation to do so the DPP has since 1998 published an annual report which contains statistical information concerning the prosecutors' activities. • The accounting officer of the DPP's office (this has always been the Deputy Director) is answerable to the Public Accounts Committee of *Dail Eireann* (the lower house of parliament) for its expenditure and for the efficiency of its operations, but not for any prosecutorial decision. The Comptroller and Auditor General reports to this Committee on an annual basis. Under the Comptroller and Auditor General. • The Office is thus accountable for the expenditure of public money through the normal governmental accounting procedures of the Parliamentary Committee of Public Accounts and the Comptroller and Auditor General, and since the establishment of the Office it has been the practice to appoint a Deputy Director, who is responsible for the management of the Office and who was envisaged by the Public Service Management Act 1997, as being Head of the Office as Accounting Officer. • The performance of the DPP, as an organisation is assessed against agreed targets by the Oireachtas, the Irish Parliament, on an annual basis. Expenditure of the Office of the Director of Public Prosecutions is audited by the Comptroller and Auditor General, the national auditor appointed under the Constitution of Ireland.

In this context, a balance needs to be stricken to ensure protection of independence of individual prosecutors and the necessary measures of transparency and accountability for general performance. Latvia is already taking steps in this direction, with an amendment to the Prosecutor Law, which entered into force on 11 March 2020 establishing an obligation for the Prosecutor General to report to Parliament, among other matters, on the performance of the institution during the preceding year. In previous years, the Latvian Prosecutor General's Office had reported annually to Parliament voluntarily since the year 2000, based on the recommendation enshrined in Recommendation Rec(2000)19 of the Committee of Ministers to Member States on the Role of Public Prosecution in the Criminal Justice System. However, in accordance with stakeholder interviews, reporting to other institutions (e.g. Parliament), which is a crucial accountability method in most of the other systems analysed as described above, appears in this case – at least for the moment - to be conceived as an informative action, not for accountability purposes (this topic will be further analysed in Chapter 5). Despite similarities to the OECD benchmarked systems, as noted, the notion of independence seems to be understood in a broader way, such as - for example - to remove prosecution from obligation of accountability or transparency. Such an understanding could also de facto lead to the PGO's detachment from the mainstream dynamics leading to modernisation and effectiveness of state institutions, including in the Latvian judiciary. In this context, and in order to bring Latvia closer to the international benchmarks, there appears to be significant scope to strengthen accountability of the PGO to other institutions (e.g. Parliament as already established by law), and to establish robust performance monitoring mechanism, without undermining the constitutional provisions for independence.

The application of good administration principles to the prosecution

Accountability, in substance, has the purpose of understanding the results of public action in the light of the priorities of criminal policy (Consultative Council of European Prosecutors, 2018[3]), on the one hand; and ensuring that the resources put at their disposal are used in an efficient and economic manner, and that a proper control and follow-up mechanisms are in place, on the other (Consultative Council of European prosecutors, 2012[4]). While prosecutorial services in Latvia are not explicitly included in the scope of the 2008 Law on the Structure of Public Administration (section 2), - which urged public bodies to "implement principles of good administration", in particular those of efficiency and effectiveness in carrying out public duties - there appear to be no significant obstacles in application of these principles and other provisions of this law to institutions outside the hierarchy of the Cabinet of Ministers (executive), such as courts and the prosecutor's office. This is particularly the case as the legislator seems to have defined the framework for application of the principles of the Law on the Structure of Public Administration also to entities outside the executive. This consideration is especially important, as the 1994 Law on the Prosecutor Office does not provide responsibility or mandate for the Ministry of Justice to ensure the efficient management of courts in their prosecutorial dimension; and it does not compel the Prosecutor General Office to align its activities with the principles of good administration, economy and efficiency, internal control and, in general, good management of public resources. And indeed when assessing the institutional status of the national prosecution service in the jurisprudence of the Constitutional Court, it was recognised that "*The Law on the Structure of Public Administration determines the institutional system of public administration subordinated to the Cabinet of Ministers and the basic rules for the operation of public administration. Pursuant to Section 3.3 of the said Law, the principles of public administration and other provisions of this Law shall also be applicable to institutions not subordinated to the Cabinet of Ministers, insofar as the special legal provisions of other laws do not provide otherwise. The activities of the Prosecutor's Office are regulated by the Law on the Prosecutor's Office, the Criminal Procedure Law, and other laws and regulations. The provisions of the Law on the Structure of Public Administration and the Administrative Procedure Law regulate the activities of the Prosecutor's Office or a prosecutor in cases when the prosecution service or its official, namely, a prosecutor performs the functions of public administration, that is, activities not listed in Section 2 of the Law on the Prosecutor's Office*" (Constitutional Court of the Republic of Latvia[5]).

Thus, while principles of public administration and the provisions of the Law on the Structure of Public Administration do not apply to the scope of rights and obligations of prosecutorial officials regulated by special laws and regulations (e.g. the Criminal Procedure Law, the Law on the Prosecutor's Office, the Law on Operative Activities, etc.), the administrative functions - such as the establishment of the internal control system (including management practices) of a public institution, use of state budget funds (efficiency and effectiveness) and others should, in principle, be performed in accordance with the national standards, such as good governance, internal control, and effectiveness. For example, in relation to the application of the principle of public administration in institutions not subordinated to the Cabinet of Ministers (executive), Latvia's Supreme Court's Operational Strategy follows the principles of good governance principles and internal control.

While the survey answer to the benchmarking questionnaire by the Latvian Prosecutor's office was in the affirmative relating to their obligation to implement good governance and administration principles, it is unclear whether this is interpreted as a legal obligation. Nonetheless, it could speak to the internalised notion that these are values worth furthering, and could pave the way for strengthening performance orientation of the PGO. This further strengthens alignment with the benchmarking countries, where 70% of the participating countries report an obligation for the prosecutorial service to implement sound good administration principles. Therefore, it is recommended to consider strengthening the regulation of the Prosecutor's Office by making an explicit extension of the principle of good governance and efficiency to the prosecution service and requiring accountability of the Prosecutor General for compliance with the principles of good governance, economy, efficiency and effectiveness, as well as for establishment, monitoring, and improvement of the internal control system.

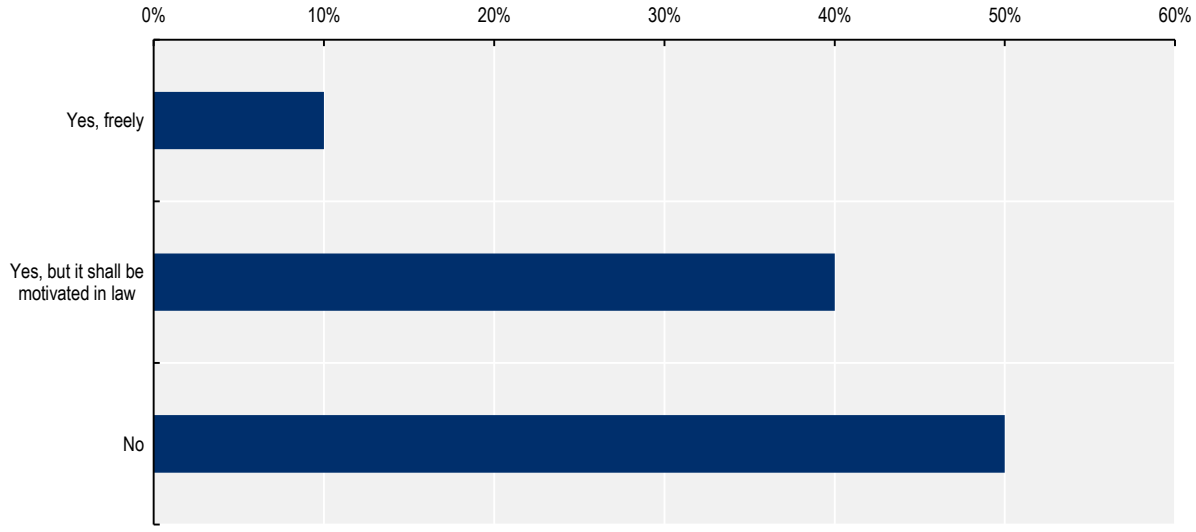
Transparency in the exercise of the prosecution

In addition, there is an expectation by the public that prosecutors perform their duties "efficiently, competently, fairly and impartially" and should be in a position to inform and explain actions they have taken in the administration of justice, according to the UN Guidelines. In some jurisdictions, the annual report that the prosecution service submits to Parliament is also made available to the general public. In this context, Latvian prosecutors had already taken a positive stance by publishing their annual reports, and continued publication of said reports can increase transparency and trust in the general public. As further analysed in Chapter 4, embedding qualitative analysis of prosecutor's work in the annual report can also be a positive development to expand public awareness on the impacts of prosecutor's work. The publication of existing prosecution guidelines can also have a positive effect on transparency, as it enables public scrutiny of the prosecution service by providing information on the roles and responsibilities of prosecutors and the prosecution service. At the individual level, recording reasons for specific decisions is a way to enhance transparency for the general public.

Instructions and possibility to appeal prosecutor's actions

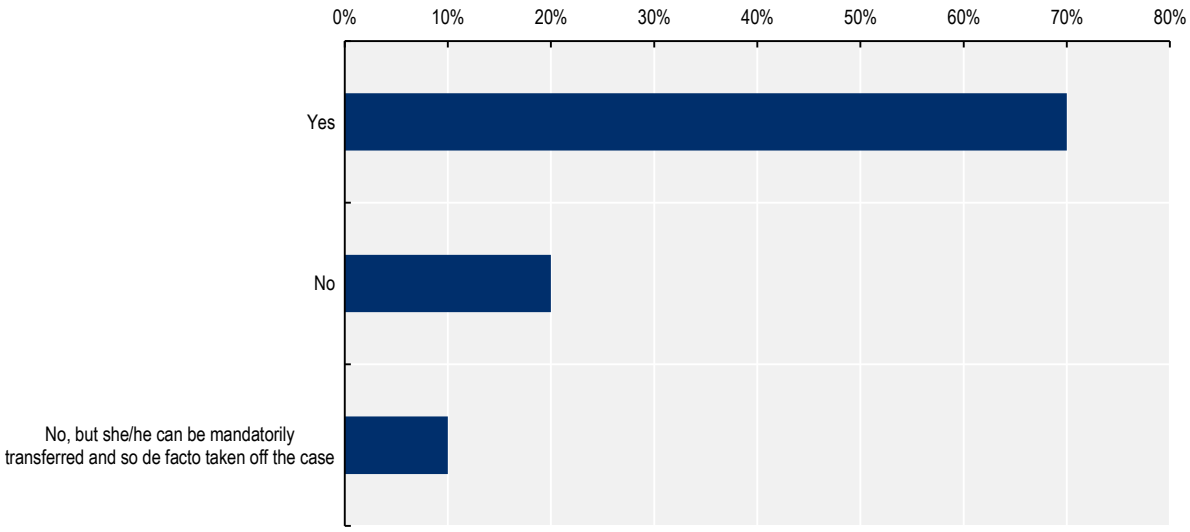
In Latvia, senior prosecutors can give instructions to lower-ranked ones or take over into his/her proceedings any case. However, he/she cannot instruct any prosecutor to perform actions which are contrary to his/her faith. Upon request of a prosecutor or upon discretion of higher-level Prosecutor the instruction shall be issued in written form. Article 46 of the Law on Criminal Procedure entitles senior prosecutors to be acquainted with all matters affecting cases under his/her jurisdiction, as well as to remove and substitute at will any supervising prosecutor and instruct limitlessly anyone participating in the pre-trial investigation, including investigators and prosecutors. A prosecutor may object on his/her own conscience to prosecute a case. Within the OECD benchmarked countries, half of systems (50%) have enabled higher-ranked prosecutors to affect decisions by younger ones, in a 40% of cases if grounded in law; and the other half prohibit such interference. In addition, in 70% of countries, prosecutors may mandatorily be taken off a case without his or her consent:

Figure 2.2. Possibility of higher-ranked prosecutor to change a decision of a lower-ranked one



Note: The following question was asked as part of the ad hoc OECD Questionnaire on Prosecution Service to benchmarking countries (2020): Can a higher-ranked prosecutor change a decision of a lower-ranked one outside of the appeal system?
Source: Benchmarking country responses to ad hoc 2020 OECD Questionnaire on Prosecution Service.

Figure 2.3. Can a prosecutor be taken off a case without his or her consent?



Note: The following question was asked as part of the ad hoc OECD Questionnaire on Prosecution Service to benchmarking countries (2020): Can a prosecutor be taken off a case without his/her consent?
Source: Benchmarking country responses to ad hoc 2020 OECD Questionnaire on Prosecution Service.

Prosecutor's action or decision is appealable in cases and according to the procedure provided by this Law and procedural laws. Complaints on issues which are the sole competence of the Prosecution Office shall be submitted to the Head Prosecutor of the Prosecution Office of the next level, complaints concerning the action or decision of Prosecutor of the Prosecutor General's Office shall be submitted to the Prosecutor General. Decisions of the said officials shall be final.

The civil immunity of prosecutors is guaranteed by article 7 of the Law. A prosecutor is not financially liable for damages caused to any person due to illegal or unjustified actions or decisions of a prosecutor. In cases provided for by the Law, the damages shall be indemnified by the State. Any person who considers that an action or decision of a prosecutor is allegedly illegal or unjustified, may challenge it according to the procedure provided for by the Law, but such person cannot lodge a claim with the Court against a prosecutor, who has taken such action or decision. Such broad immunity is rare in benchmarked countries, where they are often personally liable if they acted in gross negligence or bad faith, as is the case in New Zealand, Portugal and Finland (30% of benchmarking countries analysed) or the compensation would be due but would be paid by the state, as happens in the Netherlands, Sweden and the Czech Republic (30% of benchmarking countries analysed).

Structure and functioning of the Latvian Prosecution Service

Structure of the Prosecutor's system in Latvia

The Prosecutor's Office is a unified, centralised three-level institutional system managed by the Prosecutor General.[3] The Office of the Public Prosecutor comprises institutions in the following tiers:

- Office of the Prosecutor-General (*Ģenerālprokuratūra*) (or "PGO").
- Regional public prosecutors' offices (*tiesu apgabalu prokuratūras*).
- District or city public prosecutors' offices (*rajona vai republikas pilsētu prokuratūras*).
- Specialised public prosecutors' offices (*specializētas prokuratūras*).

If necessary, the Prosecutor-General can establish a specialised sectoral prosecutor's office having the same status as a district or regional prosecutor's office. There are currently five specialised public prosecutors' offices in Latvia:

- A specialised public prosecutor's office for organised crime and other sectors (*Organizētās noziedzības un citu nozaru specializētā prokuratūra*).
- A specialised multi-sectoral public prosecutor's office (*Specializētā vairāku nozaru prokuratūra*).
- Riga Road Transport Public Prosecutor's Office (*Rīgas autotransporta prokuratūra*).
- A public prosecutor's office for investigating financial and economic crime (*Finanšu un ekonomisko noziegumu izmeklēšanas prokuratūra*).
- A public prosecutor's office for investigating crimes involving the illegal circulation of narcotics (*Narkotiku nelegālas aprites noziegumu izmeklēšanas prokuratūra*).

Therefore, the prosecution services are organised as a centralised, hierarchical structure with three levels of responsibility: central office of the Prosecutor General, regional offices and district offices. The chief prosecutor of each department at the PGO instructs and supervises the prosecutors of regions and districts. The chief prosecutor of each region does the same regarding district prosecutors. A visual representation is provided in Figure 2.4.

Structure of the Prosecutor General's Office

The Latvian PGO is organised hierarchically with three departments and two divisions depending directly on the General Prosecutor (Latvia Prosecutor General's Office, 2020[6]):

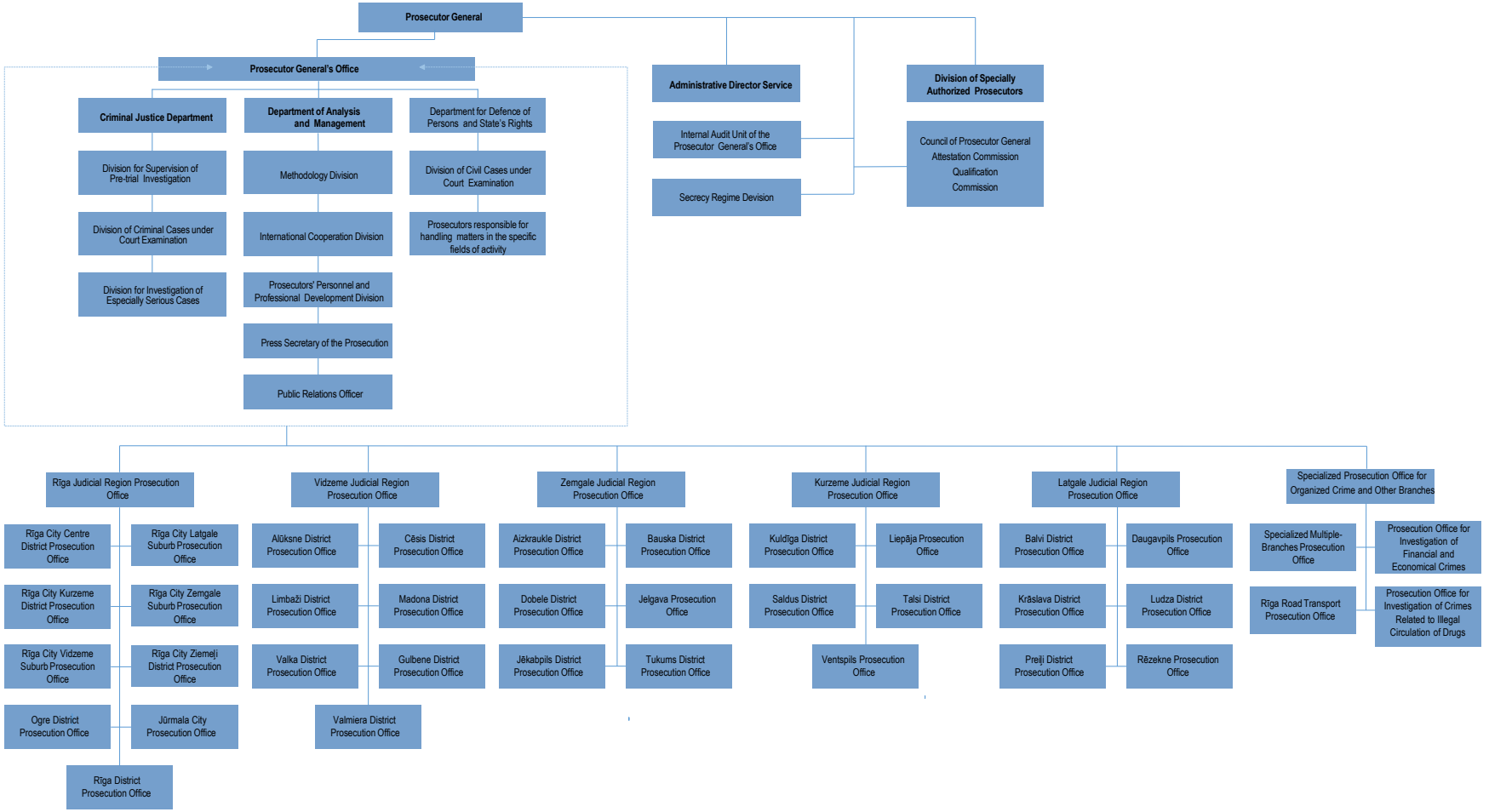
- Department of Criminal Justice: Main functions are the supervision of pre-trial investigations, supervision of criminal cases in court, supervision of especially heinous or serious crimes and several specially empowered prosecutors in matters such as protection of state secrets or criminal intelligence activities.
- Department of Analysis and Management: Main functions are the working methods, international co-operation, personnel and professional development, public relations and press communications. They have nine prosecution positions (not all occupied), but do not do prosecutorial tasks. They manage a limited training budget. There is no training centre for prosecutors separate from the Judicial Training Centre, but international co-operation represents a source of training. They manage the "qualification committee" and the "attestation committee" for recruitment and evaluation of prosecutors.
- Department of Defence of Persons and State Rights (on civil and administrative cases, as well as whistle-blowers protection).
- Division of Administrative Director: Main functions are to take care of the financial and economic activity of the PGO, public procurement and expenditure management; HRM except for prosecutors (job descriptions); personnel administration for all staff; IT; security; vehicles and transport; maintenance. Staff in this Division are employed under labour law contact, not the civil service statute, except the Director and the deputies, who are civil servants recruited through open competition. Many prosecutors are reported to have started their careers as employees of the Administrative Division. The Division employs 325 staffers, of which over 70 are assistant prosecutors. The support staff represent 40% of the total PGO staff, where 60% are prosecutors. The representatives of the Division participate in the Council of the Prosecutor General.

Also directly attached to the General Prosecutor are the following:

- The Council of the Prosecutor General, which is an advisory body.
- The attestation committee (performance evaluation of prosecutors).
- The qualification committee (recruitment of prosecutors).
- The internal audit, reporting to and depending on the PGO.
- The classified information processing division.

The Prosecutor-General's Office may also supervise the work of public bodies that, while not themselves acting as prosecutors, do help achieve certain tasks in criminal proceedings that fall within their remit. These bodies are established, reorganised and disbanded by the Prosecutor-General. The Prosecutor-General also determines the structure and number of staff of these bodies in accordance with the amount of funds allocated from the State Budget. Only one such body has been established to date: The Anti-Money-Laundering Service (*Noziedzīgi iegūtu līdzekļu legalizācijas novēršanas dienests*).

Figure 2.4. Organisation of Latvia's Prosecutor General Office



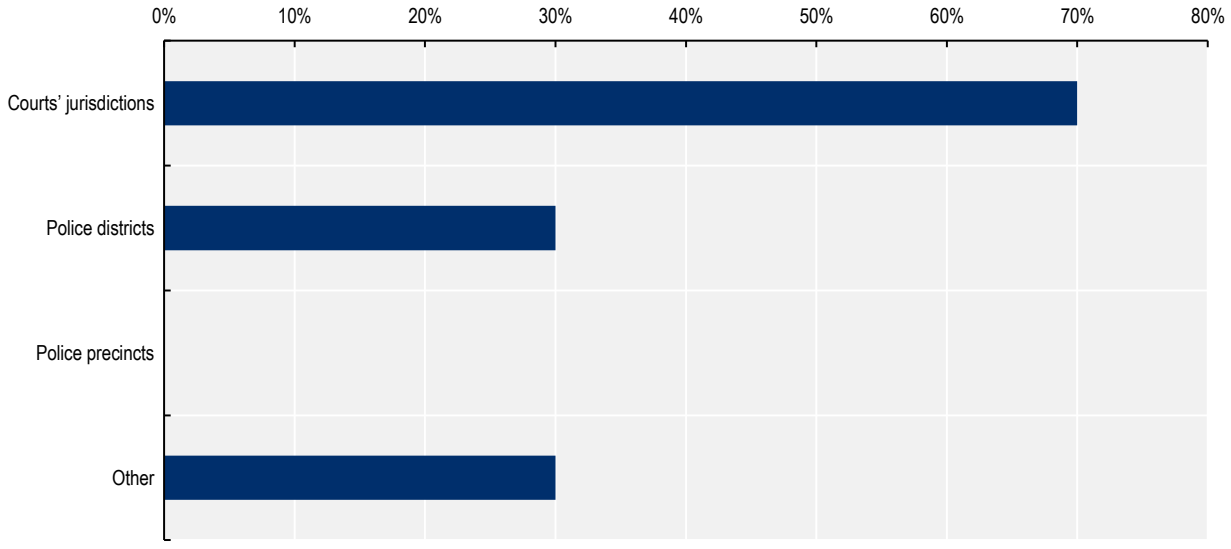
Source: (Latvia's Prosecutor General Office, 2020[7]).

Territorial organisation

The PGO territorial organisation shall match that of the courts (article 26 of the Prosecutors Office Law). In 2018, the judicial map was reformed with the aim to facilitate uniform court practices in reviewing similar cases, to ensure specialisation of judges in specific categories of cases, and to balance workload of judges. At the same time, the prosecution offices territorial distribution has de facto remained unchanged. One of the judicial map reform outcomes was the reduction from 34 to 9 district courts, while there still are 37 prosecutor districts. In this context, in order to facilitate uniform practices in examination of similar cases, ensure the specialisation of prosecutors in specific categories of cases, and balance the workload of prosecutors, the Prosecutor's Office can consider optimising its territorial structure to further align it with the judicial one.

Across the benchmarked OECD countries, a majority align their territorial organisation of the prosecution offices to that of courts:

Figure 2.5. The territorial organisation of the prosecution services



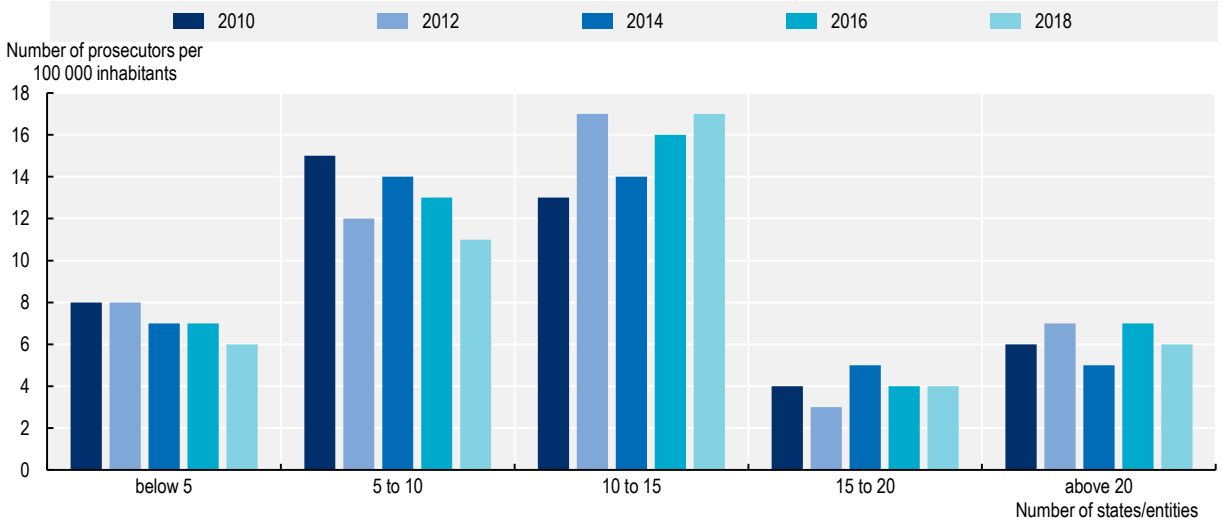
Note: The following question was asked as part of the ad hoc OECD Questionnaire on Prosecution Service to benchmarking countries (2020): The territorial organisation of the prosecutorial services matches the territorial organisation of
Source: Benchmarking country responses to ad hoc 2020 OECD Questionnaire on Prosecution Services.

The general adeptness to this model may stem from the fact that a fragmented prosecutorial service in principle may not lead to the most efficient allocation of public resources, as it can lead to increased travel and other operational costs. In addition, fragmentation can make it difficult to distribute prosecutorial workloads among districts evenly and to apply criminal law homogeneously. Thus, in general terms, the legal framework of the Latvian prosecution system dictating a co-ordination between the courts and prosecution districts is in line with the OECD benchmarked countries. There is scope to further implement in practice the alignment of the territorial organisation of the prosecutorial services with the judicial map.

Prosecutorial staff

Latvia has a total number of around 23 prosecutors per 100 000 inhabitants, according to the data presented in 2018 included in the 2020 Report of the Council of Europe European Commission for the Efficiency of Justice (CEPEJ, 2020[8]). Among 47 countries, Latvia ranked the fourth with 23 prosecutors per 100 000 inhabitants:

Figure 2.6. Number of public prosecutors per 100 000 inhabitants in Council of Europe countries



Source: 2020 CEPEJ Evaluation Report (CEPEJ, 2020[8]), Figure 3.18. Number of public prosecutors per 100 000 inhabitants, 2010 - 2018. CEPEJ data further shows that while most States and entities in Northern, Western, Central and Southern Europe employ very low to average numbers of 2 to 15 prosecutors per 100 000 inhabitants, higher numbers of more than 15 prosecutors per 100 000 inhabitants can be found mainly in more eastern areas including Latvia (and Bulgaria, Hungary, Lithuania, Republic of Moldova, Montenegro, the Russian Federation, the Slovak Republic and Ukraine).

The PGO in its central facilities has 87 prosecutor positions, out of which 11 are chief prosecutors. They are entitled to prosecute anywhere in the country, from the Supreme Court to district courts, but not all of them carry out prosecutorial functions. Some of them focus exclusively on senior prosecution tasks (controlling the work of lower-ranked prosecutors and solving complaints).

The prosecutorial staff are distributed into the following categories: Prosecutor General, chief prosecutor, deputy chief prosecutor, and prosecutor. The prosecutorial service was 499-strong on 31 December 2019, with 40 vacant positions. A decrease in number is observable, as in 2005 the prosecutorial service was 605-strong. Latvia has an average of 23 prosecutors per 100 000 inhabitants, whereas the average in Council of Europe membership was 12 prosecutors per 100 000 inhabitants in 2018. The budget of the PGO is EUR 36.1 million in 2020 (up from the 32.5 million in 2019), which is devoted mainly to personnel compensations (80%). The variable part of the monthly salary (with could reach up to 60%) consists of bonuses for additional work and quality of the work performed (such bonuses are not available to, for example, judges). Those bonuses are generally given to the prosecutors of the General Prosecutor's Office, that is, senior prosecutors, while this is not a common practice in prosecutor's offices at other levels (i.e., district and judicial region prosecutor's offices).

According to the 2020 CEPEJ Report (CEPEJ, 2020[8]), the average spent by States and entities in Council of Europe countries on justice systems was EUR 14 per person. In Latvia, the amount spent is EUR 14.02 or 0.09% of GDP, exactly within the average. In addition, as mentioned above, it was one of the countries that experienced a budget increase in the last couple of years. The budget allocated by European States to prosecution services is around 25% of the judicial system budget on average, and Latvia once again remains exactly in the average numbers, spending around that much on the prosecution. In comparison with other European countries, the prosecutorial service in Latvia does not appear to be under-resourced.

In relation to personnel salaries, according to the 2020 CEPEJ Report data, Latvian prosecutor salaries oscillate between 2.3 and 2.8 times the average national salary, an amount that is average or even high in respect to the rest of Council of Europe countries, in which in many cases prosecutor salaries do not account for twice the average national salary. Despite this, since the Latvian national average annual salary (EUR 12 384) is much lower than in other European countries, in absolute terms the salary of Latvian prosecutors can be considered low. It is reported however that the ratio of the salary of prosecutors at the beginning of the career, as well as of prosecutors at the highest instance to the average salary, has risen significantly between 2016 and 2018 (by more than 25 percentage points) in Latvia, as well as in other benchmarked countries such as the Czech Republic, Denmark, and Portugal:

Table 2.3. Average gross salary of public prosecutors in relation to the national average gross salary in 2018 (beginning of a career/highest instance), (Q4, Q132)

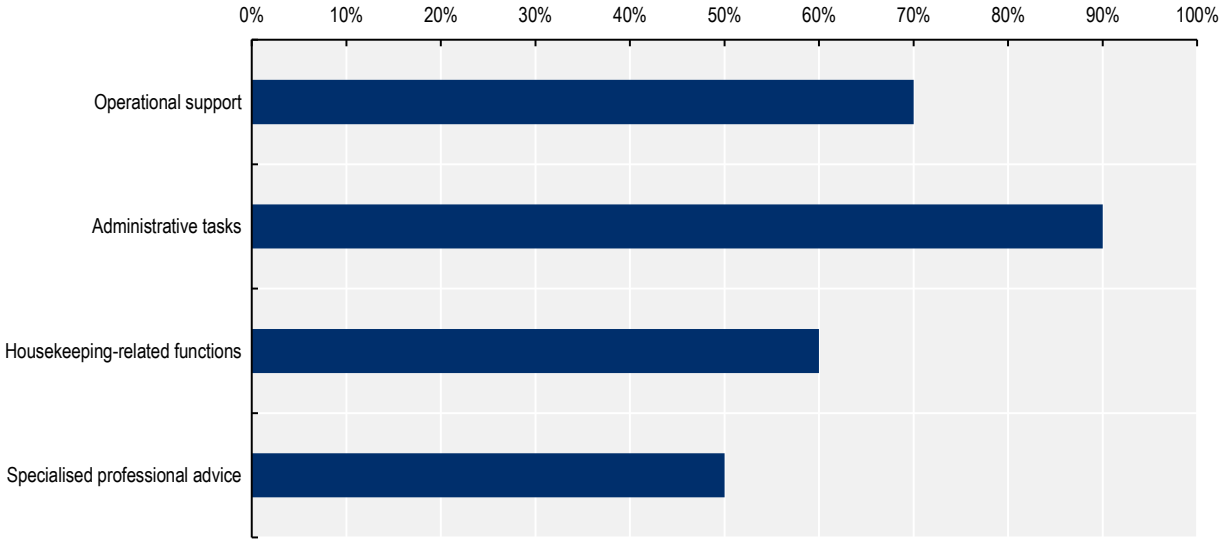
	State/entity	Beginning of career	Highest instance	Average gross annual salary
Below 2 times	AUT	1.6	3.7	EUR 35 240
	AZE	1.1	3.3	EUR 3 354
	BEL	1.6	3.0	EUR 43 497
	CHE	1.6	2.4	EUR 71 641
	CYP[1]	1.5	NAP	EUR 22 896
	DEU	0.9	1.6	EUR 53 688
	DNK	1.4	2.4	EUR 38 035
	EST	1.6	3.7	EUR 15 612
	FIN	1.2	NAP	EUR 41 580
	FRA	1.3	3.4	EUR 35 240
	HRV	1.7	3.9	EUR 13 671
	HUN	1.6	3.2	EUR 12 288
	IRL	0.8	NAP	EUR 38 871
	ITA	1.9	6.4	EUR 29 343
	LUX	1.4	NA	EUR 61 720
	MCO	1.1	2.2	EUR 43 574
	MLT	1.8	NAP	EUR 19 036
	NLD	1.3	2.4	EUR 58 800
	NOR	1.1	2.2	EUR 55 224
	SVN	1.6	2.6	EUR 20 179
	SWE	1.4	2.2	EUR 40 706
	UK:ENG&WAL	1.1	NAP	EUR 33 620
	UK:NIR	1.3	2.2	EUR 20 109
	UK:SCO	0.9	NA	EUR 38 511
2 to 3 times	ALB	2.4	3.4	EUR 4 717
	AND	2.3	3.5	EUR 25 524
	ARM	2.5	NAP	EUR 3 840
	BGR	2.9	5.2	EUR 6 964
	BIH	2.9	5.1	EUR 8 363
	CZE	2.2	4.7	EUR 14 365

	State/entity	Beginning of career	Highest instance	Average gross annual salary
	ESP	2.1	5.4	EUR 23 033
	LTU	2.4	3.2	EUR 11 089
	LVA	2.3	2.8	EUR 12 384
	MDA	2.7	4.5	EUR 3 898
	MKD	2.0	3.1	EUR 6 948
	MNE	2.0	3.5	EUR 9 192
	PRT	2.1	5.1	EUR 16 766
	RUS	2.0	3.8	EUR 7 411
	SRB	2.4	4.6	EUR 7 645
	SVK	2.8	4.3	EUR 12 156
3 to 4 times	UKR	3.2	5.2	EUR 3 355
4 to 5 times	ROU	4.0	6.1	EUR 11 235
NA	GEO	NA	NA	NA
	GRC	NA	NA	NA
	ISL	NA	2.0	EUR 64 858
	POL	NA	NA	NA
Observer	ISR	1.1	3.5	EUR 30 198
	KAZ	NA	NA	EUR 4 800
	MAR	2.1	4.4	EUR 10 512

1. Note by Turkey
The information in this document with reference to "Cyprus" relates to the southern part of the Island. There is no single authority representing both Turkish and Greek Cypriot people on the Island. Turkey recognises the Turkish Republic of Northern Cyprus (TRNC). Until a lasting and equitable solution is found within the context of the United Nations, Turkey shall preserve its position concerning the "Cyprus issue".
Note by all the European Union Member States of the OECD and the European Union
The Republic of Cyprus is recognised by all members of the United Nations with the exception of Turkey. The information in this document relates to the area under the effective control of the Government of the Republic of Cyprus.
Source: Council of Europe (2020, p. 68[9]), *European judicial systems CEPEJ Evaluation Report*, https://rm.coe.int/evaluation-report-part-1-english/16809fc058.

The Administrative Director Division provides the economic, administrative and housekeeping service to the PGO. It employs the assistant prosecutors, which were 76 according to 2018 data provided. Assistant prosecutors are those who provide technical assistance support to prosecutors through preparing draft documents, keeping records, etc. They are not prosecutors, but rather somewhat specialised administrative assistants for prosecutors. Their function appears to be more than administrative, in view that they occasionally undertake legal document drafting under the supervision of the prosecutors, despite the fact that they are required no specific prior knowledge or qualifications in legal or criminal system. In the benchmarked countries, non-prosecutorial staff are found mostly in the following roles:

Figure 2.7. Role of non-prosecutorial staff within the prosecutorial service



Note: The following question was asked as part of the ad hoc OECD Questionnaire on Prosecution Service to benchmarking countries: What is the role of non-prosecutorial staff within the prosecutorial service?
Source: Benchmarking country responses to ad hoc 2020 OECD Questionnaire on Prosecution Services.

This appears to be an initial step in the right direction to more effective prosecutions, since the potential of the non-prosecutorial staff to support prosecutors in carrying out their specialised role is not fully exploited. In most of the benchmarked countries, a large number of non-prosecutorial staff supported the prosecution. In 60% of the cases, this was over 35% of the staff. In Latvia, according to the PGO, 50% of the staff working within the system are not prosecutorial; and despite this high number, many prosecutors are still being assigned to such tasks. It is recommended that this distribution be reviewed, in order to maximise the time prosecutors spend on bringing cases before courts and other prosecutorial tasks.

In sum, the Latvian prosecutorial system seems to be comparable to other benchmarked country systems in its institutional position, structure and budget per citizen, taking into account that the prosecution falls under the judicial branch. A number of differences in respect to its neighbours include employing a much higher number of prosecutors per 100 000 inhabitants than the CEPEJ average, and a salary that is lower in absolute terms than those of many European counterparts, but within regular ranges if weighed against the national average salary (CEPEJ, 2020[8]). Areas for improvement have been identified when nuancing the understanding of independence of the prosecution to also accept higher levels of transparency and accountability in its management of resources and efficiency, in line with OECD benchmarked countries. In addition, a decreased reliance on prosecutors for non-prosecutorial tasks, assigning them instead to assistant prosecutors or other staff of the Administrative director's office may have a positive impact in the PGO's efficiency. These aspects will be further analysed in more depth in the following chapters.

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OECD (2020), *The Independence of Prosecutors in Eastern Europe, Central Asia and Asia Pacific*, https://www.oecd.org/corruption/acn/The-Independence-of-Prosecutors-in-Eastern-Europe-Central-Asia-and-Asia-Pacific.pdf (accessed on 15 December 2020). [2]

OECD (2019), “Implementing the OECD Anti-Bribery Convention in Latvia, Phase 3, para. 111”. [1]

Notes

[1] A conceptual distinction must be made between external and internal independence of the prosecution. External independence refers to autonomy from the influence of politicians and other vested and sometimes intimidating criminal interests, which enables prosecutors to take many important and brave cases to court. Internal independence refers to the internal structure and functioning of the prosecution itself. If the system is configured to have excessive hierarchical verticality, this can sometimes undermine the independence of individual prosecutors. In this section, we will largely be referring to external independence.

[2] The Phase 3 Report on Latvia by the OECD Working Group on Bribery in International Business Transactions evaluates and makes recommendations on Latvia's implementation of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the 2009 Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions. It was adopted by the Working Group on Bribery in International Business Transactions on 10 October 2019.

[3] This structure is described in relation to its organisation when this Report is written, as of the fourth quarter of 2020. Reforms and re-structuring approved by the Prosecutor General in the future or to come into force after the Report's publication may alter this composition.

3 Roles and responsibilities in investigating and prosecuting crimes in Latvia

This chapter analyses the roles ascribed to prosecutors and other institutions in Latvia in relation to the investigation and prosecution of crimes. It examines the role of prosecutors in bringing charges before the Courts, in pre-trial investigation and their involvement in policy making in light of comparative analysis with the OECD benchmarking countries. It emphasises the relevance of tightened co-operation between prosecutors and investigators and of making full use of the range of legal options in the Latvian legal framework to opt for simplified procedures and diversionary measures.

Introduction

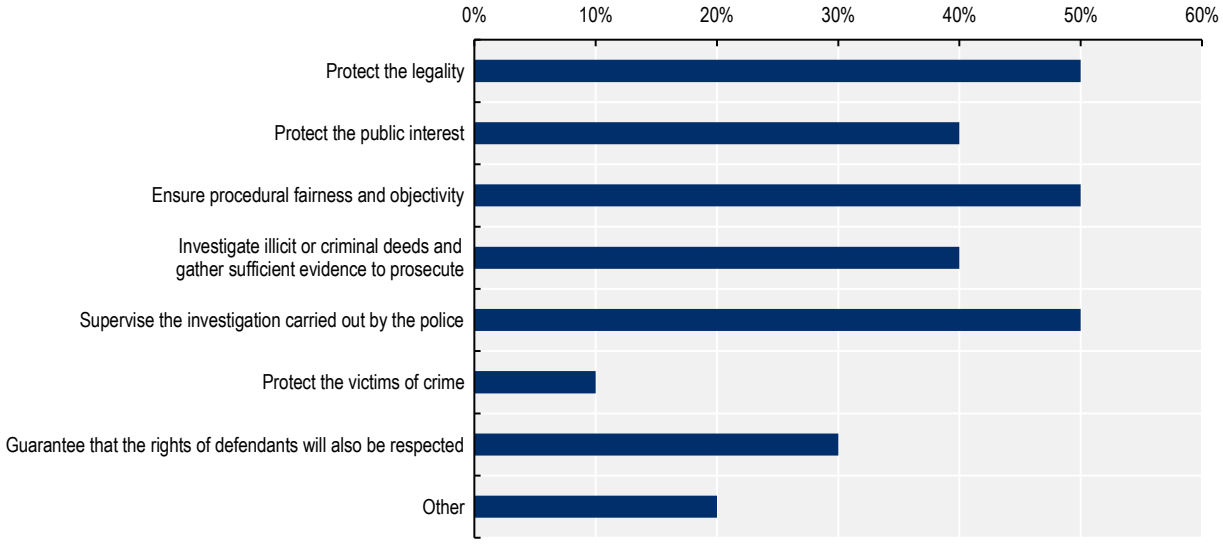
The role of prosecutors in society, as emphasised from the outset of the Report, is essential to uphold the rule of law and avoid a culture of impunity. It enables strengthening of public trust in institutions and has the ability to control criminality rates. These important functions, when pinned down into specific tasks, require prosecutors to perform an active role in criminal proceedings and, where provided by law, the investigation of crime or supervision of such investigation (UNODC/IAP, 2014[1]). They may also involve the protection by prosecutors of the human rights and legal precepts of all those that interact with the criminal justice system (United Nations Office on Drugs and Crime, 2015[2]).

In order to empower prosecutors in this regard, different legal systems ascribe special designations to them, such as prosecutorial discretion, the ability to decide in favour of simplified procedures or diversionary measures, or the ability to engage in criminal policy making. This chapter analyses the roles ascribed to prosecutors and other institutions in Latvia and benchmarking countries. It emphasises the relevance of tightened co-operation between prosecutors and investigators. It also highlights the importance of making full use of the range of legal options in the Latvian legal framework to opt for simplified procedures and diversionary measures.

Roles of the prosecutor

According to Article 36 (1) of the Law on Criminal Procedure of Latvia, a prosecutor supervises and carries out investigations, prosecutes, argues accusations on behalf of the state and performs other functions in criminal proceedings. Prosecutors can participate in all stages of criminal investigation. The Prosecutor's Office may conduct pre-trial investigations and supervise investigative operations carried out by the police and other investigating institutions, initiate and conduct criminal prosecution, and supervise the enforcement of judgments. This is primarily in line with the core functions of the prosecutorial services in the benchmark countries, as shown in Figure 3.1.

Figure 3.1. Main roles of prosecutors in OECD benchmarking countries



The following question was asked as part of the ad hoc OECD Questionnaire on Prosecution Service to benchmarking countries: According to the legislation in your country, what are the three main roles of prosecutors?
Source: Benchmarking country responses to ad hoc 2020 OECD Questionnaire on Prosecution Services.

The role of the prosecutor in criminal policy making and implementation

In Latvia, the Ministry of Justice plays a leading role in criminal law and criminal procedural law policy making, while the Ministry of the Interior is responsible for drafting and implementing national policy for combating crime. In addition, according to Section 65 of the Constitution of Latvia, the President of Latvia, the Cabinet of Ministers, standing committees of the Parliament, not less than five Members of the Parliament, as well as one-tenth of the electorate in cases and in accordance with the procedures provided for in the Constitution of Latvia may submit draft laws to the Parliament. Thus, in case when the performance of the Prosecution Office functions requires amendments to any of the laws, the Prosecution Office may refer a proposal for consideration of the necessity of amendments to the responsible ministry or the relevant parliamentary committee. In such a case, the ministry or parliamentary committee represents the required amendments in the form of its own proposals. The role of prosecutors in this area is thus limited to the submission of proposals to the Ministry of Justice to provide input in relation to criminal justice policies or strategies that will later be debated state-wide. The Ministry of Justice has channelled co-operation for this purpose in the form of Working Groups.[1] See examples in Box 3.1.

In addition, the head of the Prosecutor's Office (Prosecutor General) has the right to participate and engage in drafting or designing national policies and draft laws:

- at the sittings of the Cabinet of Ministers by expressing his/her opinion on the issues to be considered (Section 23.5.5 of the law on the Prosecutor's Office)
- at the sittings of the Crime Prevention Council (where the Prosecutor General is a member).

The Prosecutor General is also a member of the Advisory Council of the Financial Intelligence Service (Sections 59 and 60 of the Law on the Anti-Money Laundering and Terrorist and Proliferation Financing).

Box 3.1. Involvement of the Prosecutor General's Office in law drafting in Latvia

The Ministry of Justice has established several working groups for drafting amendments to procedural laws to follow the procedure described above, including the permanent Working Group for Drafting Amendments to the Criminal Procedure Law (hereinafter, the "CPL"), and the prosecutors of the Prosecutor General's Office of the Methodology Division participate in it. In addition, representatives from investigating authorities, ministries, judges (including from the Supreme Court), academia and lawyers also participate in the Working Group. At the same time, it should also be mentioned that, in the Legal Affairs Committee of the Parliament, the Prosecutor General's Office is represented mainly by the prosecutors of the Methodology Division, that provide, if necessary, a description of the existing problem, at the same time supporting it with examples from practice, as well as respond to the questions raised by the Members of Parliament.

In 2019, the prosecutors of the Methodology Division actively participated in the development of amendments to the CPL in order to promote the investigation of financial and economic crimes, especially the investigation of criminal offences related to money laundering. In addition, the prosecutors of the Methodology Division referred to the Working Group with a proposal to review the appeal procedures for several adjudications provided for in the CPL. Prosecutors have also been involved in the development of certain legal provisions of the "Law on the Operation of Authorities During the Emergency Situation Related to the Spread of COVID-19" in the context of the pandemic. The Methodology Division also provides official opinions on drafts of the legal acts submitted by ministries to the Cabinet. When providing such opinions, a draft of the legal act is evaluated within the scope of competence of the Prosecution Office, especially by evaluating the feasibility of practical application of the developed legal provision.

Source: Prosecutor General's Office, 2020.

As it emerged throughout the interviews, the described engagements are not formalised through law, and thus are not mandatory. This means that no formal mechanisms for co-operation between the executive and the prosecutors exist to collaborate in criminal policy making. As an institution of the judiciary, the prosecution has the opportunity to choose whether it responds to the call of the executive power for involvement. According to the findings of the examination (Senator of the Supreme Court of the Republic of Latvia, 2019[3]) carried out by the Senator of the Supreme Court in 2019, this may have the effect to limit the understanding of the Prosecutor's Office as a leading institution in shaping a uniform law enforcement practice. The recommendations of the OECD assessment of 13 March 2019 regarding the detection, investigation, and trial of criminal offences related to money laundering (Section 7) advised the prosecutors to assume primary responsibility when drafting guidelines on effective investigations of criminal cases associated with money laundering, as well as on the evidence to be obtained during the investigation. From the materials derived during the inspection, it appears that there was a disagreement among law enforcement bodies as to which authority, namely, the Ministry of Justice, the State Police, or the Office of Prosecutor General, should co-ordinate the process.

A number of stakeholders noted limited leadership shown by PGO representatives in the referred Working Groups, which could be explained by their constitutional position and regulation, which does not allocate such responsibility on the prosecution. This perception also could also correspond to the principle of separation of powers that is, that the Prosecutor's Office, as an institution belonging to the judiciary, applies the law but does not interfere in its drafting. At the same time, the law regulating the Latvian judiciary provides for the participation of courts in the drafting of laws and regulations, compilation of practice, as well as promotion of consistent case law and other functions to ensure the efficient functioning of the court.[2]

Involving prosecutors in the making and implementation of state criminal policy and objectives is a usual practice in the context of the OECD benchmarked countries, as well as across European states generally. Indeed, across the benchmarked countries, prosecutors and judges are consulted on draft laws affecting them or criminal justice. Paragraph 87 of Opinion no. 10 of the Consultative Council of European Judges (CCEJ) of 2007 states (emphasis added): "***All draft texts relating to the status of judges, the administration of justice, procedural law*** *and more generally, all draft legislation likely to have an impact on the judiciary, e.g. the independence of the judiciary, or which might diminish citizens' (including judges' own) guarantee of access to justice,* ***should require the opinion of the Council for the Judiciary before deliberation by Parliament****.* ***This consultative function should be recognised by all States and affirmed by the Council of Europe as a recommendation****."* (Consultative Council of European Judges, 2007[4])

In Italy, no changes to criminal policy take place if they are not consulted with the national Associations of Judges and Prosecutors, which is formally provided for. In countries where such formalised consultation is not expressly provided for, there is nevertheless some form of general consultation on draft laws or on "general guidelines" in which citizens, including judges' and prosecutors' associations, can participate. For example, when legislation is drafted in Denmark, the experts or affected parties may be consulted in giving their view on focus points and consequences. The Danish Prosecution Service is usually consulted in matters concerning criminal and procedural penal law. In certain countries, the consultation with judicial and prosecutorial councils is institutionalised. In countries where prosecutors are part of the judicial power, as is the case in Latvia, these consultations involve prosecutors as well.

Judicial Councils, as well as other types of judicial governing bodies (such as prosecutors), have generally been awarded by law the power to render opinions to the executive and the legislative on judicial policies or legislative proposals affecting the judiciary, the citizens' access to justice, the delivery of justice through procedural laws or the independence of courts. In some cases, they also have the power to put forward proposals on their own motion to amend existing legislation or to produce new legislation on these matters.

Judicial Councils, in virtually all EU member states that have one, are awarded advisory powers on legislation concerning the judiciary and procedural laws. This is the case of Belgium, Bulgaria, Croatia (at

the request of the Ministry of Justice), Denmark, France (at the request of the President of the Republic or the Ministry of Justice), Italy, Latvia, Lithuania, the Netherlands, Portugal, Romania, the Slovak Republic, Slovenia and Spain. In countries where no judicial council exists, consultations with a prosecutorial body are less institutionalised. In many countries, the judiciary, through the High Judicial Councils, is asked for assistance and comment when laws are drafted or new policies are under consideration, but not the prosecutors. In Table 3.1, some more detailed examples of Council involvement in criminal policy making and implementation will be provided.

Table 3.1. Participation of prosecutors in policy making

Czech Republic	• The Public Prosecution Service takes part in forming the criminal policy of the state. It identifies problems the prosecution deals with and suggests possible legislative solutions. • The Prosecutor General Office is one of the official institutions that need to be consulted for comments on legislative proposals in matters under the jurisdiction of the prosecution service.
Denmark	• When legislation is drafted, the experts or affected parties may be consulted in giving their view on focus points and consequences. The Danish Prosecution Service is usually consulted in matters concerning criminal and procedural criminal law. • The Director of Public Prosecutions is the non-political head of the hierarchic Prosecution Service. In providing general advice to the Ministry of Justice and commitment to international co-operation the Director also plays an important role.
France	The *Conseil Supérieur de la Magistrature* (CSM) by means of its annual reports, which are published on its website, deals with all kind of issues having to do with the independence of magistrates and proposes reforms for improvement. The CSM also publishes opinions (*avis*) and Communiqués. The *avis* (opinions) are issued by the plenum to answer the requests from the President of the Republic or the Ministry of Justice (article 65 of the constitution).
Italy	• Article 10 of the Law of 24 March 1958 (article 10) allows the Consiglio Superiore della Magistratura (CSM) to make proposals to the Ministry of Justice on modifications of the judicial map and on any matters concerning the organisation and functioning of the judicial service. • Likewise, the CSM provides opinions to the Minister, upon his/her request, on draft laws concerning the judicial organisation, administration of justice and any other concerns dealing with such issues. • The CSM can also propose laws to the parliament in matters concerning the organisation and functioning of the justice system.
Ireland	Responsibility for general criminal justice policy rests with the Minister for Justice and Equality assisted by the Law Reform Division of her Department. There is no formal method of consultation between the Prosecutor's Office and the Department. In practice, consultation about intended legislation is quite common particularly when major reforms in criminal law or procedure are contemplated. There is a formal provision for consultation between the Attorney General and the Director and such consultations take place frequently.
Netherlands	It is mandatory to request the opinion of prosecutors when drafting laws related to their area of work, but such opinion is not binding for the legislature.
New Zealand	The Government Legal Network (GLN): It is a non-prosecutorial service. Led by departmental Chief Legal Advisors and the Principal Law Officers (Attorney-General and Solicitor-General), the Government Legal Network (GLN) comprises over 1000 lawyers in central government and Crown entities. By leveraging collective legal expertise, the GLN addresses a broad spectrum of complex legal matters and assists the Crown in the delivery of better public services. The GLN reports to the Solicitor-General.
Portugal	Prosecutors must perform consultative functions as laid down by Article 4 of Law 68/2019 of 27 August on the Statute of Prosecutors.
Sweden	Prosecutors have no role outside the criminal justice system. Nevertheless, they participate in working groups for policy and law drafting in criminal justice-related matters. There is no professional association of prosecutors.

As can be observed from the above, involvement in the drafting or design of criminal policies of the prosecution is regular practice in a majority of the benchmarked countries. If such engagement were to be increased in Latvia, it could possibly benefit the prosecution by enabling it to have a voice in the proceedings as first-hand expert practitioners, on the one hand; and to increase a sense of ownership in the achievement of criminal policy goals by prosecutors, on the other. During the interviews, it emerged that prosecutors would like to have a stronger say in particular in the reforms carried out of the criminal procedural code, in which they find several roadblocks to their daily work. A more formalised and sustained engagement of the prosecution as a stakeholder in criminal policy reforms could benefit overall efficiency and performance of the prosecution in Latvia. In addition, further detailing of the law with regard to co-operation principles with the executive and introduction of some mechanisms for engaging of the Prosecutor's Office in achieving strategic goals of crime prevention policy could be a step considered by Latvia.

Management roles of prosecutors

In relation to self-management, there are a variety of instruments: some countries have them in the laws establishing public prosecutor's offices, others in the laws regulating the judicial and fiscal governing bodies, others in the procedural laws, etc.

With regard to the management of resources by the public prosecution services, in most countries, it is not the case, as it is the Ministry of Justice (or Interior) that is responsible for management. The exceptions are Italy and Portugal, where the Council of the Judiciary is responsible for management (Italy) or the Prosecutor General in tandem with the Council of the Public Prosecutor's Office (Portugal) manages existing resources. In France, it is the Ministry of Justice, especially the Directorate General of Justice, which manages resources, with the Conseil Supérieur de la Magistrature playing a very secondary role. In the rest of the countries, the predominant role is played by the Ministry of Justice. In the Latvian institutional system, the resources of the Prosecutor's Office (that is, the resources of prosecutors are not separated and cannot be separated from the resources of the institution) are managed directly by the Prosecutor's Office, with the head of the institution, the Prosecutor General, being fully accountable. Following Section 19.6 of the Law on Budget and Financial Management, the Ministry of Justice compiles budget requests submitted by courts and forwards them to the Ministry of Finance, whereas the Prosecutor General's Office compiles and forwards budget requests submitted by prosecution services.

It should be borne in mind that the Council of Europe Recommendation (2000)19 safeguards national traditions in the organisation of the public prosecutor's office. It should also be taken into account that this Recommendation, and many others from the Council of Europe, originate from recommendations of prosecutors and judges. A highly influential model has been the Italian Council of the Magistracy, which has been widely adopted as the "European model" and entails a strong self-management component for resources of judicial and prosecution systems. As such, it has grown in importance, including by recommendation of the Council of Europe and through it to the European Commission and the new member countries of the European Union from the east, except for the Czech Republic. Despite its growth, some systems are experiencing difficulties with this model that have included corruption, nepotism, arbitrary appointments, and patronage, as they came from a tradition of management by the Ministry of Justice. Despite its issues, it is worth noting that the Italian model originated in a system where not only judges but also prosecutors have complete individual independence, including at the vertical level with no hierarchical control. In some cases, this model has been transferred to a country where the system is hierarchical, without taking full account of this difference. As such, to be effective, this model should be accompanied by sound mechanisms ensuring transparency and accountability.

Roles and responsibilities in pre-trial investigation in Latvia

Criminal investigations in Latvia are mainly the responsibility of three criminal investigation bodies:

- The State Police, under the authority of the Ministry of Interior.
- The Corruption Prevention and Combating Bureau (usually known as "KNAB", per its Latvian acronym), under supervision of the Cabinet of Ministers executed by the Prime Minister.
- The Tax and Customs Police Department, which is a unit of the State Revenue Service (which is, in turn, an institution of direct administration under the supervision of the Minister for Finance).

The Financial Intelligence Unit of Latvia (hereinafter “FIU Latvia”) should also be mentioned in this context, despite the fact that it does not carry out investigations. It is an institution especially established under the supervision of the Cabinet of Ministers through the Minister of Interior which receives, processes, and analyses reports on suspicious financial transactions as well as, in cases provided for in the law, provides this information to control, pre-trial investigation, and court authorities as well as to the Prosecutor’s Office. In addition, according to Section 386 of the Criminal Procedural Law, the Security Police, the Internal Security Department of the State Revenue Service, the Military Police, the Latvian Prison Administration, the State Border Guard, the captains of seagoing vessels at sea, the commander of a unit of the Latvian National Armed Forces located in the territory of a foreign country, and the Internal Security Bureau are also charged with certain criminal investigation functions.

The work carried out by the Ministry of Finance coincides across several areas with that of the prosecutors, in particular in relation to anti-money laundering and the “AFCOS” programme (a programme established under the responsibility of OLAF to protect the financial interest of the European Union in Member States).

On the other hand, functions of the Prosecutor's Office in Latvia in a pre-trial investigation are laid down in article 2 of the Law on the Office of the Public Prosecutor whereby the Office of the Public Prosecutor:

- supervises the compliance with legal enactments of the preliminary investigation and intelligence activities, reconnaissance and counterintelligence processes of the national security institutions and of the system for protection of state secrets
- conducts the pre-trial investigation (only if the case is very complex or the police fails)
- initiates and conducts criminal prosecution
- prosecutes on behalf of the State
- supervises the execution of penalties
- protects the rights and legitimate interests of persons and the State in accordance with the procedure prescribed by law
- submits a complaint or a motion to the Court in cases provided for by the law
- takes part in the court hearings in cases provided for by the law.

On the other hand, State Police investigators are in charge of specific criminal cases, being able to prescribe the investigative actions to verify that a criminal offence has occurred and who has committed it, obtains evidence that gives grounds for indicting an offender for a crime, and chooses a type of criminal procedure that ensures a fair resolution of criminal justice, along with any specific criminal procedural steps. A similar role and tasks are associated with the specialised bodies including KNAB (which carries out such investigation for corruption-related offenses), The Tax and Customs Police (investigating tax crimes), and finally the FIU, which specialises in sensitive investigations including suspicious financial transactions on money laundering and terrorism financing. Table 3.2 provides a summary of the responsibilities of each of the actors described above.

Table 3.2. Actors in Latvian criminal investigation and prosecution, especially of financial and economic crimes

Investigator (State Police)	• Manages a specific criminal case (the investigator is an authority in charge of the investigation). • Carries out investigative actions to verify that a criminal offence has occurred and who has committed it, obtains evidence that gives grounds for indicting an offender for a crime. • Follows the instructions of his/ her immediate superior, a supervising prosecutor, and a senior prosecutor. • Selects a type of criminal procedure that ensures a fair resolution of criminal justice, without unjustified interference in the life of an individual and unreasonable expenses, as well as chooses and conducts procedural actions to conclude the investigation as fast and economically as possible
Immediate superior of the investigator (State Police)	• It is the head of the investigation body or its structural unit assigned to control a specific criminal proceeding during the investigation. • Ensures that a criminal case is initiated and investigated efficiently, expeditiously, without undue delay and without violating human rights. • Ensures that officials subordinate to him/her initiate criminal proceedings in a timely manner. • Confers procedural powers on the necessary circle of subordinate officials to ensure the purposeful conduct of the criminal proceedings and without undue delay. • Instructs on the direction of the investigation and the performance of investigative actions if the authority in charge of the criminal proceedings does not ensure a purposeful investigation and allows unjustified interference in the life of an individual or undue delay.
KNAB (Corruption Prevention and Combating Bureau)	Under the Cabinet of Ministers, it investigates corruption-related crimes and forwards the results to the prosecutor office.
Tax and Customs Police	Under the Ministry of Finance, it investigates tax-related criminality and reports to the prosecution office.
Financial Intelligence Unit-FIU (Cabinet of Ministers, through the Ministry of the Interior)	Receives, processes, and analyses reports on suspicious financial transactions on money laundering and terrorism financing, as well as in cases provided for in the Law and provides this information to control, pre-trial investigation, and court authorities as well as to the Prosecutor's Office. Publishes information regarding the results of the FIU Latvia work by indicating the number of cases investigated and the number of persons transferred for criminal prosecution during the previous year, the number of persons convicted for criminal offences related to money laundering or terrorism financing, and the amount of the funds seized and confiscated.
Supervising prosecutor (Prosecutor Office)	• supervises the investigation in the specific criminal proceedings • instructs on the direction of the investigation and the performance of investigative actions if the authority in charge of the criminal proceedings does not ensure a purposeful investigation and allows unjustified interference in the life of an individual or undue delay • urges the immediate superior of the investigator to replace the authority in charge of the criminal proceedings, makes changes to the investigation team if the given instructions are not followed or there are procedural violations admitted that endanger the course of the criminal proceedings • takes over the conduct of criminal proceedings immediately when the investigation has obtained sufficient evidence for the fair resolution of criminal justice. As the officer conducting the proceedings, the prosecutor may: • come to an agreement with the accused regarding an admission of guilt: • take a decision to refer the case to court • submit a case for prosecution under a special procedure • terminate the criminal proceedings on mandatory legitimate grounds.
Senior prosecutor (Prosecutor Office)	• overturns the decisions of an investigator, member of an investigation team or junior prosecutor • appoints or replaces a supervising prosecutor or prosecutor/officer conducting the proceedings, if supervision and prosecution are not fully guaranteed, or assumes responsibility himself or herself • establishes an investigation team, if the volume of work jeopardises completion of the criminal proceedings within a reasonable timeframe • requests that another immediate superior be appointed for the investigator or assigns the criminal investigation to a different investigative body • includes additional investigators to the investigation team • checks whether a public prosecutor performs the functions with which he or she has been entrusted • takes decision on complaints and reprimands regarding the decisions and actions of the supervising prosecutor and prosecutor/officer conducting the proceedings. • assesses whether the dismissal of an accusation is justified and legitimate.

Source: Initial understanding of the State Audit Office, Republic of Latvia of factors affecting effectiveness of investigations of economic and financial crime. Drafted by the Second Audit Department, State Audit Office on 15th May 2020.

The current allocation of responsibilities between prosecutors and investigators primarily appear to be the result of the amendments to the Criminal Procedural Law carried out in 2005, specifically through article 27-2, which stipulates that *the supervising prosecutor is obliged to give instructions only if the investigator does not ensure a purposeful investigation and allows unjustified interference in the life of an individual or delay.* Prior to that, the Criminal Procedure Code stipulated that the *supervising prosecutor instructed the investigator on the progress of the investigation and the performance of specific investigative actions*. Therefore, the 2005 law amendment appears to have given the prosecutor a vicarious character regarding the investigators, which, in the course of time, may have contributed to a relative distance of the prosecutors from the investigation.

At the same time, article 12 of the Prosecutors' Office Law highlights the supervisory functions of the prosecutor over the compliance with legal enactments of the preliminary investigation and intelligence activity.[3] The Order of the Prosecutor General determining the roles of the police and prosecutors also states that from the first day of an investigation the supervising prosecutor must ensure the control of the investigation. The Order also determines that the prosecutor can annul an act or decision of the investigator, whereas this latter can appeal to a higher prosecutor. The appeal by an investigator to a higher prosecutor may not necessarily be the way to solve the issue, as it may in fact cause further delays. An investigator who is overruled has no personal interest to defend the case, without prejudice to the possibility to raise concerns when an investigation is unlikely to be fruitful, or to propose to resume it if further evidence should come to light. Thus, it would be preferable to possibly limit the right to appeal decisions of prosecutors by investigators, while at the same time ensuring an early involvement of the prosecutor in pre-trial investigations, so necessary guidance can be given. In sum, the legal framework leaves relative ambiguity with regard to the level of involvement of the prosecutor in the pre-trial process.

There is a need to clarify the scope of prosecutor involvement in pre-trial investigation to align with practices in benchmarking countries

In view of the above institutional design described, the Latvian prosecution system seems well placed in regards to its overall structure to act effectively. The existing institutions and teams do not display dysfunctionalities in relation to their OECD benchmarked counterparts. Some aspects offer scope for improvement, which the following analysis will focus on. In particular, the creation of an increased co-ordination and clarification of responsibilities and burden of proof standards between prosecutors and investigators could significantly improve efficiency and effectiveness in pre-trial investigation - as identified by a wide range of interviewed stakeholders, including both prosecutors and investigators themselves.

Given that the current legal framework appears to encourage prosecutors to intervene in the pre-trial investigation process only as necessary, it creates a situation where investigators often work autonomously and prosecutors appear detached, especially from the beginning of the investigation, despite having the supervisory authority from the outset. Such authority includes a possibility to rule on the admissibility of evidence and on the need for additional/different investigative actions. This creates a co-ordination and co-operation challenge when the prosecutorial supervision is often perceived to be formalistic and intermittent, with often unclear roles and responsibilities during the pre-trial investigation. This can lead to the loss of time on investigations which have little or no prospect of a successful outcome. It also creates limited opportunities for the co-operation between prosecutors and investigators, except on serious criminal offenses, thus possibly undermining the effectiveness of the Latvian criminal justice system. Recommendations to improve co-ordination between the prosecutors and KNAB were also part of the *Implementing the OECD Anti-Bribery Convention in Latvia* Phase 2 (recommendation 9(a) (OECD, 2015[5]) and Phase 3 (recommendation 6(a) (OECD, 2019[6])) Reports.

From the benchmarking perspective, in countries where investigative magistrates (judges) conduct the pre-trial investigations (known as 'instructions'), they are involved in the investigation from the very beginning, since the end of the *habeas corpus* term (usually 36 or 48 hours from the arrest of the suspect,

moment when the police become fully subordinated to the investigating judge). On the other hand, in countries where a total split exists between investigation and prosecution prosecutors do not intervene at all in investigation beyond some occasional co-operation. But prosecutors do not have any supervisory role of the investigation. Finally, in countries where only prosecutors lead the investigation, the police are subordinate to the prosecution direction from the very beginning of the investigation. The situation in Latvia is ambiguous concerning the distribution of responsibilities between prosecutors and investigators, which can hamper the functioning of the criminal justice system. Table 3.3 illustrates the relationship between investigation and prosecution in the benchmark countries in conducting pre-trial investigations:

Table 3.3. Relations between investigation and prosecution in the benchmarked countries in conducting pre-trial investigations

Country	Leading investigator	Supervision of the investigators	Observations
Czech Republic	Police under prosecutor's watching	Prosecutor supervises the legality and gives binding instructions to the police	The prosecutor must be notified within 48 hours of the initiating of an investigation
Denmark	Police (with large autonomy)	Prosecutor supervises the legality and may give binding instructions to the police	Complex cases are investigated together between police and prosecutors
Finland	Police or another Pre-trial investigation authority exclusively	Pre-trial investigation authority is obliged to comply with any orders issued by the public prosecutor.	The prosecutor is not the supervisor of the pre-trial investigation authority, nor has any disciplinary authority over investigation authorities. Legal obligation is established to co-operate between police and prosecutor.
France	Judicial police led by the prosecutor	Supervision by the prosecutor In serious crimes, the investigation is under the authority of the investigating judge.	The prosecutor has formal authority over the police services when they investigate criminal offences. The police must always refer to the prosecutor who is the only authority that can decide whether a case should enter the criminal justice system.
Ireland	Police exclusively. They also prosecute minor crimes (summary offences)although it is done in the prosecutor's name and are subject to her direction although this is hardly ever exercised	No direct supervision exists, but prosecutors open the criminal justice system in serious crimes (indictable offences).	The investigation and prosecution are separate and distinct functions within the criminal justice system.
Italy	Judicial police (they have little autonomy)	Directed and supervised by Prosecutor and Court.	The police carry out any investigation and activity ordered or delegated by the prosecutors.
Netherlands	Police led by the prosecutor	Prosecution has ultimate responsibility for investigations, especially on serious offences.	Every investigation is carried out under the instructions of a prosecutor, who ensures that the police observe all the rules and procedures laid down by law.
New Zealand	Police or other prosecuting agency	Prosecutors do not supervise investigations but will provide advice as needed. On receiving the file they will review the information and seek further information through the investigator where needed.	Investigations are carried out by the police or by the agency legally empowered to investigate and prosecute.
Norway	Police prosecutors act autonomously and prosecute less serious crimes. Public prosecutors may instruct police in serious crime investigations	Prosecution higher authority (public prosecutor) is a government agency and the lower authority (police prosecutor) is part of the police.	The Norwegian Prosecuting Authority and the Norwegian Police Service are hierarchically integrated.
Portugal	Judicial police led by the prosecutor	Prosecutors supervise while respecting the technical autonomy of the police.	Tensions often arise between prosecutors and police officers when it comes to interpreting the notion of "technical autonomy" of the police.

Country	Leading investigator	Supervision of the investigators	Observations
Sweden	Police (minor crimes) Prosecutor, assisted by the police (serious crimes)	The Prosecutor is responsible for ensuring that the crime is investigated in an optimal way.	The prosecutor leads the investigation and takes decisions about the investigative measures regarding serious crimes. Investigations concerning serious crimes can also be conducted by the police if there is still no suspect in the investigations. The investigations that the police have completed concerning minor crimes are handed over to the prosecutor who will decide whether to prosecute or not. The prosecutor can also request supplementary material from the police before a decision on prosecution is made.

Source: Benchmarking country responses to ad hoc 2020 OECD Questionnaire on Prosecution Services.

There is also scope to enhance the quality of the broader pre-trial investigation process

More broadly, a number of stakeholders, including the State Audit Office, identified several additional considerations for pre-trial investigations, such as the insufficient qualification of the involved parties, relatively negative attitude of prosecutors to providing instructions to investigators, unclear distribution of roles of the officials participating in criminal proceedings, and the heterogeneous understanding of the criminal procedures by investigators and prosecutors.

For example, investigators and their immediate superiors tend to highlight the fact that supervising prosecutors are often insufficiently knowledgeable about the specifics of economic and financial crimes, while they are to decide whether the evidence gathered is enough or not to write the arraignment. The interviewed stakeholders identified the need for more joint training of investigators, prosecutors and judges as well as informal venues where to discuss and building a shared understanding of substantial and procedural issues. Indeed, in 2017, the State Audit Office proposed an enhanced co-operation between police and prosecutors, especially in financial crimes, which are very sophisticated and complex. This proposal has not been fully heeded.

They also note the instructions to investigators to carry out additional investigative actions late in the process, thus possibly contributing to the unnecessary delay of the pre-trial investigation. Discrepancies between prosecutors and investigators on the “sufficiency of the evidence” gathered appear to serve as another important hindrance for the smooth performance of the Latvian criminal justice system. According to the stakeholder interviews, prosecutors seem reluctant to prosecute if there are not enough guarantees (i.e. enough evidence) to reach a conviction. There is manifest operational discrepancy between investigators and prosecutors on the interpretation of article 401 of the Law on Criminal Procedure on when an investigation should be considered as completed from the point of view of the necessary amount of evidence to reach the burden of proof that would achieve conviction. Likewise, discrepancies also reach the extent of article 394 on tasks prosecutors can demand from investigators. There is limited regulatory base to determine when the evidence gathered by investigators is enough. This leads to many cases being suspended and remain so for a long time, as the principle of legality prevents prosecutors from dropping the case. As a result, it appears that the ratio of cases being brought to the court by prosecutors appears is low in comparison to those being investigated (see for example in Annex B, the available statistics for the Prosecutor’s Office for investigating financial and economic crimes, whereby 288 investigations are being supervised by prosecutors, only 2 are being prosecuted and 8 have reached the accusation stage), being cited by interviewees as achieving a 99% conviction rate. Harmonisation of practice on the evidentiary threshold and steps to perform for each type of offense could support enhanced co-operation (see the discussion on standardisation in Chapter 4).

In addition, whereas a number of domestic actors in the Latvian criminal justice system tend to highlight the role of the legislation as the main cause for the uneven performance of the criminal justice system, external observers often note that while some improvements in the legal frameworks could be helpful, the primary efforts for improvement should focus on strengthening the application of the law and implementation of the legal framework by the Latvian State (i.e. police, prosecutors and judges).

While a number of stakeholders highlighted that investigators and prosecutors should be working in unison from the commencement of investigations, nevertheless, from the interviews held by the OECD, it is unclear at this point whether the role of prosecutors in pre-trial investigations should be increased or decreased. More involvement was requested by investigators, including the obligation to co-operate or to be involved at an earlier stage, to better guide them and avoid cases sent back and delays. On the contrary leaving investigation responsibilities primarily to the police in certain cases could ensure the prosecutors will focus on prosecuting crimes, and on investigating the most complex crimes only. An optimal balance, but one that should include an initial meeting between the supervising prosecutor and the investigator assigned to a given case to co-ordinate on the steps to be taken and calculate a timeframe for the investigation, may bear combination of both. This could be useful to reduce workloads based on supervision, and allowing the necessary space for prosecutors to actually prosecute complex crimes. It could also allow to enhance efficiency, as was the case in a number of OECD countries represented in the benchmark. In any event, it appears essential to clarify and adjust the current approach or focus of the prosecutor in pre-trial investigations in Latvia. The Danish, Finnish and Norwegian models of prosecutions conducted by the police, as highlighted in the table above, could offer relevant practices for Latvia.

Considerations for determining prosecutor's discretion to prosecute

Increasingly, decisions in criminal justice systems in OECD countries are being brought out of courts to prosecutorial-made settlements, which often is due to the fact that traditional court designs cannot cope with the increased criminality in terms both of numbers and sophistication. The thrust is solving problems as quickly and cheaply as possible.

The finalisation of pre-trial investigation may have many forms and carried out in many ways. Whatever the modalities of ending the investigation it has deep impacts on the efficiency and economy of the criminal justice system. In Latvia, the Criminal Procedure Law (Section 6) enshrines the mandatory nature of criminal proceedings, otherwise known as the principle of legality. It enshrines the task of the Prosecution Office to respond to any violation of law and to ensure the review of the case related to the said violation in accordance with the procedure laid down by the law. Thus, pre-trial investigations may end in the ways described below, apart from lodging the arraignment in court. As in other countries in which the principle of legality in criminal proceedings prevails, the **principle of opportunity** (prosecutors have discretion to prosecute a case or not depending on various factors, including the likelihood of conviction or the relevance of the case) appears in use under some circumstances.

In Latvia, the prosecutor may terminate criminal proceedings after the receipt thereof without the initiation of criminal prosecution if there are specific circumstances provided for by law (there was a minor offense committed, a settlement has been concluded, etc.). The Criminal Procedure Law allows for simplified criminal proceedings such as the prosecutor's penal order without court approval for less serious crimes (article 420) or urgent procedures for flagrant crimes (article 424). These allow a prioritisation of resources, as opposed to the longer ordinary procedure, which is largely used in practice. Likewise, the Law provides for summary procedures for investigations if completed within ten days and if the perpetrator is identified (article 428). Plea bargaining (called "agreement in pre-trial criminal proceedings") concluded by the prosecutor and approved by the court is also admitted by article 433 of the Latvian Criminal Procedural Law. In addition, there are provisions allowing terminating criminal cases – Section 392 of the Criminal Procedure Law: if proving guilt of a specific suspect in committing a criminal offence has not been successful in pre-trial proceedings, and gathering additional evidence is not possible, the investigator, with

a consent of the supervising prosecutor, or the higher-level prosecutor, can make a decision to terminate the criminal proceedings. If the proceedings are terminated in the part against a person, the pre-trial proceedings continue. An investigator may also, with the consent of the supervising prosecutor, terminate criminal proceedings for a minor criminal offence if he has failed to identify the person who committed it (entered into force on 6 July 2020). On 1 January 2021, a new provision will enter into force (Section 392 2.2 of the Criminal Procedure Law) stipulating that an investigator may, with the consent of the supervising prosecutor or with the agreement of a senior prosecutor in criminal proceedings for money laundering, make a decision on the termination of criminal proceedings if confiscation of crime proceeds has been achieved, the guilt of the person committing the criminal offence has not been proven in the pre-trial proceedings, and gathering additional evidence will not ensure economic pre-trial criminal proceedings, or costs will be disproportionately high.

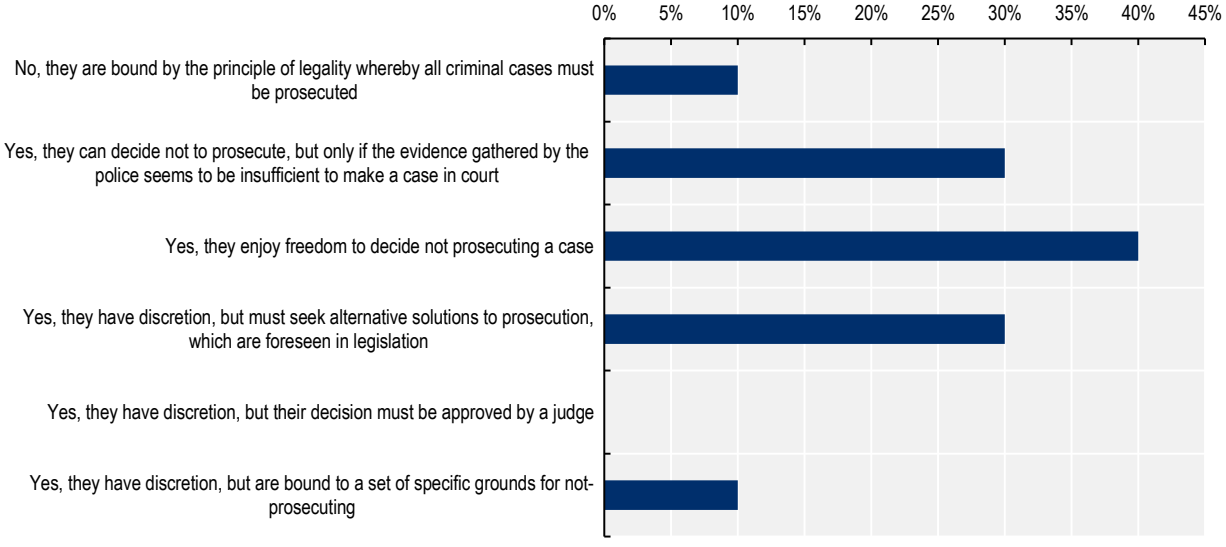
After the initiation of criminal prosecution, the prosecutor is provided with an even wider range of possibilities to complete the criminal proceedings without forwarding cases to court. Across the OECD countries benchmarked, half of the systems make use of the principle of opportunity, while the rest are bound by the one of legality (the one applied in Latvia), as follows:

Table 3.4. Principles shaping the exercise of prosecutorial discretion, by country

Principle of opportunity/expediency	Principle of legality
France	Finland
Ireland	Czech Republic
Denmark	Italy
New Zealand (limited)	Portugal
The Netherlands	Sweden

Source: Benchmarking country responses to ad hoc 2020 OECD Questionnaire on Prosecution Services.

Figure 3.2. Degrees of prosecutorial discretion in OECD countries



Note: The following question was asked as part of the ad hoc OECD Questionnaire on Prosecution Service to benchmarking countries: Do prosecutors enjoy discretion in deciding to prosecute a case or not?
Source: Benchmarking country responses to ad hoc 2020 OECD Questionnaire on Prosecution Services.

The deployment of both principles is constitutionally legitimate and there is not a clear positive or negative effect on performance of using one or the other across the benchmarked countries. However, some argue that the opportunity principle does not ensure equality before the law. Nonetheless, and for both types of systems, the UN Guidelines on the Role of Prosecutors (18) advise that, in accordance with national law, prosecutors should give due consideration to waiving prosecution, discontinuing proceedings conditionally or unconditionally, or diverting criminal cases from the formal justice system. For this purpose, States should fully explore the possibility of adopting diversion schemes not only to alleviate excessive court loads, but also to avoid the stigmatisation of pretrial detention, indictment and conviction, as well as the possible adverse effects of imprisonment. The IAP Standards (4.3 h) contain a very similar encouragement to prosecutors to give due consideration to waiving or diverting prosecution where such action is appropriate and with due respect for the victims. What may be interesting for Latvia are some the particularities of each system and the way that cases can be closed without following a full ordinary procedure. Examples may be drawn from these systems to integrate reforms in Latvia that enable seamless diversion of cases towards different dispute resolution avenues, or speedier closing of non-promising procedures (See Box 3.2).

Box 3.2. Discretion in benchmarked countries bound by the legality principle: An overview

The Italian criminal system is bound by the principle of legality, as stated in article 112 of the Constitution. Nevertheless, room for discretion of the prosecutor is opened for cases in which the penalty can be imposed without trial: the sentence agreement (*patteggiamento*) where an agreement between the prosecutor and the offender on the sentence to be imposed and the penal order (*procedimento per decreto*), when the proceeding ends with the issuing of a penal order to pay a fine.

In Portugal, an investigation can terminate if sufficient evidence is lacking, the perpetrator is unknown, or the crime was not committed. The use of alternatives to punishment in view of the country's criminal structure (about 70% of which small and less serious crime) is gaining currency and diversionary measures are being progressively introduced. There are simplified and consensual forms of proceedings laid down in the Criminal Procedure Code. These are: *sumário* (summary proceeding), *sumaríssimo* (highly summarised proceeding), *abreviado* (shortened proceeding) and *suspensão provisória do processo* (provisional suspension of the criminal proceedings).

In Sweden, there are four different ways in which prosecution of offences can be terminated (or not initiated at all) before the case would reach the court, i.e. cases in which the conviction of the suspect could be expected:

- The police refrain from prosecution of petty offences which is allowed by the Law on Police.
- A preliminary investigation may be discontinued by the prosecutor if continuing the inquiry would incur costs unreasonable regarding the importance of the matter and, at the same time, the offence, if prosecuted, would not lead to a penalty more severe than a fine. Even if the public interest is not named *expressis verbis* in this provision, the public interest is the main rationale of the provision.
- The waiver of prosecution (*åtalsunderlåtelse*) is possible a) if it may be presumed that the offence would not result in any other sanction than a fine; (b) if it may be presumed that the sanction would be a conditional sentence and special reasons justify waiver of prosecution; and (c) if, in view of the circumstances, it is manifest that no sanction is required to prevent the suspect from further criminal activity or the institution of a prosecution is not required for other reasons. The decision to waiver prosecution is recorded in the criminal register of the suspect. The number of waivers of prosecution is also recorded in criminal statistics as successfully

finished prosecutions of persons who committed crime, alongside the number of judgments and penal orders. The waiver requires the offender to plead guilty.

- Sanctioning offences through decisions of the prosecutor or the police. These are the penal orders (imposed by the prosecutor) and the summary fines order (imposed by the police). These instruments also require the offender to plead guilty. These instruments are controversial but have been successful in significantly reducing the workload of the courts. A satisfactory balance is still to be achieved.[4]

Useful experience from opportunity principle systems

Denmark applies the principle of opportunity or expediency and therefore priorities in investigation and prosecution may be established, but neither the Procedural Code nor the Penal Code allow prosecutors the option of settling cases by agreement (plea bargaining and its equivalents). However, it remains for the prosecution to decide which cases warrant being brought before the courts based on the likelihood of achieving a conviction and also on the rational use of available resources, both by prosecution authorities and by the police authorities.

In France, when an offense is committed and its perpetrator is identified, the prosecutor can decide: 1) to close the case, relying on the opportunity principle (because of the little amount of the prejudice, situation of the perpetrator, and so forth); 2) various modalities of alternative measures to prosecution 3) penal composition measures for offences punishable with less than 5 years imprisonment (the penal composition may consist of a penal order, fine, or other measures such as courses related to the crime in order to be sensitised of consequences of it, care obligation, prohibition to meet someone or go somewhere, giving for a determined period his driving licence or hunting licence, or execution of unpaid work), that needs to be accepted by the defendant and approved by a judge. It is a criminal settlement foreseen in the article 41-2 and 41-3 of the Code of Criminal Procedure; 4) Deferred Prosecution Agreement, known in French as Convention Judiciaire d'Intérêt Public (CJIP), a non-criminal financial penalty for corporate corruption-related criminal offences, approved by a judge; 5) prosecution against the perpetrator in simplified terms: without a hearing, by penal order (on a proposal for a sentence from the prosecution); by appearance on prior admission of guilt, known in French as Comparution sur reconnaissance préalable de culpabilité (with a hearing to approve the proposed sentence negotiated by the prosecution and it has to be approved by a judge); 6) ordinary proceedings before the criminal court; 7) Referral to an Investigating Judge in order to open a Judicial Information.

In Ireland, the principle of opportunity is applied too. Discretion includes not only the power to decide whether to initiate a prosecution but the power to terminate it at any stage of the proceedings before the verdict is announced, including a summary prosecution commenced by the Garda (police) in the DPP's name which is now the only manner in which the police may prosecute. The DPP has, however, no power either to require or to prevent the police from carrying out a criminal investigation. In the case of indictable offences brought at the suit of the Director, the decision to prosecute or not is taken by the Director personally or by an officer of the Director who is authorised to take such a decision. As in other common law systems, a fundamental consideration when deciding whether to prosecute is whether to do so would be in the public interest. A prosecution should be initiated or continued if prosecuting it is prima facie in the public interest. A prosecution should not be brought forward where the likelihood of a conviction is effectively non-existent. Where the likelihood of conviction is low, other factors, including the seriousness of the offence, may come into play in deciding whether to prosecute. However, this does not mean that only cases perceived as 'strong' should be prosecuted. The assessment of the prospects of conviction should also reflect the central role of the courts in the criminal justice system in determining guilt or innocence (Department of Public Prosecutions of Ireland, 2019[7]). "Deferred prosecution agreements" are not allowed but lobbying for introducing them is mounting (Dillon Eustace, December 2018[8]). The Law Reform Commission also recommends that a statutory scheme of deferred

prosecution agreements should be introduced in Ireland, under the control of the Director of Public Prosecutions.[5] Two main diversionary programmes exist: the Garda Síochána Adult Caution Scheme and the Irish Youth Justice Service.

In addition for the case of Ireland, because the country lacks a system of administrative law, much of the enforcement which would be done through the use of administrative penalties in much of the rest of Europe is in Ireland carried our through the creation of minor offences most of which are tried summarily and prosecuted by Government Departments or specialised agencies rather than by the prosecution, who concentrates on core indictable crime. Thus, most environmental offences are prosecuted by the Environmental Protection Agency or by planning authorities, and competition law is enforced by the Competition Authority; and road traffic offences are the responsibility of the Department of Transport. Where serious offences in these areas are involved, the prosecution takes charge.

In the Netherlands, prosecutors enjoy freedom to decide not prosecuting a case. The expediency or opportunity principle is established in article 167-2 of the Criminal Procedure Code: “a decision not to prosecute may be taken on grounds of public interest”. A prosecutor thus has various options for disposing of a criminal case because of the opportunity principle which governs the Dutch prosecutorial policy and law. These options are: 1) Imposing a sanction or ‘penal order’. The prosecutor can dispose of minor criminal cases, such as criminal damage, vandalism, shoplifting and traffic violations, by imposing a sanction (*strafbeschikking*). Accordingly, the case is not brought before the court, but sanctioned by the prosecutor. 2) Payment in lieu of prosecution (*transactie*). This is a proposal from the prosecutor. If the person agrees and pays, the prosecution will not proceed any further. Failure to pay means the person will have to appear in court after all. If the person wants to bring the case before court, he or she can decline the proposal. This mechanism of transaction is applicable to crimes punishable with less than a six-year prison sentence. 3) Decision not to prosecute: Sometimes, the public prosecutor decides not to prosecute a case (*sepot*). This may occur if there is, for instance, insufficient evidence to achieve a conviction or if the suspect has not been identified. A victim may object to a decision not to prosecute by lodging a complaint with the Court of Appeal. 4) Conditional decision not to prosecute: The public prosecutor may also attach conditions to the decision not to prosecute, and the perpetrator must abide by these conditions. A person may, for example, agree not to enter the street where his victim lives. If they do not stick to the agreement a sanction will be imposed after all. This mechanism is equivalent to a suspension of the prosecution. If the public prosecutor decides that none of these options are applicable, the suspect must appear before a criminal court. The Board of Prosecutors General has established guidelines (Instructions, or *Aanwijzingen*) for prosecutors to waive (*sepot*) prosecution for reasons of public interest (article 167-2 of the Penal Procedural Code).

In Norway, where the principle of legality prevails, police prosecutors and public prosecutors may drop a case on grounds of lack of or insufficient evidence, unknown perpetrator, that the described deed in the complaint is not punishable, absence of reasonable ground to start an investigation, that the perpetrator is under 15 years, and that the deed is not punishable due to qualified provocation. The district police must decide in accordance with the general instructions in circulars and directives from the Director of Public Prosecutions and the local public prosecutor’s office. It is the public prosecutor’s task to supervise the activities through control and inspections. Administrative decisions on to prosecute or not can be appealed. Plea bargaining is not recognised in the Norwegian criminal justice system. The mediation has gained currency within the criminal justice system. The idea of a mediation board emerged in the late 1970s and the first pilot project was implemented in 1981. After this, the scheme has evolved and is currently the main supplier of "restorative justice", while the prosecuting authority is the main supplier of cases to the mediation board.[6] It has become a most effective diversionary measure from prosecution. Key elements of the concept are that the parties affected by a conflict or an offence participate in a process where the offenders will be encouraged to understand the consequences of their actions and to take responsibility for them, and that the victim should be able to tell the perpetrator directly how the crime has impacted him/her. With the mediator’s help, together they will find the best

way of repairing the harm. The prosecuting authority's transfer of cases to the mediation board is a prosecution decision pursuant to Section 71-a of the Criminal Procedure Act. One condition is that the case is suitable for mediation and that a more severe reaction is not called for in the interests of acting as a general deterrent. Furthermore, there must be a victim or injured party.

In New Zealand, prosecutors may decide not to prosecute, but that decision must be justified through the evidence test and the public interest test, as established in the Solicitor-General's Prosecution Guidelines. Once a prosecutor is satisfied that there is sufficient evidence to provide a reasonable prospect of conviction (evidence test), the next consideration is whether the public interest requires a prosecution (public interest test). It is not the rule that all offences for which there is sufficient evidence must be prosecuted. Prosecutors must exercise their discretion as to whether a prosecution is required in the public interest. The Police Prosecution Service may also decide to divert the cases to one of the alternative action schemes administered by the police such as the Adult Diversion Scheme or options under the Youth Justice system.

In sum, the criminal justice legal framework in Latvia offers a broad spectrum of procedural choices that can be used to increase efficiency. These include the use of simplified procedures, the employment of diversionary measures and ways to terminate investigations that are foreseen to be fruitless if, for instance, suspects are not identifiable and no more evidence can be discovered. There are also opportunities in Latvia's legal framework to benefit from the principle of opportunity in order to strengthen prioritisation, which could become part of the standard prosecutorial work procedure. The police and prosecutorial services can fully avail themselves of these options to improve efficiency of the system.

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Notes

[1] Latvia answers to the questionnaire. This collaboration is not established by law.

[2] See, for example, Clauses 3, 4.2, Part 3, Section 33 and Part 3, Section 40 of the Law on Judicial Power.

[3] Prosecutor shall exercise supervision over the compliance with legal enactments of the preliminary investigation and intelligence activities, reconnaissance and counterintelligence processes of the national security institutions and of the system for protection of the state secret.

[4] See (Zila, J., 2006[9]). The author states that "The combination of wide discretion together with the already mentioned fact that drawing up a penal order is labour-saving in comparison with prosecution in court requires high personal integrity among prosecutors" (page 406).

[5] The Commission, appointed by the Government, is an independent body established under the Law Reform Commission Act 1975, which states that the Commission's role is to keep the law under review and to conduct research with a view to the reform of the law. See Issues Paper on Suspended Sentences.

[6] See http://www.justicereparatrice.org/www.restorativejustice.org/editions/2001/Dec01/Norway. See also Recommendation No. R (99) 19 adopted by the Committee of Ministers of the Council of Europe on 15 September 1999 and explanatory memorandum (https://www.euromed-justice.eu/en/system/files/20100715121918_RecommendationNo.R%2899%2919_EN.pdf).

4 Towards excellence in the Latvian prosecution system

This chapter explores possible strategies to drive the overall performance of the Latvian prosecution in light of international good practices. It proposes to leverage existing strategic plans to increase efficiency through the establishment of a robust monitoring and evaluation mechanism powered by data. It considers the introduction of measures for improving the speed and amount of prosecutions, such as standardisation and simplification. It also highlights the importance of involving the whole-of-justice chain in improving prosecutorial performance.

Introduction

How is success measured in prosecution? Is it conviction rates, the outcome of specific important cases, or less criminality? What information can prosecutors rely on to make management decisions? This chapter focuses on addressing these questions from the perspective of international good practices and standards, as well as how to drive forward an overall successful performance of the prosecution. It proposes to leverage the Prosecutor General's Office existing strategic plans to set clear targets and assign resources accordingly, with a view to increasing efficiency of work processes through performance-oriented management. It explores the establishment of a robust monitoring and evaluation mechanism through data to ensure that the level of achievement of objectives can be adequately assessed. This includes a focus on the use of qualitative indicators and involvement of the whole-of-justice chain in the strive towards excellence. It considers the introduction of measures for improving the speed and amount of prosecutions, such as standardisation and simplification.

Until recently, not much empirical research was available to address these concerns. However, increasingly, a growing international trend signals towards the need to improve the quality and performance of prosecution services,[1] in order to increase satisfaction and trust of the public in the justice system (Ivan-Cucu, 2015[1]). Over the past two decades, the majority of OECD member countries have implemented reforms to improve the performance-oriented management of public sector organisations. When used properly, performance assessments allow for the recognition of individual and collective efforts in an objective and transparent manner. Such practices also function to clarify organisational goals for staff so that they gain a better understanding of their role within the organisation and therefore how to best implement change and contribute towards strategic organisational objectives. Performance assessments and management requires the presence of indicators, of which several sets have been developed internationally (see Box 4.1).

Box 4.1. Examples of international indicators

In the United Nations Rule of Law Indicators – Implementation Guide and Project Tools, indicators are grouped under three institutions: the police (41 indicators); the judicial system (51 indicators); and prisons (43 indicators). The public prosecution system falls under the judicial system.

The judicial system indicators are grouped into several clusters, each relating to one of the four main dimensions of prosecutorial services within the judicial system. Few countries have adopted indicators that systematically address the prosecutors' performance, but the most used are both quantitative and qualitative:

- The average number of cases per prosecutor.
- The average number of appellate cases per prosecutor.
- The number of cases completed per year per prosecutor.
- The number of cases where a prosecution has been initiated and then abandoned or stayed.
- The proportion of cases in a year that went to trial.
- The proportion of cases in a year where a conviction was obtained, which should be taken into account only in the context of all other indicators and not as a standalone merit.
- The proportion of cases that went to trial in which the offender was eventually acquitted.
- The number of cases of wrongful convictions in a year.
- The proportion of cases that were diverted away from the formal criminal justice process (and the same indicators for juvenile offenders specifically).

- The average cost per case prosecuted during a given period, usually a year.
- The performance of the prosecutions is measured through:
  - The public confidence, assessing whether the public believes that the judicial system is fair and effective and respects individual rights.
  - Integrity and independence, assessing whether courts or prosecutors violate human rights or abuse their power and are free from undue influence of political and private interests (bribes to judges, prosecutors or court personnel).
- Transparency and accountability, assessing whether relevant information is publicly available on the activities, decision-making processes, decisions and use of resources by the courts, and whether the judges and prosecutors are held accountable for their actions:
  - Public access to criminal trials.
  - Investigation of prosecutor's misconduct.
  - Performance monitoring system for prosecution.
  - Assessment of whether the judiciary treats, fairly and without discrimination, vulnerable individuals, such as members of minorities, children in need of protection or in conflict with the law, internally displaced persons, asylum-seekers, refugees, returnees, and stateless and mentally ill individuals.
- Assessment of the prosecutorial services' capacity: The capacity is measured through evaluating the existence and use of:
  - material resources: whether prosecution services have the infrastructure and equipment they need to deliver across the country, such as material resources of the courts, means to protect court personnel, prosecution material resources and
  - human resources: whether courts and prosecution services have sufficient personnel who are adequately screened, fairly recruited and sufficiently remunerated – all focused on competence (skills and knowledge) of prosecutors compared against the competence (skills and knowledge) of defence counsels, and remuneration of prosecutors.

Source: (DPKO & OHCHR, 2011[2]).

Prosecution systems seek on the one hand to promote the fair, impartial, and expeditious pursuit of justice, guaranteeing the procedural rights of the accused and the protection of victims and witnesses; and on the other, more broadly, to ensure safer communities by reducing crime. The standards of the European Union signal in addition to the importance of appropriate management of the length of judicial proceedings through measuring the number of unresolved cases, the clearance rate[2] and the number of pending cases (See Box 4.1). There are also growing reflections on the creation of actionable frameworks for *prosecution excellence* (Albers, 2016[3]) *(*inspired by the International Framework of Court Excellence[3]). For example, elements related to prosecution excellence could include: 1) **management** (including management of resources) and leadership; 2) **prosecution policies and plans**; 3) **efficient prosecution procedures**; 4) **effective co-operation** with relevant justice and police authorities; 5) a **high quality of prosecution case files** (indictments); 6) a high level of **user satisfaction and public trust;** and 7) a high level of **accessibility** (Albers, 2016[3]).

As such, throughout this chapter and in the rest of the report, the achievement of excellence in the prosecution system along those lines will be understood as a guiding beacon to propose key policy recommendations for Latvia, also drawing on the experiences of benchmarked OECD countries.

Prosecution performance drivers

Six key performance drivers have been identified throughout this Study to be among the top mechanisms used by prosecution systems in OECD benchmarked countries and in Latvia to improve efficiency and effectiveness of the system. Many of them are used in conjunction with each other. They are the following:

1. Establishment of strategic objectives and goals (see below).
2. Development of a Quality Management System.
3. Specialisation and training of prosecutors (further analysed in Chapter 5).
4. Standardisation and simplification (see below).
5. Bonuses depending on the good results achieved by individual prosecutors.
6. Prioritisation and diversion measures (as outlined in Chapter 3).

These six measures will not be analysed in detail here as they have largely been addressed in other sections of the report. Nonetheless, Box 4.2 provides some examples of the main strategies followed by OECD benchmarked countries to introduce performance drivers in their systems.

Box 4.2. Examples of performance drivers across OECD prosecution systems

Finland's work towards improved performance: A quality management system

In Finland, work is underway to introduce a quality management system. Detailed process descriptions will be drawn up and quality management will become an integral part of organisational management. The existing system of specialised prosecutors will also be developed further, especially focusing on the monitoring and improvement of quality.

Bonuses depending on performance in France

In France, there is no management by results scheme properly speaking, but there are bonuses depending on the participation of a given prosecutor in tackling the workload of his/her jurisdiction. The scheme is based on quantitative targets (duration of the penal response ratio) and qualitative (percentage of actions alternative to prosecution and detention). The targets are decided by the Minister of Justice on proposal by the General Prosecutor and in liaison with the judges. At the local level, the targets are the result of a dialogue of the General Prosecutor with the local prosecutors (Procureurs de la République) and are based on the establishment of priorities (e.g. chasing drunk drivers, protecting the environment, prevention of street crime, etc).

Specialisation of prosecutors

In France, specialisation is gaining currency through the creation of specialised jurisdictions and the accompanying specialised prosecutors (Parquet National Financier- PNF for corruption and financial crimes; Juridictions interrégionales spécialisées-JIRS for dealing with complex financial and organised crime cases; Parquet National Antiterroriste-PNAT for terrorist crimes and crimes against humanity). In the Netherlands, specialisation and standardisation have been the main drivers for performance enhancement. There are two national operating specialised prosecutorial services. One for serious organised crime and terrorism, the other for fraud, environmental, social security crimes. The law determines the degree and hierarchical level of specialisation and this latter is determined by the Prosecutor General Office. While providing incentives is a good practice, the best approach would be cautious against using bonuses that are too high in respect of the average salaries of the service.

Source: Benchmarking country responses to ad hoc 2020 OECD Questionnaire on Prosecution Services.

Taking management practices of institutions to excellence involves as a key pillar the need to introduce strategic planning, in order to set clear objectives and targets and assign resources accordingly. In addition, it requires the establishment of a robust monitoring and evaluation mechanism through data to ensure that the level of achievement of objectives can be adequately assessed, and to allow for evidence-based policy making with the potential to address any gaps in the structure and functioning of the system. Prosecution services operating in different legal systems have developed different ways to deal with this challenge. Efficiency, competence, speed, economic rationality and accountability should all be considered. Today more than ever, the role of the prosecution service requires training, specialisation, prioritisation, effective control, co-ordination and direction of the criminal proceedings, and finally a good digital support of organisational processes allowing for information sharing among the principal actors in the fight against criminality. The subsequent sections focus on advancing these practices in the Latvian PGO.

Strategic planning for the prosecution

Development of a criminal prosecution strategy, which could include a strategic plan, accompanied by yearly operational plans, containing clear performance targets, human, material and financial resources required, could serve as a core first step to drive performance excellence in prosecution services. A number of efforts in the direction of strategic planning have already been made by the Latvian PGO through Strategy plans, the latest being the Strategy of the Prosecution Office for 2017-2021 (approved by the Prosecutor General's Council Decision No.4 of 5 July 2017). This plan outlines the following five overarching objectives:

- effective and qualitative fulfillment of the Prosecution Office functions in fighting financial and economical crimes
- ensuring the development of the Prosecution Office Information System (further referred as "ProIS")
- improving of the internal legal acts system of the Prosecution Office
- improving the work environment of Prosecutors and employees of the Prosecution Office.

It then describes smaller activities that must be reached to achieve each of the five objectives. To provide an example, in order to ensure the effective and qualitative fulfillment of the prosecutor office functions in fighting financial and economic crimes, a smaller target is to "*periodically include into the Prosecution Office Work Plan the conducting of the checks in the structures of the Prosecution Office regarding the efficiency and quality of the investigation supervision and criminal prosecution of the financial and economical crimes*." In order to take the current strategic plan to the next level, further steps could be taken to establish, on the one hand, clear and measurable goals (e.g. instead of proposing to fight crime effectively, propose a percentage in the decrease of criminality nationally for particular types of crimes that is sought, or the case prosecution ratio that is desired); and on the other hand, the establishment of a clear and quantifiable roadmap that will take the Office to the results. This latter exercise could include a specific allocation of resources to reach a given goal. Finally, it could include a system and indicators to measure the level of attainment of the objectives. For example in Denmark, setting specific objectives and targets and monitoring its success enabled the system to increase productivity by 3.9% from 2013 to 2016 (See Box 4.3).

To build on the current efforts, Latvia may consider examples of the way OECD benchmarked countries define their strategic priorities and operationalise the results to achieve increased efficiency and efficacy of the system. Some of the key ways in which OECD benchmarking countries have driven their results include defining quantitative targets to assess progress and mandatory deadlines, for example through a weighted production model taking into account production, processing time, and reduction of old charges; engaging different actors from across the justice chain in their strategic plans; and increasing training for prosecutors (Box 4.3).

Box 4.3. Strategy setting across OECD benchmarked countries

In Finland, general strategies concerning the prosecution service are included in the Finnish Government Programme and the strategies of the Ministry of Justice. The Ministry of Justice has approved a strategy on criminal policy, which includes considerations on how the resources allotted have been used. Within the Ministry of Justice, the permanent secretary is responsible for co-ordinating the targets for the entire crime-fighting chain. The prosecution service has also its own strategy. The most important stated goals of a reform carried out in 2019 were favouring the standardising of the decisions made by prosecutors and increasing the efficiency of prosecutorial work. An additional goal was that one nationwide single bureau can make use of resources as flexible as possible. If work piles up in one prosecution district, another district can process some of its criminal matters. The main performance indicators for the prosecutorial service are the average disposition time, the total amount of open cases, budgetary expenses per caseload, job satisfaction indicators, effective working time regarding caseload. The Finnish Prosecution Service's performance guidance system sets out the organisation's quality targets which are monitored annually.

In Portugal, in accordance with the Framework Law on Criminal Policy, the government submits to parliament a bill establishing criminal policy goals, priorities and guidelines every two years. The priorities are defined and outlined when the annual budgets are drafted, although they may undergo adjustments throughout the year. Every three years, the Prosecutor-General's Office defines strategic objectives in selecting priority areas of intervention, in performance quality, in procedural promptness and in organisational quality. In Sweden, the priorities according to which the prosecutors operate are established primarily by the legislator, by establishing mandatory deadlines e.g. finalising investigations against young offenders. Priorities are further established by the Prosecution Authority and set out in internal documents such as the annual general planning document and other operational guidelines.

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

- For the prosecution, the main target of the 2007 reform adopted by Parliament in 2006, were organisational changes to achieve improvements in competence, strategy and performance measurement.
- It was an objective to achieve an increase in efficiency by using management methods based on targets and results. The prosecution services now enter into a yearly agreement with the Ministry of Justice concerning targets set and results to be achieved in the coming year. The overall objectives in the performance contract for the Prosecution Service are negotiated between the Ministry of Justice and the Director of Public Prosecutions; whereas the objectives in the internal contracts are negotiated between the Director of Regional Public Prosecutions and the Public Prosecutors/the Commissioners of Police. The contract covers performance objectives on efficiency (based on a weighted production model), production, processing time, reduction of old charges (the average age). The Prosecution Service calculates its productivity based on standard cases. All cases are assigned a weight according to a case weight model based on a combination of payroll costs and the number of cases within each case area.
- One of the vision statements of the Ministry of Justice of Denmark is that the entire justice sector is to act as one group to ensure co-operation between all the authorities in the justice sector. The group approach is found throughout the period of strategic indicators from 2007 to 2018, where the group approach constitutes a heading for strategic indicators, which concerns efficient case processing from the perspective of all authorities involved. Yearly target and result

documents are created based on a co-operative effort in a series of workshops arranged across the prosecution services, where the issues to be given weight in the components of the strategic indicators are discussed and defined, so as to ensure that the strategic indicators become a joint goal and not a top-down imposition, thus letting the strategic indicators setting process in itself becoming a platform for co-operation. As a practical outcome of co-operation between judicial authorities, a mechanism was set up in 2009 to ensure that routine judicial hearings, such as extensions of custody decision, could be decided through videoconferencing with the court, which entailed timesaving for all parties involved.

- An additional initiative, which serves to support both quality enhancement and co-operation, has been the introduction of a basic education for new prosecutors, which is provided for staff with less than 3 years of employment. In addition to the modular basic education for prosecutors, the prosecution services provide basic training for non-judicial staff, as well as continuous training for all staff members.
- Results: From 2013 to 2016, productivity increased by 3.9%. For the purposes of the yearly report, the productivity is measured by dividing a weighted case number by the total staff costs, to arrive at a cost per case. One important feature of the weighted model is that by not focusing only on successful judgments (i.e. convictions), the model avoids encouraging prosecutors to limit their efforts to cases with a high probability of success, thus avoiding complicated cases to the detriment of justice.

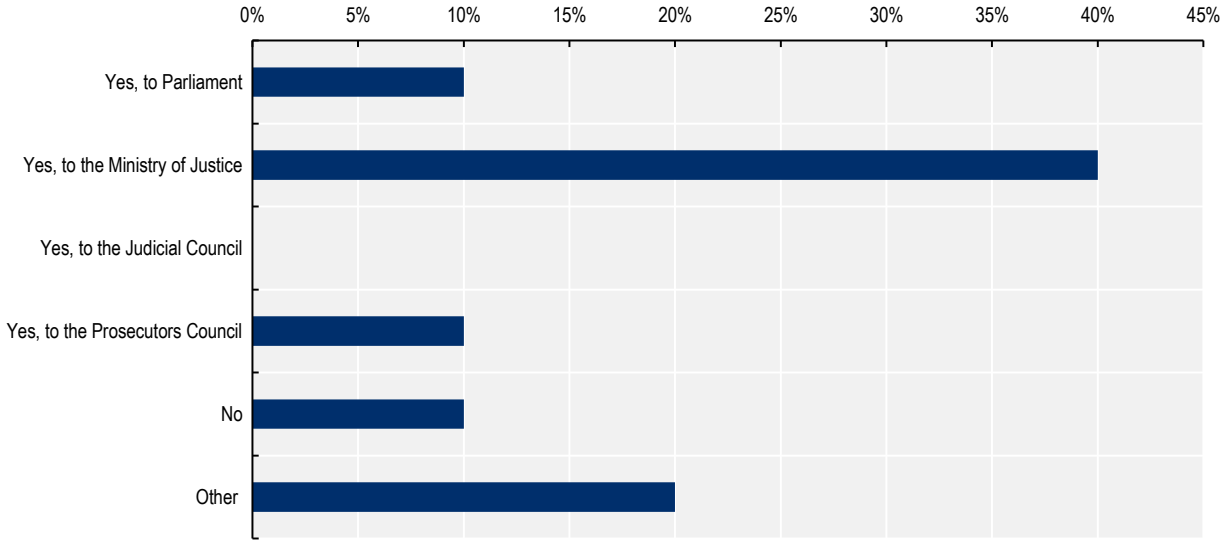
Although many interdependencies exist between the different elements of Danish public prosecution, the reform of 2007-2010 has in general achieved a simplified structure that allows the different actors in the judicial system to concentrate on the respective main objectives. The 2007-2010 reform of the Danish prosecution services, concurrently with the reform of court and police systems, have led to a much-simplified structure for the prosecution services, and has provided an impetus for focus on quality and productivity enhancement.

Sources: Benchmarking country responses to ad hoc 2020 OECD Questionnaire on Prosecution Services; (CCPE, 2020[4]); (Council of Europe Committee on Counter-Terrorism, 2018[5]); (CCPE, 2012[6]).

Measuring performance of prosecution systems

Understanding whether the established strategy and plans are effectively implemented and achieving the desired results, performance measurement is a crucial step. In this regard, two aspects must be present: first, the existence of mechanisms to record and report on performance; second, the existence of relevant statistics and data to substantiate the reports. Across the OECD membership analysed as a part of this study, the obligation to report on performance in quantitative and qualitative term is widespread, including in Latvia:

Figure 4.1. Obligation to report on performance in quantitative and qualitative terms



Note: The following question was asked as part of the ad hoc OECD Questionnaire on Prosecution Service to benchmarking countries: Does the prosecutor's service have an obligation to report on its performance in quantitative and qualitative terms?
Source: Benchmarking country responses to ad hoc 2020 OECD Questionnaire on Prosecution Services.

Establishing **robust indicators to measure performance**, along with **practical ways to gather all the information necessary to assess performance under such indicators**, are both key elements to enable evidence-based policy formulation and improvement. If applied wisely, **statistics, targets and orientation** towards results can be used to **focus resources effectively and drive performance in** policing and law enforcement. Additional ways in which data can support the fulfilment of strategic plans towards excellence are summarised in Box 4.4.

Box 4.4. Benefits of investing in gathering more data and evidence about the criminal justice system

- More data also enables sound financial resource management. An excellent office of the public prosecution requires that the management of financial resources is properly organised and that each office has the budgetary freedom to allocate the budgetary resources according to their local needs. Most ideally, effective offices of the public prosecution have a system of performance based budgeting in place, where there is a close connection between the budgetary needs required and the expected performance.
- Case clearance rates, actions taken in response to incoming cases, the number of cases being handled by a prosecution service or local office by day, week, month or year can provide a prosecutor general with a great deal of information about how efficiently a court system or office is functioning, how staff should be best allocated, what are the key bottlenecks and how those challenges might be solved. Overwhelmed prosecutors are not in a suitable position to make sound and timely decisions, and they may become more reactive than proactive, resulting in poor decisions affecting the accused, victims, police, the court and the public in general. Careful scrutiny of the number of cases carried by each prosecutor and the case clearance rate of an office can inform senior officers as to the action that needs to be taken. In some cases, efficiencies can be found simply by ensuring that each prosecutor's caseload is properly distributed.

- The availability of better data could also support prosecutors' proposals made for reform of the criminal procedure or policy, enabling evidence-based policy making for the criminal justice sector, which is likely to be better received and easier to explain to key stakeholders involved.
- Levels of user satisfaction and public trust can also be assessed through statistics, by collecting on a regular basis feedback information from the users of the services of the office of the public prosecution. In excellent prosecution services, the application of a prosecution user survey is stimulated, as well as the use of other forms of feedback mechanisms such as client panels and a proper procedure for the handling of complaints.
- Statistics can also be useful to answer queries and address negative impressions held by groups or individuals regarding the efficiency of a prosecution service in a transparent and defensible manner, thus reinforcing public confidence in the administration of justice.

Source: Author.

The way in which statistics are interpreted in prosecution systems should be carefully considered. As will be further analysed in Chapter 5 of this Report, **the idea of "winning or losing" a criminal case if the case was decided according to law should not be a deciding factor in assessing a prosecutor's performance or lack thereof**. A broader perspective must be taken, in the understanding that raising the conviction rate can be easily achieved by only prosecuting the most straightforward cases. It is thus relevant not only to collect statistics, but also to establish indicators for interpretation of data.

In the Latvian system, two main types of relevant data gathering take place. Firstly, and as established in 2020, the Prosecution must start reporting to the Parliament annually on performance and activities. This development is likely to bring to light important information and insights for the Latvian prosecution on how to manage and allocate resources most effectively. The law does not strictly determine the content of the Report to be submitted to Parliament, but during the interviews, the Latvian Prosecution Office has explained that it shall include statistics on number and types of cases; caseload; aggregated data on individual performance of prosecutors; resource data (ratios between resources employed and results achieved); training activities and attendance records; the total crime indicators in the country, statistical indicators and analysis of the work performed by prosecutors in various areas. The reporting obligation, nonetheless, could benefit from legislating the minimum amount of quality and performance assessment indicators that the Report shall include.

In addition, and in a more disaggregated manner, indicators of structural units of the Prosecution Office are compiled in dynamic reports, which allow to determine and analyse the efficiency of prosecutors' activity. Such an assessment is performed within the framework of the assessment of the prosecutors' individual performance, as well as in accordance with the Prosecutor General's Order No. 47 *On the comparative table of the work results of the structural units of the district level prosecution offices* approved on 9th of November 2018. To ensure the assessment of work results of structural units of the District Prosecution Office according to the average workload and performance criteria of Prosecutors, the Prosecutor General ordered the production of a report, which would be assessed in accordance with criteria set in the Annex 3 of the Order, to be carried out monthly. A comparative table of work results of structural units of the District Prosecution Office is then produced. All data and reporting is introduced in the *Information System of the Prosecution Office* (ProIS). ProIS allows for the collection of a large amount of data about ongoing prosecutions, as has been observed by the OECD directly, disaggregated into different sections including by topic, criminal code article number, date and time, prosecutor and office, among other criteria. ProIS also allows to observe data on the activities of a specific prosecutor. From this exercise, an excel table and a graph are generated which enable a visual representation of workload and efficiency of each prosecutor office, and enable better allocation of resources by the Prosecutor General's Office. As highlighted at the outset, it is not only important to gather information, but also to establish assessment indicators. In Box 4.5, a summary of how such data is assessed from the perspective of performance is provided.

Box 4.5. Criteria for the Assessment of Work Result of Structural Units of the District Prosecution Office in Latvia

The work results of structural units of the District Prosecution Office are summarised in a comparative table consisting of four sections:

- The *Informative Section* (points are not granted) which contains information on the number of criminal cases accepted, transferred to the court, accused persons and criminal offences in the reporting year; the number of remaining criminal cases at the beginning of the month and at the end of the month, among other categories.
- The *Workload Section* (only positive points are granted) contains the number of criminal cases transferred to the court, criminal offences, accused persons and especially topical criminal cases; the number of satisfied protests; the number of criminal cases examined at the first instance and time consumption therein; the number of persons discharged from criminal liability pursuant to some specific procedures.
- The *Performance Section* (both positive and negative points are granted) contains the number of criminal cases transferred to the court according to accelerated procedure, as well as upon entering into an agreement; the number of proceedings transferred to the court by proposing to apply coercive measures to a legal person; the number of adjudicated criminal cases, in which the verification of evidence has not been carried out pursuant to the procedures laid down in CPL Section 499; the number of arrested persons in criminal cases, contained in the records of the Prosecution Office, who have been rehabilitated in pre-trial proceedings; the number of criminal cases received from the court for the elimination of deficiencies and violations; among several others.
- The *Summary Section* contains a comparison of all the districts' data in relation to workload and the result of the performance assessments.

The performance assessment is carried out in accordance through an elaborate system of point allocation, established in detail in Annex 3 of the Order no. 47. For example, 2 negative points are awarded for each remaining criminal case with a prosecution period exceeding 2 months; 1 positive point is granted for each criminal case transferred to the court upon entering into an agreement; and 1 positive point is granted for each criminal case transferred to the court pursuant to the accelerated procedure, all measures that would aim to drive further efficiency and expediency. On the contrary, negative points are awarded when the court sends back a case due to gaps or violations in the investigation phase. Average indicators are obtained by dividing the sum of workload or performance points by the number of working Prosecutors. This can be considered a positive assessment practice on the part of the Latvian prosecution, as it does not rely on convictions but rather on promoting broader efficiency objectives.

Source: Order no. 47, Prosecutor General of Latvia, On the comparative table of the work results of the structural units of the district level prosecution offices approved on 9 November 2018.

The Parliament and the Prosecutor's Office have identified effective and high-quality prosecution in combating financial and economic crimes as a policy priority area. In order to deepen the evaluation and assess progress in this regard, Latvia could strongly gain from leveraging the amounts of data it collects in order to feed into criminal reform design and goal achievement. This may require the collection of more data, including *qualitative* information on criminal cases, as well as analysis of the backlog of pending cases, the full duration of criminal cases, and the situation with regard to the respect of human right, could be productive areas of expansion of the data collection exercise. The State Audit Office of Latvia had requested, for instance, information on existing backlogs of cases, which the office of the Prosecutor

General allegedly could not share as it was not aggregated, it was only available from each prosecutor individually. In addition, the Office of Prosecutor General considered it necessary to state that it did not find such aggregation of information necessary, as it would require significant resources of the Prosecutor's Office while not providing a useful return. Despite this conception, and as stems from the above analysis, the collection and analysis of aggregated national data on criminal statistics could prove useful to enable the design of policies that better allocate existing resources. The Prosecution Office could consider that, given the significant investment that it has already entailed to collect individual data and develop the system ProIS, going one step further could become stepping stones to achieve its strategic objectives.

In addition, the current obligation to Report to Parliament could be made more effective by clarifying its scope and meaning, as already noted in Chapter 2. As the reporting requirement only requires submission by the Prosecutor General of a report to the Parliament on performance of the office during the preceding year and the priorities for the next year, no clear scope is determined for the statistics to be submitted, but also on quality and performance indicators to be assessed as part of the Report. Quality indicators could include, as examples,[4] the following:

- backlogs
- productivity of judges and court staff
- satisfaction of court staff
- satisfaction of users (regarding the services delivered by the courts)
- costs of the judicial procedures for defendants and victims
- number of appeals
- appeal ratio
- clearance rate
- disposition time
- reduction of crime.

In addition, such reporting could serve as a strategic tool to drive performance and as an accountability instrument. At the moment, it emerged during stakeholder interviews and through the annotation to the draft law by the Prosecutor General's Office that reporting is interpreted largely as a provision of information rather than a matter of accountability: "In order to achieve greater involvement and understanding of the legislator and the public, it would be necessary to deliver that report to a higher level, thus signalling at the same time that one should recognise the work of the Prosecutor's Office as nationally significant (Prosecutor General's Office, n.d.[7])." If this interpretation is not upgraded to a more ambitious one, the reporting may not necessarily represent an improvement from the pre-existing practice to organise annual meeting of chief prosecutors, where the results of the previous year were announced.[5] The State Audit Office in 2019, when analysing such results, drew the attention of the Cabinet of Ministers to the fact that most of the informative reports prepared by the ministries on the problems of the enforcement of the Criminal Procedure Law did not provide an in-depth analysis of statistical data and the general situation. It pointed to the fact that reports focused on quantitative indicators characterising the crime situation in the country and statistics on prosecutorial work, while missing qualitative analysis of the performance and results achieved by the Prosecutor's Office. These could include, for example, the impact of the activities implemented by the Prosecutor's Office on reduction in crime rates, and the prosecution's contribution and plans to improve efficiency and quality of pre-trial investigations, quality of state prosecutions in court, and other relevant areas of activity in the field of criminal justice.

Making the most of the data collected by all institutions involved in criminal policy making would be useful to design and implement evidence-based policies in the area of reforming criminal justice and help the creation of optimised strategic plans. Strong data protection regulations within the European Union may however sometimes difficult this exercise (Open Society Institute Sofia, 2008[8]). In the following Box 4.6,

the practices in OECD benchmarked countries are analysed to serve as inspiration on further avenues to collect and use statistical data on the criminal justice system that could be useful to the Latvian PGO.

Box 4.6. Practices on statistic data gathering and performance measurement in OECD countries

In New Zealand, the *Public Prosecutions Reporting Framework* is applied. Data is collected about individual cases every month. High-level statistical information about the structure and resources required to administer the prosecution function is collected annually. Each Crown Solicitor firm and prosecuting agency participates in the reporting framework. The reporting framework provides a greater understanding of both the current and future sustainability of the Crown Solicitor Network. The oversight functions, including the reporting framework, are designed to provide information about the Crown Solicitor Network's workloads and to gauge the value for money provided. The regular surveys and reviews may examine: a) the legal acumen and performance of Crown Solicitors and their staff; b) the management of the work; and c) how the relationship with others is conducted in the justice sector.

In Portugal, statistical indicators to assess the quantity and quality of the work performed by public prosecutors. Regarding criminal investigation, there are data available defining, for a specific period: the number of cases lodged; the number of cases closed; of these cases, the number of cases leading to accusation or to dismissal, and those where one of the simplified and consensual forms of proceedings, as laid down in the Criminal Procedure Code was used. There is also an overall control of all criminal inquiries highlighting those where a criminal investigation took longer than 8 months. Finally, it is possible to ascertain the number of lodged and closed cases according to the complexity and type of crime and how many of them were against unknown perpetrators. A well-structured system of statistical surveys exists for the whole justice field in Italy as well.

In Finland, the Finnish Government has a performance guidance system. This means that Parliament grants a common operating budget appropriation to certain operations, e.g. the prosecution service, and sets general targets that the operations should achieve. Both qualitative and quantitative targets are set for the prosecution service. The most important quantitative targets are related to the time it takes to consider charges. Charges should be considered in a timely manner. Targets have been set for the average time taken to consider charges, and for no case to remain under consideration for exceedingly long time (more than six months or a year). Qualitative targets have been related to co-operation between the prosecutor and pre-trial investigation authority during pre-trial investigations, increasing the level of knowledge on certain criminal phenomena.

In Sweden, information management in the judicial system involves eleven authorities. The government uses several indicators to assess the performance of authorities, presented in the annual Budget Bill. Indicators for crime investigation and prosecution directly concerning the prosecution services are:

- number and percentage of suspected crime resulting in prosecution (or summary imposition of a fine)
- number and percentage of suspects resulting being prosecuted (or receive a summary imposition of a fine)
- case handling time.

In France, Organic law n° 2001-692 of 1 August 2001 on finance laws provided the Parliament with assessment tools to evaluate the performance of public policies in return for the autonomy granted to managers. The "annual performance projects", attached to the bill finance laws, specify the programme strategy, the objectives, the performance assessment indicators and the effectiveness of the action, and the expected results. These commitments are assessed in the year following the budget execution using "annual performance reports" where programme managers report their results.

Source: Author.

Driving performance through standardisation and simplification

Standardisation can support a more efficient case handling

Standardisation refers to the uniformisation of criteria and response to be applied when a particular offense arrives in the prosecution service. This method is used in order to increase efficiency and effectiveness of the prosecution of cases, reducing timelines for each case and enabling simplification of procedures. It is often coupled with a deviation of the simplest processes towards out-of-court mechanisms or fully standardised decision-making guidelines. In aiming towards excellence in the prosecution, procedures should be simplified where possible. This practice is not only necessarily applicable to simple cases, but can also prove useful for the prosecution of increasingly complex cases, as it can provide a stable interpretation of the criminal code that is beneficial for coherence and predictability of the system; and it can also make the co-operation between prosecutors and investigators easier. In Latvia, where reaching a common understanding of the standard required for the burden of proof for each crime among prosecutors and investigators has proven to be an issue in the interviews conducted, harmonisation of the evidence threshold to be reached in relation to each crime could be a very positive practice. It emerged throughout the interviews that inter-institutional co-operation between the prosecution and the investigator bodies has begun in this regard through a working group that will draft common guidelines related to collection of evidence, which is highly positive. Inviting representatives of the judiciary and courts to this working group may also prove positive in order to ensure that a truly common and useful understanding is reached that will enable the most efficient prosecution of crimes.

At present, prosecutors in Latvia distinguish between "*clear cases*", on which some prosecutors specialise and are standardised and where the prosecution uses the "penal orders" to fine offenders, from "*dark cases*". Dark cases are characterised by having no or little information about the perpetrator, thus they remain unidentified. They may remain suspended for long periods or indefinitely, since Latvian prosecutors wouldn't be able to waive the prosecution due to the application of the legality principle. Clear cases, while benefitting from more guidance on how to proceed, often are composed of petty and simple crimes, on which prosecutors find they spend a large amount of time that is not contributing to a lower criminality overall. Throughout the interviews, prosecutors expressed their desire to find efficient solutions to both the indefinite nature of dark cases, and the repetitive one of a majority of clear cases. Standardisation and harmonisation guidelines could also help clarify the relationship between prosecutors and investigators.

Box 4.7. Standardisation and procedural simplification in the Netherlands

In the Netherlands, by the mid-1980s, it became apparent that the increasing caseload could not be dealt with simply by appointing more prosecutors. The strategy of the Public Prosecution Service (PPS) thus changed radically, developing a comprehensive standardisation process.

The Central Processing Office (CVOM) handles virtually all minor offences and traffic cases in the Netherlands. Central Processing deals with anyone who is guilty of drunk driving, speeding or driving without a licence. It makes nationwide agreements with the police concerning road traffic enforcement and assesses whether new legislation concerning the roads, waterways, airways and railways is enforceable. Through this new approach, about 80% of cases have been standardised. The PPS began to develop policy instructions and guidelines (especially to deal with cases involving petty delinquency such as burglary, shoplifting, petty fraud and drunk driving). Decision making in such standard cases is largely guided by the policy guidelines, although the nuances and specificities of each case of each case are taken into account.

Another important change is a computerised decision support system to determine appropriate sentences and speedy case disposition time (Bos-Polaris).

On the other hand, a road map known as ZSM was introduced in 2013-2014 to quickly deal with criminal cases that need not necessarily be dealt with by a criminal court to settle these cases out of court in the shortest timeframe possible. ZSM stands for *Zorgvuldigheid* (careful), *snelheid* (rapid, as soon as possible), *en maatwerk* (tailor-made approaches). The approach thus combines a desire for speediness with the objective to reach the best resolution for the case, which is considered best for both the suspect and the victim, and conclusively settling all cases that do not warrant the attention of a trial judge (or court).

The ZSM facility is open seven days a week. It entails a special form of co-operation between important criminal justice chain partners: the Public Prosecution Service, the police, further SHN, Probation Service, Council for Child support and local municipality. All partners work together in one space/room in which they directly bring together all the necessary and relevant information to the 'accelerated procedure table'. Through the collective contribution of information concerning the (alleged) criminal offence and the suspect, the public prosecutor is able to assess what (still) needs to be done in the case. He/she can then decide whether and how the case should be further handled or disposed. Currently, it is aimed at conclusively deciding the 'defendant's fate' within 7 days after arrest or less.

Source: Netherlands Public Prosecution Service website and Public Prosecution Service of the Netherlands ad hoc input.

Latvia may benefit in this regard from the efforts undertaken in some benchmarked countries to address very similar challenges. In France, the pressing concern for efficiency and effectiveness has led to the practice of standardisation by means of the "*directives permanentes*" which standardise the response to certain mass offences. This system allows police officers to issue the paperwork and send case files directly to the prosecutor's delegate. The Netherlands started implementing significant reforms to this end by the mid-1980s, outlined in Box 4.7**.**

In Italy, prioritisation is not allowed, but over time, all major Italian Prosecution Offices have created special "*offices for the definition of simple affairs*" or "filter offices" for an "automated" disposal of crimes deemed simple or less serious in order to encourage immediate or quick ending of the proceedings. These filter offices are mainly composed of administrative and police staff who implement simplified procedures and predetermined, standardised investigative protocols with no evaluation by a magistrate (Blengino, 2020[9]).

The importance of adopting whole-of-justice chain approaches

As has been outlined throughout this report, the consideration must be made when analysing performance of the prosecution system that the prosecution does not occur in isolation. On the contrary, the effectiveness of the prosecution depends on a significant deal on its broader criminal justice context, including the respective performance and co-operation with the court system, the ministry of justice, and other actors including criminal investigators (as has been much analysed throughout this report, due to their direct impact on prosecutions), the penitentiary system and criminal legal counsels, among others.

In Latvia, the courts may have partial responsibility for the lengthy substantiation of criminal proceedings. It has emerged throughout the interviews carried out by the OECD that trials are often not conducted in a consecutive row of days, and so the hearing flows are interrupted and can last for months, with the added difficulty that while resuming the trial, a refreshment is needed of what happened in the preceding sessions. It emerged through the fact-finding interviews that this entails, on occasion, unreasonable prolongation of trials. Indeed, according to the joint summary of the European Commission and the Europe Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism on the average duration of criminal cases involving money laundering in the courts of the first instance in 2014-2017, Latvia has the second-longest average duration of such trials among the European Union member States and Latvia lags behind other countries in this respect. The average length of those proceedings was approximately 800 days in Latvia in 2017. According to the communication of the European Commission, EU Member States face difficulties when such proceedings take an average of about two years. Regular cases have also been identified to take very long to process by the State Audit Office, despite CEPEJ reports showing Latvia to be below the European disposition time for criminal cases (118 days, in comparison to the 144 average days in the Council of Europe countries) (CEPEJ, 2020[10]). It appears that a reason for this could be that the courts are often deferential to defendants' legal counsels in such a way that the hearing for a certain date and time is set on the court's docket only when the defendant's council availability allows it. In respect to the delays it causes, this circumstance might require an amendment of the criminal procedural law to empower the court to set dates as it wishes, after having heard the preferred dates of the defence.

The influence of actors outside the prosecution system on their performance calls for a holistic approach that involves the key stakeholders of the criminal justice system in Latvia. This may include the mainstreaming of a broad criminal justice strategy and objectives across different institutions of the judiciary, and significant co-operation and integration among such actors. The preparation of joint training sessions between judges, prosecutors and investigators and the development of standardised procedures, as highlighted in other sections of this report, could be measures helpful to increase co-ordination between the most relevant institutions and improve performance of the system overall.

Overall, in order to introduce more effective strategic management strategies, the PGO could leverage its existing strategic plan as a guide but introduce a strong focus on increasing efficiency of work processes and procedures. It is recommended that the PGO analyse its organisational structures and work processes for criminal procedures to detect potential causes for delays and lack of prosecution of relevant cases that are investigated for long periods, and stimulate the introduction of measures for improving the speed and amount of prosecutions, especially standardisation, specialisation (analysed in Chapter 5) and prioritisation (analysed in Chapter 3), along with more vigorous use of alternative ways of ending investigations, as permitted by legislation, and investment in sound diversionary measures (also analysed in Chapter 3). Additional consideration should be given in the domains of accessibility and public trust.

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Notes

[1] The strategic management of prosecutorial services was the main theme of the 17th European Regional Conference 2019 of the International Association of Prosecutors held in Oporto, Portugal, on 16-17 May 2019.

[2] The ratio of the number of resolved cases over the number of incoming cases.

[3] Accessible at www.courtexcellence.com/.

[4] Some of these examples are based on the ones used by the Commission on the Efficiency of Justice of the Council of Europe.

[5] The Prosecutor's Office's annual reports are public and available on the website www.prokuratura.gov.lv/lv.

5 Focus on people: Towards improved performance of Latvian prosecutors

This chapter focuses on exploring key areas for analysis and improvement of individual performance in the prosecution services in Latvia in light of international best practices. It reviews the existing performance appraisal and promotion mechanisms, and emphasises the importance of training and specialisation of prosecutors to tackle increasingly complex and new types of crime. It also proposes to strengthen the capacities of the criminal investigation staff.

Introduction

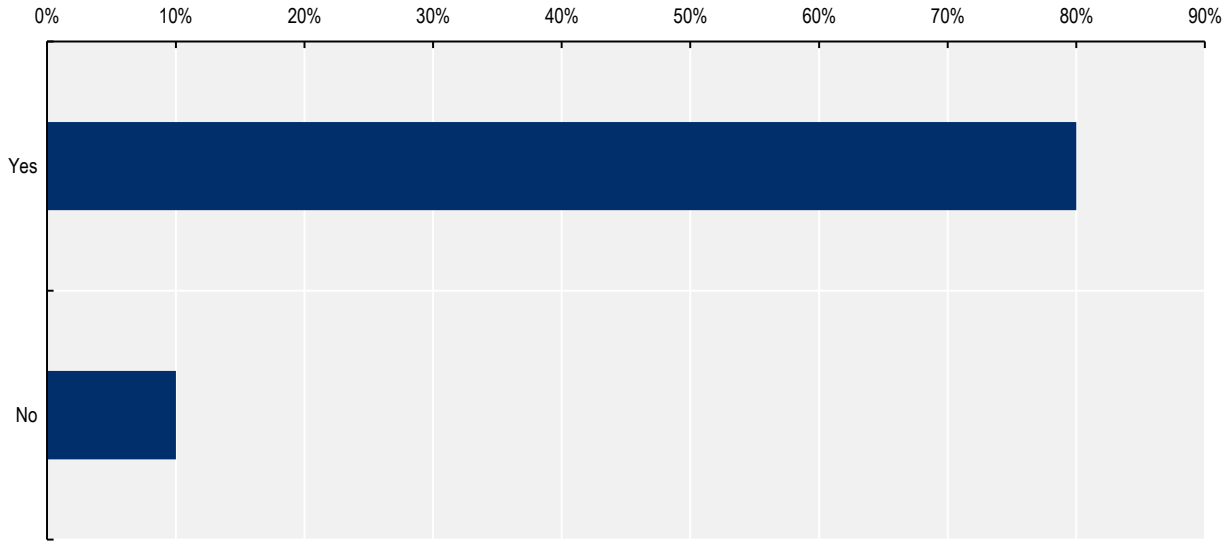
Sound management of human resources of the prosecution is critical to make a positive impact on the efficiency of the criminal prosecution system. The daily contribution of each individual prosecutor to the objectives of the system is an essential piece of the puzzle that must be given adequate weight and importance when attempting to achieve improved performance of prosecution systems as a whole. This chapter thus focuses on exploring key areas for analysis and improvement of individual performance in the prosecution services in Latvia.

Performance appraisal and promotion

The existence of a performance appraisal system is crucial

Performance appraisal of individual prosecutors is a particularly important aspect of measurement of the quality of the prosecution system, and a key driver to improve or stall performance of individuals. Indeed, a large majority of the OECD benchmarked countries (80%) have developed a performance appraisal mechanism for individual prosecutors, including Latvia (see Figure 5.1).

Figure 5.1. Existence of individual performance appraisal mechanisms in benchmarked countries



Note: The following question was asked as part of the ad hoc OECD Questionnaire on Prosecution Service to benchmarking countries: Is there any performance appraisal mechanism of individual prosecutors?
Source: Benchmarking country responses to ad hoc 2020 OECD Questionnaire on Prosecution Services.

In parallel, the United Nations Guidelines on the Role of Prosecutors (n. 7) and the IAP Standards (n. 6e) both highlight the importance of appraisal being carried out "*based on objective factors, in particular professional qualifications, ability, integrity and experience, and decided upon in accordance with fair and impartial procedures*". The Council of Europe, in its Recommendation (2000)19 on the role of public prosecution (point 5), similarly highlights that the careers of public prosecutors, their promotions and their mobility ought to be governed by known and objective criteria, such as competence and experience.

Such emphasis on professional qualifications and ability shifts the focus away from the idea that obtaining the highest rate of conviction should necessarily equal the best possible performance. There are times when an acquittal could be a just and proper verdict, and that must be taken into account when designing

performance evaluation mechanisms. As such, individual evaluations should not be based on the idea of winning or losing cases. It should be recalled that a higher conviction rate can be secured simply by deciding not to prosecute the more difficult cases. Nevertheless, careful reviews of cases should take place where errors of judgement or law on the part of the prosecutor might be found and dealt with. Adequate criteria to assess them may include: whether the prosecutor applied the law correctly, whether he or she took into account all relevant factors and evidence and where applicable, applied any public interest criteria correctly. To that end, it is important that prosecutors record their decision-making considerations in a detailed manner.

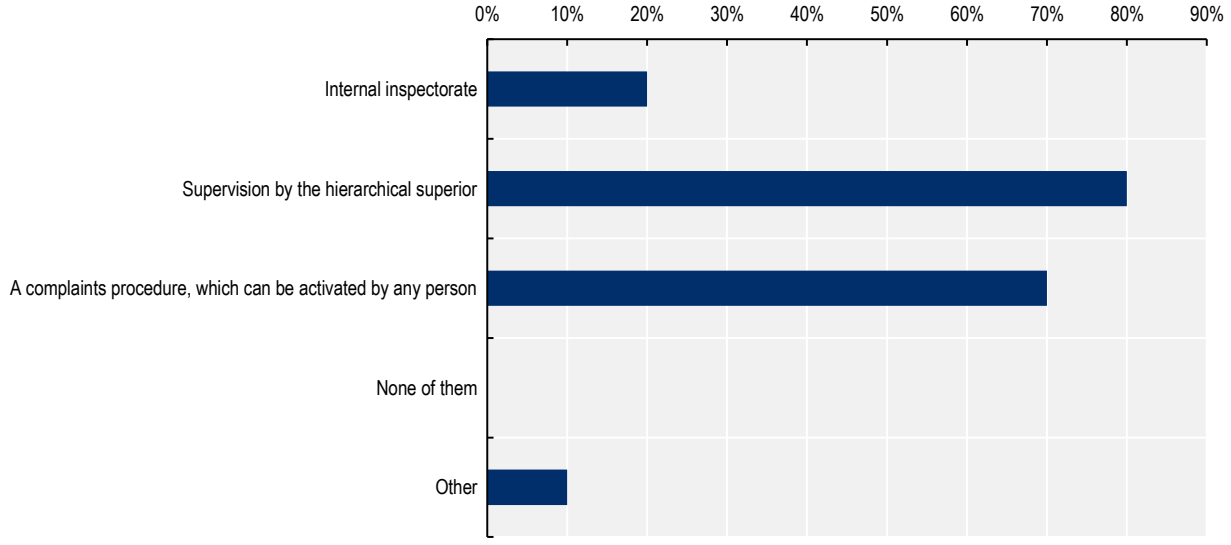
Two obstacles can make the assessment and improvement of individual prosecutor performance difficult and must be taken into account when improving performance appraisal mechanisms. Firstly, the reduction of criminality depends on the smooth interaction of several factors integrating the national criminal justice system, which can only function co-ordinately: the legal framework, the individual judges and the judiciary, the investigative authorities (police and other criminal investigation bodies) and the capabilities and performance of the prosecutorial services. As such the ability of prosecutors to achieve outcomes also depends on the respective performance of those other actors. International co-operation is increasingly becoming a crucial factor too. Performance of the penitentiary service and the effectiveness of the diversionary mechanisms that could be available as alternatives to prosecution also play an important role in keeping the criminality under control. In this vein, recommendation (2000)19 of the Committee of Ministers of the Council of Europe of 6 October 2000 recognised that the public prosecutor does not work in isolation, but is strongly dependent on other main factors intervening in the development of the criminal justice system of a country. Due to this circumstance, the adoption of a whole-of-justice chain approach to improvement of performance will be recommended throughout this report.

The second roadblock is that, in most criminal justice systems around the world, prosecutors are part of a hierarchised structure and follow explicit guidance in crucial areas of the job, enforced by regular internal review and accounting to parliaments or governments. Internal accountability mechanisms intend to keep prosecutors in line with the rule of law and to foster good individual performance. Therefore, holding prosecutors accountable for their performance in many of the benchmark countries depends on standardised internal forms of control that together promote the performance expected from individual prosecutors. Legal frameworks often aim to establish the constraints of an individual prosecutor's choices by a) prosecutors' expertise acquired through professional training and experience, b) procedural regularity defined through guidelines, and c) regular internal reviews. The above-mentioned Recommendation signalled that "with a view to promoting fairness, consistency and efficiency in public prosecution, the member states should seek to:

- *consider hierarchical methods of organisation*, without however letting such organisational methods lead to ineffective or obstructive bureaucratic structures
- 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.

Finally, in relation to the mechanism that ought to be used in assessing individual performance of prosecutors, the Venice Commission has recommended in several of its opinions that, to comply with the need for objective transparency in the promotion process, the assessment of suitability could be made by an appropriate board or similar structure and should not be left to the sole discretion of a supervisor. At the same time, a majority of the benchmarked countries rely on the opinion of hierarchical superiors as part of the evaluation of prosecutors, although this is often taken into account in conjunction with other factors.

Figure 5.2. Main internal supervision mechanisms to monitor individual performance



Note: The following question was asked as part of the ad hoc OECD Questionnaire on Prosecution Service to benchmarking countries: Which are the main internal supervision mechanisms to monitor the performance and professional behaviour of individual prosecutors?
Source: Benchmarking country responses to ad hoc 2020 OECD Questionnaire on Prosecution Services.

Towards more efficient performance appraisal and promotion in Latvia

In Latvia, assessment of individual prosecutor performance is carried out “at least every five years”. The way in which they are carried out are set out in the Regulation on the Assessment of the Professional Activity of Prosecutors, approved by Prosecutor General’s Order No.110 of 10.02.2020 (Decision No.5 of the Council of Prosecutor General). According to the Regulation, an Attestation Commission is responsible for evaluating the work of the prosecutors who are selected for assessment on a given year, based on a series of documents submitted on the work of such prosecutors.

With slight variations depending on the rank and office of the prosecutor, the Commission generally relies on the following documents:

- filled in Statistical Indicators of the Work of a Prosecutor form
- filled in Results of the Examination of the Work of a Prosecutor form
- filled in Results of Quality Control of Decisions on Holding a Person Criminally Liable (Accusation) form
- opinion of the Chief Prosecutor (or the concerned hierarchical superior).

This information is gathered in the ProIS system in an online format. The Regulation sets out in detail the content of each form, the staff responsible for filling in each of the forms and the ways to verify the information. All such practices can be considered positive and provide a wealth of information about the prosecutor’s work on a given period. The designated supervising prosecutor provides the Attestation Commission with a substantial comparison of the statistical performance of the work between the prosecutor being evaluated and those prosecutors who have performed the same or similar functions of the prosecutor in the relevant department of the public prosecutor’s office in previous years (as established in the Regulation’s Annex 12). The level of use of the available simplified procedures are among this analysis, so the Commission can see what is the degree of implementation of those procedures for a specific prosecutor in comparison to the average use across the Latvian system, taking into account the three years prior.

Despite the possibility to carry out that relevant comparative analysis, the Regulation does not specify how the information on the forms will be interpreted by the Attestation Commission by itself, or in other words, what is considered to be *good* or *bad* performance in relation to the above forms. The following is stated:

> *"56. (…) the Attestation Commission of the Prosecution Office **shall analyse the quality of performance of the functions of the prosecutor, the organisation of individual work, participation in qualification improvement activities, statistical indicators of work**, as well as other criteria provided for in this Regulation.*
>
> *57. The Attestation Commission of the Prosecution Office **shall provide a positive or negative opinion regarding the professional activity of the Prosecutor Subject to Assessment**. In the opinion, the Attestation Commission of the Prosecution Office may determine or recommend specific tasks that the Prosecutor Subject to Assessment must perform within the time period specified by the Attestation Commission of the Prosecution Office for the elimination of established deficiencies or promotion of his or her professional development." (paras. 56-57, Regulation on the Assessment of the Professional Activity of Prosecutors. Emphasis is ours).*

This lack of explicit criteria in the Regulation to explain what may sustain a positive or negative opinion has a significant relevance, as it creates a loophole in the otherwise comprehensive regulation to assess individual performance that may be hindering the prosecution's activity overall in Latvia. As a result, the quality of performance when holding charges in court is mostly measured on whether a case has been won or lost[1]. A good practice in this case would be to include a "positive and negative points" system, at least, in comparison to the system that is established to measure performance of the overall district prosecution offices. It has emerged throughout the interviews with different stakeholders that promotion is notionally based on positive performance appraisal. Such appraisal, as observed, factors in the quality in maintaining state charges in court during the last five years (which is the performance appraisal period). Because of the way in which the performance appraisal is carried out, prosecutors only write the arraignment and lodge the indictment in court if they feel that the case is 100% winnable. This may in turn explain the low ratio of prosecuted cases compared with the much higher number of investigations undertaken. There is scope to strengthen the alignment of this practice with key international standards. As indicated by the UNODC/IAP Guide, the idea of "winning or losing" a criminal case if the case was decided fairly on its merits should not be a deciding factor in assessing a prosecutor's performance or lack thereof.

Finally, it must be brought to the forefront that the regularity of performance appraisals in Latvia seems to be less than observed in its benchmarked counterparts. Below is a table comparing the timings in several selected OECD countries, including Latvia (see Table 5.1).

Table 5.1. The regularity of performance appraisals

Country	Performance appraisal
Denmark	Annually
Finland	Annually
Netherlands	Annually
Portugal	Every five years
Czech Republic	Every two years
Latvia	At least every five years

Source: Benchmarking country responses to ad hoc 2020 OECD Questionnaire on Prosecution Services.

The large spans of time that may pass without a prosecutor being evaluated on his individual performance may reduce the effectiveness of intervention once a negative performance is discovered, and has the potential to hinder the prosecution of cases by certain prosecutors for years.

Specialisation

The nature of crimes and the methods by which crime is committed are constantly evolving, with criminals taking advantage of technological advances and evolving geopolitical affairs. Many criminal groups develop a level of sophistication and co-ordination that entail genuine challenges to investigate and prosecute offenses. The applicable regulations required to combat these types of crimes are often also very complex, so that prosecutors require specialist knowledge and experience. As highlighted by the UNODC-IAP Guide, there are also more traditional kinds of crime, such as child sexual assault and sexual assault in general, civil rights abuses, environmental crime, taxation fraud, election crimes and other types of crime, for which special skills and a multidisciplinary approach may be required to enable an effective prosecution (UNODC/IAP, 2014[1]).

In order to tackle the increasing complexity of such challenges, prosecution services often create specialised departments within their prosecution services that can focus on the investigation and prosecution of specific types of offences. Specialisation of prosecution services may also involve concentrating particular types of dangerous prosecutions in one office in order to ensure that prosecutors have physical protection and are free from external pressures (UNODC/IAP, 2014[1]).

In Latvia, there is no explicit specialisation of prosecutors, but specialised prosecutors can be established by Order of the Prosecutor General. Established through this method, at the moment there are five specialised Prosecutor's Offices established in the Prosecutor's Office, which include: the Specialised Prosecutor's Office for organised crime and other sectors (Prosecutor's Office of judicial region), and four district Prosecutor's Offices such as the Specialised Multidisciplinary Prosecutor's Office, the Prosecutor's Office for investigating financial and economic crime, the Prosecutor's Office for investigating crimes of illicit drug circulation, and the Riga Road Transport Prosecutor's Office.

The prosecution for financial and economic crimes thus lies at the district level prosecution offices. They supervise the investigation of these crimes conducted by the relevant police force only within the boundaries of the district territory. The types of crimes the district supervises include tax evasion, booking counterfeits, fraud in paying salaries (salaries paid in dark), violations of copyrights, money laundering, violation of commercial secrets, selling of excise goods, unregistered business activities, insolvency, smuggling, customs violations, cash smuggling at the borders, etc.

Prosecutors in charge of supervising such investigations do not appear to require special skills, experience or knowledge, with the acquisition of necessary expertise on those crimes being expected to be achieved by in-service practising. There also seems no special selection procedure for them. Others come via promotion from other district prosecution offices, without significant selection process. As such, while specialisation of offices exists in Latvia, in line with international practices, there appear to be gaps in training for the prosecutors that need to deal with the most complex or rare types of crimes. Possibly due to this reason, it emerged throughout the interviews that the criminal justice machinery has difficulties in prosecuting complex, financial, corruption or cybercrimes. This may also be one of the causes leading prosecutors to be reluctant to lodge their cases in court unless they are entirely sure that the case can be won. This uneven of specialised training may possibly be undermining the ability to prosecute in the most effective manner.

Examples from the benchmarked countries on the specialisation of prosecutors could provide a useful basis for reflection in Latvia. For example, Box 5.1 describes the case of Finland, which has made specialisation a strategic priority. In Portugal, the specialisation and prioritisation have been given strategic

importance since the reforms initiated in 2010 amidst the worst economic crisis in the modern history of the country. The criminal policy goals, priorities and guidelines for the biennium 2017-19 were established by Law no. 96/2017 of 23 August and strategic areas were defined by the Prosecutor General, focusing on the speediness of case treatment and the quality of the prosecutorial work. In the benchmarked systems, when asked whether prosecutors specialise in some aspects of criminality, 20% signalled that the law determines the degree and hierarchical level of specialisation, while in 60% of cases the specialisation is determined by the PGO.

Box 5.1. Specialisation of prosecutors in Finland

Specialisation has been regarded as necessary in Finland both in fields where:

- there are many criminal cases (e.g. financial crime and narcotics), and
- there are comparatively few criminal cases (e.g. environmental offences and abuses of the freedom of speech).

Specialisation is justified by the fact that special expertise helps a prosecution office cope better with handling groups of cases requiring special expertise. There is a consensus in the prosecution service on the benefits of specialisation, even though these benefits are not easily measured by objective standards. The government invests extensively in preventing financial crime ("the grey economy") such as tax fraud and abuse of various forms of financial aid. For this purpose, the prosecution service has also been granted extra funds to specifically increase the number of prosecutors specialised in financial crime. This also creates a specific need in the prosecution service to demonstrate the results produced by the extra resources directed against financial crime.

In Finland, a prosecutor can specialise as a District Prosecutor in certain types of crime (specialised district prosecutor) or in supervisory duties. A specialised prosecutor has strong expertise in one or more types of crime and several years of experience in handling criminal matters in his or her area of specialisation. A supervisor has strong and expansive experience in the work of a prosecutor as well as the skills and desire to be a supervisor. Both lines of specialisation are supported with training. Prosecutors can specialise in the following types of crime: 1) financial crime; 2) narcotics offences and organised crime; 3) offences in public office, military offences and corruption; 4) crimes targeting special persons (i.e. mostly crimes committed against women and children); 5) environmental offences; 6) computer crime, abuses of the freedom of speech. In addition, it is possible to specialise in; and7) international cases and in questions concerning procedural law and the general part of the Criminal Code.

A reform kick-started by a new Act on the National Prosecution Authority entered into force in October 2019, and envisages a revised system of specialised prosecutors that is going to be introduced at the National Prosecution Authority, in which Senior Specialised Prosecutors act as prosecutors on the national level in cases related to their specialisations that are especially demanding. It will help to ensure that the most demanding criminal matters can be handled as efficiently and with as high quality as possible. On the other hand, the mass criminal matters ("high volume crimes"), which can be handled quickly, are to be centralised on the prosecutors that handle such matters on a full-time basis and will be standardised. This allows improving the uniformity of the decisions made by prosecutors. The reform thus invests in the opportunities of prosecutors to specialise, reinforce the managerial aspects of the prosecutorial work and training system, as well as using increasingly standardised procedures.

Source: Responses to ad hoc 2020 OECD Questionnaire on Prosecution Services by the General Prosecutor of Finland.

Another example is the *Special Financial Unit* of Ireland, established in 2011 in response to the post-2008 Irish banking crisis. It operates within the Solicitors' Division of the Director of Public Prosecution. It deals with large-scale financial or corporate cases. It works primarily with the Garda National Economic *Crime Bureau* and the *Office of the Director of Corporate Enforcement*. The principal role of the unit is to consider and, if necessary, prosecute serious financial and corporate crimes including complex economic (comprising transnational) crimes; complex money-laundering cases (i.e. cases where money that is made from criminal dealings is passed through a business so that it appears to come from legitimate sources); financial crimes which have a significant impact on the public; serious regulatory and corporate criminal cases and all cases of foreign bribery.

In Sweden, there are several specialised public prosecution offices with nationwide responsibilities: the National Anti-Corruption Unit, the National Environmental Crimes Unit, the Prosecution Office for National Security, and the National Police-related Crime Office. In Italy, in all prosecution offices (except in prosecution offices staffed with less than 5 prosecutors) there are special groups of prosecutors specialised in investigating certain types of crimes. These include: corruption, economic and financial crimes (usury, false accounting, tax evasion, etc.), and offences against vulnerable groups (i.e. domestic violence, sexual abuse of children, exploitation of prostitution, breach of immigration law, etc.). For organised crime offences (mafia-related and similar offences), a specific specialisation is established by the law. There is a special District Anti-mafia Prosecution Office in each prosecution office located in the District regional capital. This specialisation gives positive results with respect to the number of cases dealt with and the speed of their settlement. This specialisation is balanced by the prohibition for a public prosecutor to stay on the same work group for more than ten years to open new possibilities for prosecutors wanting to diversify their expertise.

Training for prosecutors

Appropriate training and specialisation are key tenets of the international standards for prosecutors. As outlined by the UNODC/IAP Guide, the increasing complexity of crime has required that new skills be acquired by prosecution services, which should begin in the induction phase and continue through the prosecutor's career, enabling the prosecutor to take on cases that are more complicated and allowing for career advancement. Training should be understood as an investment by the prosecution service, and appropriate funds should be allocated to provide training to staff, which for optimal results could include also investigators and assistant prosecutors. According to the United Nations Guidelines (2b):

Guidelines on the Role of Prosecutors

> *2. States shall ensure that:*
>
> *(b) Prosecutors have appropriate education and training and should be made aware of the ideals and ethical duties of their office, of the constitutional and statutory protections for the rights of the suspect and the victim, and of human rights and fundamental freedoms recognized by national and international law. (United Nations, 1990[2])*

In Latvia, certain training used to be provided by the **Latvian Judicial Training Centre**, which was attended on a voluntary basis by prosecutors. The Centre is a private foundation established in 1995. It receives funding directly from the court administration (which is subordinated to the Ministry of Justice) and from the European Social Fund and other international donors. Its main mandate is to provide training for judges and court staff; and it collaborates with other justice-related entities, such as the prosecution, on an ad hoc agreement basis (Latvian Judicial Training Centre, 2020[3]).

Since two years ago, the PGO created its own training department and limited its involvement with the Judicial Training Centre, mainly in two ways: on the one hand, it started delivering the training for newly appointed prosecutors internally, a function formerly carried out by the Centre. On the other, the Prosecution became a part of the European Judicial Training Network, limiting the amount of activities that required implementation in the Judicial Training Centre (Latvian Judicial Training Centre, 2020[3]).

Despite this, the Centre has maintained collaboration with the Prosecution in some ways. During the period between 2017 and 2021, the Centre is implementing training activities under the European Social Fund project "*Justice for Growth*". Prosecutors are one of the main target audiences of the project. Training activities have included:

- Quality of indictments, 3-day practical workshop for prosecutors.
- Lecturers school, 6-day training for acting or future trainers.
- Leadership skills training, 5-day practical training.
- Interdisciplinary ethics training, 1-day interactive training intended for judges, prosecutors and lawyers to discuss issues of cross professional ethics.
- Mediation and alternative dispute resolution training, various training activities.
- Supervision, professional group session intended to reflect on challenges at work and learn among colleagues.

The Centre focuses its training delivery on quality of judgements and court procedures across different specialisations. Nonetheless, financial and economic crimes' training is a part of the curricula. The Centre carries out training needs analyses only for judges, not for prosecutors. The Judicial Training Centre also delivers some training for investigators in co-operation with the State Police College called "*Quality of procedural documents*". It consists of a 3-day training course on criminal evidence gathering (Latvian Judicial Training Centre, 2020[3]).

These are encouraging initiatives, but seem to be insufficient to provide prosecutors and investigators with the required standard of expertise to face highly specialised defence counsels effectively in tackling complex crimes. In particular, mandatory trainings targeted for prosecutors that include induction training, training throughout the prosecutorial career and specialised for highly complex crimes seem to be lacking in comparison with the rest of benchmarking countries analysed.

Local and regional prosecutors' offices appear to face the highest workload and experience greatest gaps in lack of capacity/specialisation. To access a Judicial Regional Office as a prosecutor, a minimum of five-years' experience as a district prosecutor is required, not necessarily on criminal prosecutorial work. Not all prosecutors work on criminal cases, but also on civil and administrative law cases, thus in reality not providing a useful specialisation experience.

Advanced training would be useful for Latvian prosecutors in subjects such as transnational crime, organised crime, cybercrime, money-laundering, international co-operation in criminal matters, forensic evidence such as DNA analysis and dealing with vulnerable victims and witnesses. It emerged throughout the interviews that an increase in informal co-operation and joint trainings between judges and prosecutors may provide prosecutors with more nuanced knowledge on how to prosecute certain crimes; and similarly, joint trainings among prosecutors and investigators could allow them to reach a common understanding on how to prosecute particular crimes, improving their co-ordination. The benchmarked OECD countries analysed as a part of this Study all place a strong strategic importance on training of prosecutors, and in eight out of the ten surveyed such training is mandatory. These encompass induction programs and training throughout prosecutors' careers. Box 5.2 provides selected examples of induction training structures across the benchmarked countries.

Box 5.2. Approaches to induction training of prosecutors in OECD countries

- Finland's *Prosecutor's Start* is a comprehensive introductory programme to the work of a prosecutor. The personal tutor assigned to the junior prosecutor and his or her supervisor are responsible for its implementation. After the *Start*, the focus moves on basic competence in the work and increasing professional skills (e.g. the *In the Heart of Prosecution Work* training programme).
- In France, professional judges and prosecutors are recruited as trainees to attend the National School for the Judiciary (*Ecole Nationale de la Magistrature*, ENM), located in Bordeaux, for an induction training lasting 31 months. This training has several phases: 1) six months theory followed by 9 months of practical training in a court room, on matters such as ethics, exploring witnesses, adjudication, etc.; 2) five weeks outside the French judiciary in non-judicial French institutions or abroad; and 3) four months of enhanced immediate preparation in judicial techniques prior to joining a court.
- Italian apprentice magistrates attend a six-month theory training course at the Italian School for the Judiciary (*Scuola Superiore della Magistratura*, SSM) followed by 12 months of practice in courts or prosecutors' offices.

Source: Benchmarking country responses to ad hoc 2020 OECD Questionnaire on Prosecution Services.

In Finland, strategic importance is given to the training of prosecutors. At the National Prosecution Authority, the development of the employees' expertise is planned together with their supervisors. The supervisor guides and supports the development of expertise with a suitable distribution of work and other duties. New prosecutors are recruited to the junior prosecutor's temporary office for a period of six months, during which the prosecutor completes the Prosecutor's Start training programme, after which the junior prosecutor may apply to the office of District Prosecutor. Next come the studies of a multicompetent prosecutor, reinforcing competence in different areas. Later, a multicompetent prosecutor can specialise in various duties both in Finland and abroad. New secretaries begin building their competence with the *Secretary's Start* training programme that is an introduction to the duties and operations of the National Prosecution Authority, and the work of a secretary. Secretaries may also specialise – for example in the duties of a digital coach. After the Start, the development of the prosecutor's and the secretary's competence is planned according to the work duties and the competence needs they require. The development of the competence of experts in HR and financial administration as well as communications and training are supported with training provided by outside organisations (National Prosecution Authority of Finland, 2020[4]).

In France and Italy, training is also considered of strategic importance. A structured system of professional training is aimed at ensuring the quality of the judicial and prosecutorial performance. In France, since 2008, five days per year of judicial training has been compulsory in the ordinary judicial order. In the administrative judicial order, judicial training is not compulsory, but the Vice-President of the Council of State has set the target of each judge receiving at least three days of training per year. Training for members of the ordinary judicial order is provided by the National School for the Judiciary (*Ecole Nationale de la Magistrature*, ENM); each judge is required to attend one session at the ENM per year. Training for judges of the administrative order is provided by the *Centre de formation de la juridiction administrative* (CFAJ) of the Council of State. In Italy, the training of civil and commercial judges is within the remit of the Italian School for the Judiciary (*Scuola Superiore della Magistratura*, SSM) and the training of administrative judges within that of the Training and Research Department of Administrative Justice (*Ufficio Studi della Giustizia Amministrativa*, USGA). The SSM is a public foundation which is funded 97% by the State and 3% by EU grants. Continuous training is also organised at a decentralised level, in each court

of appeal district, often in co-ordination with the SSM. All members of the judiciary are expected to follow continuous education programs both at national and district level.

In the Netherlands, training is given strategic importance. Training for prosecutors is mandatory first as an induction training at the beginning of the career and then the regular in-service training is provided, and participation is mandatory in training activities. Training needs analysis is carried out by each prosecutorial unit. Since its establishment in 1960, the *Studiecentrum Rechtspleging* (SSR) has been the joint training institute of the Dutch judicial system and the Public Prosecution Service, operating independently from the Ministry of Justice. In partnership with the Dutch courts of law and public prosecutor's offices, the SSR trains law graduates as judges and public prosecutors. These initial training programmes are currently undergoing major changes, and SSR has been assigned to redesign the judge programme.

Training for investigators

It has emerged throughout OECD interviews that investigative police staff is scarce in many places in Latvia. However, according to international statistics, Latvia is among EU member states with the largest number of police officers per 100 000 residents (429). The reason seems to be that few are devoted to criminal investigation.

The State Audit Office mentioned in multiple of its past audits of investigative institutions that State Police officers are often unable to investigate criminal processes. Observers also note that errors in application of the law, insufficiently justified decisions, lengthy investigation periods, and cases concluded because of statute of limitations are some of the concerns affecting the police system. «*Low investigation quality has far-reaching consequences that only contribute to the unsafe environment in the country and allow criminals to avoid punishment. In addition, state resources are wasted on unfinished cases. Only well-performed and efficient investigation can result in punishment for the guilty. It is the duty of the state to protect its residents from crime*» (Baltic News Network, 2017[5]).

One reason for this may be an insufficient training for investigative police. The State Police College 3-day training course on criminal evidence gathering mentioned above seems to be insufficient.

Some of the OECD peer countries reviewed have highlighted that reforms in their prosecutorial systems also included reforms of their police. In Denmark, a significant reform of the Police and the Prosecution Service was implemented in 2007-2010. For the police, this entailed a reduction in the number of local police stations and the creation of larger regional police stations.

Thus, it is recommended to strengthen the capacities of the investigative staff across Latvia, both in terms of number of staff assigned to criminal investigations and improving their qualifications. This will ensure they can meet the growing demand stemming from the criminal justice system for high-quality investigations that prosecutors can effectively rely on when bringing charges to trial.

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Note

[1] However, there is a "Classification of errors and omissions found in accusations" meant to evaluate the mistakes made by prosecutors in performing their duties.

6 Strengthening integrity policies and culture within the prosecution service of Latvia

This chapter assesses the integrity system of the Latvian prosecution service in light of leading international standards and, in particular, the analytical framework of the OECD Recommendation on Public Integrity that provides countries and public entities with a strategy to develop a comprehensive and coherent public integrity system. It focuses on the institutional responsibilities of the Latvian prosecution services in the area of integrity, including policies to create and promote a culture of public integrity as well as accountability mechanisms for the implementation of integrity standards.

Introduction

Although prosecution services have different roles in countries' justice chain, the extensive responsibility, powers and discretion that they are commonly entrusted to expose them to a number of integrity and corruption risks. Considering that the decisions of prosecutors may affect personal, economic and political interests, especially when dealing with economic and financial cases, they may be offered bribes or other favours to interfere at various degrees throughout the criminal process. They may also be attempts of other entities or state's powers to capture the leadership of prosecution services in order to unduly influence the implementation of the criminal justice policy. At the same time, entities in the prosecution services are subject to other integrity risks that common to any other public organisations such as opacity in the human resources management, conflict of interests in the procurement processes and weaknesses in the internal control policy.

Given these risks, ensuring integrity in the prosecution service is not only essential for ensuring the rule of law and fair trial rights but also for guaranteeing the independence of the prosecutorial decision-making power. Moreover, it ensures better performance in so far as it enables the efficient use of its resources and the quality of its work. On the contrary, the (perceived) misconducts of prosecutors, especially related to episodes of corruption, negatively affect the level of trust of citizens and businesses in the justice system and thus affect the social contract and the investment climate.

The risks of corruption in the court system of Latvia has been pointed out in Latvia's AC strategy (KNAB, 2015[1]) that highlighted that they concern the actions of the judges, but also to those belonging to the judicial system and involved in the court proceedings. As a consequence it stressed the need to prevent the risk of corruption also among members of the judiciary, including prosecutors. In 2016, after a scandal involving prosecutors, the President of the Latvian Association of Prosecution had declared in a public interview that there are risk areas in the prosecution service such as the pressure caused by large loans. These risks reverberate in the citizens' trust into the prosecution service and the judicial system more broadly. On the one hand, the latest data from the special Eurobarometer on corruption evidence that 19% of respondents think that corruption is widespread within the public prosecution service of Latvia, which is slightly higher than the EU27 average (17%) (European Commission, 2020[2]). On the other hand, a survey conducted by the Institute of Legal Research and the Center for Market and Public Opinion Research SKDS in December 2017 found that only 39% of the population fully trust or rather trust the Latvian judicial system, while 42% express the opinion that they do not trust the Latvian judicial system (KNAB, 2020[3]).

In Latvia Cabinet Regulation 630 of 2017 – which applies to judicial authorities in line with the specific nature of the functions and actions – establishes that public entities' internal control system should count with the following requirements to address integrity risks:

- create such a control environment in the institution that is intended towards prevention of corruption risks
- identify, analyse and assess corruption risks
- determine, introduce and implement corruption risk prevention measures
- ensure circulation of information and communication regarding corruption risk prevention
- ensure the education of employees regarding matters of corruption and conflict of interest
- ensure the monitoring of the internal control system.

Although the Prosecution Office reported that it has gathered information concerning the implementation of the operational risk management and is currently developing an action plan to reduce such risks, interviews during fact-finding mission highlighted gaps in the implementation of such internal control model. As illustrated in the chapter, there are no measure to identify at-risk positions or areas, put in place mitigation measures and develop tailored training activities. In recognition of these gaps, the Prosecution

Office recently informed the KNAB of its intention to establish a separate, internal unit within the PGO to take measures to fulfil Regulation 630.

The current chapter assesses the integrity system of the Latvian prosecution service in light of leading international standards (Box 6.1) and, in particular, the analytical framework of the OECD Recommendation on Public Integrity that provides countries and public entities with a strategy to develop a comprehensive and coherent public integrity system (OECD, 2017[4]). In particular, it focuses on the Latvian prosecution service's institutional responsibilities on integrity, policies to create and promote a culture of public integrity as well as accountability mechanisms to integrity standards.

Box 6.1. Integrity and anticorruption standards for the public sector and prosecutors

Various international standards provide for guidance and recommendations as to the level of integrity to establish in public entities but also in prosecutor services specifically. They include:

- OECD Recommendation on Public Integrity (2017).
- Resolution 17/2 of the United Nations Commission on Crime Prevention and Criminal Justice on Strengthening the rule of law through improved integrity and capacity of prosecution services (2008).
- European Guidelines on Ethics and Conduct for Public Prosecutors (2005).
- United Nations Convention against Corruption (2003).
- OECD Recommendation on Guidelines for Managing Conflict of Interest in the Public Service (2004).
- Recommendation Rec(2000)19 of the Committee of Ministers on the Role of Public Prosecution in the Criminal Justice System.
- Standards of professional responsibility and statement of the essential duties and rights of prosecutors adopted by the International Association of Prosecutors (1999).
- UN Guidelines on the Role of Prosecutors (1990).

Source: (OECD, 2017[4]); (United Nations Commission on Crime Prevention and Criminal Justice, 2008[5]); (Council of Europe, 2005[6]); (UN, 2003[7]); (OECD, 2004[8]).

Defining an integrity strategy

Specifying responsibilities to promote and co-ordinate integrity-related measures

A public integrity system, whether at the country or organisational level, includes different actors with responsibilities for defining, supporting, controlling and enforcing public integrity. Within public organisations such as the prosecution service a number of key integrity roles should defined, together with the necessary resources and co-operation mechanisms between them. (Table 6.1)

Table 6.1. Actors and integrity roles at the organisational level

Position or unit	Integrity role
Highest officer	Ultimately responsible for the agenda, implementation and enforcement of integrity policies for the entire organisation Responsible for adhering to and demonstrating the highest levels of commitment and conduct for public integrity
Management	Responsible for implementation of integrity policies and for promoting ethical behaviour within the organisational units for which they are responsible Responsible for adhering to and demonstrating the highest levels of commitment and conduct for public integrity
Integrity officer Integrity co-ordinator Compliance officer Integrity policy staff	A wide range of different types of officers who fulfil roles relating to: design, support and advice, implementation, co-operation, and enforcement of integrity policies
Internal audit and control	Responsible for establishing an internal control system and risk management framework to reduce vulnerability to fraud and corruption and for ensuring that governments are operating optimally to deliver programmes that benefit citizens
Finance	Responsible for taking care of vulnerable actions around purchasing, tenders, and expense claims in a transparent manner
Legal	Responsible for formulating administrative-legal policy, providing advice based on relevant legislation and the drafting of delegation and mandate regulations, and applying an integrity lens to ensure policies comply with integrity standards
Human resource management	Responsible for establishing procedures and providing advice concerning recruitment and selection, job descriptions, performance and assessment interviews, disciplinary research, sanctions and organisational culture, and applying an integrity lens to ensure processes comply with integrity standards
Communication/Information	Responsible for communication concerning integrity standards and procedures
Security/ICT	Responsible for setting up physical and ICT security
Confidential advisor	Responsible for advising employees on and coaching them in the internal reporting process in the event of suspected integrity violations

Source: (OECD, 2020[9]).

In Latvia's Prosecutor Office, some integrity-related roles are performed by the Prosecutor General Office's Attestation Commission. Pursuant to the Prosecutor General´s General Order 109 of 17 January 2020 such Commission:

- examines the materials of the inspection of the fact of a disciplinary violation and provide an opinion on the imposition of a disciplinary sanction
- decides on the application of moral sanctions specified in the Code of Ethics of Prosecutors in cases where, while examining violations of the norms of the Code of Ethics of Prosecutors, no grounds for the imposition of disciplinary sanctions are established.

While the Attestation Commission is entrusted of a key role in ensuring accountability of disciplinary rules and violation of the Code of Ethics, there is no dedicated integrity function in the Latvian PGO with a focus on co-ordinating and mainstreaming integrity in the prosecutorial entities. The lack of such a role was also highlighted by the Latvian Association of Prosecutors, who called for the creation of an internal supervision department, whose task should be to prevent risks related to, for example, potential conflicts of interest, violations of ethical and moral norms and to promote the propriety of relations of a prosecutor as a public official proactively (State Audit Office of Latvia, 2020[10]). Indeed, the Latvia PGO could create an integrity office or appoint an integrity officer in charge of promoting and co-ordinating relevant initiatives as well as providing guidance, advice and awareness to prosecutors on integrity issues such as when faced with ethical dilemmas or concerns (e.g. conflict of interest situations, gifts, discretionary decision making). In doing that, it could consider the experience of the Integrity Office of the Netherlands' Office of the Prosecutor, which is part of its broader integrity policy (Box 6.2).

Box 6.2. The integrity office of the Netherland's Prosecution Service

The Integrity Bureau of the Netherlands' Prosecution Service (BI-OM), established in 2012, works as nationwide centre of expertise concerning consultation, promotion and management of integrity issues within the prosecution service. The creation of the bureau and the broader integrity policy of the Netherlands' prosecution service came from the acknowledgment of integrity as an essential hallmark of the quality of the public prosecutor service and of the importance of making integrity visible and recognisable both internally and externally.

The Integrity Bureau consists of a national programme manager for integrity matters and an integrity co-ordinator together with specialists from human resources, communication, the Employment Law Expertise Centre and the National Police Internal Investigations Department.

The tasks of the bureau include:

- enhancing awareness of integrity within the prosecution service
- receiving and centralising information regarding all (suspected) violations of integrity and monitoring the follow-up given
- upon request, providing support and advice on the handling of an integrity violation and perform an investigation into a (suspected) violation
- upon suspicion of a conflict of interest situation, interviewing the concerned prosecutor's immediate superior and proposing corresponding action to manage it (e.g. gradually terminating or abandoning the incompatible activities transferring a criminal case to a colleague).

As part of its communications, the Bureau produces an annual accountability report containing the number of integrity violations and the manner in which they were settled as well a semi-annual report, about the type of integrity violations and the sanctions imposed.

Source: Benchmarking country responses to ad hoc 2020 OECD Questionnaire on Prosecution Service; (GRECO, Evaluation Report Netherlands: Fourth Evaluation Round, 2013).

Defining an internal comprehensive integrity strategy

As part of its efforts to define integrity roles and responsibilities with the prosecution service, the PGO of Latvia could develop a comprehensive internal integrity and anticorruption strategy identifying risks and mitigating measures together with corresponding roles and responsibilities as well as timelines to measure progress. This would not contribute to the implementation of the Guidelines for the Corruption Prevention and Combating (KNAB, 2015[1]) and Cabinet Regulation 630 of 2017 on public entities' internal control system, but it would also allow to assign institutional responsibilities and to prioritise and sequence actions according to risks. At the same time, both the development process and the final document would also be a way of demonstrating integrity commitment and show progresses within the prosecution service and externally to other institutions and citizens. In this context, Latvia could consider the anti-corruption policy of the Czech Republic´s Prosecutor General Office, which – for each objective – defines actions, timelines and responsibilities.

Box 6.3. The anti-corruption policy of the Czech Republic's Prosecutor General Office

The Prosecutor General's Office of the Czech Republic adopted its Internal Anticorruption Policy in 2018 as part of the institutional responses to the broader national strategic documents such as the Government Strategy to Combat Corruption 2013-2014, the Government Concept for Combatting Corruption 2015-2017 and the Government Resolution of 21 December no.1077 updating the Framework Departmental Anti-Corruption Policy.

While the overall objective of the policy is to identify risk areas and corresponding mechanisms to supervise and mitigate them as well as to ensure the review and improvement of internal measures, the document focuses on the following priority areas:

- building and strengthening the anti-corruption climate
- using transparency as an accountability and deterrent tool
- managing corruption risks and monitoring controls
- ensuring effective procedures in case of suspected corruption cases
- evaluating and improving Internal Anti-Corruption Policy.

Each of these objectives is further detailed in sub-objectives for which, in turn, are defined tasks, responsibilities and timelines to carry them out. With regards to the internal Code of Ethics, for example, key responsibilities are assigned to managers which are responsible for:

- actively promoting it and verifying compliance by their subordinate employees
- taking immediate action in case any breach is detected
- making compliance with it part of employees´ evaluations.

Source: Prosecutor General Office of the Czech Republic, 2018.

Promoting and providing guidance on integrity standards

The OECD defines public integrity as "the consistent alignment of, and adherence to, shared ethical values, principles and norms for upholding and prioritising the public interest over private interests in the public sector" (OECD, 2017[4]). While this implies doing the right things, doing things for the right reasons, and doing things the right way Heywood et al., 2017[11], in practice understanding what is meant by "right" requires clear standards clarifying which behaviours are expected of public officials, guiding them in ethical decision and shaping shared common values within the entity. For prosecutors, identifying ethical problems in their work and referring to clear principles to solve them is essential for the proper administration of justice and for the respect of the highest professional standards. (Consultative Council of European Prosecutors, n.d.[12]) In this context, integrity standards are commonly defined in codes of conduct and codes of ethics with the former clarifying expected standards and prohibited situations and the latter identifying the principles that guide behaviour and decision making. However, most national regulatory frameworks are situated between both instruments, which combine public service values with guidance on how to apply the expected standards and principles of conduct.

In the Latvian prosecutor service a Code of Ethics was adopted by the Council of the Prosecutor General in 1998 (Council of the Prosecutor General of Latvia, 1998[13]). It develops around a number of principles (independence, honesty, impartiality, fairness, confidentiality) and details expected behaviour with respect to professional growth, relationships outside work and mutual relations among prosecutors. Additional integrity standards are defined in the national law on conflict of interest (Saeima, 2003[14]) and the Law on Prosecution Office, which contains some specific rules on incompatibilities when the cases they deal with involve members of their families.[1]

While the Code is a key instrument to set the values and behaviours of Latvian prosecutors, interviews during the fact-finding evidenced that it is perceived as a formal document without any actual impact in guiding prosecutors' behaviour. The Latvian PGO could therefore take initiatives to make it a "living instrument" in the organisation, for instance by complementing the Code with additional practical guidance and examples clarifying expected behaviour as provided for prosecutors in Czech Republic, Denmark and Finland. (Box 6.4)

Box 6.4. Guidance on Integrity Standards for Czech, Danish and Finnish prosecutors

Following the adoption of the Code of Ethics of Public Prosecutors in the Czech Republic, the Office of the Prosecutor General released a Commentary of the Code aiming to be a live document responding to prosecutors' demands and context, both in the professional and human domains. In this sense, it integrates individual provisions of the Code of Ethics with explanatory notes, practical examples and selected disciplinary and other relevant decisions and opinions.

In 2018, the Ministry of Justice of Denmark published a guide on 'Good conduct in the police and prosecution service' ('*God adfærd i politiet og anklagemyndigheden*') with an overview of some of the basics rules and principles applicable to employees of the police and the prosecution in light of the Modernisation Agency's guidelines on good behaviour in the public sector and the Ministry of Finance's Code VII with seven key duties of civil servants. The guide aims to explain the principle and help avoid cases where doubt can arise regarding the conduct of public employees through examples. In relation to gifts, for example, the following guidance is provided:

"Gifts and other benefits

As a matter of course, you must not accept gifts or other benefits that you are offered in connection with your work in the police or the prosecution. This is because receiving gifts or other benefits may cast doubt on yours, the police or the prosecution objectivity and impartiality.

As a starting point, you are welcome to:

- Receive a usual and modest occasional gift in connection with an arrangement of a personal nature, e.g. around birthday, anniversary or farewell if the gift is in fact an acknowledgment of your well-done work over a number of years. However, you may not receive even very modest occasional gifts from private in connection with holidays, e.g. Christmas or New Year.
- Receive a few bottles of wine or a bouquet of flowers of lesser value after an unpaid presentation or lecture that you give as part of your work in the police or the prosecution.

As a rule, you must not:

- Receive even a very modest gift from e.g. a citizen, who you have helped as part of your work in the police or prosecution.
- Use a discount from e.g. an external provider if you have become offered the discount because of your work in the police or prosecution."

The Prosecution Office of Finland adopted its Ethical Guidelines of the Finnish Prosecution Service in 2016, also taking into account the results of a survey assessing the ethical climate among its staff. The guidelines touch upon the values of the Finnish Prosecution service such equality, fairness, independence, impartiality, and transparency but also provides guidance on conflicts of interest situations, gifts and benefits, professional competence, communication, confidence etc. It also emphasises the shared responsibility of prosecutors to safeguard the required "trustworthiness" as well as the example set by supervisors.

Source: Benchmarking country responses to ad hoc 2020 OECD Questionnaire on Prosecution Service; (Office of the Prosecutor General of Czech Republic, 2017[15]), (Prosecution Service of Denmark, 2015[16]); (Prosecution Service of Finland, n.d.[17]).

At the same time, the PGO could promote a discussion on whether the Code - adopted in 1998 – still responds to the current context of the organisation and new ethical situations that may have appeared in prosecutor's activities, e.g. linked to the use of technology. Such a discussion should be a participatory exercise for all prosecutors to bring forward their concerns based on their experience and to define the key common values defining the organisation, also taking into consideration relevant international standards. (Box 6.1).

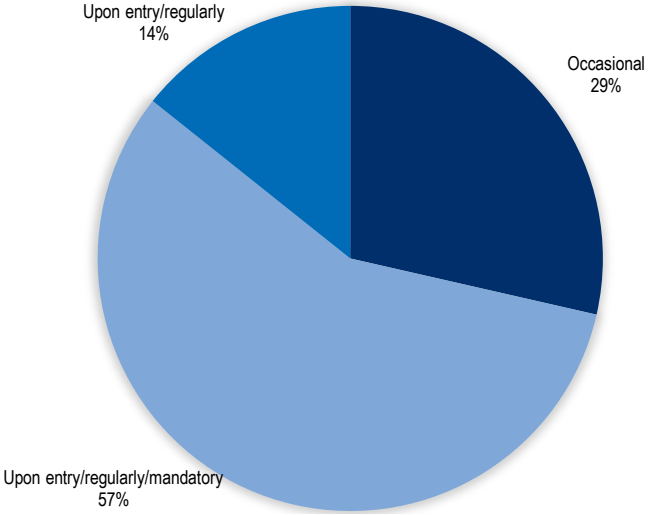
Scaling up capacity-building integrity efforts

In order to make integrity standards part of the organisational culture, additional activities are necessary to make them known, understood and visible in practice through raising awareness and training initiatives. These capacity-building activities should be integrated into the wider skills development framework of public officials. This also the case for prosecutors, whose education and training programmes – both before and after the appointment – should touch upon the principles and ethical duties of their offices. (Consultative Council of European Prosecutors, n.d.[12])

While Latvian prosecutors are offered some trainings or awareness-raising activities on prosecuting economic and financial crimes, including corruption (see Annex A), only a few activities are focused on illustrating and discussing integrity issues within the prosecution service such as on Code of Ethics or the management of possible conflict of interest situations. This is in line with the findings of the latest evaluation from the Council of Europe´s Group of States against Corruption, which reports an obligation for new prosecutors to follow training on deontology but no regular activities dealing with integrity-related issues targeting all prosecutors. (GRECO, 2019[18]) The PGO could therefore scale up its capacity-building efforts and organise mandatory integrity training activities both at the beginning of the career and on a regular basis in line with the practice of other public prosecutor services in OECD countries (Figure 6.1).

This was also stressed by the GRECO, which called for sustained efforts to ensure that training on integrity matters forms part of a regular rolling programme. (GRECO, 2019[18]) At the same time, these training efforts would contribute to one of the objectives of the national anticorruption strategy, which provided that additional, more tailored-made activities should be organised for prosecutors in at-risk positions, e.g. those with higher responsibilities or those involved in high-level financial and economic cases. (KNAB, 2015[1])

Figure 6.1. Frequency of the integrity training activities



Note: The following question was asked as part of the 2020 ad hoc OECD Questionnaire on Prosecution Service to benchmarking countries: Do prosecutors receive training/awareness raising on integrity issues (e.g. ethical questions/dilemmas, relevant instruments and laws relating to conduct, ethics and conflicts of interest)? Please also specify whether it is mandatory.
Source: Benchmarking country responses to ad hoc 2020 OECD Questionnaire on Prosecution Service.

As for the methods, they could be traditional ones such as lectures, e-learning modules and (online) courses but also values-based activities focusing on developing attitudes and behaviours in response to potential integrity issues that will occur during the performance of duties such as discussion of case studies, simulation games, card or board games, and role-playing. The experience of Sweden's prosecutor service provides an example of various methods to build capacity on its ethical standards such as traditional trainings and ethical discussion in dilemma or at-risk situations. (Box 6.5)

Box 6.5. Building capacity on integrity in Sweden's Ethical Guidelines for prosecutors

In June 2014 a set of ethical guidelines applying to all prosecutors and other employees of the Swedish Prosecution Authority and the Swedish Economic Crime Authority were adopted by the Prosecutor-General. The ethical guidelines are constantly updated (last updated June 2019).

The ethical guidelines and the role of prosecutors and ethics are part of the mandatory basic training for prosecutors, which includes several classes on the topic. Each year a set of ethical dilemmas are distributed to all workplaces in the Swedish Prosecution Authority to facilitate local and regional ethical seminars and ethical questions are also addressed in non-mandatory continued training for prosecutors in specific areas, e.g. on economic crime or child abuse.

Source: Answers to ad hoc 2020 OECD benchmarking questionnaire; (GRECO, 2013[19]).

Developing an open culture

A holistic approach to public integrity includes measures aimed at fostering openness, in which public officials feel safe actively identifying, raising questions, concerns or ideas, and responding to potential violations of public integrity. This includes formal reporting mechanisms, such as whistleblowing and other internal disclosure policies, which enable employees to report misconduct through an official channel when the misconduct has already taken place.

Interviews during the fact-finding mission highlighted the lack of any mechanism or area within the prosecution service to discuss integrity-related questions or concerns, ethical dilemmas, and errors. However, in 2019 a whistleblowing channel has been set up by the Prosecutor General Office, allowing prosecutors to report possible violations that may harm the public interest and have been observed in the fulfilment of their duties. Procedures have been adopted for examining a whistle-blower's report, including the identification of a contact person in the Persons and State Rights Protection Department of the PGO where to consult and with responsibility to deal with them, in line with the guidelines defined by the State Chancellery in co-operation with the Inter-Institutional Coordination Group for the Implementation of the Whistle-blowing Law. In particular, a prosecutor may submit a report:

- by transmitting it electronically to an e-mail address created specifically for the receipt of whistle-blower's reports
- by mail
- in person.

The set-up of a whistleblowing channel and the appointment of contact person is a step forward in developing a culture of integrity in the Latvian prosecution service. From the set-up in 2019 to November 2020, the Prosecutor´s Office received and examined 66 whistleblowing reports, but only three related to prosecutors´ duties, and two of them led to disciplinary sanctions. According to the analysis of the PGO, all the other reports refer to decisions taken in accordance with the procedures specified in the Public

Prosecutor's Office Law or the Criminal Procedure Law, so a campaign could be organised to clarify and raise awareness on the actual scope, purpose and functioning of this reporting mechanism. At the same time, the Latvia PGO could clarify or define channels for prosecutors to use in case of integrity questions or dilemmas. Based on the review of benchmarked countries, the following actors could be entrusted to provide these 'safe environments':

- office of the Prosecutor General
- immediate superiors
- HR department
- legal department
- dedicated confidential integrity officers (Box 6.6).

Box 6.6. Confidential Integrity Officers for Dutch prosecutors

One of the objectives of the integrity policy of the Netherlands' Prosecutor Office is to have a public prosecution service in which employees feel safe and free to discuss dilemma. For this purpose, since 2012, each prosecution service organisational unit has been assigned with at least one trained confidential integrity officer.

These officers not only promote and discuss integrity within the entity but also act as first contact for employees who have questions, seek advice or wish to report a suspected integrity violation, as well as to provide advice to managers on integrity issues.

Source: (GRECO, 2013[20]).

Improving the effectiveness of the disciplinary system

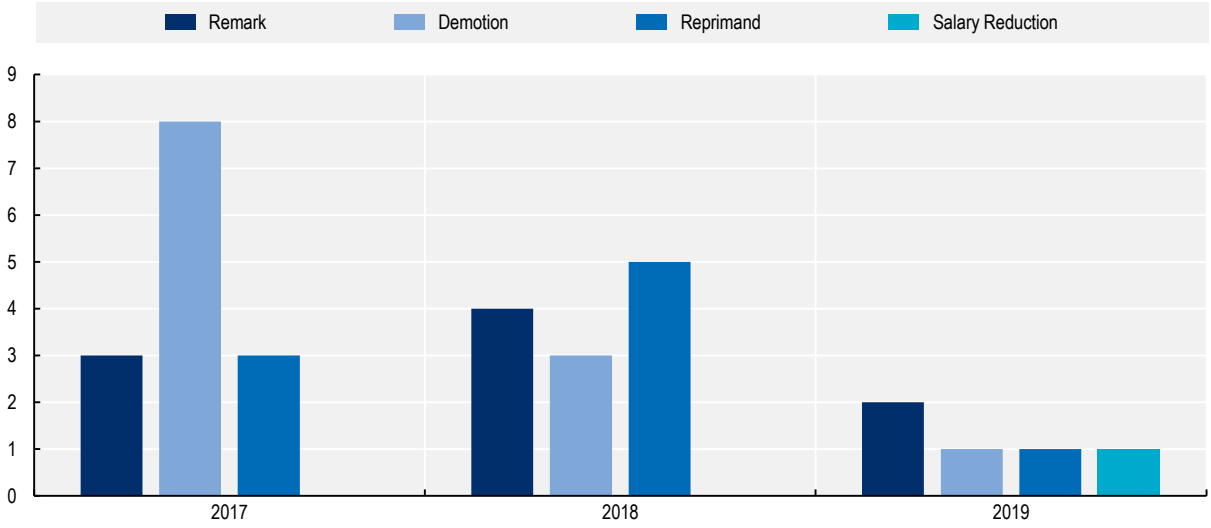
An integrity system should also count on enforcement mechanisms ensuring compliance with rules and deter misconduct. Enforcement also promotes confidence among citizens that integrity standards are applied, strengthening their legitimacy and creating incentives and expectations for public officials to follow the values and desired behaviour. While there are various typologies of enforcement depending on the nature of rules, disciplinary enforcement is particularly relevant in the present context because it ensures adherence to and compliance with public integrity rules and values as defined in codes of conduct and codes of ethics.

The disciplinary liability of prosecutors in Latvia is provided for in the Office of the Prosecutor Law and a key role is played by the Attestation Commission, which provides opinions to the Prosecutor General on the imposition of disciplinary sanctions (reprimand, dismissal, salary reduction, demotion) based on the findings from inspections, and decides on the application of a number of other 'moral' sanctions specified in the Code of Ethics of Prosecutors (examination by the attestation commission; reprimand; a public apology; an information letter to all prosecution offices and structural entity). With regards to potential violations of the Code of Ethics, related applications or complaints are first examined by the head of the respective prosecution office or structural unit before reaching the Attestation Commission. (Council of the Prosecutor General of Latvia, 1998[13])

In the last three years, a total number of 30 disciplinary sanctions have been imposed, with only 4 in 2019. (Figure 6.2) Until June 2020, prosecutors enjoyed immunity for administrative liability, meaning that other administrative violations, including those related to integrity such breaches of the conflict of interest and asset declarations (Law on Prevention of Conflicts of Interest in the Activities of Public Officials), were also

decided by the Attestation Commission. This was removed in June 2020 and, since then, competence for integrity-related administrative offences is of other Latvian institutions including the State Revenue Service and the Corruption Prevention and Combating Bureau (KNAB).

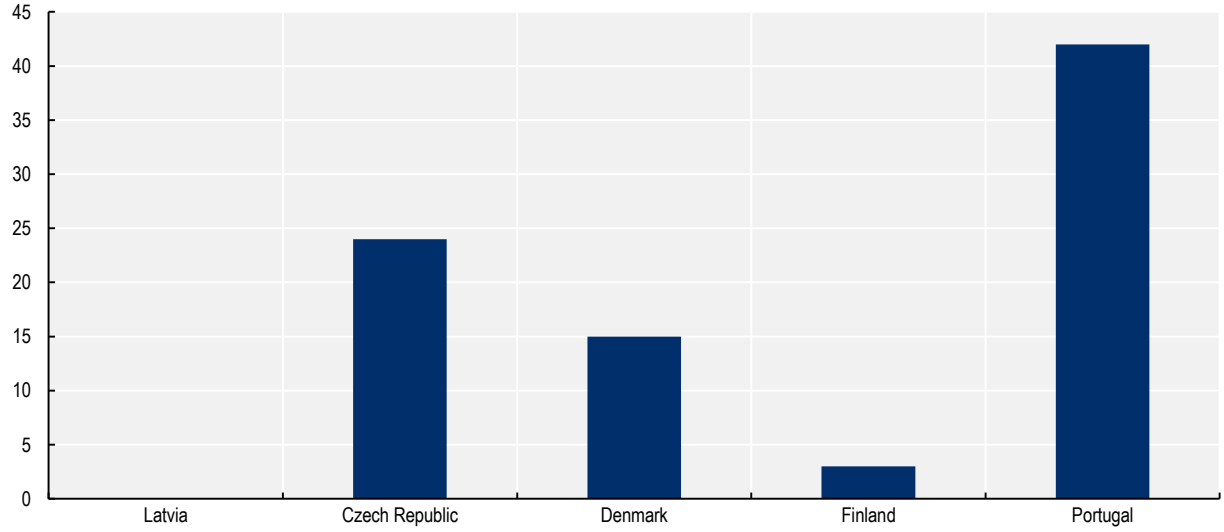
Figure 6.2. Typologies of disciplinary sanctions on Latvia prosecutors (2017-2019)



Source: Latvia's PGO Annual Report 2019 (2020), available at http://www.prokuratura.gov.lv/lv/noderigi/gada-parskati.

The loss of administrative immunity may provide greater accountability towards the integrity framework. However, according to the information provided by the PGO, in the last three years no disciplinary proceedings were initiated due to violations of integrity-related regulations. While numbers of related disciplinary sanctions vary in benchmarked countries (Figure 6.3), its lack raises concern on capability of the disciplinary system to respond to integrity-related violations, especially those related to the Code of Ethics. This could be explained by the lack of guidance provided to those entities that are responsible for its enforcement. For example, the Code of Ethics foresees two potential typologies of sanctions, disciplinary or moral ones, but no clear criteria are established for their respective application in the Code itself or in the Regulation on the Attestation Commission of the Prosecution Office, which only mentions that moral sanctions are decided in cases where "no grounds for the imposition of disciplinary sanctions are established." Given the key role of the head of prosecution offices or structural units as well as of the Attestation Commission to frame, examine and decide on applications or complaints related to the Code of Ethics, the PGO of Latvia could guide them in their enforcement activity of integrity standards. In particular, it could elaborate a compendium of relevant decisions from the Attestation Commission and national Courts to support the understanding of the scope, rationale and sanction of each obligation. These decisions – or a selection thereof – could also be included in the complementary guidance to the Code of Ethics for all prosecutors recommended earlier, as done by the Czech Republic in the Commentary to the Code of Ethics of Public Prosecutors. (Office of the Prosecutor General of Czech Republic, 2019[21]); (Box 6.7).

Figure 6.3. Integrity-related disciplinary sanctions against prosecutors (2017-2020)



Note: Answer provided by Latvia, Czech Republic and Denmark, Finland and Portugal to the following question: "Please provide for the last three years, the number of disciplinary cases and typology of breach investigated, as well as the number and typology of sanctions imposed in the last three years." (Sweden, New Zealand, France, the Netherlands, Italy did not respond on this or data is missing).
Source: Benchmarking country responses to ad hoc 2020 OECD Questionnaire on Prosecution Service.

At the same time, in order to promote trust, awareness and deterrence of the disciplinary system, the Latvian Prosecutor Office could further expand the collection of the disciplinary data beyond the number of sanctions and raise their visibility by communicating some regular information about cases, breaches and sanctions both internally and with public as done by the prosecution service of the Netherlands. (Box 6.7). A higher quantity and quality of data would also enable the assessment of the effectiveness of disciplinary system and the identification of potential shortcomings to be addressed, such as the capacity to detect and examine potential misconducts. Making disciplinary data public would contribute to meet the Code of Ethics´ objective that the public is "confident that cases of Prosecutors' non-compliance with the basic principles of their professional ethics will be examined and evaluated" (Council of the Prosecutor General of Latvia, 1998[13]). Similarly, one GRECO assessment highlighted the importance of publishing the types of offences or breaches committed together with any similar information on any criminal convictions in view of raising public awareness of the action that is taken. (GRECO, 2012[22])

Box 6.7. Communication Guidelines for integrity violations

As part of its integrity strategy, and in view of mitigating the operational and reputational risks of integrity breaches by public prosecutors, the Prosecution Office of the Netherlands in 2012 has adopted "Communication Guidelines in the event of Violations of Integrity". Taking privacy concerns into account, the guidelines define how to deal with communication throughout the disciplinary proceedings. In this way, the document aims at making transparent the violations of integrity, thereby showing the reactiveness of the prosecution service in case of internal misconducts both to other prosecutors and the public.

Source: (GRECO, 2013[20]).

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Note

[1] Article 8 of the Law on Prosecution Office (Rejection of Prosecutor):

(1) Prosecutor shall not participate in the hearing of case in the court or shall not examine any application, if in the said case the judge or the counsel for defence, or in the event of the application the person whose activities are examined by the Prosecutor, is the Prosecutor's spouse, a relative of the Prosecutor or of his/her spouse in the direct line without any limitation of degree, but in the side-lines – a relation of the first three degrees or of the two degrees of in-law relations as well as in cases provided by the Law on Prevention of Interest Conflict in the Activities of State Officials. In the said cases the Prosecutor shall recuse him/herself.

(2) In the event of the Prosecutor's failure to recuse him/herself, persons, whose rights or lawful interests may be affected, shall have the right to submit a rejection of the Prosecutor to a senior Prosecutor or court.

(3) The rejection of Prosecutor shall be examined in accordance with procedure prescribed by law.

Annex A. Considerations in the assessment of prosecutorial services

Considerations in the assessment of prosecutorial services

1. Allocation of investigative authority: One distinctive feature of prosecutorial services is the allocation of investigative and prosecutorial authority within the criminal justice system. Generally speaking, the allocation of pre-trial investigative authority to judges (investigating magistrates or *juges d'instruction*) rather than to prosecutors and police is a foundational feature of the inquisitorial model of criminal justice, whereas entrusting the pre-trial investigation to the police under the supervision of prosecutors is characteristic of the adversarial criminal justice systems. Generally, in the former the investigating judge is meant to seek the 'material truth' whereas in the latter the court is generally presented with the evidence serving the purpose of obtaining the conviction of the defendant or solving the legal criminal conflict as quickly as possible ('material truth' v 'conflict resolution approach').
2. Interaction patterns of prosecutors and the police: Another distinctive feature of prosecutorial services is the patterns of the relationships between prosecutors and the investigative police (Stenning, Philip and Jansson. Julia, 2020[1]). The allocation of responsibilities between police and prosecutors in a given criminal justice system and the interactions between them reflect to varying degrees the extent to which key values associated to democratic prosecution processes are prioritised and upheld. Often those values are invoked as rationales for legal and operational changes in prosecutorial services (impartiality, independence, equity, cost effectiveness-efficiency, expertise-specialisation, checks and balances, and effective political public accountability). In addition, in Europe, there is the case law on the ECtHR urging "objectivity" in investigations and prosecutions (Kjelby, G. J., 2015[2]) and the growing necessity of a harmonisation of law enforcement and justice within the European Union Schengen space, which leads to mutual borrowing from among national systems.
3. Prosecutorial discretion: In many national settings, prosecutors play a broader role in the criminal process designed in legal frameworks. Prosecutors not only are meant to bring about legality control over police investigations in democratic countries, but they also dispose of cases with a high degree of independence and discretion. The freedom to prosecute or not is seen as an alternative (along with plea bargaining and its equivalents) to court sentencing. Those alternatives are increasingly being used in OECD countries, even in those where the legal obligation for prosecutors to prosecute (i.e. the principle of legality) criminal offences is stronger (e.g. in Germany, where *penal orders* are being profusely used) (Thaman, 2012[3]). The use of these alternatives may in turn require additional safeguards to prevent wrongful convictions and may imply that the judiciary may need to serve as an instance of control (Enescu, 2020[4]) (Luna, 2014[5]).
4. Economic analysis of law: More and more decisions in criminal justice systems in developed countries are being brought out of courts to prosecutorial made settlements, with a view of solving problems in the most efficient and affordable manner. Yet, with these changing roles of prosecutors and courts, care is needed to ensure guarantees of the rights of the defendants.

5. Ethical shifts: The traditional liberal state imperative that the prosecutors and the courts were there to ensure the realisation of justice appears, in many cases, to often been replaced in practice by the imperative of winning the criminal cases "at all costs". The "do justice" ethical principle is being replaced by the "win the case" principle or wind up the case quickly, which may lead to deny or jeopardise procedural rights to the accused while primarily pressing up for conviction, as any private lawyer would do. Some performance appraisal schemes for prosecutors are infused of that ethical philosophy.
6. Conceptual challenges: Many of the newly developing conceptual understandings may require systemic reformulation of both substantive norms of the criminal law and the structural design of criminal justice systems. This would be required if they are to be kept within the legitimate boundaries of the liberal democratic states often put forward in many OECD countries' constitutions to ensure the realisation of justice under the "equality before the law" constitutional imperative. These reformulations often represent big conceptual challenges if liberal democratic values are to be preserved while being balanced with efficiency-driven reforms (Snyder, T., 2018[6]).
7. Balancing independence and accountability: While there is a lot of international emphasis on the value of prosecutorial independence, it is essential to underline the importance of procedural fairness and prosecutorial accountability.[1] This is particularly important when there is a growing tendency towards the use of discretionary decisions by prosecutors about whether to prosecute or not a case. Strong discretionary decision making without accountability can pose various risks to integrity and effectiveness of criminal justice systems.

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Note

[1] See OECD (2020): The Independence of the Prosecutors: Practices Review and Recommendations. OECD Publishing, Paris, p. 9:

> *"The independence of prosecutors is a crucial issue in the fight against corruption. 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 prosecutorial service a decisive factor conditioning the possibility of a country to combat corruption crimes. Integrity, an essential quality of prosecution professionals, implies their institutional, economic and individual independence."*

See also the Venice Commission numerous opinions advocating for prosecutorial independence as the fundamental principle. For all, see the seminal CDL(1995)073rev, Opinion on the Regulatory concept of the Constitution of the Hungarian Republic, Chapter 11, p. 6:

> *"The fundamental principle which should govern the system of public prosecution in a state is the complete independence of the system, no administrative or other consideration is as important as that principle. Only where the independence of the system is guaranteed and protected by law will the public have confidence in the system which is essential in any healthy society."*

Annex B. Selected data on Latvia Prosecutor's Office criminal proceedings

Table A B.1. Average per prosecutor number of criminal proceedings under the supervision, prosecution, and maintenance of the charges by the Prosecutor's Office as of 1 March 2020

Structural units of the Prosecutor's Office	Prosecutors			Deputy chief prosecutors			Chief prosecutors		
	Supervision of investigation	Prosecution	Accusation	Supervision of investigation	Prosecution	Accusation	Supervision of investigation	Prosecution	Accusation
Office of Prosecutor General									
Criminal Justice Department									
Division for Supervision of Pre-trial Investigation	0	0	0				0	0	0
Division of Criminal Cases under Court Examination	0	0	0				0	0	0
Division for Investigation of Especially Serious Cases	5	1	4				0	0	0
Department of Analysis and Management:									
Methodology Division	0	0	1				0	0	0
International Cooperation Division	0	0	0				0	0	0
Division for Prosecutor Staff and Professional Development	0	0	0				0	0	1
Department for Defence of Individual and Federal Rights:	0	0	0				0	0	0
Division of Civil Cases under Court Examination	0	0	0				0	0	0
Division of Specially Authorised Prosecutors	0	0	0				0	0	0
Prosecutor's Offices of judicial region								0	0
Prosecutor's Office of Kurzeme judicial region	40	2	12				0	0	0
Prosecutor's Office of Latgale judicial region	147	2	12				0	0	0
Prosecutor's Office of Riga judicial region	200	2	12	0	0	0	0	0	0
Prosecutor's Office of Vidzeme judicial region	113	7	8				0	0	0
Prosecutor's Office of Zemgale judicial region	135	2	15				-	0	0
Specialised Prosecutor's Office on organised crime and other sectors	32	3	9	39	1	8	0	0	0
District and City Prosecutor's Offices									
Prosecutor's Office of Riga City Centre District	996	7	24				0	0	1
Prosecutor's Office of Riga City Kurzeme District	1 619	4	9				0	0	0
Prosecutor's Office of Riga City Latgale District	1 648	7	9	3	3	2	0	1	1
Prosecutor's Office of Riga City Vidzeme District	1 137	5	15	1	0	2	0	0	0
Prosecutor's Office of Riga City Zemgale District	1 274	5	8				0	0	0
Prosecutor's Office of Riga City Ziemelu District	1 116	5	11				0	0	1
Jurmala City Prosecutor's Office	680	3	16				0		

Structural units of the Prosecutor's Office	Prosecutors			Deputy chief prosecutors			Chief prosecutors		
	Supervision of investigation	Prosecution	Accusation	Supervision of investigation	Prosecution	Accusation	Supervision of investigation	Prosecution	Accusation
Ogre District Prosecutor's Office	579	5	13				0	0	1
Prosecutor's Office of Riga Region	799	6	14	0	0	1	0	0	0
Kuldīga District Prosecutor's Office	443	2	5				0	0	0
Liepāja Prosecutor's Office	403	3	20				0	0	0
Saldus District Prosecutor's Office	247	1	5				0	0	0
Talsu District Prosecutor's Office	521	5	15				0	0	0
Ventspils Prosecutor's Office	603	2	5				0	0	0
Balvi District Prosecutor's Office	208	2	16				10	0	0
Daugavpils Prosecutor's Office	764	6	23	451	16	6	0	0	0
Krāslava District Prosecutor's Office	326	1	10				0	0	0
Ludza District Prosecutor's Office	254	5	14				0	0	3
Preiļi District Prosecutor's Office	199	10	11				69	1	0
Rēzekne Prosecutor's Office	403	3	16				0	1	8
Alūksne District Prosecutor's Office	176	0	5				185	0	11
Cēsis District Prosecutor's Office	329	3	9				7	0	1
Gulbene District Prosecutor's Office	271	3	7				284	1	11
Limbaži District Prosecutor's Office	505	8	9				0	2	0
Madona District Prosecutor's Office	209	4	9				176	6	18
Valka District Prosecutor's Office	563	1	19				35	0	0
Valmiera District Prosecutor's Office	357	2	12				5	0	0
Aizkraukle District Prosecutor's Office	422	3	14				5	0	0
Bauska District Prosecutor's Office	342	295	14				0	0	0
Dobele District Prosecutor's Office	775	3	43				0	0	0
Jelgava Prosecutor's Office	407	3	14				0	0	0
Jēkabpils District Prosecutor's Office	445	2	27				0	0	0
Tukums District Prosecutor's Office	559	3	11				15	0	0
Specialised Multidisciplinary Prosecutor's Office	55	1	4				0	0	0
Prosecutor's Office for investigating financial and economic crimes	314	2	9	16	0	14	1	1	2
Riga Road Transport Prosecutor's Office	45	10	33				0	0	0
Prosecutor's Office for investigating crimes of illicit drug circulation	167	8	21	0	0	0	21	0	0
Average value per prosecutor	**435.92**	**7.30**	**11.47**	**85.60**	**2.00**	**4.10**	**15.84**	**0.26**	

Note: The number of criminal proceedings under the supervision, prosecution, and maintenance of the charges in court by the Prosecutor's Office as of 1 March 2020 (an average per prosecutor).
Source: State Audit Office Initial understanding of the State Audit Office, Republic of Latvia of factors affecting effectiveness of investigations of economic and financial crime. Drafted by the Second Audit Department, State Audit Office. Version of 15th May 2020.

Annex C. Benchmarking Review of Selected National Country Systems

The main sources of information concerning the country cases benchmarked in this report are:

- a questionnaire prepared ad hoc for this report by the OECD Secretariat and answered by the prosecutorial services of the benchmark countries
- publicly available sources on the internet included in official webpages and scholarly research
- among the internet sources deserve special mention the answers to questionnaires provided to the Council of Europe, by the countries concerned, for drafting the various Opinions of the Consultative Council of European Prosecutors (CCPE) on the topics which are relevant for this report (Consultative Council of European Prosecutors, 2020[1]).

We show the following fiches of each country in order to facilitate further information and exploration for the reader to look at. The narrative of each country is presented under the following headings:

- status and powers of prosecution services
- investigation and prosecution
- management tools, especially concerning strategic prioritisation and resource management
- accountability: monitoring and reporting
- recent significant reforms.

Integrity and ethical standards have been added as a separate heading due to the transversal importance of integrity-related issues of the prosecution services both because they are a crucial element of national anticorruption systems and because they are public institutions in which their members are perceived, as is also the case of the judges, as role models of integrity and beacons of ethical behaviour for the society at large.

Czech Republic

Status

The public prosecutor´s office is, in accordance with article 80 of the constitution, a part of executive power. Its main function is to represent the state in protection of public interest (not the state interest) in proceeding before court in cases stipulated by law. It is under the administration of the Ministry of Justice. Act Nº 283/1993 on the Public Prosecutor´s Office, as amended does not explicitly stipulate the independence of prosecutors. Nevertheless, it establishes that the public prosecutor´s office performs its functions impartially and ensures the protection of fundamental rights and freedoms. The public prosecutor is thus obliged to proceed impartially and fairly and must refuse any external interference or other influence, as it could result in a breach of these duties. However, there is an effort to achieve a higher level of independence of public prosecutors and public prosecutor´s office, mainly in the area of criminal competence.

The public prosecutor functions as a part of the vertically and horizontally structured hierarchical system of the public prosecutor´s office. Prosecutors are independent in deciding over individual cases. Their independence is different, however, from that of judges. The Constitutional Court (judgement No. Pl. ÚS 17/10) stated that both the Constitution and the Act on the public prosecutor's office, as well as the principle of equality of the parties in the proceedings and due process, require independent discharge of the office of public prosecutor within the public prosecutor's office system, which, acting as a special and independent authority *sui generis*, performs tasks defined by the Constitution and the Act and granted exclusively to it.

Section 3(1) of Public Prosecutor's Office Act determines that prosecutors handle the cases entrusted to the jurisdiction of the public prosecutor's office. Other authorities or persons may not interfere with their activity or replace or represent them in the performance of their duties. Section 24(1) of the Act states that in the performance of his/her position, a prosecutor is obliged to perform his/her duties professionally, thoroughly, duly, impartially and righteously without undue delay. He/she must refuse any external interference, the result of which might be violating some of these duties. Section 24(2a) of the Act establishes that the public prosecutor cannot let him/herself to be influenced by the interests of political parties, public opinion or the media. Prosecutors are legal professionals assigned to a prosecutor's office. Prosecutor's offices are public bodies that represent the state to protect the public interest and supervise the criminal investigations. Prosecutors are bound by the principle of legality whereby all criminal cases must be prosecuted. Plea agreements are subject to judicial approval.

Prosecutors are public officials, under labour law, having responsibilities within the criminal justice system and beyond. Within the criminal justice system, they can act at every stage of the criminal proceedings, as specified in Act No 283/1993. Prosecutors are responsible for conducting criminal prosecutions under the Criminal Procedure Code. They monitor compliance with the law as regards pre-trial detention, imprisonment, court-ordered medical treatment, youth detention centres and institutional care homes, and other instances where the law authorises restrictions on personal liberty Prosecutors also act in non-criminal proceedings and perform other specific tasks in protection of public interest laid down by law.

Prosecutors ensure that the law is observed in pre-trial criminal proceedings. Under the Criminal Procedure Code (Act Nº 141/1961), certain steps at this stage are the sole prerogative of the prosecutor. Before beginning a criminal prosecution, the prosecutor must have been notified by the police of facts indicating that a crime has been committed (Section 158(2) of the Criminal Code). The prosecutor issues a formal charge (recommending a penalty), which sets in motion the procedure for a penal action to be brought before the relevant court. Prosecutors must attend the main hearing, where they open proceedings by setting out the charges and end them with their closing statement. Prosecutors have powers to reaching agreements on guilt and sentencing. The prosecutor can appeal on the grounds that a wrong verdict has been given. Appeals may be in the accused's favour or to his disadvantage. A further appeal can be lodged by the Prosecutor General. The prosecutor can also recommend a retrial either in the accused's favour or to their disadvantage. The prosecutor must always be present, not only at the main hearing but also at all public hearings (Act No 218/2003) in judicial proceedings in juvenile cases. Decisions on alternative settlements at the pre-trial stage are among the exclusive decision-making powers of the prosecutor.

The prosecution service also has responsibility in non-criminal cases (in protection of public interest). It can recommend bringing civil proceedings or can intervene in civil proceedings that are already under way, but only where the law permits. The basis for the involvement of the prosecution service in civil proceedings is Article 80 of the Constitution, which states that the public prosecution service may perform other tasks under the law besides bringing criminal prosecutions. The Civil Procedure Code specifies when the public prosecution service may intervene in ongoing civil proceedings.

The public prosecutor's office is not an administrative office, or a body focused on implementing government policy. Its status in the system of public power is specific. The public prosecutor's office is a body for criminal justice (Zezulová[2]).

The Public Prosecution Service takes part in forming the criminal policy of the state. It spots problems the prosecution deals with and suggests possible legislative solutions. The possible introduction of elements of the principle of opportunity into the system is being discussed in order to increase the efficiency of the system. Some of these elements are already in the Criminal Procedure Code as diversions, which enable the public prosecution to solve a criminal case of lower gravity within a pre-trial procedure without an unnecessary stigmatisation of the defendants and without spending funds superfluously on a criminal procedure. Sometimes prosecutors participate as members of working groups in law drafting. The Prosecutor General Office is one of the official consultancy and comment points on legislative proposals in matters under the jurisdiction of the prosecution service.

Investigation and prosecution

Police authorities conduct the investigation independently. They actively seek the facts proving the perpetration of offences and at the same time receive criminal notices from the public. As soon as the criminal investigation starts, the Police must inform the prosecutor within 48 hours. The prosecutor supervises the compliance with legality in the pre-trial procedure, which mainly consists of checking the police while investigating and collecting evidence. The system and structure of the Czech criminal investigation and law enforcement arrangements entrust the police with the central and most active role in the pre-investigative and investigative stages.

The prosecutor acts as *dominus litis* of the pre-trial procedure. The prosecutor can give binding instructions to the police on criminal investigations; the prosecutor can participate in investigative actions of the police; he/she can require from the police all the documentation concerning the investigation to review the police actions; he/she annuls unlawful or unjustified decisions of the police. The prosecutor makes all the decisions concerning the merits of the case in the pre-trial procedure. An exhaustive list of powers the prosecutor is entrusted with in supervising the police is in the Criminal Procedure Code. FATF-GAFI has recommended that the Czech authorities should focus more efforts and devote greater resources to large scale and complex money laundering prosecutions; the authorities should find ways, including through legislative amendments, to streamline the pre-trial process in order to shorten the average length of prosecutions in serious money laundering cases (MONEYVAL, 2018[3]).

The police are bound by the instructions given by the prosecutor, but they act relatively independently. Both co-operate closely, the prosecutor gives advice to the police on how to proceed and occasionally gives the Police binding instructions. The Czech Police force generally lack legal education, which requires a thorough control of the activities of the police by the prosecutor who shall guarantee the lawfulness of the whole pre-trial procedure.

Because the investigation is conducted by the police, the costs of investigative acts and the production of evidences are covered from their budget. Investigative acts are covered from the budget of the prosecutor´s office if they were conducted directly by a prosecutor. The prosecutor conducts investigations on his/her own only in strictly listed cases (e.g. investigation of crimes committed by the members of the General Inspection of Security Forces, by members of the Office for Foreign Relations and Information, etc.).

The initiation of a criminal procedure is governed by the principle of legality, which means that the prosecutor is obliged to prosecute all the offences he/she has notice thereof. The prosecutor has no discretion to initiate the prosecution or not. In principle, if deeds meet the conditions stipulated in the Criminal Code they are to be qualified as criminal acts. The principle of compulsory prosecution as provided by Article 2-3 of the 1961 Criminal Procedure Code (CPC) is binding on prosecutors. Prosecutors have the duty to prosecute all criminal offences of which they are aware except if a law or an international treaty prescribe otherwise. There are several statutory exceptions to the principle. These exceptions can be relied upon to explain a refusal to initiate proceedings or the dismissal of proceedings. The police can drop a

matter before the commencement of proceedings and dismiss it once in progress. A prosecutor may only dismiss proceedings once they have been investigated (Marguery, T. P., 2008[4]).

The police, the prosecutor or other established public bodies (e.g. the Financial Analysis Department or the Customs Administration) may discover or suspect the existence of criminal facts. The first phase following this discovery or announcement of facts is the verification and securing of facts. The police report is submitted to the prosecutor requesting the initiation or continuation of the prosecution or any other decision. The prosecutor may draft an arraignment and file it in court, dismiss the case, transfer it to another body or settle it. The prosecutor is, in principle, the only body competent to file the indictment and represent the Public Prosecution Service before a court (Article 180-1 CPC).

The prosecutor can preclude the criminal prosecution for example by giving the police a binding instruction to suspend or stop a case. When a criminal prosecution against a person has been initiated, the prosecution may be discontinued only by the prosecutor and for legal reasons strictly listed in the Criminal Procedure Code. Among those reasons are the inadmissibility (e.g. the statute of limitations of a crime; the final decision in the same case has already been issued; the defendant passed away etc.) or because the investigation clearly shows that there is an obligatory reason for discontinuing the criminal prosecution (e.g. the criminal deed did not happen; the deed is not a criminal offence; the defendant is not the perpetrator of the crime; the criminal prosecution is inadmissible; the defendant was mentally insane at the moment of committing the crime; the criminal nature of the act vanished). In certain cases, the criminal prosecution may be discontinued by using the notion of procedural opportunity. In such cases, the public prosecutor disposes of discretion to do so. This is considered an element of the principle opportunity already introduced in the Czech criminal procedure.

The body for internal control of the police is the *General Inspection of the Security Forces* which was established on 1 January 2012 as a body unifying the system of internal control of the police. Creating such a body was necessary because the whole control system was previously fragmented and control competencies were conferred to various bodies within the police. The General Inspection of the Security Forces is an independent body which actively investigates the facts suggesting criminal conduct by a member of the police or by members of other bodies, as foreseen in the law. The Act on Police established a mechanism of public control, according to which everybody is entitled to notify the General Inspection of the Security Forces about the shortcomings and faults of the police and alert that a member of the police committed a crime, disciplinary offence or administrative offence. The Chamber of Deputies of the Czech Parliament is the body which controls the General Inspection of the Security Forces.

The General Inspection of the Security Forces closely co-operates with the Public Prosecution Service because this latter supervises the activities of the General Inspection of the Security Forces while investigating offences of police members. In 2011, a Police Ombudsman was established (Office of the Ombudsman of the Ministry of Interior) by a regulation of the Ministry of Interior. The ombudsman deals with complaints filed by police members concerning the violation of their rights; the inaction of the superordinate police members while enforcing these rights; actions contradicting the principles of a democratic rule of law; avoiding and solving cases of discrimination by the superordinate or subordinate police members and if need be by the colleagues. After investigating the complaint, the ombudsman suggests a measure to be taken or if the complaint does not fall within his competence, he refers the matter to the competent body.

Management tools

Organisation

The organisation of the Prosecution Service mirrors the court system (district, regional, high and supreme levels). At the head of the service is the Prosecutor General's Office in Brno, which is the supreme public prosecutor's office and oversees the prosecution service. The government appoints and dismisses the Prosecutor General upon proposal of the Minister of Justice.

According to the act Nº 283/1993 on the Public Prosecutor's Office, the administrative body for the public prosecutor's office is the Ministry of Justice. Amendments to the Act on the Public Prosecutor's Office made by Acts No. 14/2002 and No. 192/2003 expressly set down the principle that the Ministry of Justice performs the central administration of the public prosecutor's office. This involves organisation, personnel, financial and economic affairs, control and review of economic management, attending to complaints, education, determining crisis management and security tasks, and directing and employing information technology. Other administration is performed by chief public prosecutors.

The Ministry of Justice is thus the central body of the administration of the Public Prosecutor´s Office. The Ministry administers the Prosecutor General's Office through the Prosecutor General. The Ministry also administers the High, Regional and District Public Prosecutor's Offices directly or through chief public prosecutors; the Ministry may also administer the district Public Prosecutor's Offices through the Regional Public Prosecutor's Offices. The good management of available resources is a legal obligation in performing these administration tasks.

The Minister of Justice, however, is no longer (as it was prior to Act No. 14/2002) functionally superior to the Prosecutor General. Only the Prosecutor General may issue instructions of a general nature such as explanatory positions related to generalised problems. This involves interdepartmental organisational regulations related predominantly to the district process level.

The public prosecutor's offices are: a) the Prosecutor General's Office; b) two high public prosecutor's offices, located in Olomouc and Prague respectively; c) 8 regional public prosecutor's offices and the Municipal Public Prosecutor's Office in Prague; d) 86 district public prosecutor's offices throughout the country (10 in Prague) and the Municipal Public Prosecutor's Office in Brno.

The Prosecutor General's Office supervises the activity of the High Public Prosecutor's Offices, deals with complaints against the violation of the law in criminal cases and with reviewing these cases on its own initiative. It also releases recommendations and deals with concrete legal practical problems with which public prosecutors are confronted in practice in both the criminal and non-criminal areas. In this regard, the Prosecutor General's Office issues decisions and opinions on the interpretation of laws and other legal regulations, or in cases when a legal question calls for a unification of the interpretation. Instructions of general nature serve for the unification and regulation of procedures followed by prosecutors. Instructions are binding for prosecutors, and if the Prosecutor General so decides, they are also binding for other employees of the Public Prosecutor's Office. General Instructions are published in the Collection of Instructions of the Prosecutor General's Office, then in the various legal information systems in electronic form, and on the Internet website of the Public Prosecutor's Office.[1]

The Prosecutor General can issue opinions on the unification of practice in implementing the regulations of substantive and procedural criminal law and regulations of non-criminal competence. These opinions serve for the explanation of controversial questions concerning the exercise of competence of the Public Prosecutor's Office. These opinions are not binding.

Section 174a of Criminal Procedure Code authorises the Prosecutor General to repeal unlawful resolutions of lower ranked prosecutors on discontinuation of criminal prosecution, on the transfer of the case or decisions not to prosecute a suspect according to Section 159d (1) of Criminal Procedure Code, within three months after full force and effect of the relevant resolution. If the Prosecutor General repeals

that resolution, the proceedings will be continued by the prosecutor who decided the case in the first instance. A prosecutor is bound by the legal opinion formulated by the Prosecutor General and obliged to implement what was ordered by this latter.

Human resources

The Prosecutor General is appointed – and can be removed – by the government at the proposal of the Minister of Justice, for an indefinite period. S/he is appointed from among the existing public prosecutors. The decision by the government to dismiss the Prosecutor General does not have to be reasoned. The deputies to the Prosecutor General are appointed and may be removed by the Minister of Justice at the proposal of the Prosecutor General.

The appointment of other chief public prosecutors is regulated by section 10 of the 1993 Act as follows: The Minister of Justice appoints high prosecutors at the proposal of the Prosecutor General, regional prosecutors at the proposal of the relevant high prosecutor and district prosecutors at the proposal of the relevant regional prosecutor. Chief prosecutors are appointed for an indefinite period. The Minister may remove them from office 1) in case of a serious breach of duties resulting from the execution of the prosecutor's competence or 2) at the proposal of the relevant chief prosecutor of the superior level. The Minister may also appoint or remove chief prosecutors of Regional or District Prosecutors' Offices at the proposal of the Prosecutor General. Decisions on appointment of chief prosecutors are not reasoned, whereas decisions on their dismissal are reasoned and are subject to appeal under the Administrative Procedure Code (Court decision).

Prosecutors are appointed by the Minister of Justice, on the proposal of the Prosecutor General. The appointment is for an unlimited period. To be appointed as a prosecutor a person must be a Czech citizen and must enjoy legal capacity; have no criminal record; be at least 25 years of age at the time of the appointment; have obtained a master's degree in law from a Czech university; have passed the final examination; possess the moral qualities that guarantee they will exercise their function properly, and accept the appointment as a prosecutor and the assignment to a prosecutor's office. The final examination is an exam taken, after a 36-month internship, before the examination board appointed by the Ministry of Justice. The board includes prosecutors, judges and other legal experts. Some other examinations specified by law – such as the bar examination and the judges' examination – have the same status as the final examination concluding the prosecutorial internship.

The selection of candidate prosecutors (prosecutor trainees) is under the responsibility of Regional Prosecutors. Mostly it includes a written test and an oral interview, usually attended by the head of prosecutor's offices where the vacant posts are to be occupied. The test aims at ascertaining the candidates' knowledge on substantive and procedural criminal law and other branches of law.

The Minister of Justice appoints public prosecutors for an indefinite period upon a proposal of the Prosecutor General. Proposal of Prosecutor General in made on the basis of open competition organised by chief public prosecutor where the place is vacant. The selection of candidates by Regional Prosecutors and the appointment decisions by the Ministry of Justice do not have to be reasoned and are not subject to appeal by unsuccessful candidates.

Their tenure ceases when they reach the age of 70, when they die or are declared dead, or if, for example, they lose their legal capacity or it is restricted, if they refuse to take the oath, if they lose Czech citizenship, if they take on a function incompatible with that of public prosecutor, if they are found guilty of a crime, if they are found to be unfit to perform their duties, or if a lasting illness prevents them from performing their duties. Their tenure is also terminated if they are removed from office as a disciplinary measure or if they resign.

Prosecutors are assigned by the Minister of Justice upon a proposal of the Prosecutor General to perform their position at a specific prosecutor's office with their previous approval. The Minister of Justice may transfer a prosecutor to another office of the same or higher instance with his/her approval or at his/her

request; as a rule, a prosecutor can be transferred to an office of a lower instance at his/her request only. The Minister of Justice may, upon hearing the opinion of the chief prosecutor of the concerned office, transfer a prosecutor even without his/her approval or application to another office if its organisation or jurisdiction has been changed by law; the decision by the Ministry of Justice may be appealed to the administrative court. Temporary assignment of a prosecutor to another office, or his/her secondment to the Ministry of Justice or to the Judicial Academy requires his/her approval.

The promotion of prosecutors is not regulated in detail by the 1993 Act. Section 19(2) only states that when prosecutors are transferred to a higher office, their level of expertise is considered. The decision on promotion is made by the Minister of Justice based on criteria established in an agreement on career advancement rules (working results, seniority, personal integrity etc.) The 2015 draft Law on the Public Prosecutor's Office defined the minimum experience required, namely five years for Regional Public Prosecutor's Offices and eight years for the High Public Prosecutor's Office and the Prosecutor General's Office, but this reform did not enter into force.

Except where the law permits, a prosecutor may not act as an arbitrator or mediator for the settlement of legal disputes, represent parties in judicial proceedings, or act as an agent for a claimant or party in judicial or administrative proceedings. Apart from serving as a prosecutor, or as chief or deputy chief prosecutor, or performing duties arising from temporary assignment to the Ministry or the Judicial Academy, prosecutors may not hold any paid function or engage in any other gainful activity, except managing their own assets and performing academic, teaching, literary, journalistic, or artistic work, or to serve on advisory bodies to the Ministry or government or on parliamentary bodies.

The Judicial Academy (JA) was established in 2002 by the Act No. 6/2002 as the central institution of the justice sector for the training of judges, state prosecutors and other target groups. Since it took over the Judicial School in 2005, the Judicial Academy is the sole state body responsible for training all these groups. Training is provided pursuant to the regular annual training programme based on the analysis of training needs in co-operation with the Ministry of Justice, courts and state prosecution offices. The training is focused on domestic law, EU law, legal skills and social sciences. It is provided through lectures, seminars, workshops, short-term courses, moot court trials, etc.

A prosecutor is obliged to care about his/her professional legal and other knowledge necessary for due performance of position by continuous training (article 24 of the 1993 Act). In addition to individual studies he/she avails of educational actions organised by the Judicial Academy, Prosecutor's Offices or by universities. There is no binding induction training for new prosecutors but there is plenty of trainings organised by the Judicial Academy and it is up to the individual prosecutor to pick up which is most suitable for him/her.

The Union of Public Prosecutors is an independent, voluntary, professional organisation which also provides training and advice (not only to its members) on ethical questions and monitors compliance of its members with the 1999 code of ethics the Union published. Violation of the rules does not give rise to disciplinary proceedings but can, ultimately, lead to exclusion of the prosecutor concerned from the Union. Section 13 of Public Prosecutor's Office Act indicates that the Public Prosecutor´s Office proceeds in co-operation with interested organisations of prosecutors and discuss with them mainly draft laws substantially concerning the competence of the Public Prosecutor´s Office and the manner of its exercise and essential measures concerning the organisation and performance of the Public Prosecutor´s Office and the status of prosecutors.

There is new legislation on conflict of interests of prosecutors. The Act on Conflicts of Interest (No. 156/2006 was amended by the Act no. 14/2017, which entered into the force on 1 September 2017. This legislation imposes the duty of prosecutors to notify their personal interests, activities, assets, income, gifts and liabilities into the Registry of Notices. Because of security reasons this information is not open to the public, but only for criminal and disciplinary proceedings.

The state is liable, as specified in law, for any damage, injury, or loss resulting from unlawful decisions or procedural errors made by prosecutors. Prosecutors do not enjoy criminal immunity and they are liable also disciplinarily. They do not have civil immunity either, but the compensation owed to a third, aggrieved party, will be paid by the state. The state is entitled to a regress action against the prosecutor under certain conditions (e.g. the prosecutor was convicted in criminal or disciplinary proceedings).

Non-prosecutorial staff provide specialised professional advice, but they are only some 30 internal experts in the prosecution service. The prosecutorial staff are 1439-strong (maximum 1480 according to the systematisation). Other ancillary staff are 1461-strong.

At present, the 1993 Act does not provide for regular performance appraisal of prosecutors. Currently, the evaluation is based on internal guidelines. Regular evaluation is mainly performed at the Prosecutor General's Office based on an internal binding instruction in which certain criteria are stated: managerial skills, quality and productivity of work, professional knowledge and skills, linguistic skills, intellectual skills, co-operation with other subjects, broader work activities, etc. At lower level offices performance appraisals are done on a voluntary basis.

The main internal supervision mechanisms to monitor the performance and professional behaviour of individual prosecutors are the internal inspectorate and the supervision by the hierarchical superior. There are regular evaluations at some offices and evaluations for promotion purposes. Regular evaluations are carried out after one year holding a specific position and subsequently every two years. Objectives are settled in a meeting with the hierarchical superior and then reported in an evaluation report. The results of the performance appraisal can be challenged before the chief prosecutor or deputy chief prosecutor. The appraisal can bear positive or negative consequences: positive because the appraisal results are important for future career advancement. Negative consequences may be the dismissal from chief positions in the way mentioned above (but it is not possible to dismiss from the position of ranks and file prosecutor), no chance for promotion, no chance for internship on higher level.

Financial resources

The Minister of Justice sets the budget of the prosecution service. The current budget for the prosecution service is EUR 130 million per year. The Ministry of Justice administers the budget and allocates financial resources to individual organisational units under its jurisdiction. Budgets are split into two sections: one for salaries of prosecutors and employees, assistants and support staff, etc., and the other for material expenditures. The Ministry of Justice can modify both sections over the year to increase or decrease resources of the unit. For investment expenditures, the unit receives financial resources directly from the Ministry of Justice for pre-approved investment plans. Once the Ministry of Justice assigns resources for the offices every office (Supreme, high and regional) manages independently its allocated resources within its budget. However, the offices' budgetary expenditure is tightly controlled by the department of administration of the Ministry of Justice. The Minister of Justice may also order a separate control. Internal audit recommendations (if it is established at the level of the prosecutor´s office) are helpful for the management of the prosecution. External audit is carried out by the State Audit Office, which reports to Parliament, The Ministries of Finance and Justice also carry out the audit on the use of the public funds allocated to the prosecution service.

Specialisation

The Public Prosecutor's Office is aware of the need to specialise in specific types of criminality to ensure sufficient expert knowledge and experience of individual prosecutors. There are specialised prosecutors within the system of Public Prosecutor's Office on corruption-related criminality.

The issue of specialisation of public prosecutors is governed by the Instruction of General Nature No. 4/2009, the Sample Rules of Organisation, as amended. The Instruction of General Nature is an internal regulatory act of the Public Prosecutor's Office binding to all public prosecutors, and also for other employees of the Public Prosecutor's Office, if the Supreme Public Prosecutor so stipulates (according to

Section 12 (1) of the 1993 Act). For example, the area of money laundering the said Instruction of General Nature in Annex 1 and 2 stipulates under item I. Economic and property crime, paragraph B) corruption, criminality of public officials (with exemption of security forces and intelligence services).

These specialisations are mandatory to all Prosecutor's Offices. The assignment of individual prosecutors to each specialisation is decided by the chief prosecutor of the respective Office. In general, each prosecutor handles cases according to his/her specialisation. The list of specialisations and changes thereof are notified to the Prosecutor General's Office, which keeps a list of specialisations and allocation of public prosecutors; this list is updated quarterly and published on the Extranet website of Public Prosecutor's Office, and as such it is accessible to all public prosecutors and other expert employees of the Public Prosecutor's Office.

Since 2011 the Public Prosecutor's Office includes positions of National Correspondents for various areas of criminal activity (10 NC total). Currently, this issue is regulated by Provision of the Supreme Public Prosecutor no. 2/2013, on National Correspondents and their expert teams, as amended; this Provision also follows up on Section 25 of the Act no. 104/2013, on International Judicial Cooperation in Criminal Matters, as amended. With effect as of 1.5. 2016, this Provision was amended (amendment effected by Provision no. 8/2016), whereas the amendment consisted in certain redistribution among National Correspondents by establishing a position of National Correspondent for combating corruption.

The National Correspondent, or his expert team, not only form a point of co-operation for the National Member in Eurojust in the given area, but also serve as a guarantor of interdepartmental co-operation and co-operation with foreign countries; they also analyse case law and specialised publications, participate on execution of questionnaires, educational activities secured in particular by the Judicial Academy, on interdepartmental co-operation and meetings, they attend or propose attendance on domestic and foreign conferences. Currently there are a total of ten National Correspondents, appointed also for other areas.

Case management

The workload of prosecutors is managed, and cases are assigned, based on specialisation criteria, the experience of the prosecutor and trying to balance the workloads of all the prosecutors in a district or region. There are no guidelines for case assignment. It is fully within the decision-making remit of chief prosecutors.

Quality

Impartiality, independence and sufficient human and material resources are considered crucial criteria in order to secure a high standard of quality and efficiency in the public prosecution service. However, no mechanism exists for the time being for establishing quality standards of the prosecutorial service and evaluating its overall performance.

Accountability: Monitoring and reporting

Section 12 of the Public Prosecutor's Office Act states that within six months of a calendar year at the latest the Prosecutor General submits to the Government, through the Ministry of Justice, a report on the activities of the previous calendar year. These yearly reports are freely available on the website of the Prosecutor General's Office (Supreme Public Prosecutor's Office, Czech Republic, 2020[5]).

On supervision, the Public Prosecutor's Office Act, states that supervision means performance of powers specified by this Act to guarantee the governing and control of the various instances of Public Prosecutor's Offices and inside individual Public Prosecutor's Offices (Section 12c).

Section 12 also determines that the immediate superior can supervise the immediate subordinates in his/her jurisdiction in disposing of cases and issue written instructions. Oral instructions must be written down afterwards. The immediate subordinate is obliged to follow written instructions except if these latter violate the law, in which case the subordinate can refuse compliance, but should alert in writing the

superior's superior on the reasons for such refusal without undue delay. If the immediate superior insists on keeping the instruction, the case shall be removed from the subordinate and shall be handled by the insisting superior him/herself. A case may be removed from a prosecutor because of passivity or undue delay. In a trial, the prosecutor is not bound by the instruction of the chief prosecutor or the prosecutor authorised by him/her if during the trial the evidentiary situation changed.

Significant reforms

The most important amendment to the 1993 Act, adopted in 2002, changed the organisation of the prosecution. It repealed the subordination of the prosecution to the Minister of Justice who since then is only entitled to administer the prosecution service (Zezulová[2]).

In 2019, on the Draft of amendment of Public Prosecutor's Act prepared with the participation of Prosecutor General's Office, there was consent on some parts of the amendment (to fulfill the recommendations of GRECO), such as for example:

1. Introduction of removing of chief public prosecutors (including the Prosecutor General) only in disciplinary proceedings (in court proceedings).
2. Introduction of the term of office of chief public prosecutors (in the same length for all chief public prosecutors: 7 years).
3. Introduction of basic requirements for the person of the chief public prosecutor (apart from the absence of an unprecedented disciplinary sanction, the requirement for professional knowledge, professional experience and moral qualities guaranteeing the proper performance of the function and the minimum required period of practice); the minimum requirements of the internship are set both for transfer to a higher public prosecutor's office and for assignment to a non-district public prosecutor's office.
4. The selection of high, regional and district public prosecutors will take place exclusively through open selection proceedings – open call for candidates – organised by PS (to reduce influence of executive power).

There was a change on the position of Minister of Justice at the end of April 2019, including changes to the draft amendment (without prior consultation with Prosecutor General's Office). Objections to the changes in the amendment from the Prosecutor General's Office are as follows:

1. Changes go against strategic materials passed by the goverment to strenghten independence of the prosecution.
2. Changes do not follow the recommendations of GRECO.
3. Changes give more opportunities for executive power how to interfere into the prosecution service.
4. Changes make legal differences for judges and prosecutors without good reasons.

The draft amendment to the Public Prosecutor's Office Act was discussed on 12 September 2019 by the Legislative Council of the Government, which recommended that the bill be approved by the Government of the Czech Republic with certain legislative and technical comments and then submitted to the Parliament of the Czech Republic. At the same time, the opinion contains a statement for the government, which states that the some individual members of the council had conflicting views on some essential parts of the bill (especially on the composition of the selection committee for the positions of chief public prosecutors).

The Legislative Council of the Government is an advisory body of the Government of the Czech Republic in its legislative activities, it evaluates the bill primarily from the point of view of legislative elaboration and compliance with the legal order.

The draft amendment to the Public Prosecutor's Office Act was further discussed by the Anti-Corruption Council of the Government on 2 October 2019, which recommended the Government of the Czech Republic not to approve the bill. The main reason for this decision was that the council considered that the bill in question improperly increases the executive's intervention in the public prosecutor's office, especially in the area of the selection of chief public prosecutors.

The Anti-Corruption Council of the Government is a permanent advisory body of the Government of the Czech Republic in the area of the fight against corruption and, among other things, also assesses draft legal regulations submitted to the government in terms of corruption risks.

The draft amendment to the Public Prosecutor's Office Act has not yet been included on the agenda of the Government of the Czech Republic.

Denmark

Status

The Prosecution Service (*Rigsadvokaten*) in Denmark is under the responsibility of the Minister of Justice, along with the Police and the Prison Service. The Danish Prosecution Service was created in 1919 with the coming into force of the 1916 judicial reform (the Administration of Justice Act).

The Prosecution Service is structured as a hierarchy of three levels headed by the Director of Public Prosecutions (the General Prosecutor). The second level comprises two units called Regional Public Prosecutors (Copenhagen and Viborg each of them including several police districts) plus the Greenland and Faroe Islands police, while at the local level there are 12 Commissioners of Police heading both the local Prosecution Service and the Police in a joined-up structure. At the local level, the local Commissioner is at the same time the head of the Police and of the Prosecution Service. In addition to this basic territorial structure, there is the specialised State Prosecutor for Serious Economic and International Crime holding nationwide jurisdiction over cases concerned with serious economic crime, genocide, crimes against humanity, war crimes and other serious crimes committed abroad.

The Ministry of Justice governs the Prosecution Service through a performance contract. The contract for the Prosecution Service is concluded between the Ministry of Justice and the Director of Public Prosecutions and covers the entire organisation. The contract is settled on an annual basis and sets the objectives for the Prosecution Service. The contract is not legally binding.

The Director of Public Prosecution is responsible for the creation of prosecutor positions. However, the official recruitment process of prosecutor trainees is co-ordinated together with the Ministry of Justice by an *ad hoc* selection committee appointed within the Prosecutor General's Office in the HR department on behalf of the Prosecutor General and the Ministry of Justice subsequent to a public announcement of vacancies, which happens every 6 months. The Administration of Justice Act (Procedural Code) provides in Article 98 that the Minister of Justice may intervene in individual cases and require any of the prosecutors to commence or desist from proceedings. However, any such direct order must be notified to the President of the Parliament together with a statement of reasons. The procedural code does not provide specifically for measures that may be taken by the President of the Parliament, but the Danish judicial system includes a special court for impeachment, which might be addressed in case of an abuse of powers by the Minister of Justice.

The main role of prosecutors is to ensure procedural fairness and objectivity and supervise the investigation carried out by the police. The tasks and organisation of the Prosecution Service are set out in the Administration of Justice Act. The key task of the Prosecution Service is to ensure enforcement of the law in co-operation with the police and in pursuance of the rules of the Administration of Justice Act in situations where a breach of the law carries a criminal sanction. The overall principles guiding the

performance of the task are described in the Administration of Justice Act, which prescribes that the Prosecution Service shall proceed with every case at the speed permitted by the nature of the case thereby ensuring that those liable to punishment are prosecuted while the innocent are not prosecuted.

When legislation is drafted, the experts or affected parties may be consulted in giving their view on focus points and consequences. The Danish Prosecution Service is usually consulted in matters concerning criminal and procedural penal law.

Investigation and prosecution

Investigations are not within the authority of the Prosecution Service. Criminal investigations are carried out by the Police. The Prosecution has a supervisory role over the Police and must ensure the legality of the investigations and can give instructions to the investigating police. However, the Danish Police has a wide autonomy. Minor crimes are prosecuted by the police. Yet in larger or more complex cases, investigations will always be carried out in co-operation between Police and Prosecution.

As a rule, the Police can initiate an investigation and carry out various investigative steps on their own initiative, but any intrusive measures (home searches, bugging phones, pre-trial arrest, etc.) must be warranted by the Courts. It is the Prosecution who decides whether the conditions for an investigative step are likely to be met – and thus decides whether to request the Court to approve the measure. Legally, the prosecutor can stop or discontinue a police investigation, but it is rather unlikely to happen unless the police are committing blatant illegalities.

In cases where intrusive investigative measures and/or pre-trial detention are not required, the Prosecution will normally receive the case only after the completion of the investigation. In cases where intrusive investigative measures and/or pre-trial detention are to be used, the Prosecution will most likely be involved at an early stage.

The prosecutorial supervision of the police is carried out normally as part of the daily co-operation. But the supervision can also be effectuated after the termination of the investigation when the prosecution formally receives the case and sees the case file. The prosecution can also make a general supervision or surveillance of a specific area of Police action. They can then ask to see all the relevant file cases. This may lead to targeted training or information meetings with the local investigators.

Criminal cases against police officers are carried out by the Independent Police Complaint Authority. The independent authority investigates allegations of criminal offences committed by police officers. After finalising investigations, the case is sent to the State Prosecutor (the prosecution at the regional level) who then decides whether the case should be prosecuted. The decision not to prosecute a police officer can be appealed to the office of the Director of Public Prosecutions. There are no other investigative bodies.

Due to the structure described above, there is a close daily contact and co-operation between Police and Prosecution, both when it comes to specific cases and to questions of a more general nature. For example, many teachers at the Danish Police College are prosecutors. Also, joint training activities for both investigators and prosecutors are often organised. Especially at the local level, prosecutors organise ad hoc training sessions for investigators.

According to the law, the Police will – either upon complaint or by their own initiative - initiate investigations when there is reason to believe that a criminal offence has been committed. Denmark applies the principle of opportunity or expediency and therefore priorities in investigation and prosecution may be established. Denmark only has one Police force. Usually, investigations are carried out in the Police district where the crime was committed or where the suspect is domiciled. Nevertheless, the State Prosecutor for Serious Economic and International Crime can decide to investigate and prosecute all cases of economic crime and will investigate and prosecute all cases of international crime.

Prosecutorial discretion and alternatives to prosecution

The Prosecution Service has the monopoly over decisions to prosecute. Thus, except for a small number of cases such as slander, private prosecution is not known in Denmark. However, a victim can file a civil claim against an alleged perpetrator for financial damages. The Danish Prosecution Service is not statutorily obliged to prosecute every crime brought to its attention but may to a certain extent waive prosecution or exercise prosecutorial discretion. A decision not to prosecute is regarded as an administrative decision and must be presented in writing with written reasons. Victims and other with a direct and personal interest in the case can appeal a decision of non-prosecution to the next level of the prosecution service. Victims can also file a civil claim for financial damages.

Neither the Procedural Code nor the Penal Code allow prosecutors the option of settling cases by agreement (plea bargaining and its equivalents). It is only the courts that may, under Article 82 of the Penal Code, take into consideration, when deciding on the severity of the penalty, the co-operation provided by the offender during the investigation as a mitigating factor. However, it remains for the prosecution to decide which cases warrant being brought before the courts based on the likelihood of achieving a conviction and also on the rational use of available resources, both by prosecution authorities and by the police authorities.

There are no guidelines or instructions issued to guide discretionary decisions of prosecutors. The conditions and procedures for investigations are set out in the Administration of Justice Act. The Police have made internal guidelines on certain investigative steps. Prosecutors can decide not to prosecute, but only if the evidence gathered by the police seems to be insufficient to make a case in court. Decisions whether to initiate investigations are taken by the Police. However, the prosecution can always order the Police to initiate investigations. Also, due to the supervisory functions of the police, the Prosecution can give instructions on whether to initiate investigations.

It follows from section 722 in the Administration of Justice Act (AJA) (*retsplejeloven*) that prosecution can be waivered in the whole or in part in cases where the alleged offense under the law cannot result in higher penalty than a fine and is a minor misdemeanour, where the accused is a minor, when it is estimated that no or only an insignificant penalty would be imposed, and that a conviction will not otherwise be of significant importance, where the execution of the case will lead to difficulties, costs or processing times, which are not in reasonable proportion to the significance of the case and the punishment that can be expected to be imposed, where the law provides for special grounds for waiving the charge; or where this follows from provisions laid down by the Minister of Justice or the Prosecutor General. In other cases, prosecution may only be waived if there are special mitigating circumstances or other special circumstances and prosecution cannot be considered necessary in the public interest.

It follows from section 723 in the Administration of Justice Act (*retsplejeloven*) that as a condition for a waiver of charges can be stipulated that the accused decides to pay a fine or accepts confiscation, and the same conditions as in conditional judgments. Conditions may only be determined if the accused has given an unreserved confession in court, the accuracy of which is confirmed in the circumstances otherwise available.

A prosecutor must withdraw from handling a case if he/she believes that his/her impartiality can be put into question or if a defendant claims conflict of interest of the prosecutor dealing with the case.

Management tools

Organisation

The Director of Public Prosecutions is the non-political head of the hierarchic Prosecution Service. The Director and his staff conduct criminal cases before the Supreme Court. The Director is superior to the other levels of the Prosecution Service and may issue instructions to them, both of a general nature and

regarding specific cases. Certain specific cases can or must be brought before the Director's office for decision making. In providing general advice to the Ministry of Justice and commitment to international co-operation the Director also plays an important role.

The Regional Public Prosecutors and their staff conduct jury cases before the district courts and appeal cases before the higher courts. They decide if district court decisions should be appealed to the High Court and whether to prosecute or not in certain cases, particularly those concerning serious crime. Furthermore, they supervise the handling of criminal cases by the Commissioners and have full powers to instruct prosecutors. The Regional Public Prosecutors also handle cases concerning police conduct and alleged criminal behaviour by police. Two specialised units have national jurisdiction in dealing with cases of serious economic crime and cases of special international crimes, e.g. war crimes, crimes against humanity and genocide.

The legal staff of the Police Commissioners conducts criminal cases before the District Courts. In minor cases specially trained police officers may act as prosecutors in court. The Commissioners are responsible for the police investigation of all criminal cases and decide to prosecute or not in the vast majority of criminal cases. Due to their dual function as head of both police and prosecution, they are subject to close supervision by the Regional Public Prosecutors in relation to their tasks concerning investigation and prosecution of criminal offences.

Strategic management

Approximately every three years, the Government sets out general areas of priority for both the Prosecution Service and for the Police. These priorities are linked to the passing of the budgets for Police and Prosecution and are often passed with a broad consent in Parliament. Beside these general priorities, the Director of Public Prosecutions every year publishes his/her priorities for the Prosecutions Service as such.

The objectives were defined as increasing the quality aspects of prosecution activities, specifically in relation to the development of competences and the sharing of information. Further, it was an objective to achieve an increase in efficiency by use of modern methods for directing development based on targets and results, including the optimisation of procedures with a focus on management and human resources. One important aspect of the reform was also the decentralisation and the integration of staff members into the development of common goals and policies.

As an offspring of this reform, the prosecution services now enter into a yearly agreement with the Ministry of Justice concerning targets set and results to be achieved in the coming year. The overall objectives in the performance contract for the Prosecution Service are negotiated between the Ministry of Justice and the Director of Public Prosecutions; whereas the objectives in the internal contracts are negotiated between the Director of Regional Public Prosecutions and the Public Prosecutors/the Commissioners of Police.

The Prosecution Service is thus managed through internal performance contracts for the Regional Public Prosecutors and the Commissioners of Police. The performance contracts are concluded between the Director of Public Prosecutions and the subordinated parties. The contract covers performance objectives on efficiency (based on a weighted production model), production, processing time, reduction of old charges (the average age). The Prosecution Service calculates its productivity based on standard cases. All cases are assigned a weight according to a case weight model based on a combination of payroll costs and the number of cases within each case area. From 2013 to 2016, productivity increased by 3.90% (Danish Prosecutor's Office, 2020[6]). The Danish Central Crime Registry (*Kriminalregisteret*) collects and records all information about charges and decisions made in criminal cases for use in criminal procedures. As of August 22nd 2020, 660 343 events have been recorded including traffic related events. Excluding the traffic related events, the number of recorded events is 233 029. Of the 233 029 events ca. 50% have resulted in charges, ca. 40% have been filed and ca. 10% are pending.

Case management and productivity

For the purposes of the yearly report, the productivity is measured by dividing a weighted case number by the total staff costs, to arrive at a cost per case. The weighting system involves consideration of the number of violations in each case, and the total of the weighted number of cases is achieved by adding the weighted figures for the number of formal charges and the number of court decisions, orders and judgments. However, the issue is under debate whether the productivity, as expressed in cost per case, is in it itself a meaningful figure. The risk is that the weighted model may induce behaviour that only serves its own purposes and not actual improvement of productivity. In any case, it would seem clear that productivity can be measured only in units of output per unit of input. With the weighted model, it is not only the number of prosecutions that are considered, which could encourage excessive persecution in violation of the principles of fairness and objectivity whereby the duty of the prosecution services is both to pursue crime, but also to avoid pursuing the innocent.

One important feature of the weighted model is that by not focussing only on successful judgments (i.e. convictions), the model avoids encouraging the prosecution services to limit their efforts to cases with a high probability of success, thus avoiding complicated cases to the detriment of justice. Accordingly, it seems clear that a weighted model which considers both overall activities and successful activities may represent the most neutral measurement of output.

Besides the performance objectives, the contracts also include other areas such as human resources and local issues. The achievement of the objectives are monitored both individually and as benchmarks in a centralised business intelligence system (The Director of Public Prosecutions presents data concerning production, financial and human resources in a resource management application in a centralised IT-based business intelligence system to certain users within the Prosecution Service).

The negotiations at different organisational levels are co-ordinated. Likewise, the performance contract for the Prosecution Service is co-ordinated with the objectives in the performance contract for the Police, so that these two contracts constitute the overall management framework for the Police and Prosecution Service. The main performance indicators are calculated based on the caseload and type of case. Specific examples of main performance indicators are number (%) of convictions, number (%) of charges, number (%) of filed cases.

Case allocation is based on specialisation criteria and experience of the prosecutor and on balancing the workloads of all the prosecutors in a district or region (territorial jurisdiction). In addition, the above-mentioned case weighting mechanism is used. Therefore, case allocation among the 12 police and prosecution districts are well defined by guidelines on territorial responsibility, but case allocation among individual prosecutors is not well-defined by guidelines, but the more vaguely defined criteria just mentioned are used. General rules do not exist thus on case assignment to a concrete prosecutor, but a prosecutor is always obliged to consider if there are any factors present that could mean his/her disqualification or withdrawal from the case. Also, under certain circumstances, a whole prosecution district may waive a concrete case or matter and send the case to another district to be managed there.

Co-ordination, specialisation and co-operation

One of the vision statements of the Ministry of Justice is that the entire justice sector is to act as one group to ensure co-operation between all the authorities in the justice sector. The group approach is found throughout the period of strategic indicators from 2007 to 2018, where the group approach constitutes a heading for strategic indicators, which concerns efficient case processing from the perspective of all authorities involved.

The resources are allocated through an activity-based budget model, which ensures that resources are correlated with the workload.

The targets, which are referred to as strategic indicators, developed over the years 2007-2018. Initially, the strategic indicators were quality, efficiency and legality, thus reflecting the need to adjust the prosecutions services to the requirements of the 2007-2010 reform. These strategic indicators later on developed to encompass management, IT, working methods and communication, which may be seen as a continuation from the early years, as well as the opening towards a more coherent set of strategic indicators for the handling of penal cases between various authorities.

During the reforms, the concept of lean management gained currency. The targets of lean management were the creation of efficient management supervision and motivation of employees through target setting. At the same time, the concentration of staff in larger service units allowed for specialisation that would not have been possible in the previous decentralised model. As set out in the yearly report for 2010, each Chief of Police was allotted 5 specialised prosecution services within his force, to achieve better quality in the processing of cases.

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

Yearly target and result documents are created based on a co-operative effort in a series of workshops arranged across the prosecution services, where the issues to be given weight in the components of the strategic indicators are discussed and defined, so as to ensure that the strategic indicators become a joint goal and not a top-down imposition, thus letting the strategic indicators setting process in itself becomes a platform for co-operation.

As a practical outcome of co-operation between judicial authorities, a mechanism was set up in 2009 to ensure that routine judicial hearings, such as extensions of custody decision, could be decided in video conferencing with the court rather than by means of the physical presence of the police and prosecution involved, which entailed timesaving for all parties involved. This has been followed up by digital communication between police, prosecution, defence lawyers and the court, as set out in a co-operation agreement between the Court Management Authority, the Prosecutor General and the national Chief of Police in 2017. Under the co-operation agreement, the case files are submitted in a digital format by the prosecution services to the court and the defence lawyer, and during the oral hearing, the parties refer to the digital files, which may also be displayed on AV equipment. The digital format allows all parties to search the materials and to add notes.

Human resource management

An additional initiative, which serves to support both quality enhancement and co-operation, has been the introduction of a basic education for new prosecutors, which is provided for staff with less than 3 years of employment. All younger prosecutors have a mentor who follows the daily work and who will also at times accompany the prosecutor in court to supervise the performance there. This induction training has 9 modules, each lasting 3 days, which cover the following topics: the role of the prosecutor and introduction to good judicial working methods; the methodology of the prosecution in relation to good judicial working methods; penal procedure; court hearings; legality and police work; the role of a case manager; communications; organisation; and practice. It also contains training in ethics and integrity issues.

Prosecutors are employed by the Ministry of Justice. Appointments to senior positions are formally decided by the Queen but in practice by the Ministry of Justice after recommendation from the Director of Public Prosecutions. Although the Minister of Justice is thus responsible for the employment of prosecutors and of the appointment of senior prosecutors, politically motivated appointments are not known in the Danish Prosecution Service.

Although the application of the Civil Servants Act is restricted to employees with civil servant status, it is assumed to be applicable also to all employed in the Danish Prosecution Service under a collective labour

agreement on public accord, based on the principle of good conduct for all employees within the Danish Prosecution Service. According to article 10, a civil servant must consciously follow the rules applicable to the position. On duty as well as off duty the public servant must show her or himself worthy of the esteem and trust necessary for police employment. This demand is defined also as the “demand for dignity”.

Prosecutors are recruited by an *ad hoc* selection committee appointed within the Prosecutor General’s Office in the HR department on behalf of the Prosecutor General and the Ministry of Justice subsequent to a public announcement of vacancies.

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

During the first three years of employment, the prosecutor trainees attend a basic training programme. During these three years, the prosecutors will be affiliated with a mentor. The mentor is an experienced prosecutor. The mentor supports the training on the job and is obliged to continuously evaluate on the individual prosecutor’s skills and areas in need of development. Afterwards each employee will attend an appraisal interview (MUS) once a year with his/her hierarchical superior. The training programme is developed by the Prosecutor General’s Office. Teachers are both senior prosecutors and external specialists. The Prosecutor General’s Office carries out periodically training needs assessment.

The appraisal interview is a structured dialogue based on a development schedule provided by the Human Resources Department. The interview results in a written plan for future development of the employee, including courses to attend, tasks, training in other departments, etc. The interview also focuses on giving feedback on the behaviour and attitude as well as feedback on professional competence. If the prosecutor is not performing as desired or has made inappropriate actions, disciplinary sanctions will be considered. However, discipline is not based on the performance appraisal. This latter is meant to be proactive and is forward-looking, not a mechanism for punishment. Nevertheless, if the professional competence is very problematic and the prosecutor is not adapting to the feedback, an actual disciplinary procedure will step into place instead.

Promotion is carried out through merit-based internal competition ensuring the publication of the job vacancy. The most suitable candidate is appointed after sitting an interview and in some cases a test.

As for the remuneration, the law (collective labour agreement) determines the basic salary whereas the variable remuneration is decided by the superiors.

The Danish Prosecution Service employs approximately 700 lawyers as prosecutors. More than 50% of Danish prosecutors are women. As said, in minor cases, specially trained police officers may also appear in court as prosecutors. In the prosecutorial service near 50% of the staff are categorised as non-prosecutorial, devoted mainly to administrative tasks.

Denmark has a unified police force with approximately 11 000 police officers. The Danish Police is divided into 12 local police districts. The Police districts are subordinated to the National Commissioner of Police that carries out several administrative tasks in operating the Police. The duties of the Police are to maintain security, peace and order; to ensure that laws and regulations are complied with; to take the necessary steps to prevent crime and to investigate crime. Police officers at the local level investigate criminal offences. If the case is complicated, the investigation will be carried out by investigators specialised in certain areas of crime, such as for example economic crime, murder, organised crime, major drugs crime and IT-related offences.

Accountability: Monitoring and reporting

As part of monitoring and evaluating performance in the justice sector, both the Ministry of Justice and the prosecution services, under the auspices of the Prosecutor General, have defined mission and vision statements, which are published in the yearly reports on targets. The most important topics to report on are: Statistics on number and types of cases, evolving caseload and data on ratios between resources employed and results achieved (resource data).

In this connection, a set of guidelines were issued by the prosecution services in 2011 concerning the achievement of quality on the processing of penal cases. It was underlined that whenever new initiatives are implemented as pilot projects, it is important to define measuring points to be able to evaluate whether the initiatives do lead to any improvement. The prosecution service is a hierarchical institution. Supervision by the hierarchical superior and a complaints procedure, which can be activated by any person are the main accountability mechanisms for individual prosecutors. A superior can make a concrete assessment to take a prosecutor off a case due to for example professional incompetence, personal issues, sickness, etc. or can be mandatorily transferred and so *de facto* taken off the case.

Guidelines for ensuring homogeneity in the application of the penal code are issued by the Prosecutor General. Higher ranking prosecutors may give binding orientations, guidelines, ad hoc advice and exert other influence on subordinate prosecutors, as for example by pressing for a rapid solution of a case. All guidelines are mandatory for lower-ranked prosecutors.

The political strategy for the Prosecution Service is stated in the political four-year agreement for economy in 2012-2015 of both the Police and the Prosecution Service. Besides the political goals, the Prosecution Service has stated its own long-term goals and strategy for 2010-2015 as well as a common strategy for the Police and Prosecution Service for 2011-15.

Both quantitative and qualitative indicators are available for assessing the effectiveness of criminal proceedings. The qualitative measures consist of quarterly and yearly meetings to oversee the effectiveness both locally and overall, in the prosecution service. All quality standards are carefully set and periodically revised by the relevant authorities.

The quantitative indicators consist of different measurable conditions, e.g. calculated costs per criminal case and case disposition time measured in days (case weighting). Functional reviews are regularly carried out in order to identify risk of inefficiencies or misuse of resources. Good management of available resources is a legal obligation for prosecutors.

The attainment of objectives is communicated in a common annual report for the Police and the Prosecution Service. Besides the common annual report, the Director of Public Prosecutions also publishes a non-financial annual report which focuses on the goals of the internal strategy and communicates different feature stories about the results of the Prosecution Service.

One issue that is not given prominence is the consequences of respectively meeting, surpassing and failing to meet the targets. Nevertheless, meeting the strategic indicators may lead to a salary rise agreement for the Prosecutor General and for the national Chief of Police. Failure in meeting the strategic indicators will have a shaming effect for the institution as such, but it remains to be seen the motivating effect of a shaming mechanism. In this connection it must be recalled that the reform of the prosecution services was adopted by Parliament and this latter might consider further legislative initiatives to obtain the results that the strategic indicators were meant to obtain.

The Prosecution Service is included in the Government strategy on public procurement. Furthermore, the Prosecution Service is bound by governmental contracts with private service and goods providers. The administration of the Prosecution Service is externally audited by the National Audit Office of Denmark (*Rigsrevisionen*), by the Ministry of Finance and by the Ministry of Justice. The Prosecution Service and the Police have set up a joint, internal audit mechanism.

In 2012 the “Independent Police Complaints Authority” was established: its main task is to investigate criminal offences committed by police officers or by prosecutors who serve in the Local Prosecution Service in the course of their duties. Prosecutors are furthermore subject to different legislation and policies on this area, including for example the decorum rule in the Civil Servants Act article 10, Code of conduct within the Police and Prosecution Service and the “Code VII” of the Agency for Modernisation (Danish Ministry of Finance, 2015[7]).

Violations by prosecutors of the relevant rules on the prohibition or restriction of certain activities relating to accessory activities, self-disqualification, gifts and confidentiality, may result in either disciplinary actions or criminal sanctions. The Director of Public Prosecution acts on behalf of the Ministry of Justice and as the appointing authority decides on disciplinary proceedings against public prosecutors. A disciplinary procedure concerning a statutory civil servant is expressly described in the Civil Servants Act. The sanctions available are a formal warning, reprimand, fine, transfer, demotion and dismissal. In more severe cases an investigator is appointed (usually an official from the public administration) who investigates the matter and submits a report. Similar principles apply to proceedings concerning prosecutors employed under a collective labour agreement. The relevant rules are contained in the collective labour agreement as well as the Employers’ and Employees’ Act and the Public Administration Act. The Director of Public Prosecution on behalf of the Ministry of Justice may choose just to advice the employee, give a formal warning or dismiss the employee. In the most serious cases, the employment relationship may be terminated with immediate effect. There is no appeals system against disciplinary decisions, but a prosecutor may bring a complaint to the Parliamentary Ombudsman or bring the case to the civil court system. The Danish Prosecution Service has around 5 disciplinary procedures each year that result in reprimand, fine or dismissal.

Significant reforms

A significant reform of the Police and the Prosecution Service was implemented in 2007-2010. For the police, this entailed a reduction in the number of local police stations and the creation of larger regional police stations amidst discussion as to whether adequate police response times could be maintained. For the prosecution, the main target of the 2007 reform, adopted by Parliament in 2006, was organisational changes to achieve improvements in competence, strategy and performance measurement. This legislative basis was ensured in the Procedural Code, which was amended to remove the division of competence between the Municipal Courts and the High Courts.

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

The 2007-2010 reform of the Danish prosecution services, concurrently with the reform of court and police systems, have led to a much-simplified structure for the prosecution services, and has provided an impetus for focus on quality and productivity enhancement.

Finland

Status

The independent National Prosecution Authority is a state authority and part of the judicial system. Its task is to ensure the realisation of criminal liability, i.e. that the proper statutory punishment is attached to a criminal act. The National Prosecution Authority operates within the administrative branch of the Ministry of Justice (article 3 of Law 32/2019 on the National Prosecution Authority, in force as from 1 October 2019).

This Law repealed the previous Law on the Prosecution Service (Law 439/2011, which had in turn repealed Law 195/1996).

The Department of Judicial Administration of the Ministry of Justice handles all administrative matters of the court system. However, neither the Ministry of Justice, nor any other government body, have authority over the internal matters of the prosecution service, or over individual prosecutions. A prosecutor's independence and autonomy mean that no one can give orders to a prosecutor on how he/she should decide an individual, pending criminal case. No other person than the case's prosecutor him/herself can, for example, decide on whether to press charges. Neither can anyone order the prosecutor to judge the evidence, nor interpret the provisions of a law, in a certain manner. Regarding interpretation of the law, a prosecutor is obligated to observe the law in a similar manner to, for example, a judge.

Articles 9 and 10 of the 2019 Law clearly establish the autonomy of individual prosecutors: “Prosecutors shall ensure that criminal liability is realised in cases being handled by them in an equal, prompt and economical manner as required to ensure the legal protection of the parties concerned and to serve the public interest” (article 9). “Prosecutors shall consider charges independently and autonomously. Prosecutors make decisions in criminal matters being handled by them, falling within the prosecutors’ power of decision and concerning the realisation of criminal liability, independently and autonomously. Prosecutors are competent to perform prosecutorial duties in the entire country” (article 10).

The National Prosecution Authority is a key actor in the processing chain of criminal matters and is the only authority involved at all stages of processing a criminal matter: the pre-trial investigation, the consideration of charges and the trial. In the decisions they make in prosecution matters, prosecutors are autonomous and independent administrators of justice (National Prosecutor Authority, 2020[8]).

Provisions on the prosecution service are also laid down in Chapter 9 (Administration of justice) of the Constitution (article 104). Most of the provisions of that chapter concern judges and the court system.

A prosecutor's independence and autonomy mean, among other things, that the police officer who carried out the pre-trial investigation cannot compel the prosecutor to press or not to press charges in the case investigated by the officer. Regarding a prosecutor's independence and autonomy, it is of vital importance that a police officer must, if requested by the prosecutor, conduct a pre-trial investigation or additional investigations and follow the orders given by the prosecutor to safeguard the objectives of the pre-trial investigation. A prosecutor, therefore, has the authority to give orders to the officer in charge of the investigation, but not vice versa. Prosecutors have discretion to prosecute or not, but must seek alternative solutions to prosecution, which are foreseen in legislation (e.g. plea agreements subject to judicial approval or a mediation process for less serious crimes, conducted by an arbitration office) and ground in law their decision not to prosecute.

Only the Prosecutor General or the Deputy Prosecutor General, can influence a prosecutor's decision making although he/she cannot order a prosecutor to decide an individual case in a certain way, but must rather exercise his/her right provided for in section 11 of the Act on the Prosecution Authority to take over the case. The following provision is issued in the law: “The Prosecutor General can take over a case belonging to a prosecutor subordinate to him/her or order a subordinate to pursue a charge the Prosecutor General has decided to bring. The Prosecutor General can also order a subordinate to consider charges for the case”. This is the sole situation where a prosecutor's independence and autonomy are different from a judge's independence and autonomy.

Prosecutors, as any other public officials, enjoy criminal immunity for the acts carried out in good faith while on duty. They are personally liable in civil terms for the material or moral damage caused to an aggrieved party only if they acted with gross negligence or bad faith. Provisions on the consideration of liability claims against the National Prosecution Authority are laid down in the Act on Tort Liability of the State (978/2014).

The Prosecutor General is also independent and autonomous of other governmental authorities, based on the legal provisions. The organisational independence and autonomy of the prosecution service is

reinforced by the fact that its funding is based on its own subsection in the state budget, approved by Parliament in the Finance Act each year. Also, the fact that the Office of the Prosecutor General handles indemnity matters concerning the prosecution service increases the prosecution service's autonomy to a certain extent. The Ministry of Justice grants an appropriation to the prosecution service, within the bounds of which the Office of the Prosecutor General decides on using the funds for various purposes. The procurement and maintenance of ICT systems has been concentrated in the hands of the ICT Service Centre for the Judicial Administration (OTTK). The prosecution service pays OTTK for the ICT services it provides. The payments are in proportion to use.

In addition, there are two special prosecutors, supreme overseers of the legality, whose responsibilities somehow overlap: The Chancellor of Justice and the Parliamentary Ombudsman. Both have powers to bring criminal charges before courts against public authorities, including courts and prosecutors. In principle, a complaint can be made either to the Chancellor of Justice or the Ombudsman. However, small differences in the division of tasks between them determine which of them ultimately investigates a complaint. Their tasks and powers are largely the same. Both oversee the legality of the actions of authorities and officials. The Chancellor of Justice also oversees the actions of lawyers. The Chancellor of Justice is exempted from examining issues concerning the Finnish Defence Forces, the Finnish Border Guard or peacekeeping personnel. Nor does he oversee prisons and other institutions where people are confined against their will. He has no duty to oversee the legality of the various forms of deprival of liberty. All these matters come under the Ombudsman's oversight. Therefore, the Chancellor of Justice refers complaints concerning them to the Ombudsman. The Ombudsman and the Chancellor of Justice can also transfer complaints from one to the other at times if this expedites handling of the matter or is otherwise justified. If for some reason it is considered appropriate to transfer a complaint from one overseer to the other, the complainant is always notified of this. The Ombudsman and the Chancellor of Justice do not investigate a matter at the same time. If a complaint has been sent to both, it is generally investigated by whichever of them has received it first. The Chancellor of Justice has the task of overseeing the legality of the government's actions. For that reason, he is present at cabinet sessions and examines the relevant documents beforehand. The Ombudsman likewise has a right, but not a duty, to examine these documents (Ombudsman and Chancellor of Justice, 2020[9]).

Investigation and Prosecution

Chapter 5 of the Criminal Investigation Act of 2011, as amended in 2015 lays down provisions on the public prosecutor's and pre-trial investigation authority's obligation to co-operate.[2] In addition to the police, the border guard, customs and military authorities are criminal investigation authorities as provided in respect of their criminal investigation competence in their respective statute: the Border Guard Act (578/2005), the Act on the Customs Investigation Office (623/2015), the Military Discipline Act (331/1983) and the Act on the Performance of Police Functions in the Defence Forces(1251/1995). (629/2015). In addition to the criminal investigation authorities, the prosecutor participates in the criminal investigation (chapter 2, section 1 of the Criminal Investigation Act).

Pre-trial investigations are performed by the police. The public prosecutor directs a pre-trial investigation if a police officer is suspected of committing an offence in the performance of his or her official duties. Consequently, the pre-trial investigation authorities (basically the police) are, as a rule, responsible for conducting pre-trial investigations, but the prosecutor actively participates in pre-trial investigations.

The pre-trial investigation authority is obliged to notify the public prosecutor that an investigation has been opened in the case of an offence, except for cases that are petty or clear. The pre-trial investigation authority may discuss the circumstances connected with the suspected offence informally with the public prosecutor before submitting a notification. However, the pre-trial investigation authority is responsible for assessing whether an offence has been committed, and whether a pre-trial investigation should be initiated. If the pre-trial investigation authority deems it appropriate to waive a pre-trial investigation or to

discontinue an investigation completely or partially, a proposal on this must be submitted to the public prosecutor, who decides on the matter.

The public prosecutor participates in pre-trial investigations alongside with the pre-trial investigation police authorities, but it is not a pre-trial investigation authority. In administrative terms, the prosecutor is not the supervisor of the pre-trial investigation authority, nor has the public prosecutor any disciplinary authority over investigation authorities. Yet the pre-trial investigation authority is obliged to comply with any orders issued by the public prosecutor.

Upon the request of the prosecutor, the pre-trial investigation authority must conduct a pre-trial investigation or conduct a pre-trial investigation procedure. In other respects, too, the pre-trial investigation authority must comply with the orders issued by the public prosecutor regarding the consideration of prosecution and court proceedings. However, it should be noted that the Prosecution Service does not have its own investigation resources. All concrete investigation measures are therefore performed by the pre-trial investigation authorities acting under the auspices of other administrative branches. The public prosecutor has no authority to define the resources available to the pre-trial investigation authority or the schedule for a measure which the public prosecutor has ordered. Should disputes arise, they should be resolved under the obligation to collaborate set forth in the Criminal Investigation Act. After the completion of the pre-trial investigation, the prosecutor decides on all pre-trial investigation measures.

The investigation of an operational criminal matter requires collaboration between the pre-trial investigation authorities and prosecutors. As said, pursuant to the Criminal Investigation Act, the pre-trial investigation authority and the public prosecutor must co-operate in operational matters. Since these actors are mutual, key stakeholders, regular co-operation meetings are also held on issues other than those involving operational criminal matters. These are organised at both local and central government level. Joint training is also provided.

Therefore, although as a rule the pre-trial investigation authority is the head of any pre-trial investigation, the pre-trial investigation authority and the prosecutor collaborate in the investigation of a case in accordance with the Criminal Investigation Act. The prosecutor must ensure that the matter is sufficiently clarified during the pre-trial investigation, to avoid any need to conduct a further investigation, that would delay the process following the completion of the pre-trial investigation. Before closing the investigation, the pre-trial investigation authority must consult the prosecutor.

The prosecutor plays a key role in considering whether it is necessary to require the use of coercive measures in connection with the investigation. Although the pre-trial investigation authority is competent in terms of requiring the use of coercive measures, in many cases the public prosecutor must be notified if such a demand is presented. However, upon the closure of an investigation, competence in terms of requiring the use of coercive measures is transferred solely to the public prosecutor. Further individual provisions regarding the distribution of authority between the pre-trial investigation authority and the public prosecutor are included in legislation such as the Coercive Measures Act and the Criminal Investigation Act. In addition, the Finnish Prosecution Service and pre-trial investigation authorities' have issued orders and instructions on co-operation during pre-trial investigations.

Pre-trial investigations are compulsory in Finland under the principle of legality. The Criminal Investigation Act requires that the pre-trial investigation authority investigates when there is suspicion that an offence has been committed. By law, pre-trial investigations must be conducted without undue delay. Pre-trial investigation measures may, however, be placed in order of priority and even postponed based on a decision by the head investigator. The pre-trial investigation authority, not the prosecutor, decides on the priorities referred to in the question. With respect to operational issues, the pre-trial investigation authorities plan their work and may allocate investigation resources to solving preferably certain types of crime. An estimate of the measures and resources appropriate to solving each offence is made on each occasion. Should the pre-trial investigation authorities not wish to investigate or wish to discontinue one, they must submit a proposal on the matter to the public prosecutor, who will decide on the matter.

In most cases, it is not the prosecutor, but the pre-trial investigation authority who decides to initiate a pre-trial investigation, including the prioritisation of cases. Nevertheless, pursuant to the Criminal Investigation Act, in all cases the prosecutor may order the initiation of a pre-trial investigation even in a case where a pre-trial investigation authority has refused to do so in the first instance. In principle, the prosecutor therefore can influence the prioritisation of matters. Yet, the prosecutor is the sole authority to investigate crimes suspected to have been committed by police officers in their line of duty.

The pre-trial investigation authorities are obliged to notify the prosecutor of any offences reported for investigation. Such a notification must be given as soon as the pre-trial investigation authority has investigated the suspected offence to the extent necessary to demonstrate that an offence has been committed and that a pre-trial investigation must be conducted. The notification must be given as soon as possible so that the investigation and related measures can be considered, planned, targeted and scheduled in co-operation with the public prosecutor. Should urgent measures be necessary with respect to the case, the prosecutor must be informed without delay. The pre-trial investigation authority does not need to submit a notification to the prosecutor on initiating the investigation of a petty offence in which the circumstances require no clarification, and where no need has arisen to discuss such an offence with the prosecutor.

When acting as the heads of the investigation, both the pre-trial investigation authority and the prosecutor are autonomous and independent. The pre-trial investigation authority's independence dwells in the fact that no party, such as the public prosecutor, may order that a pre-trial investigation initiated be discontinued or interrupted. A pre-trial investigation may only be waived, discontinued or restricted upon a proposal by the head investigator. After a pre-trial investigation has been initiated, it may be interrupted based on a decision by the head investigator if no-one is suspected of the offence and if the elucidation of the case is not possible.

In principle, the pre-trial investigation authority ensures the legality and appropriateness of the pre-trial investigation. The prosecutor is not responsible for ensuring that the pre-trial investigation authority abides by the law. This does not, however, relieve the prosecutor of responsibility for ensuring that the pre-trial investigation is conducted in compliance with the law while respecting basic and human rights. The prosecutor must be able to provide grounds demonstrating the objectivity and accuracy of the pre-trial investigation material. The public prosecutor may not refer to any other type of material in support of any charges brought.

The Police Internal Audit Unit operates as part of the National Police Board and is directly subordinated to the National Police Commissioner. In addition, the National Police Board's legality control department ensures the legality of conduct throughout the police administration. All police units have a legal unit, one of whose tasks is to ensure the legality of all actions in the police unit in question. The Border Guard, Customs and military authorities have their own internal control systems. In addition, the Parliamentary Ombudsman and the Chancellor of Justice, exercise control over the law enforcement authorities. Therefore, the public prosecutor is not involved in supervising the operations of the pre-trial investigation authorities. The prosecutor adopts a more concrete role when the police are suspected of violating the law during their activities. In such an event, the case is referred to the public prosecutor for the consideration of performance of a pre-trial investigation.

As a rule, the prosecutor cannot prevent or stop an investigation. The only exception is an offence committed abroad. In cases where the investigation of an offence committed abroad requires a prosecution order by the Prosecutor-General, the prosecutor is the authority which decides on whether an investigation should be initiated. In the case of an offence committed abroad, the pre-trial investigation authority may therefore be willing to initiate an investigation but the prosecutor may decide otherwise, either because the Finnish law cannot be applied to the case, or because an investigation of the case by the Finnish authorities would not be appropriate.

Finland's 11 police departments are responsible for the investigation of offences committed in their geographical area. The investigating unit in each case is mostly determined based on the so-called principle of regional responsibility, whereby each police department investigates offences committed in its geographical area. If an offence spreads over the areas of several police departments, the departments may agree among themselves on how best to conduct the investigation. Particularly in extensive series of property offences involving the areas of several police departments, the National Bureau of Investigation's (NBI) criminal intelligence and analysis unit may prepare a so-called proposal on investigation arrangements. Such a proposal describes the series of offences in question and includes a proposal, with grounds, on which police unit could most expediently conduct the pre-trial investigation. The National Police Board ultimately decides on which investigation unit will be involved. The Border Guard, Customs and military authorities have internal orders of their own on the determination of the investigating unit. These, too, mainly follow the principle of regional responsibility.

In addition to police departments, the National Bureau of Investigation conducts pre-trial investigations in Finland. The NBI's primary task is to prevent and uncover organised and other crime of the most serious nature and, as a rule, to investigate such crime. In addition, the NBI investigates any other, separately defined crimes of the most serious nature of which it has become aware. The National Police Board has issued an order on this issue.

In summary, pursuant to the Criminal Investigation Act, the public prosecutor has extensive powers to participate in pre-trial investigations, to issue its own statements as guidance for decision making and to issue instructions on the performance of an investigation. The challenge for prosecutors lies in allocating sufficient time for managing issues at the investigation stage. Most of a prosecutor's time is usually taken up with the consideration of charges and overseeing cases in court. Improvements could also be made with respect to the timely and sufficiently comprehensive reporting of cases to prosecutors by the pre-trial investigation authorities. Improvement is also required in the planning of pre-trial investigations, the final discussion between the prosecutor and pre-trial investigation authorities before an investigation is closed, and the transfer of a case to the prosecutor. But in a nutshell it is to be retained that although the prosecutor may order that a pre-trial investigation be initiated and investigation measures be performed, it is the pre-trial investigation authority that decides on the resources to be allocated to the task and on the timing of measures. While most cases are handled without problems, implementing a prosecutor's order may prove challenging in practice.

Management tools

As a rule, prosecutors are bound by the legal obligation of efficiency and economy in performing their duties (section 9 of Law 32/2019).

Human Resources and Organisation

The National Prosecution Authority employs around 540 people, some 400 of which are prosecutors. Additionally, around 150 persons work at the National Prosecution Authority in various support and expert duties (The Finnish National Prosecution Authority, 2020[10]). The prosecutors are classified into the following categories: 1) the Prosecutor General and the Deputy Prosecutor General; 2) State Prosecutors (they serve at the Office of the Prosecutor General); 3) Chief District Prosecutors (they head the 5 districts that exist); 4) Senior Specialised Prosecutors (they deal with particularly demanding cases within their field of specialisation); 5) District Prosecutors; 6) Junior Prosecutors. These two latter serve at one of the five prosecution districts into which the country is divided.

The National Prosecution Authority comprises the Office of the Prosecutor General that acts as the general administrative unit, and five prosecution districts: Southern Finland, Western Finland, Northern Finland, Eastern Finland and Åland. The National Prosecution Authority has 34 offices around Finland.

The Prosecutor General leads the National Prosecution Authority as the higher prosecutor in the country. The Office of the Prosecutor General is responsible for the central administration, steering and oversight of the National Prosecution Authority, and the operational prerequisites of the prosecutor's offices. The prosecution districts are responsible for the actual prosecution activities.

The duties of the Office of the Prosecutor General are concretely (section 4 of Law 39/2019) to appoint the Chief District Prosecutors, Special Prosecutors and District Prosecutors; to steer and develop the National Prosecution Authority and prosecution activities; to ensure the effectiveness of the activities of the National Prosecution Authority; to supervise the legality and consistency of the activities of the prosecutors; to take care of the National Prosecution Authority's general administration, communications and training; to engage in the national and international co-operation within its purview; to ensure the organisation of the activities of prosecutors acting as heads of investigation in crimes in which a police officer is a suspect.

The Prosecutor General Office employs State Prosecutors, office staff and experts in administrative, communications, training, development and international duties. A total of around 50 public servants currently work at the Office of the Prosecutor General (Finnish Office of the Prosecutor General, 2020[11]).

Training

At the National Prosecution Authority, the development of the employees' expertise is planned together with their supervisors. The supervisor guides and supports the development of expertise with a suitable distribution of work and other duties. New prosecutors are recruited to the junior prosecutor's temporary office for a period of six months, during which the prosecutor completes the Prosecutor's Start training programme, after which the junior prosecutor may apply to the office of District Prosecutor. The *Prosecutor's Start* is a comprehensive introductory programme to the work of a prosecutor. The personal tutor assigned to the junior prosecutor and his or her supervisor are responsible for its implementation. After the Start, the focus moves on basic competence in the work and increasing the professional skills (e.g. the In the Heart of Prosecution Work training programme). Next come the studies of a multicompetent prosecutor, reinforcing competence in different areas. Later, a multicompetent prosecutor can specialise in various duties both in Finland and abroad. New secretaries begin building their competence with the *Secretary's Start* training programme that is an introduction to the duties and operations of the National Prosecution Authority, and the work of a secretary. Secretaries may also specialise – for example in the duties of a digital coach. After the Start, the development of the prosecutor's and the secretary's competence is planned according to the work duties and the competence needs they require. The development of the competence of experts in HR and financial administration as well as communications and training are supported with training provided by outside organisations (Finnish National Prosecution Authority, 2020[12]).

Financial resources

The government approves the general spending limits for the coming year each March. Spending limits are only approved by the executive branch (judicial administration) of the Ministry of Justice. The Ministry of Justice sets up spending limits to the prosecution service on this basis. Based on the proposed spending limits, the Office of the Prosecutor General prepares the next year's draft budget in April–May. The Office of the Prosecutor General can, for a justified reason, propose that the spending limits be exceeded. At the end of May, the Ministry of Justice forwards its draft budget to the Ministry of Finance. The matter is negotiated during the summer, both between public servants and by the entire government in the 'government budget session'. The draft budget is then considered by Parliament.

The prosecution service has its own subsection in the final budget proposal, in which the Parliament approves the final budget. Currently the budget amounts to EUR 50.1 million. The Ministry of Justice cannot, on its own accord, increase or reduce the prosecution service's budgetary appropriation. The Office of the Prosecutor General's administrative unit is responsible for these matters inside the prosecution service. There is a Chief District Prosecutor, deputy chiefs and a Judicial Secretary in each prosecution

office who have responsibility for matters of this nature in the prosecution service. The prosecution service receives up-to-date statistics from a separate data system. The data is transferred from the financial systems proper to the statistics database each day. Budget spending figures are thus always available. This system has been a great help in planning and monitoring operations.

There are no direct linkages between the budgets of courts and that of the prosecution service. Their appropriations are defined in separate subsections. Both budgets belong to the Ministry of Justice's administrative branch and they will be reviewed together if saving obligations have been imposed on the Ministry of Justice.

The instruments used to allocate resources needed for the good functioning of the prosecution service are the “spending limits”. This means that the available resources are distributed among the prosecution offices based on completed working hours. The method of calculating working hours has been the subject of extensive discussions between prosecution office chiefs. Changing circumstances require that the method of calculation be regularly updated to make the result as fair as possible. This system has received general approval. It must be born in mind that the funding of pre-trial investigations does not belong to the prosecution service in Finland.

The Office of the Prosecutor General has no reserved resources for unexpected eventualities. The local prosecution offices are such large units today that they can manage even unexpected situations. However, the Office of the Prosecutor General has the possibility to render assistance with smaller appropriations and by transferring cases to a different prosecution office. Moreover, the system enables the rapid transfer of resources from one prosecution office to another. Prosecutors have competence across the entire country, which allows rapid re-evaluations to be made. These kinds of measures should, however, only be carried out for extremely well-justified reasons, or the confidence in the system may deteriorate and prosecution office chiefs may lose their commitment to long-term work. In principle, each prosecution office must be responsible for itself. If a case involves several prosecution offices, the Chief District Prosecutors will, in the first instance, co-ordinate prosecution activities. If necessary, the Office of the Prosecutor General will decide where and by whom prosecution activities and related pre-trial investigation work will be done.

Specialisation

A prosecutor can specialise as a District Prosecutor in certain types of crime (specialised district prosecutor), specialised prosecutor or in supervisory duties. A specialised prosecutor has strong expertise in one or more types of crime and several years of experience in handling criminal matters in his or her area of specialisation. A supervisor has strong and expansive experience in the work of a prosecutor as well as the skills and desire to be a supervisor. Both lines of specialisation are supported with training.

Prosecutors can specialise in the following types of crime: 1) financial crime, 2) narcotics offences and organised crime, 3) offences in public office, military offences and corruption, 4) crimes targeting special persons (i.e. mostly crimes committed against women and children), 5) environmental offences, 6) computer crime, abuses of the freedom of speech. In addition, it is possible to specialise in 7) international cases and in questions concerning procedural law and the general part of the Criminal Code.

Specialisation has been regarded as necessary both in fields where there are many criminal cases (e.g. financial crime and narcotics offences), and in fields where there are comparatively few criminal cases (e.g. environmental offences and abuses of the freedom of speech). Specialisation is justified by the fact that special expertise helps a prosecution office cope better with handling groups of cases requiring special expertise. There is a consensus in the prosecution service on the benefits of specialisation, even though these benefits are not easily measured by objective standards. The government invests extensively in preventing financial crime (“the grey economy”) such as tax fraud and abuse of various forms of financial aid. For this purpose, the prosecution service has also been granted extra funds to specifically increase the number of prosecutors specialised in financial crime. This also creates a specific need in the

prosecution service to demonstrate the results produced by the extra resources directed against financial crime. The problem is that no reliable and efficient indicators exist for this (for example, counting prison years sentenced is not one).

Resources are committed to prosecutor training. Organised crime and terrorist offences have been assigned to specialised prosecutors who mainly deal with these cases. Specialised prosecutors receive in-depth training in this area. They have regular meetings and training events and communicate with the pre-trial investigation authorities and specialists investigating organised crime and terrorism. They also attend relevant international meetings and participate in prosecutor networks. The above measures take place in order to ensure high-level professionalism of prosecutors, guarantee the quality of their work and improve effectiveness. Regarding terrorist offences, the prosecutors' training has only just started to develop in Finland. Until 2015, Finland had not had any suspects of terrorist offences. Since the situation has now changed to a certain degree, prosecutors are receiving training in the subject.

Performance management

The Finnish Government has a performance guidance system. This means that Parliament grants a common operating appropriation to certain operations, e.g. the prosecution service, and sets general targets that the operations should achieve. Both qualitative and quantitative targets are set for the prosecution service. The most important quantitative targets are related to the time it takes to consider charges. Charges should be considered in a timely manner. Targets have been set for the average time taken to consider charges, and for no case to remain under consideration for exceedingly long time (more than six months or a year). Qualitative targets have been related to co-operation between the prosecutor and pre-trial investigation authority during pre-trial investigations, increasing the level of knowledge on certain criminal phenomena and using new methods such as the written procedure or limiting the pre-trial investigation.

At the highest level, Parliament sets the general targets, but the more concrete performance targets are set in negotiations between the Ministry of Justice and the Office of the Prosecutor General. Performance targets are set for local prosecution offices in negotiations between the Office of the Prosecutor General and the prosecution office in question. The setting targets mechanism operates as follows: A proposal for the following year's performance targets is prepared within the prosecution service. The final targets have been set in negotiations between the ministry and the Office of the Prosecutor General. Based on this preparatory work, the government proposes higher-level targets for the prosecution service to Parliament, which then approves them. Within the Ministry of Justice, the permanent secretary is responsible for co-ordinating the targets for the entire crime-fighting chain. Meetings are held between the permanent secretaries of the Ministry of Justice and the Ministry of the Interior, which are also attended by public servants and representatives of the prosecution service. The targets of all actors involved in the handling of criminal cases are co-ordinated at these meetings.

There are no regulations on the optimal workload within prosecution offices. The prosecution service has, however, been paying attention to well-being at work, which includes this matter as well. Well-being is surveyed each year, and the results are used in the management of the prosecution service.

In Finland, courts are under the administration of the Ministry of Justice and there is no such an independent institution as a High Council of Judiciary. The Ministry has not recommended nor introduced any uniform evaluation or assessment procedures for judges or prosecutors. However, it is a common practice in different bodies of state administration that heads of bureau or department have regular individual discussions (known as "development discussions" or "career discussions") with the members of their personnel concerning progress in their career. Nowadays, this practice is followed in most courts of law although it has not been made compulsory by any general order given within the judiciary or prosecutorial service. The discussions cover all different groups of judicial personnel.

The yearly 'development discussions' between the judges and their supervisors are a central tool for evaluation. In the discussion, the work and actions are evaluated and discussed diversely. The evaluation practices are linked to training and improvement. The evaluation data is used in assessing training needs and in devising and conducting personal training programmes (Pekkanen, 2017[13]).

The main performance indicators for the prosecutorial service are the average disposition time, the total amount of open cases, budgetary expenses per caseload, job satisfaction indicators, effective working time, and caseload.

Quality management

Finish prosecutors must follow guidelines from the Prosecutor General on diversionary measures, on deferred prosecution agreements and guidelines for ensuring homogeneity in the application of the penal code.

The Finnish Prosecution Service's performance guidance system sets out the organisation's quality targets which are monitored annually. The Service has a system of specialised prosecutors, which is used to monitor the management of particularly demanding criminal cases. While the Finnish Prosecution Service has not yet adopted quality management work is underway to introduce a quality management system. Detailed process descriptions will be drawn up and quality management will become an integral part of organisational management. The existing system of specialised prosecutors will also be developed further, especially focusing on the monitoring and improvement of quality.

The criteria being considered in introducing a quality management scheme are:

- *Independence of prosecutors*: The independence of prosecutors is provided in legislation (the Constitution and the Act on the Prosecution Service). According to these acts, the prosecutor's decision is based on his or her consideration alone, and no other body has the right to intervene with the prosecutor's decision, the only exception being the Prosecutor General who may take over the consideration of a case from a subordinate. In such a case, the responsibility for dealing with the case is transferred to the Prosecutor General in full. In Finland, the prosecutors' decisions are not hierarchical, and a prosecutor always makes decisions independently.
- *Impartiality of prosecutors*: In Finland, the prosecutors' decision profiles, i.e. whether they provide consistent, impartial solutions for similar cases, are closely monitored. A system has been set up which the central administrative authority (Office of the Prosecutor General) and each local prosecutor's office can access to monitor the prosecutors' decision profiles digitally in real time (daily if necessary). Impartiality of the prosecutors' activities is also monitored with the help of general instructions given by the Prosecutor General and by the management group of the Finnish Prosecution Service (with representatives from the central administrative office and the local prosecutors' offices). Furthermore, the ethical guidelines of the Finnish Prosecution Service steer and influence the assessment of the prosecutors' work. Complaints against the decisions made by the prosecutor can be addressed to the central administrative authority, the Office of the Prosecutor General. The complaint rulings will have an impact on the quality of the prosecutor's work.
- *Human resources*: The prosecutor recruitment process seeks to select individuals who can contribute to the service efficiently and demonstrate high-quality work. The Finnish Prosecution Service uses a multi-level training system to help prosecutors enhance their professional skills. The workload of each prosecutor can be monitored in real time with the help of digital statistics. If deviations are found, the matter will be investigated.
- *Material resources*: Most of the service's appropriations are allocated to employee pay. But improvement is sought in operations, for example by significantly investing in digitalisation.
- *Working conditions*: The Finnish Prosecution Services is committed to looking after wellbeing at work. Working conditions have a major effect on the quality and the efficiency of the prosecutors' work. Continuous development of working methods is vital as well as good tools and premises. The Service has a flexible attitude towards remote working.

In addition, two other issues have gained prominence recently in Finland's shaping of prosecutors' quality parameters:

- *Organised crime*: The Finnish Criminal Code standardised the definitions for organised crime in 2015. This has facilitated the consideration by prosecutors and harmonised the practices. Specialised prosecutors who deal with organised crime cases follow the legal practice of the courts and report it to the Office of the Prosecutor General. Based on their observations, the quality of the prosecutors' work can be assessed.
- *Terrorist offences*: Concerning terrorist offences, Finland has implemented comprehensive legislation that complies with international treaties. The latest amendments to the Criminal Code were effected in 2014 when training for the purpose of committing terrorist offences, recruitment for the commission of a terrorist offence and funding of terrorist offences were criminalised.

Accountability: Monitoring and reporting

The general strategies concerning the prosecution service are included in the Government Programme and the strategies of the Ministry of Justice. The Ministry of Justice has approved a strategy on criminal policy, which includes considerations on how the resources allotted have been used. The prosecution service has also its own strategy. Criminal justice statistics are provided by the Prosecutor General Office, the Judiciary and Statistics Finland (https://www.stat.fi/til/oik_en.html).

The prosecution service draws up an annual report, and a biannual interim report every six months. In these documents, it is evaluated whether the performance targets that were set have been attained. If targets have not been attained, the most important reasons for this are assessed. Local prosecution offices draw up their corresponding reports. The report shall contain statistics on number and types of cases, caseload, aggregated data on individual performance of prosecutors, resource data (ratios between resources employed and results achieved), analyses of the impact of prosecutorial activity on criminality, and raining activities and attendance records.

There is an internal auditing in the prosecution service. It is used to chart the risks related to operations each year, and to evaluate the chance that they will be realised. Corrective measures are then devised based on the evaluation. The external audit is carried out by the State Audit Office.

The performance of prosecutors' actions can be measured rather objectively by the equality in handling time and the uniformity of decisions in equal criminal offences and cases. The activities of prosecutors can be evaluated by monitoring handling times and identifying the reasons behind delays. The purpose of monitoring the uniformity of decisions is to seek to control that prosecutors decide similar cases in a similar way throughout the country. In this respect, surveys are carried out on how many police investigations result in prosecution in various parts of the country. The figures of individual prosecution offices are compared with the national average. If substantial differences are discovered, the reasons behind them will be investigated in more detail.

Acceptable reasons may exist for the variations, such as the fact that crimes investigated by the police are of a different nature in different parts of the country. In such a case, the activities of prosecutors fulfil the requirement of uniformity despite the difference in the statistics. The final evaluation is made by the Office of the Prosecutor General. The prosecutors' work is also assessed in the specialised prosecutors 'regular meetings in which they analyse the court judgments in cases involving organised crime, ensuring that all specialised prosecutors are informed of the case law. The specialised prosecutor function can enhance the quality and effectiveness of the prosecutors' work. Best practice and any problems that have been observed are highlighted, and prosecutors can be advised to refresh their professional skills. Finally, prosecutors' activities are also evaluated by other parties, e.g. research institutes and individual researchers.

The Finnish Prosecution Service employs performance guidance indicators which measure productivity and economy. They also systematically monitor the prosecutors' decision profiles (i.e. the prosecutors' course of action in similar matters) and the processing times of cases which the prosecutors' have taken up for consideration. The cases are classified according to their average workload and degree of difficulty (competence classification). In demanding criminal cases, special monitoring takes place concerning, for example, the time taken for the consideration of charges. The matters mentioned above can be monitored digitally in real time by the central administrative authority and the local office. Unofficial indicators include the supervisors' reports on the quality and efficiency of the prosecutors' work. Supervisors monitor these matters as part of their role, and they often provide the best overview of the situation since they work closely with the individual prosecutors. The main internal supervision mechanisms to monitor the performance and professional behaviour of individual prosecutors are thus the performance appraisal by the hierarchical superior and a complaints procedure, which can be activated by any person (section 27 of Law 32/2019).

While the Finnish Prosecution Service has not yet adopted a systematic evaluation system, the quality management system currently underway will include one. Currently, evaluation is carried out mainly by the supervisors and the department head, and the observations are discussed in the meetings of the local offices and the central administrative authority. Prosecutors will always be given an opportunity to respond to the observations of their work, in a discussion with the supervisor.

According to section 27 of Law 32/2019, claims and charges against the Prosecutor General and the Deputy Prosecutor General for offences in office are brought in the Supreme Court. The Chancellor of Justice or the Parliamentary Ombudsman serves as the prosecutor in such a case. Claims against a State Prosecutor, a Chief District Prosecutor, a District Prosecutor and a Junior Prosecutor for offences in office are brought in a court of appeal. Such a case is prosecuted by the Chancellor of Justice or the Parliamentary Ombudsman or by a prosecutor assigned by the Chancellor of Justice or the Parliamentary Ombudsman.

The Service does not have a formal internal complaints procedure. If the matter concerns the management of a criminal case, the Prosecutor General, who is at the top of the supervision hierarchy of prosecutors, can take over the consideration of the case from an individual prosecutor. The prosecutor whose case has been taken over is released from the case management and any related responsibilities. This decision cannot be appealed. When the prosecutor's activities are assessed in accordance with the law of public servants and a sanction at a certain level, such as a warning, has been given to the prosecutor, he or she has the right to appeal against the sanction in court.

Significant reforms

According to Jansson (2020) recent reforms have mostly focused on improving the co-operation between investigative police and the prosecution, especially during the pre-trial phase. A major reason for demands of increased collaboration or structural changes to the organisation of preliminary investigations was the fact that charges were often insufficiently prepared by the *stadsfiskals* (prosecutors) because they did not oversee police investigations (Jansson, 2020[14]). A major reform took place in 1996-97 where the new Act on Prosecutors (199/1997) created the Office of the Prosecutor General replacing the former Chancellor of Justice as the highest prosecutorial authority. Immediately the criminal procedure was altered with the enactment of the Criminal Procedure Act of 1997 (689/1997, amended in 2015), which represented in practice a shift from the inquisitorial to the accusatorial or adversarial system). Simultaneously, the Criminal Investigation Act was also amended in 1997 (692/1997, also amended in 2011 and 2015) giving the prosecutor powers to decide whether an investigation should be conducted at all or whether an ongoing inquiry should be discontinued or limited subject to guidelines. Finally, the Criminal Investigation Act that came into force on 1 January 2014 made it mandatory for the public prosecutor to oversee and guide the investigation in serious or complicated cases.

Even if the 2014 Criminal Investigation Act increased the role of the prosecutor, the police remain formally in charge of the investigation and of the use of certain intrusive measures, including arrests, seizure and search. The current system is a sort of compromise between those advocating a total separation of police and prosecution roles in pre-trial investigation and those willing to have a stronger prosecution leading the work of the police during the investigation phase.

Currently, the development priority is to finalise the national, systematic quality management and evaluation system. The work has commenced, with the primary focus on:

- Successful recruitment of prosecutors.
- Sufficiency and correct allocation of resources.
- Maintenance and improvement of the professional skills of prosecutors.
- Effective co-operation between the authorities in national and transnational crime investigation.
- Ability to ensure that the prosecutors' work uniformly (i.e. that the prosecutors make consistent decisions in similar cases).
- Preparedness for new criminal phenomena.

The most recent organisational reform was the enactment of a new Act on the National Prosecution Authority (October 2019). The National Prosecution Authority started to operate as single nationwide office since 1 October 2019. The National Prosecution Authority comprises now the Office of the Prosecutor General that acts as the central administrative unit, and five prosecution districts: Southern Finland, Western Finland, Eastern Finland, Northern Finland and Åland. The Office of the Prosecutor General and the eleven local prosecutors' offices have merged into one single bureau called the National Prosecution Authority. The National Prosecution Authority comprises the Office of the Prosecutor General that acts as the central administrative unit, and five prosecution districts. The most important stated goals of the 2019 reform was favouring the standardising of the decisions made by prosecutors and increase the efficiency of the prosecutorial work. An additional goal was that one nationwide single bureau can make the flexible use of resources possible. If work piles up in one prosecution district, another district can process some of its criminal matters.

A reform envisages a revised system of specialised prosecutors that is going to be introduced at the National Prosecution Authority, in which Senior Specialised Prosecutors act as prosecutors on the national level in cases related to their specialisations that are especially demanding. It aims to help to ensure that the most demanding criminal matters can be handled as efficiently and with as high quality as possible. On the other hand, the mass criminal matters ("high volume crimes"), which can be handled quickly, are to be centralised on the prosecutors that handle such matters on a full-time basis and will be standardised. This could allow improving the uniformity of the decisions made by prosecutors. The reform thus aims to invest in the opportunities of prosecutors to specialise, reinforce the managerial aspects of the prosecutorial work and training system, as well as using increasingly standardised procedures.

France

Status

Prosecutors in France are considered "magistrates" (specifically, "magistrates of the prosecution" or, less formally, "standing magistrates" or *magistrats du parquet* because they shall remain standing during the judicial hearings); they are distinguished from judges (who are called "sitting magistrates" or *magistrats du siège* because they remain seated during the judicial hearings). Those with the title "Prosecutor of the Republic" or *procureur de la République* are attached to a high court (tribunal judiciaire, which is the first instance court for civil and criminal matters), while those attached to a court of appeal or the Court of Cassation (France's highest court in civil and criminal matters) are called "General Prosecutors" or

procureurs généraux. These latter are hierarchically superior. At the top of this hierarchy is the Minister of Justice (also known in France as the Guardian of the Seals or *garde des sceaux*).

The minister of justice implements the prosecution policy determined by the Government. He/she ensures that the application of this policy is coherent throughout the territory of the Republic by addressing general instructions on prosecution to the general prosecutors. The hierarchy within the prosecution service is as follows: the "*procureurs de la République*" (first level) are under the authority of the "*procureurs généraux*" (court of appeal and court of cassation) who can give them instructions regarding the general functioning of their offices and the policy of their jurisdiction and also the decisions to take in a particular case, if deemed necessary. The "*procureurs généraux*" report directly to the minister of justice. As a result of the hierarchy of the prosecution, prosecutors and their substitutes do not benefit from the security of tenure enjoyed by the judges.

The organisation of the Public Prosecutors Office is governed by three principles:

- subordination in the chain of command: public prosecutors are placed under the supervision and control of their superiors and under the authority of the minister of justice.
- indivisibility of the prosecution service: public prosecutors are considered to embody one single person since they act in the name of the prosecution service in its entirety. Consequently, the members of the Public Prosecutors Office can replace each other, including during the judgment phase of a case (which is not allowed for the sitting judges).
- unchallengeable legitimacy of public prosecutors: the legitimacy of the public prosecutor cannot be challenged because he/she defends the interests of society as a whole and applies the policy defined by the government.

The organisation of French prosecutorial services is primarily based on a territorial approach: prosecution services are represented by a prosecutor (as well as, sometimes, substitutes, vice-prosecutors and/or deputy prosecutors) and administrative staff in each court. Under the terms of the Code of Criminal Procedure, the competence of territorial jurisdiction of the courts (Judicial tribunals or "*Tribunaux judiciaires*") prevails over the specialisation. The specialisation of certain jurisdictions appears only for some categories of offenses, including economic and financial crimes. With the law currently in force, the transfer of certain cases to a specialised court cannot be imposed: referral to the specialised courts is optional for the territorially competent Judicial tribunal, except for stock market criminal offenses.

The role of prosecutors was not specifically mentioned in the original text of the Constitution of the Fifth Republic (which dates to 1958). The status of prosecutors and other magistrates (i.e. judges) is regulated in article 5 of the ordinance of 22 December 1958, which is an organic law. The text in the ordinance setting out the role of prosecutors is brief: "Prosecutors are under the direction and control of their hierarchical superiors and under the authority of the Guardian of the Seals, the Minister of Justice. At hearings, they are free to speak" (article 5).[3]

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

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

The selection of prosecutors was later made similar to the selection of judges. This coincided with a change to the Constitution in 1993. At that time, Article 65 of the Constitution was amended, introducing the position of prosecutor into the constitutional text for the first time. That article concerns the Higher Council of the Judiciary, which already existed and was already involved in the selection of judges. For the first time, this institution was separated into two bodies, one responsible for judges and the other for prosecutors. The body responsible for prosecutors was to give its opinion on the nomination of prosecutors (except for high-level prosecutors selected by the Council of Ministers) and to give its opinion on disciplinary sanctions for prosecutors. This brought the process for selecting prosecutors closer to that for selecting judges, with one important difference: The Higher Council of the Judiciary can only give its opinion about nominations of prosecutors.

The *Conseil constitutionnel* issued a decision of 8 December 2017, which had explaining the functioning of the independence of the prosecutors in this system.[4] In accordance with the 25 July 2013 Law[5], prosecutors enjoy full authority about when to use their powers (with the prohibition to the Minister of Justice from issuing instructions in individual cases). At the same time, the Minister of Justice remains responsible for directing the Government's policies on crime, including issuing general instructions to prosecutors.

At the end of 2016, legislation was passed, which involved amendments to the ordonnance of 22 December 1958, which governs the selection of prosecutors (and other magistrates). One of the changes was that certain high-level prosecutors are no longer selected by the Council of Ministers but using the ordinary (and more transparent) system for all prosecutors. The 2016 amendments to the ordonnance brought in other changes in relation to the measurement of performance.

There is no financial autonomy of the prosecutorial service. The budget of the Directorate General of the Justice (JSD) of the Ministry of Justice includes the courts, prosecution and penitentiary service. The Judicial Services Department (JSD) of the Ministry of Justice is responsible for ensuring the organisation and proper functioning of all courts of general jurisdiction, including the prosecutorial service (i.e. civil and criminal courts), not the administrative courts.

Investigation and Prosecution

The vast majority of criminal cases are investigated by the police under the supervision of the prosecutor (parquet); only in cases deemed as very serious, time-consuming or complex cases (crimes) is the investigation under the authority of the investigating judge (*juge d'instruction*), though the prosecutor may choose to refer other (typically complex) cases also to the investigating judge.

Under the French legal system, criminal investigations are carried out by the judicial police under the authority and supervision of the prosecutor of the Republic. At the end of the investigation, the prosecutor decides whether there is enough evidence to bring the case before a criminal court. France follows the opportunity principle, also called principle of expediency.[6] The costs of the investigation incurred by the police are paid by the Ministry of the Interior whereas those incurred by the prosecutors and investigating magistrates are paid from the budget of the Ministry of Justice.

The prosecutor is not obliged to prosecute a criminal offence in any case but is free, according to the specific and concrete circumstances of the case, to decide whether to prosecute or not. Yet the deciding prosecutor must make a statement of reasons. Consequently, when the offender's behaviour falls clearly and without any doubt into the legal definition of a criminal offence (i.e. the *actus reus* and *mens rea* are constituted) and when the offender has been identified, the prosecutor has to consider whether to prosecute or another action is to be followed. The victims of the offence play almost no role in this decision, but they may undertake a criminal procedure on their own should the prosecutor abstain from doing so (by referring to an investigating judge (*juge d'instruction*) or by applying to the court directly.

For most complex cases requiring thorough investigations, the Prosecutor can ask an investigating magistrate to conduct the investigations. The investigating magistrate is an independent judge specialised in criminal investigations.

For most serious offenses, qualified as crimes by the French Penal Code (i.e. punishable by prison above 10 years and up to life sentence), the investigation can only be conducted by an investigating magistrate with the assistance of the judicial police. When the case is complex, or when the crime qualifies as a criminal act (murder, rape, terrorism, etc.) the investigation is mandatorily supervised by an investigating judge. At the end of his investigation, the investigating magistrate decides whether there is enough evidence to hand over the suspects before a court of law for them to be judged. In case there is not enough evidence the investigating magistrate closes the investigation. If new evidence is found later the investigation can be reopened if the crime is not reached it statute of limitations. For certain offenses, if the perpetrator acknowledged his/her responsibility for the crime, the prosecutor could offer him a plea bargain.

In France, the Code of Criminal Procedure (CCP) states that the *procureur* has formal authority over the police services when they investigate criminal offences. Under French legal provisions, although the police hold discretionary powers, they must always refer to the prosecutor who is the only authority that can decide whether a case should enter the criminal justice system.

In order to facilitate the execution of their duties, the Code provides that prosecutors can issue general instructions (apart from the specific instructions they give in individual cases) to investigators in which they explain the choices and the priorities in the detection of particular categories of crimes. The police must report to prosecutors all offences known to them and seek instructions as to the lines of investigations. They also have the formal obligation to inform the public prosecutors of all arrests they make and of the decision to put a suspect in police custody, as well as to seek their authorisation for the use of intrusive investigation techniques. The prosecutors may, if they think proper, take over the investigation themselves. In the case of serious offences and complex investigations the public prosecutors can request that a judicial inquiry be opened. The case is then brought to the *juge d'instruction*, who opens the judicial inquiry.

When an offense is committed and its perpetrator is identified, the prosecutor can decide:

1. To close the case, relying on the opportunity principle (because of the little amount of the prejudice, situation of the perpetrator, and so forth).
2. Various modalities of alternative measures to prosecution (under section 41-1 of the Code of Criminal Procedure).
3. Penal composition measures for offences punishable with less than 5 years imprisonment (the penal composition may consist of a penal order, fine, or other measures such as courses related to the crime in order to be sensitised of consequences of it, care obligation, prohibition to meet someone or go somewhere, giving for a determined period his driving licence or hunting licence, or execution of unpaid work), that needs to be accepted by the defendant and approved by a judge. It is a criminal settlement foreseen in the article 41-2 and 41-3 of the Code of Criminal Procedure.
4. Deferred Prosecution Agreement, known in French as *Convention Judiciaire d'Intérêt Public* (CJIP), a non-criminal financial penalty for corporate corruption-related criminal offences.[7]
5. Prosecution against the perpetrator in simplified terms: without a hearing, by penal order (on a proposal for a sentence from the prosecution); by appearance on prior admission of guilt (with a hearing to approve the proposed sentence negotiated by the prosecution).
6. Proceedings before the criminal court.
7. Referral to an Investigating Judge in order to open a Judicial Information.

Management tools

Management by results

There is no management by results scheme properly speaking, but there are bonuses depending on the participation of a given prosecutor to the workload of his/her jurisdiction. The scheme is based on quantitative targets (duration of the penal response ratio) and qualitative (percentage of actions alternative to prosecution and detention). The targets are decided by the Minister of Justice on proposal by the General Prosecutor and in liaison with the judges. At the local level, the targets are the result of a dialogue of the General Prosecutor with the local prosecutors (*procureurs de la République*) and are based on the establishment of priorities (e.g. chasing drunk drivers, protecting the environment, prevention of street crime, etc.). The establishment of targets is co-ordinated with the police, customs, gendarmerie, tax police and so forth. If the right to defence may result affected by the target setting exercise, the legal counsels of the defendants through the local bar associations also participate in the process.

There is no regulation on the workload of prosecutors, but the attribution of means to the various jurisdictions is in practice a way of factoring in the different workloads.

Standardisation

"The pressing concern for efficiency and effectiveness has led to the practice of "*directives permanentes*" which standardise the response to certain mass offences. Usually, police officers must ring the prosecutor's office to report on every case they investigate, so that the procureur can decide whether to prosecute or not and which procedural pathway is most appropriate to the case. Permanent instructions allow public prosecutors to delegate part of their casework to police officers by providing them with set tables for mass offences, such as drink driving, shoplifting and cannabis possession, which allow them to determine the appropriate prosecution pathway following grading scales, depending on blood alcohol level, quantity of drugs, or value of stolen goods for example. This system allows police officers to issue the paperwork and send case files directly to the *Maison de la Justice et du Droit* (MJD – House of Justice) which deals with out-of-court disposals on behalf of the public prosecutors' office. Although the suspect's previous encounters with the system are considered, this system leads to a routinisation of the criminal justice process." (Hodgson and Soubis, 2017, p. 16[15])

The prosecutors are subject to the obligation to prevent personal conflicts of interest. Article 7-1 of the ordinance of 22 December 1958, created by law n° 2016-1090 of 8 August 2016, "the magistrates take care to prevent or put an immediate end to situations of conflict of interest".

Any situation of interference between a public interest and public or private interests which is likely to influence or appear to influence the independent, impartial and objective exercise of a function constitutes a conflict of interest".

Specialisation

The main specialised jurisdictions in the economic and financial fields are:

- The National Financial Prosecutor's Office (*Parquet National Financier- PNF*), created by the law of December 6, 2013. As of December 31, 2016, it comprised 15 magistrates, i.e. less than in the economic and financial section of the Paris prosecutor's office, and 14 support staff (including 4 specialised assistants), compared to 6 in January 2014. On December 31, 2017, the workforce increased to 18 magistrates and 18 support staff (including 5 specialised assistants and an assistant lawyer). The PNF has six departments: the Central Office for the Fight against Corruption and Financial and Tax Offenses (OCLCIFF), the Central Office for the Repression of Major Financial Crime (OCRGDF), the judicial police of the Paris Police Prefecture (financial brigade, economic crime repression brigade), the Financial Judicial Investigation Service (SEFJ), the National Gendarmerie, the regional judicial police services (Parquet National Financier, 2020[16]).

- The specialised interregional jurisdictions (*Juridictions interrégionales spécialisées-JIRS*), created by the law of March 9, 2004 and set up in October 2004. The JIRS bring together judges, prosecutors and investigators with experience in the fight against organised crime and financial crime in cases of great complexity. The law gave an extended territorial, interregional, competence to 8 established jurisdictions, given the importance of the disputes handled and the aspects related to transnational co-operation: Paris, Lyon, Marseille, Lille, Rennes, Bordeaux, Nancy and Fort of France. Specialised in these technical matters, magistrates are relieved of simpler cases and benefit from the support of specialised assistants (customs, taxes, etc.) The JIRS benefit from innovative investigative devices (infiltrations, sound systems, joint investigation teams between different countries) (Ministry of Justice of France, 2020[17]).
- The economic and financial poles (PEF), created in the 1990s and abolished in 2013, except for that of Bastia. However, a new pole was created at the Nanterre Judicial tribunal in 2017.

According to the law, the transfer of certain cases to a specialised court cannot be imposed: referral to the PEF or to the JIRS is optional for the territorially competent Judicial tribunal. The same goes for referral to the PNF, except for stock market offenses.

The French *Cour des comptes* (Court of accounts), has noted that the PNF and the JIRS prosecutors have a wide margin of appreciation and decide which cases they take on. Recently, despite potentially overlapping interventions, a complementarity seems to be emerging between the PNF and the economic and financial JIRS, the latter concentrating their action on cases with links to organised criminality. The specialised courts, including the economic and financial poles of the judicial tribunal, handle the most complex cases, which only represent 2 to 3% of cases (Court of Accounts of France, 2019[18]) (Ministry of Justice of France, 2019[19])

A new specialisation field on antiterrorism was introduced by the Law n° 2019-222, of 23 March 2019, of Programming the Reform of the Justice System 2018-2022.

Human resources

A structured system of professional training is aimed at ensuring the quality of the judicial and prosecutorial performance:

- Induction training: Professional judges or the ordinary judicial order are recruited as trainees to attend the National School for the Judiciary (*Ecole Nationale de la Magistrature*, ENM), located in Bordeaux, for an induction training lasting 31 months. The selection is carried out by panels made up of ordinary judges and chaired by a counsellor of the Cassation Court (Supreme Court). This training has several phases: 1) six months theory followed by 9 months of practical training in a court room, on matters such as ethics, exploring witnesses, adjudication, etc.; 2) five weeks outside the French judiciary in non-judicial French institutions or abroad; 3) four months of enhanced immediate preparation in judicial techniques prior to joining a court.
- Continuous training: Since 2008, five days per year of judicial training has been compulsory in the ordinary judicial order. In the administrative judicial order, judicial training is not compulsory, but the Vice-President of the Council of State has set the target of each judge receiving at least three days of training per year. Training for members of the ordinary judicial order is provided by the National School for the Judiciary (*Ecole Nationale de la Magistrature*, ENM); each judge is required to attend one session at the ENM per year. Training for judges of the administrative order is provided by the *Centre de formation de la jurisdiction administrative* (CFAJ) of the Council of State.

Accountability: Monitoring and reporting

Ordinance of 22 December 1958 on the statute of the judiciary sets, as a general principle, that "Magistrates are only responsible for their personal faults". Consequently, and according to a principle which is common to all civil servants, if a magistrate's fault has no connection with the exercise of his/her functions, he/she is liable under the conditions of the general law. Magistrates therefore do not benefit from any special privilege or immunity in the judicial treatment to which they are subject. On the contrary, when the personal fault of the magistrate is traceable to his/her judicial activity of public service, the litigant can only bring a civil action against the State. This latter shall compensate the victims of the deficient functioning of the public service (*faute de service*) of the justice, defined by the Cassation Court in 2001 as “any failure characterised by a fact or a series of facts revealing inaptitude of the justice system (service public) to fulfil its mission” (Police Scientifique, 2020[20]).

As said, in France, a judge or prosecutor can only be held disciplinarily responsible out of *fautes personnelles*, not out of *fautes de service*, as any other civil servant. In matters of criminal liability, judges do not enjoy any privilege: they do not enjoy any immunity and are prosecuted under the conditions of ordinary law.

Magistrates are subject to a specific disciplinary liability regime, in the event of “breaching the obligations befitting their status, the honour, the thoughtfulness (*délicatesse*) or the dignity". The disciplinary procedure involves the referral to the High Council of the Magistracy (CSM), which, at the end of a public and adversarial procedure, delivers, for public prosecutors, an opinion possibly to be taken up by the Minister of Justice. The Minister of Justice can, in accord with the heads of appellate courts, initiate a disciplinary procedure against a *Judge du Siège* (judge) and lodge a request for it with the High Council of the Magistracywhen a *Magistrat du Parquet* (prosecutor) is targeted. The CSM can be seized for disciplinary proceedings against a magistrate in three ways: by the Keeper of the Seals (Minister of Justice); by presidents (or general prosecutors) of the first court of appeal; and, since the constitutional revision of July 23, 2008 implemented by the organic law of July 22, 2010, directly by any litigant who considers that the behaviour of a magistrate during proceedings concerning him/her should be disciplined. This is carried out with strict admissibility conditions through a “*commission d’admission des requêtes*” which makes the triage of the complaints before sending them to the Discipline Council of the High Council of the Magistracy.

Disciplinary proceedings must be initiated by the Minister of Justice or first courts of appeal’s general prosecutors, but a draft law on the justice foresees one-year statute of limitations within 3 years as soon as the reality, nature and scale of the facts are known. A prosecutor or judge may be suspended from his/her duties during the investigation in case of emergency. In such a case, often when a criminal proceeding is on-going against that judge or prosecutor, the Minister of Justice after consultation with the courts of appeal presidents (or general prosecutors), may refer to the Council the suspension of a judge or prosecutor. Except the suspension, there is no other restriction which could be taken against the judge or prosecutor. He/she may apply for a new function during the substantiation of the disciplinary proceeding.

The disciplinary sanctions are reprimand with an entry in the prosecutor or judge's personal file; transfer; separation of certain functions; demotion; suspension from office for a maximum of one year with total or partial withholding of the remuneration; demotion to a lower prosecutorial echelon; compulsory retirement or ceasing to exercise with or without suspension of pension rights; or revocation (dismissal). The disciplinary decisions of the High Council of the Magistracy concerning judges can be appealed before the Council of State, but the appeal must be based only on points of law; however the notice from the High Council of the Magistracy about prosecutors can be appealed only when the Ministry of Justice have taken a sanction in an act separate from the notice (the appeal then focus on the act of the Ministry of Justice and it is an appeal to the Administrative Court on the ground of abuse of authority).

The Constitution entrusts the "*Cour des comptes*" to audit and evaluate the State and public policies, among which the judiciary and the prosecution services (French SAI, 2019[21]). Below are some abstracts of the December 2018 *Cour des comptes* report on "*Methodological approach to costs of justice: survey on the measurement of the activity and the allocation of resources of the judicial courts*", Communication to the Finance, General Economy and Budgetary Control Committee of the National Assembly:

> *Si le taux de réponse pénale des parquets se maintient à un niveau élevé, il a diminué entre 2013 et 2017, passant de 89,6% à 87,8% des affaires poursuivables. Ainsi les réformes législatives qui, avec les compositions pénales et les procédures alternatives aux poursuites, permettent à la fois d'accroître la réactivité dans le traitement des délits par les juridictions et de mobiliser des magistrats et personnels de greffe sur des enjeux d'action publique nécessitant des moyens plus importants, semblent ne pas atteindre pleinement leurs objectifs. [While the criminal prosecution response rate remains at a high level, it decreased between 2013 and 2017, dropping from 89.6% to 87.8% of prosecutable cases. Thus the legislative reforms which, with the penal compositions and the alternative procedures to prosecutions, make it possible both to increase responsiveness in the treatment of offenses by the courts and to mobilise magistrates and registry staff on issues of action public sector requiring greater resources, do not seem to fully achieve their objectives].*

Table A C.1. Activity of the French prosecution services in criminal matters (2013-2017)

	2013	2014	2015	2016	2017	Variation 2013-2017
Business orientated *(Affaires orientées)*	4 355 958	4 366 266	4 260 836	4 479 808	4 241 508	-2.70%
Classification of non-prosecutable cases *(Classement d'affaires non poursuivables)*	3 052 489	3 038 040	2 996 217	3 112 642	2 947 126	-3.58%
Orientation of prosecutable cases *(Orientation des affaires poursuivables)*	1 303 469	1 327 980	1 264 619	1 367 166	1 294 382	-0.70%
Including prosecutions *(Dont poursuites)*	600 652	597 194	579 858	595 592	595 261	-0.91%
Prosecutions including criminal compositions *(Dont compositions pénales)*	73 732	70 576	67 134	67 998	63 207	-16.65%
Including alternative procedures to prosecution *(Dont procédures alternatives aux poursuites)*	493 089	507 440	463 960	512 146	475 413	-3.72%
Including classification with no further action *(Dont classement sans suite)*	135 996	152 770	153 667	191 430	160 501	15.27%
Criminal response rate *(Taux de réponse pénale)*	89.60%	88.50%	87.80%	86.00%	87.80%	

Source: French Court of Auditors according to key figures from Justice (2014 to 2018 Editions).

Table A C.2. Number of criminal cases handled by judges and prosecutors per year

	2014	2015	2016	2017	2018 prévision actualisée	Évolution 2014-2018
Court of Appeal (magistrate) *Cours d'appel (magistrat du siège)*	277	262	260	255	260	-6.54 %
Court of Appeal (public prosecutors) *Cours d'appel (magistrats du parquet)*	401	387	384	374	380	-5.53 %
High courts (magistrate) *Tribunaux de grande instance (magistrat du siège)*	832	865	870	847	860	-0.23 %
High Courts (public prosecutor) *Tribunaux de grande instance (magistrat du parquet)*	1 149	1 080	1 147	1 079	1 115	-3.05 %

Source: French Court of Accounts according to projects and annual performance reports, justice mission (2014-2019) – Statistical data (prosecution officials, investigations directory, national criminal record) for the year are only known two years later.

Organic law n ° 2001-692 of 1 August 2001 on finance laws provided the Parliament with assessment tools to evaluate the performance of public policies in return for the autonomy granted to managers. The "annual performance projects", attached to the bill finance laws, specify the programme strategy, the objectives, the performance assessment indicators and the effectiveness of the action, and the expected results. These commitments are assessed in the year following the budget execution using "annual performance reports" where programme managers report their results (Government of France, 2019[22]).

The internal audit is ensured by the Inspectorate General for Judiciary Services of the Ministry of Justice. Please find below an abstract of the annual performance report of the Ministry of Justice for 2019:

Table A C.3. Number of criminal cases handled by Judges and Prosecutors

	Unité	2017 Réalisation	2018 Réalisation	2019 Prévision PAP 2019	2019 Prévision actualisée	2019 Réalisation	2020 Cible PAP 2019
Court of Cassation (*Cour de Cassation*)	Nb	102	96	105	Non determined	Non determined	170
Court of Appeal (magistrate) *Cours d'appel (magistrats du siége)*	Nb	255	253	265	265	Non determined	275
Court of Appeal (public prosecutors) *Cours d'appel (magistrats du parquet)*	Nb	374	386	385	390	Non determined	395
High courts (magistrate) *Tribunaux de grande instance (magistrat du siège)*	Nb	847	841	965	Non determined	Non determined	880
High Courts (public prosecutor) *Tribunaux de grande instance (magistrat du parquet)*	Nb	1079	1073	1140	Non determined	Non determined	1160

Source: (Government of France, 2019[22]).

Commentaires techniques

Source des données:

Secrétariat général de la Cour de cassation, cadres des parquets pour les cours d'appel et Cassiopée pour les tribunaux de grande instance.

Mode de calcul:

Pour le PAP 2015, un nouvel indicateurs a été créé fusionnant les anciens indicateurs 2.4 et 2.4 concernant respectivement le nombre d'affaires pénales traitées par magistrat du parquet et du siège. Le sous-indicateur "Cours d'appel" (magistrats du parquet) a été créé dans cette nouvelle présentation.

Pour la Cour de cassation, il s'agit du calcul du nombre moyen de dossiers par rapporteur (nommé dans ces dossiers), terminées dans l'année. Ce chiffre comprend l'ensemble des affaires terminée (ensemble des cassations et des affaires refusées aux motifs d'use non admission, d'un désistement ou d'use déchéance).

Pour les cours d'appel (siège et parquet), le numérateur intègre le nombre total des affaires terminées (arrêts et ordonnances) des chambres de l'application des peines, chambres de l'instruction, et chambre des appels correctionnels.

Devant les tribunaux de grande instance, pour le siège, au numérateur, il s'agit des jugements correctionnels auxquels s'ajoutent les CRPC homologuées, les compositions pénales réussies et les ordonnances pénales. Toutefois, la réalisation 2013 reste celle du PAP 2015 qui intégrait tous les ETPT de magistrats du parquet alors que, depuis 2015, seuls les ETPT affectés sur l'activité pénale sont pris en compte.

Technical comments

Data source:

General Secretariat of the Court of Cassation, prosecution officials for the courts of appeal and Cassiopeia for the high courts.

Calculation method:

For the 2015 PAP, a new indicator was created merging the old indicators 2.4 and 2.4 respectively concerning the number of criminal cases handled by prosecutors and judges. The 'Courts of Appeal' (public prosecutors) sub-indicator has been created in this new presentation.

For the Court of Cassation, this is the calculation of the average number of cases per rapporteur (named in these cases), completed during the year. This figure includes all completed cases (all cassations and cases refused on grounds of non-admission, withdrawal or forfeiture).

For appeal courts (headquarters and prosecution), the numerator incorporates the total number of completed cases (judgments and orders) of the penalty enforcement chambers, investigative chambers, and correctional appeals chamber.

Before the high courts, for the seat, the numerator includes correctional judgements to which are added the approved CRPCs, successful penal compositions and penal orders. However, the 2013 achievement remains that of the 2015 PAP, which included all FTEs of public prosecutors, whereas since 2015, only FTEs assigned to criminal activity have been taken into account.

Legislation passed at the end of 2016 introduced an obligation for reporting on the evaluation and monitoring the work of public prosecutors. General Prosecutors (i.e. those attached to courts of appeal) must, within six months of taking office, "define the objectives of their activity". These prosecutors must also publish a report every two years of their activities (article 38-1 of the Ordonnance of 22 December 1958, as amended in 2016). On the other hand, prosecutors and judges are required, within two months

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

The General Inspection of the Justice (*Inspection générale de la justice*) was created by Decree nº 2016-1675 of 5 December 2016 entering into force on the 1st of January 2017. It is the result of a merger of the General Inspection of the Judicial Services, Inspection of the Services for the Judicial Protection of the Youth, and the Inspection of Penitentiary Services (Ministry of Justice of France, 2020[23]). Its role is the inspecting, controlling, studying, advice and evaluation of all the bodies and institutions of the Ministry of Justice, the judges (only *juges judiciaires* not administrative judges) and prosecutors. Among its responsibilities is the performance evaluation of courts administrations, individual judges and prosecutors and issue recommendations to the Minister. The State Council (*Conseil d'Etat*) nullified the article 2 of the Decree by making it clear that the General Inspection could not control the Cassation Court (Conseil d'État, 2018[24]).

Significant reforms

Law n°2019-222 of March 23, 2019 for 2018-2022 programming and reform of justice relating to alternatives to prosecution, prosecution and judgment (« *loi de programmation 2018-2022 et de réforme pour la justice relative aux alternatives aux poursuites, aux poursuites et au jugement* ») (Ministry of Justice of France, 2019[25]). This legislation foresees several provisions in many areas of the criminal justice system. Among others it aims at reinforcing the role of the prosecutors as directing the police in investigations and the co-ordination of prosecutors by one of the "prosecutors of the republic" within the judicial courts' jurisdictions.

Ireland

Status

The prosecution service is a part of the executive but is independent of any other parts of the executive, including the government. The Office of the Director of Public Prosecutions (DDP) is the principal public agency for conducting criminal prosecutions. It is led by the Director of Public Prosecutions, who must be a practising barrister or a solicitor. Section 1 of the Act defines a professional officer as "an officer who is a barrister or a solicitor." This effectively provides a definition of what is meant by a prosecutor who may therefore be defined as a Civil Servant of the State employed in the Office of the DPP who has the professional qualification of being either a barrister or a solicitor which are the two branches of the legal profession in Ireland.

The Director is appointed by the Government upon proposal of a statutory committee made up of the Chief Justice, the Chairman of the General Council of the Bar in Ireland, the President of the Incorporated Law Society, the Secretary to the Government and the senior Legal Assistant in the Office of the Attorney General (article 2-7 of the 1974 Prosecution of Offences Act). The Government can decline to appoint any person recommended and can make a further request to the committee for a recommendation. The Government has, however, no power to appoint a person not recommended by the committee. (Prosecution of Offences Act section 2).

The prosecution system is not described or set out fully in any one document. It is grounded in the Constitution and in statute law, notably the Prosecution of Offences Act 1974. The prosecution system has developed from the common law tradition and many important practices and rules in Ireland have their basis in common law, that is, judge-made law.

The Director is defined as being a civil servant in the Civil Service of the State. This term has a particular meaning in Irish law: the expression Civil Service of the State is used, in contradistinction to the expression Civil Service of the Government, to denote civil servants who work within independent branches of the State which are not controlled by the Government such as the Courts Service or the office of the Attorney General. The purpose of this provision is to secure the independence and non-political status of the Director (Hamilton, 2008[26]).

The Director holds office on terms and conditions determined by the Taoiseach (government). The first two holders of the office were appointed until age 65 (the normal civil service retirement age); the current holder is appointed for a 10-year term which is non-renewable but pensionable at its termination.

The Director may be removed by the legal causes and through the procedure foreseen in article 2-9 of the Law, i.e. following consideration of a report of an inquiry, into the physical or mental health or conduct of the Director, carried out by a committee consisting of the Chief Justice, a High Court judge nominated by the Chief Justice and the Attorney General. To date there have been only three Directors in the 46 years of the office's existence none of whom have been removed from office.

To reinforce the independence of the Director the Act (article 6) makes it unlawful to communicate with the Director or his officers for the purposes of influencing a decision to withdraw or not to initiate criminal proceedings or any particular charge in criminal proceedings unless the person making the communication is a defendant or complainant in criminal proceedings or believes that he is likely to be a defendant, or is a person involved in the matter either personally or is a legal or medical advisor, a social worker or a member of the family of such an involved person. As said, the Act provides that the Director of Public Prosecutions is to be a civil servant in the service of the State. The thinking behind this provision was to reinforce the independence of the Director given the strong guarantees of security of tenure held by senior office holders in the civil service.

The agency was founded in 1974 assuming prosecutorial functions previously held by the Attorney General. The original powers of prosecution were vested with the Attorney General under the Ministers and Secretaries Act 1924. The Prosecution of Offences Act 1974 delegated the functions of the Attorney General to the Office of the Director of Prosecutions. It is responsible for conducting reviews of files prepared by law enforcement agencies including the national police service (*An Garda Síochána*) and deciding whether to prosecute.

The office of the DPP is located in Dublin and deals with all court work taking place in Dublin, including trials in the Dublin Circuit Criminal Court, the Central Criminal Court, the Special Criminal Court, as well as all appellate cases and judicial review heard in the High Court, the Court of Appeal or the Supreme Court, almost all of which are heard in Dublin. The office also gives directions to State Solicitors in relation to cases heard outside Dublin in the Circuit Criminal Courts and instructs outside counsels to appear in court.

Article 30.3 of the Constitution provides as follows: "All crimes and offences prosecuted in any court constituted under Article 34 of this Constitution other than a court of summary jurisdiction shall be prosecuted in the name of the People and at the suit of the Attorney General or *some other person authorised in accordance with law to act for that purpose*."

The Prosecution of Offences Act 1974 established the Director of Public Prosecutions as an officer authorised in accordance with law to act for the purpose of prosecuting in the name of the People as provided for in Article 30.3 of the Constitution. Section 3(1) of the 1974 Act provides as follows: "*Subject to the provisions of this Act, the Director shall perform all the functions capable of being performed in relation to criminal matters and in relation to election petitions and referendum petitions by the Attorney General immediately before the commencement of this section and references to the Attorney General in any statute or statutory instrument in force immediately before such commencement shall be construed*

accordingly". The 1974 Act thereby conferred on the Director of Public Prosecutions the function of prosecuting both on indictment and summarily.

In Ireland, criminal cases are divided into two types – indictable offences and summary offences:

- *Indictable offences* are the more serious cases; they are heard by a judge and jury in the Circuit Criminal Court or the Central Criminal Court; they carry the most serious penalties if the court convicts the accused; They can sometimes be dealt with in the Special Criminal Court by three judges sitting without a jury; they are subject to appeal to the Court of Appeal. The conduct of trials on indictment in the Circuit Court outside Dublin is handled by counsels practising at the Bar who are engaged to represent the Director of Public Prosecutions on a case by case basis. Counsels prosecute in accordance with the Director's instructions. They are called Local State Solicitors. The solicitors' work involved in handling these cases, as well as certain criminal law business carried out in the District Courts, is carried out by local State Solicitors. These are solicitors in private practice who handle these cases on behalf of the Director on a contract basis. When vacancies arise, the positions are advertised and filled by a competition. There is outside representation on all interview panels. The local State Solicitors are not employees of the Director. Their contracts are for a period of 10 years. There are 25 counties in the State outside Dublin. In 21 of these there is a single State Solicitor, in each of four, Galway, Kildare, Limerick and Tipperary there are two State Solicitors and in Cork there are four making a total in all of 32. These arrangements essentially mirror the geographical jurisdiction of the courts of local and limited jurisdiction.
- *Summary offences* are less serious offences; they are heard by a judge without a jury in the District Court and on appeal in the Circuit Court; they cannot be subject to a maximum prison sentence of more than 12 months for any one offence. Summary prosecutions are brought in the District Court in the name of the Director of Public Prosecutions. Yet in practice, the great majority are presented by members of the Police (*Garda Síochána*) without specific reference to the Office of the DPP, except in cases where the *Garda Síochána* are required to seek direction from the Director or where for some other reason they seek instructions.

Under section 8 of the Garda Síochána Act 2005, members of the Garda Síochána who prosecute summarily in the course of their official duties must do so in the name of the Director of Public Prosecutions and must comply with any directions given by the Director, whether of a general or specific nature. The Director of Public Prosecutions may give, vary or rescind directions concerning the institution and conduct of prosecutions by members of the Garda Síochána. Directions may be of a general or specific nature and may, among other things, prohibit members of the Garda Síochána from: (a) instituting or conducting prosecutions of specified types of offences or in specified circumstances; or (b) conducting prosecutions beyond a specified stage of the proceedings.

The Director may assume the conduct of a prosecution instituted by a member of the Garda Síochána at any time. General directions governing the conduct of prosecutions in the name of the Director of Public Prosecutions are now issued by the Director.[8] Those general directions outline the categories of cases in which the decision to institute or continue a prosecution lies solely with the Director, and those cases where the Garda Síochána have been delegated the authority to institute criminal proceedings without reference to the Office of the DPP. There are also many regulatory offences which may be prosecuted in the District Court by a variety of State agencies- for example, building regulations, planning and environmental regulations. In practice, the Director is not involved in such cases except where serious breaches are involved and there is a power to prosecute on indictment.

Section 2(5) of the 1974 Act provides that the Director of Public Prosecutions shall be independent in the performance of the Director's functions. Section 6(1) of the 1974 Act underscores that obligation of independence by making it unlawful for persons – other than a victim of a crime, a family member of a victim of a crime, an accused person, a family member of an accused person, or a lawyer, doctor or social worker acting on behalf of a client – to communicate with the Director or the Director's officers for the

purpose of influencing the making of certain decisions. They include decisions to withdraw or not to initiate criminal proceedings or any charge in criminal proceedings, to apply for a review of sentence, to apply for a re-trial order, or to seek leave to appeal an acquittal. The effect and application of section 6(1) of the 1974 Act was extended by section 2 of the Criminal Justice Act 1993 and sections 21 and 29 of the Criminal Procedure Act 2010.

The Director of Public Prosecutions independently enforces the criminal law in the courts. To this end, the Director directs and supervises public prosecutions on indictment in the courts and gives general direction and advice to the Garda Síochána in relation to summary cases if specific direction in such cases were requested. The Director decides whether to charge a person with criminal offences, and what the charges should be. The Office of the DPP defines its mission as being "to provide on behalf of the People of Ireland a prosecution service that is independent, fair and effective".

Strong hierarchy

The DPP's office in Ireland is a very hierarchical model since the constitutional and statutory provisions confer all the powers of criminal prosecution in indictable offences (i.e. serious crime triable before a jury) on the Director. Of course, no single individual could possibly personally exercise all these powers. So the Act confers a power of delegation on the Director in the following terms: "A law officer may direct any of his professional officers to perform on his behalf and in accordance with his instructions any particular function of the law officer in relation to a particular case or cases or in all cases in which that function falls to be performed." ((section 4. (1)(a))." As can be seen this model is an extremely hierarchical one in which in principle every prosecutorial act is that of the Director but may be delegated to one of her officers.

Discretion to prosecute

In the case of indictable offences brought at the suit of the Director, the decision to prosecute or not to prosecute is taken by the Director personally or by an officer of the Director who is authorised to take such a decision. That decision is based on the principle of opportunity or expediency. As in other common law systems, a fundamental consideration when deciding whether to prosecute is whether to do so would be in the public interest. A prosecution should be initiated or continued, subject to the available evidence disclosing a prima facie case, if it is in the public interest, and not otherwise. There are many factors which may have to be considered in deciding whether a prosecution is in the public interest. Often the public interest will be clear but, in some cases, there will be public interest factors both for and against prosecution (Department of Public Prosecutions, Ireland, 2019[27]).

Factors which prosecutors shall consider in assessing whether to commence or continue with such a prosecution include: (i) the nature of the offence allegedly committed by the suspect; (ii) whether there is any information that coercion or duress was exercised against the suspect in the context of the alleged offence; (iii) where there are allegations that the suspect was subjected to duress – whether it is alleged that this included violence or threats of violence or the use of force, deceit or fraud, or an abuse of authority or exploitation of a position of vulnerability; and (iv) whether the suspect has co-operated with the authorities in relation to any offences believed to have been committed against the suspect.

A decision not to prosecute because the evidence is not sufficiently strong could be considered as an aspect of the consideration of the 'public interest'. It can be said that it is not in the public interest to use public resources on a prosecution case which has no reasonable prospect of success. A prosecution should not be brought where the likelihood of a conviction is effectively non-existent. Where the likelihood of conviction is low, other factors, including the seriousness of the offence, may come into play in deciding whether to prosecute. However, this does not mean that only cases perceived as 'strong' should be prosecuted. The assessment of the prospects of conviction should also reflect the central role of the courts in the criminal justice system in determining guilt or innocence. A preconception on the part of the

prosecutor as to views which may be held by a jury about the subject of the offence is not a material factor. The prosecution must assume that the jury will do its duty and act impartially.

The constitutional rights to a trial in due course of law and to fair procedures found in Articles 38.1 and 40.3 of the Constitution place a duty on the prosecution to disclose to the defence all relevant evidence which is within its possession. “the prosecution are under a duty to disclose to the defence any material which may be relevant to the case which could either help the defence or damage the prosecution and that if there is such material which is in their possession they are under a constitutional duty to make that available to the defence” (Michael McKevitt v. DPP, Supreme Court, 2003[28]).

In a decision handed down in 2019 in E.R. v DPP (2019) IESC 86, the Irish Supreme Court emphasised that ‘plea-bargaining’, even in a diluted form, has no place in the Irish criminal trial. Plea-bargaining has some obvious bureaucratic and resource advantages. “Persuading a guilty person to plead guilty avoids the uncertainty attaching to the outcome of a contested criminal trial. It also makes substantial cost savings and speeds up the processing of other criminal trials to the benefit of victims, witnesses, the criminal justice agencies and society. The drawbacks to plea-bargaining are surely weightier. One of the basic principles of justice in a liberal democracy based on the rule of law is that criminal trials must be conducted in public. The integrity of the criminal process, and public confidence in it, depends heavily on that. Accordingly, when an accused pleads not guilty, the evidence against him should be presented and tested in open court, and (where applicable) the sentencing process should be conducted in open court. The accused must not be exposed to pressures aimed at extorting an involuntary guilty plea. Equally, there should be no room for secret deals which harbour suspicions of promoting professional, bureaucratic and/or privileged interests to the detriment of the individual victim and society. In this context, appearance and substance are virtually indistinguishable” (Kent University, 2020[29]).

“In *Heeney* (2001), the Irish Supreme Court made it clear that plea-bargaining, in the sense of a private arrangement whereby a particular level of sentence will be imposed in return for a plea of guilty, has no place in Irish law. Indeed, it would be contrary to Article 34.1 of the Irish Constitution which states that justice, in general, should be administered in public. The Court also said, however, that a trial judge could give a provisional indication as to the difference in level of sentence that might be secured in return for a plea of guilty. This would be permissible so long as there was no element of bargain involved, and it was understood that the sentence might change depending on the evidence heard in open court. It is also worth noting that the DPP issued an instruction to prosecution counsels in 1998 to desist from the practice of accompanying defence counsel to the judge’s chambers for the purpose of expressing a view, if asked by the judge, on a sentence that might be imposed.” (Kent University, 2020[29])

Plea-bargaining in the American sense in which the bargain consists of, on the one part, an agreement to plead guilty to a lesser offence than that charged and on the other part an agreement as to the sentence to be imposed does not exist. However, in Ireland it is the well-settled practice of the courts to apply a reduced sentence where an accused makes an early plea of guilty and the co-operation of the accused will also be a mitigating factor in sentencing. However, the judge always retains control over the sentence to be imposed. The prosecutor has a discretion to accept a plea to a lesser offence than that charged provided it is an appropriate one to meet the justice of the case and provided the court is satisfied that the accused is legally advised of the consequences of the decision and offers the plea freely.

“Deferred prosecution agreements” are not allowed either but lobbying for introducing them is mounting (Dillon Eustace, 2018[30]). The Law Reform Commission also recommends that a statutory scheme of deferred prosecution agreements should be introduced in Ireland, under the control of the Director of Public Prosecutions (Irish Commission, 2017[31]).[9]

A number of options are open to the court to avoid custodial sentences including the use of fines, wholly or partly suspended sentences under which the sentence will not be imposed in the event of good behaviour during a specified period, community service orders, in minor cases finding the facts proved but

not imposing a sentence on condition of good behaviour, and placing the convicted person under the supervision of the Probation Service.

It is open to the Director to discontinue a prosecution which she considers to be unfounded. Furthermore, many decisions not to prosecute are based on an insufficiency of evidence and remain open to reconsideration should further evidence become available. Furthermore, there is no statute of limitation in indictable cases, although cases may be prevented where there has been unjustifiable delay.

A crime victim may seek a review of a decision not to prosecute which is carried out by a prosecutor who was not involved in the making of the original decision.

Investigation and prosecution

The investigation and prosecution are separate and distinct functions within the criminal justice system. The Director of Public Prosecutions has no investigative function and no power to direct the Garda Síochána or other agencies in their investigations. In the Irish criminal justice system, the investigation of criminal offences is the function of the Garda Síochána. The Garda Commissioner is responsible for the general direction, management and control of *An Garda Síochána* and is appointed by the Government. The Minister for Justice, Equality & Law Reform is responsible to the Government for the performance of *An Garda Síochána*.

In addition, there are specialised investigating authorities in relation to certain particular categories of crime, including the Competition and Consumer Protection Commission in relation to offences against the Competition Acts; the investigation branch of the Revenue Commissioners in relation to revenue offences; the Health and Safety Authority in relation to offences relating to safety and welfare at work; and the Office of Director of Corporate Enforcement which deals with offences against company law. This list is not exhaustive. Complaints of criminal conduct made to the Director of Public Prosecutions cannot be investigated by the Director but are transmitted to the Garda Commissioner or to one of the other investigating authorities to take the appropriate decisions and action. While the Director has no investigative function, the Director and the Director's Office co-operate regularly with the Garda Síochána and the other investigating agencies during criminal investigations, particularly in furnishing relevant legal and prosecutorial advice.

Many investigative agencies have the power to prosecute summarily without reference to the Director of Public Prosecutions. The sole power to prosecute on indictment rests with the Director (apart from a limited number of cases still dealt with by the Attorney General). When an offence is or may be sufficiently serious to be tried on indictment the investigator sends the file to the Office of the DPP.

The Director of Public Prosecutions may advise investigators in relation to the sufficiency of evidence to support nominated charges and the appropriateness of charges or in relation to legal issues arising during the investigation. Whilst not responsible for the conduct of investigations, the Director is free to indicate what evidence would be required to sustain a prosecution.

Where the Director believes that a criminal offence may have been committed, then the matter may also be referred to the Garda Síochána or another investigating agency. Investigation is, however, a matter for the Garda Síochána or the investigating agency. The Director has no investigative function and no power to direct the Garda Síochána or other agencies in their investigations and has no power to interfere with or stop an investigation.

The Garda Síochána should where possible seek directions before charging all indictable cases or cases which are likely to be heard on indictment. Where a charge has been preferred without directions from the Office of the DPP, and the case is proceeding on indictment, directions should be sought prior to any sending forward for trial. The Director, or one of the Director's professional officers, will consider whether

the prosecution should proceed or whether any of the charges should be amended, withdrawn, or other charges added.

The Director does not have direct responsibility to control the respect for the law by the police or other investigating body. However, the actions of the investigators will be relevant to the decision by the Director on whether or not to prosecute and, ultimately, to the courts in the context of ensuring a fair trial or otherwise reviewing that decision, following the initiation of any prosecution. There are, separately, procedures by which persons aggrieved by the actions of the police or other investigating body may seek redress from the courts. Finally, there is an ombudsman who receives complaints against members of the police.

The Garda Síochána Act 2005 provides for a Garda Síochána Inspectorate consisting of three members who are appointed by the Government. The functions of the Inspectorate, *inter alia*, are to carry out, at the request or with the consent of the Minister for Justice, inspections or inquiries in relation to any particular aspects of the operation and administration of the Garda Síochána; to submit to the Minister for Justice a report on those inspections or inquiries, and if required by the Minister, a report on the operation and administration of the Garda Síochána during a specified period and on any significant developments in that regard during that period, and any such reports must contain recommendations for any action the Inspectorate considers necessary and to provide advice to the Minister with regard to best-policing practice.

In 2007, the Garda Síochána Ombudsman Commission (GSOC) replaced the earlier system of complaints (the "Garda Síochána Complaints Board") and is empowered to directly and independently investigate complaints against members of the Garda Síochána; to investigate any matter, even where no complaint has been made, where it appears that a Garda may have committed an offence or behaved in a way that justified disciplinary proceedings; to investigate any practice, policy or procedure of the Garda Síochána with a view to reducing the incidence of related complaints. The Office of the Director of Public Prosecutions may decide whether to prosecute, following the submission of a file by the Garda Síochána Ombudsman Commission.

The Office of the Director of Prosecutions is not responsible for training the police or other investigation bodies. While the Office assists, when requested, with training on specific topics such as file preparation, conduct of criminal proceedings in the lower courts and other relevant issues as they arise, primary responsibility for such training rests with the police or the investigation body concerned.

Management tools

Organisation

The Office of the DPP consists of three legal divisions, the Directing Division, the Solicitors Division and the Prosecution Support Services Division. There is also an Administration Division that provides the organisational, infrastructural, administrative and information services required by the Office.

- *Directing Division*: The Directing Division comprises a small number of professional officers, both barristers and solicitors, whose principal function is to make submissions to the Director and to take decisions in relation to the initiation or continuation of criminal prosecutions and to give ongoing instructions and directions to the Solicitors Division, local State Solicitors and counsels regarding the conduct of criminal proceedings. The Directing Division also makes other decisions including whether or not to accept pleas of guilty to lesser offences; to bring appeals to higher courts (like the Court of Appeal and Supreme Court) about points of law; or seek a review of an unduly lenient sentence (where it is believed that a judge was wrong in law to give a light sentence). It should be noted, however, that not all the functions which would in most systems be performed by prosecutors are in fact performed by professional officers of the Director. The professional officers of the Director exercise the functions of making decisions in relation to

prosecutions and ensuring that the prosecutions are properly conducted. In addition, professional officers of the Director who are qualified as solicitors carry out summary prosecution in the lower courts and provide a solicitor service for cases heard in the indictable courts in Dublin. The advocacy function of conducting the cases in indictable courts is exercised by barristers engaged on behalf of the Director who conduct the cases in accordance with the Director's instructions which are conveyed either by the Director or her professional officer responsible for the case.

- *Solicitors Division*: The work of appearing for the Director of Public Prosecutions in court is carried out either by the full-time legal staff in the *Solicitors Division* who represent the Director in all courts in Dublin, or by the local State Solicitors in courts outside Dublin. The Solicitors Division is headed by the Chief Prosecution Solicitor who acts as solicitor to the Director. The Division consists of solicitors and legal executives whose responsibilities include: a) preparation of and conducting summary cases on behalf of the Director in all courts sitting in Dublin; b) implementation of directions from the Directing Division; c) preparation of books of evidence in indictable cases; d) briefing and instructing barristers nominated to conduct prosecutions; e) attending trials and reporting outcomes to the Directing Division; f) providing a liaison service to agencies and parties involved in the criminal process including victims and their families; g) consenting to certain cases being dealt with summarily rather than on indictment. The State Solicitor service (32 solicitors in private practice who are employed by the DPP on a contract basis) act on behalf of the Director in Circuit Courts and occasionally in the District Courts outside of Dublin. They support private barristers working for the DPP to present the prosecution case in the Circuit Court in their respective county. Higher ranked prosecutors can instruct on their own initiative lower ranked ones, but not arbitrarily: when a case is assigned the officer dealing with it may be instructed not to sign off on it without referring to a superior officer. In some cases, the Director may give an instruction that the final decision on an issue is to be referred to her. In the case of recently appointed officers it would be usual that any decision made would first be approved by a senior officer. Such arrangements are inherent in the legal provision under which every act of a prosecutor is the act of the Director. It should be noted that it is the practice to minute all decisions in writing on the file.
- The *Prosecution Support Services Division* supports the criminal prosecution work in a number of areas as follows: a) International Law, including European arrest warrants, extradition and mutual legal assistance; b) Victims Liaison to meet the obligations of the Office of the DPP in respect of the rights, support and protection of victims under the Criminal Justice (Victims of Crime) Act 2017; c) Prosecution Policy and Research including knowledge and information management. Forensic scientists and other expert witnesses are independent experts. They are consulted by prosecutors but are in no sense part of a prosecution team. At present consideration is being given to employing financial/economic experts in the Special Financial Unit but these would advise the prosecutors and not act as expert witnesses. There is no formal role for prosecutors in policy making, but the Office may be consulted by the Department of Justice when considering proposals to reform criminal law or procedure.
- Administrative Division: It is divided into units dealing with change management, communications, finance, human resources and training, information and communications technology and organisation and general services. It has a Special Financial Unit dealing with economic crime which at present is staffed only by lawyers, but it is hoped to recruit other specialist staff to this. Forensic evidence (including DNA analysis) is the responsibility of Forensic Science Ireland which is independent both from the DPP and the Garda Siochana (police). Analysis of blood and urine samples is dealt with by an independent Medical Bureau of Road Safety. An Garda Siochana have specialised units dealing with ballistics and fingerprints.

Human resources

As said, the Director of Public Prosecutions (DPP) is a civil servant in the civil service of the State who is appointed by the government from a selection of candidates recommended to the government by a

statutory committee, consisting of the Chief Justice, the Chairman of the General Council of the Bar of Ireland, the President of the Law Society, the Secretary to the Government and the Director General of the Office of the Attorney General. Tenure is a matter to be determined by the government on appointment, the current office holder being on a 10-year non-renewable term. All other prosecutors, although not civil servants, are appointed to the office under the rules applying to civil servants on permanent contract subject to an upper retirement age. State solicitors are currently appointed by the director, based on a ten-year, renewable, contract for services. The Office cannot hire staff without the sanction of the Minister for Public Expenditure and Reform for the creation and filling of the post in question and without the necessary money being voted.

The Director of Public Prosecutions is assisted by senior managers.[10] There is also a Management Advisory Committee of which senior prosecutors and other senior managers are members and which considers and advises concerning important management decisions.

The Director is responsible for the appointment and promotion of prosecutors; however, the office is assisted by the Public Appointments Service to ensure independence and probity in the recruitment process. Recruitment is carried out in accordance with the Codes of Practice established by the Commission for Public Service Appointments. The director is responsible for the dismissal of prosecutors at the grade of principal officer and above, while the deputy director is responsible for dismissal of prosecutors of a lower grade. New employees undergo a probationary period and may not have their employment continued if their performance is unsatisfactory. However, it is the practice to inform employees at the earliest opportunity of any default in performance in order to give them the opportunity to correct any shortcomings. The Office has its own Training Unit. Mentoring is the main source of training for new recruits.

All employed lawyers in the Office, with one exception, are recruited through open recruitment competitions. The competencies against which candidates will be assessed are advertised and a selection panel which always includes a member from outside the Office selects the most qualified candidates. The exception to open recruitment is in respect of serving staff who qualify as lawyers while working. Periodically, confined internal competitions are run for such staff. External recruitment of lawyers takes place, in the main, for entry level lawyers who typically start on an annual salary of in the region of EUR 58 000. Recruitment of entry-level staff can be at the level of newly qualified solicitors or barristers but more typically a level of two to four years post-qualification experience is required. Open external recruitment also takes place for the more senior grades in the Office. Posts at other levels are filled through internal promotion competitions. All recruitment and promotion competitions involve publishing the competencies required and are conducted by a panel which includes at least one member from outside the Office.

Competitions involve a process of competitive interview and are organised in accordance with relevant codes of practice adopted by the Commission for Public Service Appointments and subject to their supervision. Interview boards are composed of a combination of senior prosecutors and independent outside experts such as judges and legal practitioners. The Commission is the regulator of recruitment and selection in the Irish public service, whose role is to ensure that appointments to the civil and public service are fair, transparent and merit-based. This is a non-political independent agency whose current membership consists of the *Ceann Comhairle* (Speaker) of the lower house of Parliament, the Ombudsman, the Secretary General to the Government, the civil service head of the Department of Public Service and Reform, and the Chair of the Standards in Public Office Commission who is a retired High Court Judge.

Once it has been determined that a candidate be considered for appointment to the prosecution service, a comprehensive background check into such issues as integrity/propriety is conducted by the Garda Síochána. Officers appointed to interview boards are selected both from the Office, who themselves will

have gone through a similar selection process, and independent experts recommended by the Public Appointments Service.

The general conditions of service of civil servants apply equally to prosecutors within the office and salary scales equate with similar ranks across the civil service. All professional grades have equivalents to general public servants. The actual amounts are fixed by regulations made pursuant to statute.

Officers assigned to the directing division, whose function is to take decisions in relation to the initiation or continuation of criminal prosecutions and to give ongoing instructions and directions regarding their conduct, includes some prosecutors holding higher rank. Salaries increase annually at an incremental rate and identifying an individual prosecutor's point on either scale will depend on many variables, including experience, years of service, level of qualification, etc. The gross annual salary of the Director of Public Prosecutions equates with that of a secretary general of a department of state, grade 3. There are no additional benefits that accrue to prosecutors except a pension scheme, which applies equally to all officers in the civil service.

Prosecutors are, like any other person, criminally liable for their actions. There are no immunities or special procedures for prosecutors under Irish law in relation to prosecution for criminal offences. In principle a prosecutor could be civilly liable for the tort of malicious prosecution but this tort, as its name suggests, does not extend to acts carried out in good faith. There is no court decision as to whether a prosecutor could be held civilly liable in negligence. Compensation can be paid to a person who is wrongfully convicted as a result of misbehaviour and there have been cases where this has occurred as a result of police misbehaviour but none in recent years involving misbehaviour by a prosecutor.

Prosecutors are included in the definition of "public official" for the purpose of corruption offences. The supervision of the implementation of the Ethics Acts or the Civil Service Code, as far as the prosecution service is concerned, applies in respect of all prosecutors holding a delegated ability to direct the initiation or course of a prosecution ("designated positions"). Non-compliance with these instruments would be considered a matter to be dealt with under the Civil Service Disciplinary Code; the "Standards in Public Office Commission" is to investigate such matters and draw up a report of its investigation that will be furnished to the relevant public body. If the commission determines that there was a contravention and that the contravention was a serious matter, the report will be laid before parliament. A public body in receipt of such a report may take appropriate disciplinary action. All other disciplinary proceedings against prosecutors are under the responsibility of the Director of Public Prosecutions, or where appropriate the Deputy Director of Public Prosecutions, following the procedures as set out by the Civil Service Disciplinary Code.

The Office of the DPP has a dedicated training unit, led by a training officer of the DPP, which organises induction training for new staff as well as in-service training on a regular basis. As part of the induction training, all new staff receive training in relation to the Civil Service Code of Standards and Behaviour, Civil Service Regulations Acts, Official Secrets Act, Standards in Public Office Act, Ethics in Public Office Act, Freedom of Information Act, and Data Protection. New staff are also informed about confidential information held by the office and accountability. This training is provided on an annual basis. In addition, in-service training has been regularly organised and over recent years has dealt with special topics such as various forms of economic crime, fraud and corruption. It has also covered topics such as good governance and public procurement as well as international instruments and domestic legislation relating to prosecutors and prosecution of crime as well as the induction topics on ethics referred to above. Training needs analysis is the responsibility of senior management in the Office.

Professional networks

There is no association of Irish prosecutors. Many prosecutors are members of the Impact trade union and are represented by them in such matters as terms and conditions of employment. There is also an association of employed lawyers. The office is an organisational member of the International Association

of Prosecutors (IAP) and the current DPP is a member of its Executive Committee whilst the previous one used to be its President. Many Irish prosecutors are individual members of the IAP. There is also a State Solicitors' Association.

Specialisation

The *Special Financial Unit* was established in 2011 in response to the post-2008 Irish banking crisis. It operates within the Solicitors' Division. It deals with large-scale financial or corporate cases. It works primarily with the Garda National Economic Crime Bureau and the Office of the Director of Corporate Enforcement. The principal role of the unit is to consider and, if necessary, prosecute serious financial and corporate crimes including complex economic (comprising transnational) crimes; complex money-laundering cases (i.e. cases where money that is made from criminal dealings is passed through a business so that it appears to come from legitimate sources); financial crimes which have a significant impact on the public; serious regulatory and corporate criminal cases and all cases of foreign bribery and corruption-related cases. The allocation of cases beyond this specialised unit is random.

Prioritisation

As said, the investigation of criminal complaints is the function of the Garda Síochána (Irish police) or other appropriate investigation body and it is a matter for such body to consider priorities in investigating. The Office of the Director of Prosecutions has no function in investigating crime or determining priorities in relation to such investigations.

Case management

All new indictment cases are initially assigned to the Directing Division. A senior officer in that division assigns each case to an individual professional officer based on experience, specialist expertise and current caseload. Where a prosecution is to be taken, the case will be transferred to the Solicitors Division, which is divided into six separate sections based on functionality and expertise. Each section has a head, who will assign cases to an officer within his/her section based on experience, specialist expertise and current caseload. Cases are generally not sent to the prosecutor and therefore not assigned until the investigation is complete. A prosecutor should withdraw if he or she has a conflict of interest. An unfounded allegation of a conflict is not a ground to force a withdrawal. No officer will be assigned a case where there is potential for a conflict of interest. The director, or a senior member of staff, would be entitled to remove a prosecutor from a case in circumstances such as the identification of potential conflicts of interest, incompetence, in compliance with the office mobility strategy, or in the interests of a fair division of workload.

There is a computer management model in place, which tracks all files received in the office, designed to alert management to potential undue delay. There is also a secondary structure calculated to identify potential delays in replies to requests for information from external agencies, which includes an escalation procedure.

Alternatives to prosecution

Established in 2006, the Garda Síochána Adult Caution Scheme provides a mechanism to divert adult offenders, aged 18 years and over, from the criminal justice system by way of a formal police caution in lieu of prosecution before the courts (Tolan and Seymouri, 2014[32]).

The Irish Youth Justice Service: The Irish police practice of diverting young offenders was placed within a statutory framework in 2001 through Garda Youth Diversion Projects (GYDPs). The police discretion in the management of young offenders that had been a feature of the administrative process was retained at the heart of the new statutory programme. This diversionary measure has a drawback and that is the lack of published criteria to guide the discretionary decision making at several stages of the programme, and the lack of a credible complaint or review mechanism for the children affected (Swirak, 2018[33]).

Accountability: Monitoring and reporting

Article 2(6) of the 1974 Act provides that "the Attorney General and the Director shall consult together from time to time in relation to matters pertaining to the functions of the Director."[11] This does not, however, amount to a power to give an instruction to the Director. The Director's independence is further guaranteed by a provision making it unlawful to communicate with him or her or the Director's staff for the purpose of influencing prosecution decisions except by defendants, complainants and their professional advisers. (Section 6.)

"It is the practice to hold regular meetings in relation to individual cases in which both the Attorney General and the Director are named as defendants. It is generally possible for the Attorney General and the Director to agree with a common approach to defending such actions and to engage a single team of counsel to act on behalf of both. Other reasons which might lead to a consultation might include discussions about the likely practical impact of a reforming measure in the criminal law on the Director's functions. There are also a number of matters in relation to which the Attorney General's consent to a criminal prosecution is required, such as prosecutions for breaches of the Official Secrets Act 1963, and where such matters arise a consultation would be likely to take place. So far as cases in which the Attorney General is not directly involved, he does not have any power to give an instruction to the Director as to how the case should be dealt with" (Hamilton, 2008[26]).

Although there is no binding legal obligation to do so the DPP has since 1998 published an annual report which contains statistical information concerning the prosecutors' activities. The Director of Public Prosecutions is accountable in several ways for the performance of his functions, apart from the mechanism of consultation with the Attorney General. The accounting officer of the DPP's office (this has always been the Deputy Director) is answerable to the Public Accounts Committee of *Dail Eireann* (the lower house of parliament) for its expenditure and for the efficiency of its operations, but not for any prosecutorial decision. The Comptroller and Auditor General reports to this Committee on an annual basis. Under the Comptroller and Auditor General (Amendment) Act 1993 the Comptroller and Auditor General has the duty of auditing all accounts to ensure that amounts are expended for the purpose for which money was appropriated by parliament. The accounting officer of the DPP (the Deputy Director) is responsible under this law to account to the Public Accounts Committee of *Dail Eireann* for the regularity of the DPP's office's expenditure, for the economy and efficiency of the office in the use of its resources as well as for the systems, procedures and practices employed by the office for the purpose of evaluating its operations.

The Office is thus accountable for the expenditure of public money through the normal governmental accounting procedures of the Parliamentary Committee of Public Accounts and the Comptroller and Auditor General, and since the establishment of the Office it has been the practice to appoint a Deputy Director, who is responsible for the management of the Office and who was envisaged by the Public Service Management Act 1997, as being Head of the Office as Accounting Officer. The Freedom of Information Act 1997 applies to the Office only in respect of records concerning the general administration of the Office. The purpose of this provision is, of course, to avoid the Freedom of Information Act being used in order to obtain details of individual cases. The Director remains subject to the normal rules of criminal disclosure in relation to individual cases.

The Committees of the Houses of the *Oireachtas* (parliament): The Compellability, Privileges and Immunities of Witnesses Act 1997, article 3-6, governs the compellability of witnesses before parliamentary committees and empowers such committees to summon witnesses to give evidence and to produce or make discovery documents. However, this Act does not apply to the Director of Public Prosecutions or his officers except where the committee is the Committee of Public Accounts. Evidence or the production of documents can be compelled only in relation to the general administration of the Office or in relation to statistics relevant to a matter referred to in a report of and published by the Director of Public Prosecutions in relation to the activities generally of the Office. The Director and his officers are not, therefore, accountable to the Oireachtas or the public in respect of the reasons for prosecutorial decisions.

The Director of Public Prosecutions is always accountable to the courts in respect of prosecutions brought by him in the sense that if he behaves wrongly, he is likely to be criticised by the court for his actions. Secondly, it is the practice to keep the Garda Síochána informed as to the thinking behind decisions made in the Office, not least to ensure that the Garda Síochána are fully aware of all the requirements of the prosecution service. If the Director and his Office were to behave in ways which were erratic or unsustainable it would not be long before the Garda Síochána would be likely to complain about this. Furthermore, by virtue of the fact that the Garda Síochána have the power (as do injured parties in relation to offences) to seek a review of decisions, where they are dissatisfied with the decision of the DPP they can always invoke this right.

Complaints against prosecutors' conduct are to be addressed to the DPP. To this end, the DPP has included in its website clear instructions aimed at the general public on how to file complaints against the Prosecution Service in case it does not meet expectations (Director of Public Prosecutions of Ireland, 2020[34]). There is no dedicated internal department of the DPP to deal with complaints against prosecutors. In the current system, such complaints are, as a main rule, to be addressed by the prosecutor who delivered the service complained of and, subsequently, within his/her hierarchy. In October 2012, the DPP issued an internal policy document on a pilot basis concerning the handling of such complaints. This policy was reviewed in May 2013 and is currently in operation. It follows, inter alia, from the policy document that complaints are to be registered and dealt with by the division concerned (where the alleged problem occurred) and that the Private Office of the DPP and the Communication and Development Unit (CDU) of the Administration Division are to be kept informed of incoming complaints. Moreover, the CDU is to co-ordinate the handling of the complaints, monitoring its logging, etc. The current mechanism implies that the actual dealing with complaints most often are under the responsibility of the prosecutor (in consultation with the line manager) involved in the matter complained of, a fact which has been criticised by GRECO (GRECO, 2014[35]).

The performance in and of the Office of Public Prosecution is measured and assessed in several ways. Individual performance of directly employed lawyers and that of lawyers engaged under contract is measured and assessed by the organisation. In addition, the performance of the organisation is assessed against agreed targets by the *Oireachtas*, the Irish Parliament, on an annual basis. Expenditure of the Office of the Director of Public Prosecutions is audited by the Comptroller and Auditor General, the national auditor appointed under the Constitution of Ireland.

Once appointed by the DPP, all employed lawyers and lawyers appointed under contract have their performance assessed on an ongoing basis. Employed lawyers are assessed formally under the Irish Civil Service Performance Management and Development System. This system requires the formal agreeing of roles and targets at the start of every year. A formal mid-year review and end of year review against the role and targets takes place. The legal work of individual lawyers is also reviewed by the managers on an ongoing basis. In addition, as part of continuing professional development lawyers must undertake a minimum of 22 hours of professional development training a year.

Should performance not be at the level expected a range of options are open to the Office. Employed lawyers are subject to the Civil Service Disciplinary Code which provides for sanction in the event of underperformance. Lawyers engaged under contracts can have their contracts terminated if performance is not adequate. Performance issues, however, are rare. This is attributed to the detailed selection method, ongoing review of performance and requirements to undertake annually continuing professional development. Suspension is a remedy for misbehaviour rather than for a poor appraisal. Dismissal is seen as a last resort to be applied only where all reasonable attempts to help the employee to attain a satisfactory standard have failed. General responsibility for personnel issues rests with the three most senior officers, the Deputy Director, the Chief State Solicitor and the Head of the Directing Division, and the DPP has ultimate responsibility for the running of her Office. Any employee may complain about alleged unfairness on the part of a superior officer. There are also legal remedies before courts and tribunals in

cases of wrongful or constructive dismissal and discrimination against employees on various prohibited grounds such as gender, sexual orientation, age, religion, race, ethnicity, etc.

Objective 1 of the Office's Strategy Statement 2019 - 2021 is "Maintain high standards of operating efficiency to achieve independent, fair and effective prosecutions". One of the strategies to achieve this is that State Solicitors and Counsel are appointed by the Office through a competitive process and their performance is monitored annually. Measurement of the performance of State Solicitors and Counsel is led by the two most senior lawyers in the Office after the Director and Deputy Director of Public Prosecutions, i.e., the Chief Prosecution Solicitor and the Head of the Directing Division. The Chief Prosecution Solicitor meets each local State Solicitor at least once a year at which meeting all aspects of the State Solicitor's work are discussed.

Italy

Status

The Prosecution Service is an independent institution. Each public prosecutor is also independent. Such an independence is guaranteed by the Constitution. In Italy, public prosecutors are *magistrati*, as they belong – together with judges – to the judiciary. Their independence is safeguarded by the *Consiglio Superiore della Magistratura* (CSM – the High Council for the Judiciary). The latter has full authority on appointments, transfers, careers and discipline of judges and public prosecutors. The High Council for the Judiciary is mostly composed of *magistrati* (judges and public prosecutors) who are elected by vote of all the judges and public prosecutors. Their independence is further guaranteed by their non-removability or guarantee of tenure. They can only be removed or suspended from their functions or transferred to another workplace if the CSM so decides and respecting the guarantees of the law.

Access to both prosecution and judicial positions follows a single public competition. Subsequently they are assigned either to a court or to a public prosecutor's office. Under certain conditions shifting between the two career paths is possible. Prosecutors receive the *notitiae criminis* from private persons or from the various police forces and evaluate them to decide whether to prosecute or not.

The principle of legality or mandatory criminal action is enshrined in article 112 of the Constitution. That principle is believed to contribute to safeguard public prosecutors' independence. Since they must prosecute all crimes, they cannot be legally influenced by other public powers. At the same time, the combination of this obligation for Italian prosecutors to prosecute any and every crime, coupled with the rising criminality, hampers the possibility to implement the also constitutional principle to expedite criminal justice, as Italian prosecutors cannot formally prioritise the prosecution of certain criminal deeds over others (Blengino, 2020[36]).

Italy reformed the criminal justice system in 1989, replacing the inquisitorial procedural model by the accusatorial model with cross-examinations of the accused and witnesses, but the prosecutor kept his/her condition of magistrate member of the judicature. A Chief Prosecutor is at the head of each prosecution office under which prosecutors and support staff are assigned. The number depends on the size of the local district. Prosecutors carry out investigations supported by the judicial police and support administrative staff. The judicial police follow the instructions of the prosecutor in the investigations.

The Minister of Justice does not govern Prosecution Offices' activities. He is only charged with the organisation and functioning of services linked to justice activities (i.e. resources and personnel). The judiciary is not organised in a hierarchy (it is said to be a "diffused" power). However, powers of control and impulse of the activities of public prosecutors lie within the authority of the Prosecutor General at the Supreme Court of Cassation -as the last resort- and of the Prosecutors General at the Courts of Appeal. They have a duty to ensure the implementation of a correct and uniform prosecution, as well as a fair trial and an accurate organisation of prosecution offices.

The Italian Parliament determines the number of prosecutors, as the number of members of the judiciary -judges and public prosecutors- is established by law. If new positions are created, their distribution is decided by the Minister of Justice, after hearing the CSM's opinion. A Law sets forth provisions concerning the elimination of smaller judicial offices. In accordance with this act, the Minister of Justice can change judicial districts. Consequently, positions corresponding to the suppressed offices will be assigned to the remaining offices.

The organisation and running of justice-related services lie within the authority of the Ministry of Justice. As for human resources, public prosecutors and police work together in prosecution offices. All of them are civil servants. The Ministry of Justice assigns supporting administrative staff to each prosecution office. Financial resources and information systems are provided by the Ministry of Justice. Prosecution offices, like the Courts, are not independent with respect to accountant and financial matters. Assets coming from justice users' fees or seized or confiscated from illegal proceeds go to the state budget, from which is paid any expenditure such as staff salaries, infrastructure maintenance, investigation costs, office stationery and so forth).

Fees for keeping up buildings and facilities are disbursed by municipalities and then they are reimbursed by the State in a percentage equivalent to 75%. Office stationery and equipment are paid by funds which the Ministry allocates to Prosecutor General offices and handed down from them to the various prosecution offices. Personnel and information technology are directly paid for by the Ministry. Expenditure on criminal proceedings such investigations, phone or indoor tapping, expert reports, etc.) are disbursed by the Ministry although, in case of conviction, they must be paid by the offender.

The information system (software packages, registries of criminal offences, etc.) is managed by the prosecution offices in co-operation with the Ministry of Justice and the CSM. All this prevents the Ministry from interfering with programs, which might influence public prosecutors' investigations. Individual prosecution offices might sign conventions with local authorities (for example with the Regions) to improve services of the legal system. They may have also access to European funds earmarked to the improvement of justice systems in EU Member States.

The law prescribes that each prosecution office shall draft a yearly programme of the most relevant activities, considering human, financial and instrumental activities at their disposal. Such a document is drafted jointly by the Chief Prosecutor and by the administrative Manager of the prosecution office. Then, every prosecution office makes a statement of accounts of yearly expenses. Some prosecution offices draft also their own "social budget", but it is not compulsory. In every prosecution office the administrative manager is responsible for the management of resources. If there is no administrative manager, as it often happens in smaller offices, the Chief Prosecutor takes on that administrative responsibility.

Since the end of World War II, Italian prosecutors have been members of the judiciary, granted the independence and tenure of judges and serving a quasi-judicial function consistent with the European continental tradition. In the late 1980s, Italy adopted a new criminal procedure code inspired by the Anglo-American adversarial model. Despite lacking the power to settle cases out of court, several mechanisms also allow Italian prosecutors to expedite court resolutions, including a special procedure for negotiated sentences that seems reminiscent of American plea bargaining (Caianiello, 2012[37]).

Investigation and Prosecution

The relationship between prosecutors and the police is ruled by a constitutional principle whereby "judicial authorities directly shall command the judiciary police" (article 109 of the Constitution). When this provision mentions the words "judicial authorities", it refers both to the Courts and to the Prosecution Service. The expression (they) "directly shall command" excludes that prosecutors might use the police by means of or subject to other public authorities. The constitutional provision is restated in the Code of Criminal Procedure

regarding investigation activities. The Code rules that the functions of the investigative police are dependent upon and directed by judicial authorities.

There are several police bodies in Italy. The major ones are the State Police (Polizia di Stato), the Carabineers (Carabinieri), and the Fiscal Police (Guardia di Finanza). All of them act as investigative police or judicial police (*polizia giudiziaria*) when they investigate crimes. They perform functions of security police when they act as public security forces. The former role is played after a crime has been committed; the latter is aimed at preventing offences.

In every Prosecution Office there is a unit of the investigative police composed of members of different police forces. The prosecutor can also resort to other police bodies. Police unit members cannot be turned away from investigative police activities on orders from authorities different from the prosecutor on which they depend.

The law regulates the relationships between prosecutors and investigation bodies. The police must fulfil the duties that public prosecutors entrust them with. They must take notice of criminal offences, even on their own initiative, prevent them from bringing further consequences about, look for offenders, accomplish the necessary acts to secure the evidence and gather any information needed to enforce criminal law. Furthermore, the police carry out any investigation and activity ordered or delegated by prosecutors.

The Code of Criminal Procedure provides that both prosecutors and the police shall take notice of offences. They can do so on their own initiative or upon a claim of public officials or private citizens. After taking notice of an offence, a police officer must refer it to the prosecutor “without delay” by reporting the essential elements of the criminal act, the sources of evidence and the performed activities. Furthermore, the police officer sends all the documents over and underlines the day and time when the criminal offence was reported. From then on, the prosecutor takes the lead of the investigation. S/He can directly lead it by him/herself or through the police by delegating special activities or the whole direction to them. The prosecutor always gives guidelines to the police. Carrying on their functions, police officers gather any useful information to reconstruct the deeds and to detect the indictable person and “speedily” shall inform the prosecutor about it. In Italy there is an actual subordination of the investigative police to the prosecution service. When a prosecutor gives his guidelines to investigate, the police must interpret them based on their expertise.

A prosecutor is autonomous to decide which police body he wishes to delegate for each investigation. When he makes a choice, a prosecutor seeks specific competences (for instance, he chooses the Fiscal Police, Guardia di Finanza, for economic and financial crimes). In the most delicate and complex cases, prosecutors sometimes delegate to several police forces to work together, while the prosecutor retains their co-ordination.

The prosecutor always monitors that his instructions have been complied with by the investigating police. This monitoring is carried out in all cases, when the police report to the prosecutor the results of the investigation activity they were required to conduct. Disciplinary action against police officers is initiated by the Prosecutor General at the Court of Appeal. If police officers have omitted to report the offence to a prosecutor within the prescribed time limit or they have omitted or delayed the enforcement of the prosecutor’s order or, even enforced, the order was partly or carelessly enforced, police officers can be liable for a disciplinary or criminal offence. At the end of the disciplinary proceedings, sanctions may be decided by a Commission composed of the President of a Chamber of the Court of Appeal, a Judge of the First Instance Court and a police officer belonging to the same police corps of the accused person. As provided for by law, the accused person is fully entitled to the rights of defence. The possibility also exists (for the defence counsel and for the prosecutor) to eventually appeal against disciplinary sanctions to an Appeal Commission and then to the Supreme Court.

The main feature of the Italian criminal system is that criminal action is mandatory. This feature is enshrined by article 112 of the Constitution. Therefore, whereas elements of crime come about, each case must be

mandatorily investigated. If enough evidence for trial is obtained, the case must be brought before a Court. Consequently, a prosecutor cannot dismiss a case on his own discretion. Within this framework, every Chief Prosecutor can outline his priority criteria to rationalise the employment of available resources: he cannot decide whether he may or may not investigate a single case, but he can evaluate which categories of cases deserve a priority (see below further on prioritisation under the heading Management Tools). A useful criterion for guidance comes from law provisions establishing which kind of cases must be treated as a priority matter by judging Courts (for example, cases related to organised crime or terrorist crime offences, sexual abuse, etc.). No priority assessment is made by the police. They must stick to the prosecutors' indications.

According to article 112 of the Constitution, the prosecutor is obliged to prosecute whenever there is sufficient evidence to charge the offender. It follows that the prosecutor cannot be vested with the right to settle a case out of court. Nevertheless, room for discretion of the prosecutor is left regarding the cases in which the penalty can be imposed without trial: the sentence agreement (*patteggiamento*) and the penal order (*procedimento per decreto*). The sentence agreement consists of an agreement between the prosecutor and the offender on the sentence to be imposed. This form of diversion is characterised by an exchange between a sentence discount and the defendant's waiver of the right to stand trial. In other words, by means of a sentence discount, the accused is encouraged to waive his or her right to have his or her case dealt with in a public trial. This saves time and expenses for the system. Since the policy criteria according to which the prosecutor should give his or her consent are not defined by the law, the decision depends on his or her choice, which is not always based only on technical reasons. Once the parties have reached an agreement, the judge must verify whether the conditions to pronounce the requested sentence have been met. The *patteggiamento* is not admitted for Mafia crimes and organised crime.

A trial is also avoided when the proceeding ends with the issuing of a penal order to pay a fine (*procedimento per decreto*). There are two conditions required by law. Firstly, the offence shall be prosecuted ex officio. Secondly, the fine must be commensurate with the actual offence. If the prosecutor considers these conditions met, he or she may request the judge to issue such a penal order. The request shall be motivated and shall indicate the level of the fine, which can be reduced up to one half of the minimum fixed by law.

A prosecutor has full control over an investigation but cannot prevent or stop an ongoing one. The principle of mandatory prosecution binds him/her in relation to whether s/he can decide not to investigate or prosecute a specific case, or whether he can stop an ongoing investigation. If the prosecutor wishes to discontinue an investigation, he/she must request to the judge for filing the case away. It is up to the Judge of the Preliminary Investigation to decide on this request: he may either file the case away or order the prosecutor furthering the investigations or to formulate charges.

Prosecutors, judges and the police must comply with the Code of Criminal Procedure. Chief Prosecutors control that rules are complied with and can adopt disciplinary measures against police officers in case of infringements. The ordinary way through which the prosecutor controls whether police officers have been law-abiding is based on examining the documents from the police service pertaining the investigations they have been conducting. In fact, police officers must forward the entire results of their investigations. They cannot cherry-pick what they wish or what they do not wish to send. During the processing of a criminal case, one of the involved persons can lodge a complaint about the actions of the police. In this case, the prosecutor can adopt any initiative he believes to be convenient to monitor the lawfulness of police actions. Within each police body there are also internal controls on the fairness and lawfulness of its members' actions.

Public debates often arise at political or academia levels on whether it is convenient to reinforce the autonomy of the investigative police, mostly with reference to the initial stages of the investigations, as its current total subordination to the prosecutor sometimes is dysfunctional. Still, the Italian legal constitutional system clearly opted for that the prosecutor is responsible for directly conducting the investigations himself

and the police are subject to it. Nevertheless, if the system is to work properly, a higher standard for the prosecutors' professional qualifications is necessary, especially on investigation techniques. Police officers are themselves specialised in some sectors. Therefore, the prosecutor has the duty (and should have the ability) to exploit this specialisation at its best and to avoid that police subordination might lead to lack of motivation in conducting investigations.

The prosecutor should be able to befit his/her autonomous role while doing investigation assessments, when he/she carefully examines police' indications and proposals on possible investigative developments or concerning investigative results tending to hand over the suspect for trial. From another viewpoint, the prosecutor must prevent that rivalries or unhealthy competition among different police bodies hinder investigations. Instead, he/she must promote co-ordination as much as possible.

Management Tools

Organisation

The prosecution organisation matches the judicial organisation. The organisation of the prosecution offices is basically in the hands of single Chief prosecutors (i.e. the Chiefs of the Prosecution Offices at each Italian Court). The organisational model adopted by each of them is under the scrutiny of the Judicial Council within each District, and that of the High Council of the Judiciary. This arrangement ensures uniformity of approach throughout the national territory. Enhancing the quality of the prosecutors' work is sought by the specialisation of prosecutors (see below). Specialised prosecutors are more expert and generally quicker and better in deciding on the cases. Furthermore, the Chief Prosecutor checks on prosecutors' performance through the powers bestowed upon him.

Redeployment

Judges and prosecutors can be temporarily "seconded" from their office to another court/prosecution office that has vacancies or investigation-related needs. In these cases, it is up to the Prosecutor General at the Court of Appeal to decide when a public prosecutor is seconded within the same district, otherwise it is up to the CSM to decide. Administrative staff can also be temporarily seconded from its permanent office to a different office.

Specialisation

In all prosecution offices (except in prosecution offices staffed with less than 5 prosecutors) there are special groups of prosecutors specialised in investigating certain types of crimes. These include corruption, economic and financial crimes (usury, false accounting, tax evasion, etc.), offences against the weakest layers of society (i.e. domestic violence, sexual abuse of children, exploitation of prostitution, breach of immigration law, etc.). For organised crime offences (mafia-related and similar offences), a specific specialisation is established by the law. There is a special District Anti-mafia Prosecution Office in each prosecution office located in the District regional capital. This specialisation gives positive results with respect to the number of cases dealt with and the quickness of their settlement. This specialisation is balanced by the prohibition for a public prosecutor to stay on the same work group for more than ten years so as to open new possibilities for prosecutors wanting to diversify their expertise.

The Anti-mafia District Prosecution Office has been established within the Prosecution Office at the District Court of Appeal, located in the area's main city. It has a special jurisdiction in the field of organised crime, with respect to some particularly serious offences. The Anti-mafia District Prosecution Offices are co-ordinated at national level by the Anti-mafia National Directorate. In 2015, the Anti-mafia District Prosecution Offices and the Anti-mafia National Directorate were conferred powers also in the field of anti-terrorism. Just like all judges and prosecutors, the prosecutors responsible for the Anti-mafia Directorate are subject to the regular performance appraisal mechanism. They are appointed to work for the Anti-Mafia

District Prosecution Office for two years and their appointment (which may be renewed every two years up to an overall period of no more than ten years) is subject to a specific performance appraisal.

Management by results

Prosecutors have general objectives, starting from the mandatory action of prosecution derived from the principle of legality. It compels prosecutors to investigate all crimes and prosecute all offenders. The Chief Public Prosecutor can only underline some priorities in the organisation of his prosecution office. As far as financial resources are concerned, some hints can be given in the yearly programme drawn up by the Chief Public Prosecutor and the administrative Manager while considering the general hints contained in the performance directive adopted by the Ministry of Justice.

Even if prioritisation is not allowed in the Italian criminal justice system, over time, all major Italian Prosecution Offices have created special "offices for the definition of simple affairs" or "filter offices" for an "automated" disposal of crimes deemed simple or less serious in order to encourage immediate ending of the proceedings. These filter offices are mainly composed of administrative and police staffers who implement simplified procedures and predetermined, standardised investigative protocols with no evaluation by a magistrate.

Human Resources

In the Italian legal system, the independence and impartiality of the judiciary are regarded as essential principles. They are enshrined in the Italian Constitution in relation both to judges and prosecutors. In addition to these principles, the principle of security of tenure of the judiciary ensures the independence of judges and prosecutors even from any indirect pressure.

A well-arranged system of recruitment and induction training, in the first place, and then on-the-job training is envisaged to ensure top quality in the work of prosecutors and judges.

- Induction training: Apprentice magistrates attend a six-month theory training course at the Italian School for the Judiciary (*Scuola Superiore della Magistratura*, SSM) followed by 12 months of practice in courts or prosecutors' offices. Currently the total duration of this induction training can temporarily be condensed in order to speed up the process of new judges taking office. The training of judges and prosecutors of the Court of Auditors is within the remit of the Higher Education School of the Court "F. Staderini".
- Continuous training: Judicial training in Italy is compulsory according to the Legislative Decree of 30 January 2006, n. 26 (art. 25) as amended by Law 30 July 2007, n. 111. The training of civil and commercial judges is within the remit of the Italian School for the Judiciary (*Scuola Superiore della Magistratura*, SSM) and the training of administrative judges within that of the Training and Research Department of Administrative Justice (*Ufficio Studi della Giustizia Amministrativa*, USGA). The SSM is a public foundation which is funded 97% by the State and 3% by EU grants. Continuous training is also organised at a decentralised level, in each court of appeal district, often in co-ordination with the SSM. The High Council for the Magistracy (*Consiglio Superiore della Magistratura*, CSM) was responsible for judicial training before the creation of the SSM. The training organised by the USGA is aimed at the administrative judiciary, but lawyers may also participate. All members of the judiciary are expected to follow continuous education programs both at national and district level.

Judges and prosecutors are subject to a professional assessment every four years and up to the 7th level of proficiency check. This system is based upon different standards (legal background, mastery in the techniques used in the different fields of prosecution and jurisdiction activity, outcome of the judicial decisions they have taken, quantity and quality of their work, respect for the deadlines in the drafting of decisions, as well as participation of (judges and) prosecutors in the smooth running of the offices they are assigned to).

The High Council of the Judiciary conducts a proficiency check based upon the opinion expressed by the Judicial Council (a district-based council) and the obtained documents. The Judicial Council's opinion is respectively grounded upon the Chief Prosecutor's report, the assessment of the deeds drawn by a prosecutor (some of them are sample extracts and some others are singled out by him/her) and also some other elements of information it may acquire.

Accountability: Monitoring and Reporting

A well-structured system of statistical surveys exists for the whole justice field. This system makes it possible to draw useful data to assess the "efficiency", meaning the respect for the different deadlines included in the proceedings and the respect for the overall length of trial proceedings.

The Judicial Council evaluates judges and prosecutors with the support of local Judicial Councils. The evaluation occurs every four years, based on a scheme that is identical for judges, prosecutors and magistrates engaged in non-judicial functions (for instance at the Ministry of Justice).

The Ministry of Justice is not involved in performance evaluation. However, the Ministry of Justice, through the clerks serving in the court, provides statistics and inspection reports. They also provide a selection of decisions, taken randomly according to criteria objectively established "ex post" by local Judicial Councils (see below). The judge is then formally asked to submit a self-assessment (see below). On the basis of such data, Presidents of Courts provide reports (on standard assessment forms) to local Judicial Councils (a Council is also established at the Court of Cassation); these bodies are composed of judges elected for a 4-year term. Judicial Councils send their assessment proposals to the *Consiglio Superiore della Magistratura* CSM), which may approve, amend or ask to clarify the assessment. A new source of information may come from Committees established in each district to supervise case management and the flow of cases.

The appraisal procedure is established by law (Art. 11, paragraph 3, of Legislative Decree of 5 April 5 2006, n. 160, as amended by Art. 2, paragraph 2, of the Law of 30 July 2007, n. 111, entered into force with effect from 31 July 2007). According to this article, the CSM, issues a resolution governing "*the bases on which assessments must be conducted on the judiciary, the parameters to be used to allow homogeneity of the evaluations, documentation that the Presidents of courts and prosecution offices shall submit to the local Judicial Councils ...*" Therefore, the law is implemented by way of an administrative regulatory instrument issued by the CSM.

The purpose of the assessment procedure is to "*describe with due completeness the qualities of each judge, in order to highlight in detail his or her professional features, the types of work carried out and his or her real aptitudes, framing such data within the parameters that are provided for under the existing provisions of law*" (2007 Resolution of CSM). The evaluation is substantially done in writing. Hearings are provided upon request, both before local Councils or the CSM, should any of the indicators be not positive.

The evaluation procedure is applicable to all ordinary professional judges and prosecutors active in the civil and criminal sectors of Tribunals, Court of Appeals and Court of Cassation, Juvenile courts, Penitentiary supervision courts and some other jurisdictions, as well as to members of public prosecution offices attached thereto (in Italy prosecutors share the same career as judges). The evaluation procedures do not apply to justices of the peace, that are non-professional judges, as well as to members of special professional jurisdictions, such as Administrative Tribunals, Council of State, Court of Auditors, Military tribunals, and to public prosecutors attached thereto; these specialised jurisdictions have their separate regulatory framework. Constitutional Court judges, serving at a high constitutional office for a limited period, are not assessed.

The evaluation relies on various sources of information, including a self-evaluation by the judge, case-load statistics,[12] some 20 judicial documents (including minutes of hearings and sentences), a report made by

the head of the office in which the magistrate works, that must also consider complaints or other inputs received from the Bar.

The evaluation criteria include three values inherent to the fulfilment of the judicial function: independence, impartiality and balance. They must be rated as “nothing to remark” or the evaluation is considered negative. Then, the evaluation process considers four other criteria: professional skills, productivity, diligence, and commitment. The Council has approved a detailed definition for each criterion, with the goal of making the evaluation objective and consistent. Judicial or prosecutorial writings are evaluated considering the clarity, completeness and synthesis, and their appropriateness concerning the procedural or investigative problems dealt with in such documents. Appeal rates or reversal rates are not considered, except for cases explicitly reported by the President of the Court.

The local judicial council considers the information provided in the dossier and expresses an opinion. Then, the (National) Judicial Council expresses the final evaluation that can be positive (in more than 98% of cases, and associated to a salary increase), non-positive (mostly side effects of disciplinary sanctions) or negative (0.6%) (Contini, 2014[38]).

Marks: Art. 11, paragraph 9, of Legislative Decree no. n. 160/2006 provides that the assessment must be carried out analytically, with reference to each of the parameters of the assessment referred to in paragraph 2 (capability, productivity, diligence and commitment), without adding any further specification; legislation then only states the consequences in cases in which the feedback referring to each of the aforementioned parameters is “positive”, “insufficient” and “seriously insufficient”. Resolution of 2007 by CSM distinguished, first, between three parameters, on one side (independence, impartiality and balance), which arguably are essential elements in the evaluation, and assessment regarding other parameters, on the other side (capability, productivity, diligence and commitment). The first three parameters, grouped in a single heading of the assessment form, must necessarily be present in order for the evaluation to be positive and, should they not be, a motivation should be provided in the assessment (so the choices are “nothing to observe” or, as an alternative, an express inclusion of observations); for the other parameters, “positive” (including sufficiency and degrees above), “insufficient” and “seriously insufficient” are the evaluations to be expressed in short, with motivation. The Resolution includes sub-parameters and states that when some are missing the assessment is insufficient, when more are missing it is seriously insufficient. The appraisal marks thus are:

- Positive: It is awarded if the assessment is positive with respect to all parameters examined. In this case, the judge passes the assessment, resulting in increased salary and acquisition of title to carry out higher functions (appeal judge, president of chamber, president of tribunal, etc.).
- Insufficient: If there are any deficiencies, the whole assessment is not positive. In this case, after a year, the CSM conducts a new assessment of professionalism, acquiring a new opinion of the Judicial Council.
- Seriously Insufficient: If there are serious shortcomings, the assessment will end with a negative opinion. In this case, the decision of CSM shall states explicitly the parameters missing and establishes whether the magistrate should eventually participate in additional training, indicating the nature and number of training initiatives, and whether the judge is unfit to carry out particular functions; in that case, CSM imposes assignment to another function until the next assessment, and decides whether the exclusion should be applied from access to court or chamber president positions, or other specific functions. Copy of the decision must be forwarded to the School for the judiciary.

The CSM, in the case of a first negative assessment, proceeds to carry out a new one two years after the expiry of the four-year period for which the assessment was rated as negative. If the second evaluation is also negative, the magistrate is dismissed from service.

Against all assessments, the magistrate may request a judicial review by the Regional Administrative Tribunal, the decision of which is subject to appeal before the Council of State. The decision of CSM, relating to the status of the judge, is kept forever in the personal file of the judge and it is sent to the Minister of Justice. Access to the decision is governed by the general regulations on access to public data.

For what concerns the relationships between disciplinary procedures and assessment: 1) when a disciplinary proceeding is pending, depending on several circumstances, the evaluation is suspended necessarily or it is suspended optionally; 2) when an assessment is negative, the CSM may initiate a disciplinary procedure.

Appointment to a managerial position: The appointment of judges and prosecutors to managerial positions requires another evaluation that considers merit and aptness. Merit should look at the whole quantity and quality of the judicial activities of the magistrate and should be a kind of a 'consolidated evaluation' of the periodic professional evaluations. Aptness must take into consideration previous experience in managerial positions in courts or prosecutor's offices. Several detailed items define merit and aptness. Prospective candidates must attend a course organised by the School for the Magistracy to apply for a managerial position. The Council makes the appointment with the "*concerto*" (endorsement) of the Minister of Justice that is not binding.

Netherlands

Status

The prosecution service (*Openbaar Ministerie*) has a special autonomous position. It is part of the judicial organisation, but not of the judiciary. The prosecutors can only be held accountable through and by court. The prosecution service is separate from the ministry of Justice, but there is a (limited) hierarchical relationship with the minister of Justice. The prosecution service reports on financial and organisational matters to the government through the Ministry of Justice. The minister of Justice has the power to give individual instructions to the prosecution service in specific cases, under very strict conditions. However, in practice the minister has never made use of this power.

The main roles of the prosecution services are to protect the legality, to investigate illicit or criminal deeds and gather sufficient evidence to prosecute and supervise the investigation carried out by the police. Overarching roles include to protect the public interest, to ensure procedural fairness and objectivity in the criminal justice system and protect the victims of crime. In concrete terms, the Public Prosecution Service's main tasks are supervising the police in the investigation of criminal offences, prosecuting criminal offences and bringing suspected offenders before the courts and dealing with criminal offences without involving the courts. The Public Prosecution Service concerns itself only with criminal law, but prosecutors have still several duties in civil law, for instance with regard to the compulsory internment and treatment of psychiatric patients, the prevention of marriages for fraudulent purposes or the dissolution of legal entities with criminal aims. In the case of occurring an unnatural death, permission to dispose of the body must be obtained from a public prosecutor.

Prosecutors have legal functional criminal immunity only for the actions performed in good faith while on duty, but they are always liable to disciplinary responsibility. The compensation owed to a third, aggrieved party, will be paid by the state in case of civil responsibility incurred by a prosecutor while on duty.

The Public Prosecution Service consists of:

- The Board of Prosecutors-General and its Office.
- The district Public Prosecutors Offices.
- The National Office of the Public Prosecution Service.
- The Public Prosecutors Offices at the Courts of Appeal.

The Public Prosecution Service is headed by a Board of Procurators-General which determines policies about investigations and prosecutions. It also supervises the National Police Internal Investigations Department (*Rijksrecherche*, see below).

The Board of Prosecutors-General is responsible for 19 regional departments. There is a Public Prosecutor's Office in every town which is the seat of a court. Therefore, the organisation of the prosecution service matches the one of the courts. A Chief Public Prosecutor, who is responsible for ensuring that the policy of the Public Prosecution Service is implemented in his/her district, heads it. The five courts of appeal are each assigned their own Public Prosecutor's Office. There is also a 'prosecution office' at the Supreme Court. The Prosecutor General and his/her staff at the Supreme Court are - like judges - independent and appointed for life.

The board of Prosecutors General is concerned with general policy on investigation and prosecution. If the minister orders the prosecution service to abstain from prosecuting a case, parliament will always be informed. Until now no minister ever issued such a directive. All prosecutors are bound by the guidelines issued by the Board of Prosecutors General. They are mainly the Guidelines on deferred prosecution agreements and the Guidelines for ensuring homogeneity in the application of the penal code.

Higher ranked prosecutors are not entitled to issue instructions to lower-ranked ones, or modify the decisions of the latter, as each prosecutor shall decide autonomously on the merits of the case. A prosecutor is obliged to withdraw from dealing with a case if he/she believes that his/her impartiality can be put into question.

Prosecutors have role in law drafting. It is mandatory to request their opinion, but it is not binding in law drafting.

Investigation and Prosecution

The prosecutors at the Public Prosecution Service have ultimate responsibility for investigations and – especially where serious offences are concerned – they supervise the police during the investigation.

The police are responsible for the practical side of criminal investigations. They collect evidence, interview witnesses and victims, and arrest suspects. And they are required to keep a complete record of the case in the form of an official report. However, the Public Prosecution Service has the ultimate responsibility for the investigation. Throughout the process the public prosecutor ensures that the police follow all the rules and procedures laid down by law and take account of all relevant information.[13] The police must render account for their actions to one of the public prosecutors of the Public Prosecution Service. Every investigation is carried out under the instructions of a public prosecutor, who ensures that the police observe all the rules and procedures laid down by law. This is of consequence in the case of a serious offence, where the public prosecutor will be in direct charge.

According to the 1993 Police Act, as amended in 2012, authority precedes management. That is, the police managers must adjust their management decisions to the wishes of the regional authorities (i.e. all mayors and the chief public prosecutors for each region) and the wishes of the national police policy makers (i.e. the ministers). In practice, authority and management decisions are interconnected. The chief public prosecutor, for instance, holds co-authority over the regional police force and at the same time is part of the regional council and in this position is surrounded by all the mayors. In the Dutch Police Act 2012, the traditional legal distinction remained between the 'administration' of the police (the formal power to make decisions about police organisation and resources) and 'authority' over the police (the power to decide what the police should do). What is also similar with the situation before 2013 is that according to the new Police Act authority over the police is largely concentrated at the local level, divided between two actors: the mayor as the head of the municipality (who has authority over the police with respect to the policing of disorder and police services) and the public prosecutor (with authority over the police concerning criminal

investigations). In the Netherlands, both the mayor and the public prosecutor are non-elected, appointed officials (Terpstra and Fyfe, 2019[39]).

In October 2010, part of the tasks of the Ministry of Interior and Kingdom Relations (amongst others, responsibility for the police organisation) were transferred to the Ministry of Justice. From then on, the Ministry of Justice became the Ministry of Justice and Security.

Supervising the investigation, which is primarily the responsibility of the police, is the main prosecutorial responsibility in pre-trial investigations. Public prosecutors can issue instructions to the police. In some cases, they must first obtain permission from the court, for example to tap a phone or search a home or computer. The methods the police and Public Prosecution Service use when investigating criminal offences must be proportionate to the offence and therefore may not be too heavy-handed. This proportionate approach is a matter of justice.

Various investigative authorities are responsible for detecting corruption-offences and can carry out investigations: the police, the National Police Internal Investigation Department (*Rijksrecherche*, see below) and the Fiscal and Economic Intelligence and Investigation Service (FIOD), the Food and Consumer Product Safety Authority and the municipal social services. The Public Prosecution Service is also responsible for supervising criminal investigations carried out by these authorities. The Fiscal Intelligence and Investigation Service (FIOD) is a special investigation service of the Tax and Customs Administration. The FIOD deals with the preliminary investigation of economic and tax crimes reported by tax authorities. If necessary, the public prosecutor may authorise the police to apply certain intrusive measures, but the Public Prosecution Service does not have unlimited powers, and certain measures (e.g. domicile searches or phone tapping) may only be taken with permission from the courts.

Prosecutors enjoy freedom to decide not prosecuting a case. The expediency or opportunity principle is established in article 167-2 of the Criminal Procedure Code: “a decision not to prosecute may be taken on grounds of public interest”.

The prosecutor may decide to bring a case before the court, but he/she also has various options for disposing of a criminal case because of the opportunity principle which governs the Dutch prosecutorial policy and law. These options are:

- Imposing a sanction or ‘penal order’: The public prosecutor can dispose of minor criminal cases, such as criminal damage, vandalism, shoplifting and traffic violations, by imposing a sanction (*strafbeschikking*). Accordingly, the case is not brought before the court. The Public Prosecution Service itself decides on the sanction imposed once it has been established that the suspect is guilty of the offence in question. The sanction could be a fine, a driving ban (for up to six months), an alternative sanction (e.g. up to 180 hours’ community service) or a compensation order. The Public Prosecution Service may not impose a prison sentence; only a court may do that. Suspects who accept the sanction thereby admit their guilt. And if they decide to reject the sanction, they can have their case brought before the court.
- Payment in lieu of prosecution: The public prosecutor may also decide to allow the offender to make a payment in lieu of prosecution (*transactie*). If the person agrees and pays, the prosecution will not proceed any further. Failure to pay means the person will have to appear in court after all. This mechanism of transaction is theoretically applicable to crimes punishable with less than six-year prison sentence.
- Decision not to prosecute: Sometimes, the public prosecutor decides not to prosecute a case (*sepot*). This may occur if there is, for instance, insufficient evidence to achieve a conviction or if the suspect has not been identified. A prosecution may not go ahead if the evidence was obtained unlawfully, or if the suspect cannot be held accountable because they have psychiatric problems or because they acted in self-defence. The public prosecutor may reason, on public interest grounds, not to initiate or not to continue prosecution proceedings. He/she can take that decision

because the Dutch system is based on the opportunity principle. A victim may object to a decision not to prosecute by lodging a complaint with the Court of Appeal. If the Court says the complaint is well founded, the Public Prosecution Service must start a prosecution.

- Conditional decision not to prosecute: The public prosecutor may also attach conditions to the decision not to prosecute, and the perpetrator must abide by these conditions. A person may, for example, agree not to enter the street where his victim lives. If they do not stick to the agreement a sanction will be imposed after all. This mechanism is equivalent to a suspension of the prosecution.

If the public prosecutor decides that none of these options are appropriate, the suspect must appear before a criminal court. He is sent a summons: a letter stating when the case is to be heard and giving a description of the offence he/she is charged with. Relatively minor offences are heard in a court presided over by a single judge. More serious or complicated cases are heard by three judges.

Like the prosecutors, the police have discretion not to investigate an individual crime. This discretion is derived from the prosecutorial discretion, not formally established in any explicit provision in legislation. Formally, the public prosecutor is the senior investigator (articles 148 of the Penal Procedure Act and 13 of the Police Act). From beginning to end, the prosecutor is the responsible authority for the conduct of the police, especially when it comes to respect for the law. Most activities of the police require his permission and therefore the prosecutor can check the legality of his orders and the acts of the police officers.

The Board of Prosecutors General, the highest authority in the Public Prosecution Service, sets the parameters for investigation and prosecution policy. Individual public prosecutors also make choices. They need to comply with national policy, but they must also take local circumstances into account. In order to stay up to date on the local context the Public Prosecution Service takes part in regular tripartite consultations with local mayors and police representatives to discuss ways of tackling crime to promoting public safety and the use of police resources. The Public Prosecution Service is the authority for the police regarding criminal law enforcement. The mayors are the authority when maintaining public order is at stake.

The Board of Prosecutors General has established guidelines (Instructions, or *Aanwijzingen*) for prosecutors to waive prosecution for reasons of public interest (article 167-2 of the Penal Procedural Code). Guidelines perform as a counterbalance to the discretionary power of prosecutors:

- a response other than penal measures or sanctions is preferable, or would be more effective (e.g. disciplinary, administrative or civil measures)
- prosecution would be disproportionate, unjust or ineffective in relation to the nature of the offence (e.g. if the offence caused no harm and it was inexpedient to inflict punishment)
- prosecution would be disproportionate, unjust or ineffective for reasons related to the offender (e.g. because of his age or health, rehabilitation prospects, first offender)
- prosecution would be contrary to the interests of the State (e.g. for reasons of security, peace and order, or if new applicable legislation has been introduced)
- prosecution would be contrary to the interests of the victim (e.g. compensation has already been paid).

Likewise, a prosecutor may decide not to prosecute based on technical grounds:

- wrongly registered as a suspect by the police
- insufficient legal evidence for a prosecution
- inadmissibility of a prosecution
- the court does not have legal competence over the case
- the deed does not constitute a criminal offence

- the offender is not criminally liable due to a justification or to legitimate defence.

Anyone who is directly involved in a case may object to the charges being dropped by lodging a complaint with the Court of Appeal. If the Court says the complaint is well founded, the Public Prosecution Service must start a prosecution.

Management tools

Specialisation

In addition to the territorial prosecutorial services, there are two national operating prosecutorial services. One for serious organised crime and terrorism, the other for fraud, environmental, social security crimes. The law determines the degree and hierarchical level of specialisation and this latter is determined by the Prosecutor General Office. The main areas of specialisation are organised crime, corruption crimes, financial crimes, juvenile justice, trans-border economic criminality, terrorism, environmental crimes, fraud, and human trafficking. Specialised bodies under the Prosecution Service are:

The National Public Prosecutors' Office (*Landelijk Parket*) focuses on international forms of organised crime and crime that undermines society, such as human trafficking, terrorism, drug trafficking, money laundering related to organised crime, international war crimes, child pornography, child sex tourism and cybercrime.

The National Office for Serious Fraud, Environmental Crime and Asset Confiscation (*Functioneel Parket*) is responsible for tackling fraud and environmental offences and handles complex criminal cases. It also serves as the Public Prosecution Service's centre of expertise on confiscating proceeds of crime.

The Central Processing Office (CVOM) handles virtually all minor offences and traffic cases. Central Processing deals with anyone who is guilty of drink-driving, speeding or driving without a licence. It makes nationwide agreements with the police concerning road traffic enforcement and assesses whether new legislation concerning the roads, waterways, airways and railways is enforceable.

The Internal Investigations Department (*Rijksrecherche*) is part of the Dutch national police but falls under the authority of the Public Prosecution Service. This independent body investigates alleged cases of criminal conduct within the government, such as when a public servant is suspected of a criminal offence like corruption, fraud or bribery. In addition, the Internal Investigations Department is always called in when someone is killed or wounded following the use of firearms by the police. The Department also launches an investigation in the event of a detainee's death in prison or at a police station.

Standardisation

One major reform objective since the 1990s has been the standardisation of case processing (mostly for cases from CVOM), especially of cases involving petty delinquency such as burglary, shoplifting, petty fraud, drunk driving, etc. This has led to a categorising criminal deeds into standard cases, special cases and sensitive cases. Special cases tend to involve serious crimes involving one or more offenders who must await the verdict of the judge in custody. Sensitive cases are atypical and tend to attract large media coverage or to involve offenders who are considered to be a threat to society; politically sensitive cases, such as serious organised crime cases; or instances of terrorism and white-collar crime. The public prosecutor is directly involved in handling special and sensitive cases, and decision making is individualised and non-routine.

Decision making in standard cases, which amount to about 80 percent of the total caseload, is entirely standardised. Directives are there to help in these cases. The directives emanate from the Board of Prosecutors General, although case nuances and specificities are always taken into account. The directives are incorporated in the BOS-Polaris system, which emphasises a small number of variables, thereby enabling speedy decisions. BOS-Polaris is a computerised decision support system directed at the standardisation of PPS decision making for common, high-volume offenses. These offenses are

weighted according to a rule-based system in order to determine appropriate sentences. This system uses a decision tree of questions and answers that help prosecution staff classify cases and determine appropriate sentences given national norms. For example, in the case of driving under the influence of a substance, relevant parameters include the level of alcohol in the suspect's blood, whether the suspect has previous convictions, or endangered others by driving recklessly. If all or as many of these parameters as possible are encoded in a structured XML format, the time to determine sentences can be reduced significantly.

The BOS-Polaris system is heavily oriented toward efficiency. The system does not involve making decisions as the criteria applied to cases and the ensuing decisions result from ticking boxes. Public prosecutors are consulted only in exceptional cases that do not fit in the BOS-Polaris schemes. The decision makers are semiskilled PPS employees, who in case of uncertainty must consult a secretary of the public prosecutor or the programmers of the BOS-Polaris software.

Simplification

The Public Prosecution Service has focused its attention on developing a 'road map' for the speedier resolution of criminal cases, known as ZSM. The aim of the road map, introduced in 2013-2014, is to quickly deal with criminal cases that need not (necessarily) be dealt with by a criminal court from the perspective of the Public Prosecutor and to settle these cases out of court in the shortest timeframe possible. Developing such a road map is believed by the Public Prosecution Service to significantly contribute to a visible and noticeable correction of punishable behaviour, thereby strengthening the confidence of society (victims included) in the criminal justice system as such. ZSM stands for *Zorgvuldigheid* (careful), *snelheid* (rapid, as soon as possible), *en maatwerk* (tailor-made approaches). The approach thus combines a desire for speediness with the objective to reach the best resolution for the case, which is considered best for both the suspect and the victim, and conclusively settling all cases that do not warrant the attention of a trial judge (or court).

The ZSM facility is open seven days a week. It entails a special form of co-operation between important criminal justice chain partners: the Public Prosecution Service, the police, further SHN, Probation Service, Council for Child support and local municipality. All partners work together in one space/room in which they directly bring together all the necessary and relevant information to the 'accelerated procedure table'. Through the collective contribution of information concerning the (alleged) criminal offence and the suspect, the public prosecutor is able to assess what (still) needs to be done in the case. He/she can then decide whether and how the case should be further handled or disposed. Currently, it is aimed at conclusively deciding the 'defendant's fate' within 7 days after arrest or less.

Management structure and objectives

The Public Prosecution Service is headed by the Board of Prosecutors General. They decide on the investigation and prosecution policy. Together with the organisation's directors and staff officers, the Board of Prosecutors General constitutes the national head office of the Public Prosecution Service (*Parket-Generaal*).

The Public Prosecution Service is a national organisation divided over ten regions. The organisation's office (*arrondissementsparket*) in each region is located at the district court (*rechtbank*) serving that region. Every office of this kind is headed by a Chief Prosecutor. The managing bodies are the General Prosecutor's Office and the Director of the Prosecutorial Service. All the prosecutorial services together are managed by the general prosecutor's office primarily regarding the funding and overall management/workspaces/IT etc. The National Service Centre (DVOM) is a service provider which performs operational management tasks for the Public Prosecution Service in the fields of human resources, finance, information management and facilities management.

Other constituent elements are: a) The Bureau for Criminal Law Studies (WBOM), which acts as a knowledge and documentation centre on legal matters for the Board of Prosecutors General and the other

parts of the Public Prosecution Service; b) The Bureau for International Affairs (BI) which acts as a non-operational advisory body to gain more coherence and overview in the field of international matters.

Good management of available resources is a legal obligation for prosecutors. There is a prioritised case load for police and prosecution regions. Objectives are settled each year depending on the social state and evolving crime numbers. Objectives are cleared in a meeting with the hierarchical superior and in a dispatch by the chief prosecutor.

Case assignment

Mechanisms for case allocation are not well-defined in legislation or guidelines, but the most used criteria for assigning cases to prosecutors are specialisation, experience of the prosecutor, case weighting and territorial jurisdiction. But the criteria may be changed ad hoc by the hierarchy.

Human resources

According to June 2020 figures, there are 800 prosecutors out of a total staff of 5025. These include non-prosecutorial staff working on operational support, administrative tasks, housekeeping-related functions or specialised professional advice. Some of these professionals also work on the preliminary processual activities, especially the forensic experts.

The recruitment criteria for prosecutors are public announcement of vacancies, theoretical and practical tests, thorough scrutiny of the curriculum vitae and recommendations from active prosecutors. The recruitment is entrusted to a permanent selection committee. Promotions are carried out through an internal announcement of vacancies and a decision by the selection committee.

The remuneration of prosecutors is detailed in legislation.

Training for prosecutors is mandatory first as an induction training at the beginning of the career and then the regular in-service training is provided, and participation is mandatory in training activities. Training is delivered at an official training school, by international actors and by more senior prosecutors, in internal sessions. Training needs analysis carried out by each prosecutorial unit.

Since its establishment in 1960, the *Studiecentrum Rechtspleging* (SSR) has been the joint training institute of the Dutch judicial system and the Public Prosecution Service, operating independently from the Ministry of Justice. In partnership with the Dutch courts of law and public prosecutor's offices, the SSR trains law graduates as judges and public prosecutors. These initial training programmes are currently undergoing major changes, and SSR has been assigned to redesign the judge programme. The Public Prosecution Service has taken the initiative to modify the public prosecutor programme itself, with SSR acting as a consultant. Besides its main office, which is in Utrecht, SSR also facilitates local training sites at court buildings and public prosecutor's offices in Amsterdam, Rotterdam, Den Bosch and Zwolle.

Accountability: Monitoring and reporting

The Public Prosecution Service is accountable to the judge in court. The Minister of Justice and Security, who is politically responsible for the Service's conduct and performance and may be called upon to render account to the Parliament.

The courts review the conduct of the Public Prosecution Service and the police. The Public Prosecution Service reports to the Minister of Justice and Security on caseloads and statistics on number and type of cases. The Minister bears political responsibility for the Service's conduct and performance and may be called upon to render account to both houses of the Dutch parliament. The Prosecutor General at the Supreme Court supervises the quality of the Public Prosecution Service's work on criminal procedure.

The main internal supervision mechanisms to monitor the performance and professional behaviour of individual prosecutors is the supervision by the hierarchical superior and a complaints procedure, which can be activated by any person. Every individual will be appraised once a year by his/her superior as part

of the normal working relation. In special cases, e.g. a misstep by a prosecutor in his private life that compromises his work, there is a separate appraisal when necessary. The results of the performance appraisal can be challenged before the Prosecutor General and before the courts.

The consequences of an appraisal can be a reprimand, a suspension of duty and remuneration or dismissal. A financial bonus is awarded if the prosecutor had performed outside his/her normal role on a more than normal professional level/ has done more than could be asked for.

Statistics on criminal justice are elaborated by the *Centraal Bureau voor de Statistiek* , which is responsible for collecting data for the government, and the *Wetenschappelijk Onderzoek- en Documentatiecentrum* (WODC) of the Ministry of Justice.

The main performance indicators for the prosecution service are the number of cases vs. caseload, cases of cybercrime, cases with victims, human trafficking, finance (budget-agreement).

New Zealand

New Zealand presents a number of unique features as compared to most benchmarked countries. New Zealand classifies itself within the common law legal tradition, at least as far as its origins are concerned. Nevertheless, nowadays this country has drifted away from that tradition in some respects creating a criminal justice system on its own, which is very well regarded internationally (Stenning, 2008[40]). For example, in 2018 and 2019, the World Bank ranked New Zealand first out of 190 nations for 'Ease of doing business'. The World Justice Project 2020 'Rule of Law' index, which measures how the rule of law is experienced and perceived by the general public ranked New Zealand 7th out of 128 countries. The New Zealand public sector and judiciary was again ranked the least corrupt in the world in the 2019 Corruption Perception Index of Transparency International paired with Denmark.

Status and main players in the prosecutorial services

There are many prosecuting authorities in New Zealand, and each aligns itself in accordance with their own priorities. The most significant groups are the Police Prosecution Service (which has offices spread throughout the country) and Crown Solicitors (these are private lawyers appointed by warrant of the the Governor-General whose jurisdiction is matched with Courts' jurisdictions). Today there are 42 prosecuting agencies and 16 Crown Solicitor firms, which are all structured differently. All prosecutions must be conducted in accordance with the Solicitor-General's Prosecution Guidelines. In addition, section 193 of the Criminal Procedure Act 2011 also requires Crown prosecutions to be conducted independently of the relevant agency.

The Prosecution Guidelines 2013 s 19, imposes that the overarching duty of a prosecutor is to act in a manner that is fundamentally fair. Prosecutors should perform their obligations in a detached and objective manner, impartially and without delay. Legal practitioners acting in a prosecutorial capacity should do so in accordance with their ethical obligations as officers of the Court and conduct themselves according to the rules of professional conduct. Prosecutors should always protect the right to a fair trial. Subject to that requirement, prosecutors may act as strong advocates within the adversarial process and may prosecute their case forcefully in a firm and vigorous manner. However, prosecutors should not strive for a conviction. They should present their case dispassionately and avoid inflammatory language. Obtaining a conviction is a consequence but not the purpose of a prosecution.

The main players in the prosecution service are (Spencer, 2011[41]):

1. The Attorney-General is a politician, a government minister, who is responsible to Parliament for all public prosecutions, but does not carry out prosecutions him/herself. The Attorney-General has two distinct roles in Government, a) as a Minister of the Crown with Ministerial responsibility for Crown Law, the SFO and the Parliamentary Counsel Office; and b) the senior Law Officer of the Crown with primary responsibility for the Government's administration of the law, which involves being the Government's principal legal adviser. This function is exercised in conjunction with the Solicitor-General, who is the junior Law Officer. As a part of his or her Law Officer role, the Attorney-General has responsibility for the Government's role in the administration of criminal justice. This means that the Attorney-General is nominally and formally responsible to Parliament for all public prosecutions and for supervising the prosecution system. The Attorney-General's dual roles as the senior Law Officer and a Minister of the Crown inherently involve tension. As a Law Officer the Attorney is obliged to act solely in the public interest by disregarding any political interest or partisan advantage/disadvantage to the Government or opposition parties. However, the Attorney's role as a Minister properly includes political partisanship. Management of this tension is facilitated by the constitutional convention that recognises the position of the Solicitor-General as a non-political one.
2. The Solicitor-General is a civil servant who superintends the prosecution system on behalf of the Attorney-General. The Solicitor-General holds office as a Government Official and is also the Chief Executive of Crown Law. Subject only to the Attorney-General, he or she is the Government's chief legal adviser and advocate in the Courts. The Solicitor-General also has a separate responsibility to give legal and constitutional advice to the Governor-General (de facto head of state representing the Queen of the United Kingdom). This function emphasises the Solicitor-General's non-political and constitutional role in Government and ultimate responsibility to the Crown. As a matter of convention, the Solicitor-General has traditionally assumed responsibility for the exercise of those Law Officer functions that should be undertaken independently of the political process, most notably the prosecution functions. These functions include responsibility for overseeing Crown prosecutions, Crown representation in appeals against conviction and sentence and several specific statutory duties relating to the administration of criminal justice. The Solicitor-General is accountable to the Attorney-General for the exercise of these functions. The reason for the convention is to prevent the administration of criminal law becoming, or appearing to become, a matter of political decision making. It works in practice because, by virtue of s 9A of the Constitution Act 1986, the Solicitor-General can exercise almost all the functions conferred on the Attorney-General.
3. The Crown Law Office (or simply Crown Law, as it is known) is the office that supports the Attorney-General and the Solicitor-General in performing their roles. It is headed by the Solicitor-General. Crown Law is a department of the public service and, in essence, is the Government's law firm. To achieve Crown Law's outcomes, the Attorney-General provides funds for: a) The conduct of criminal appeals from Crown prosecutions seeking to clarify points of law; b) Legal advice and representation services to the Crown via central Government departments; c) the supervision and conduct of Crown prosecutions; and d) Legal and administrative services for the Attorney-General and the Solicitor-General to assist them in the exercise of their statutory functions and responsibilities. Reflecting the core functions of the Office, the structure is organised into five practice groups:
    - Attorney-General's Group led by a Deputy Solicitor-General.
    - Crown Legal Risk Group led by a Deputy Solicitor-General.
    - Criminal Group led by a Deputy Solicitor-General (it includes the Criminal Teams and the Public Prosecutions Unit-PPU). The Criminal Teams discharge the statutory responsibility of the

Solicitor-General in representing the Crown in the Court of Appeal and Supreme Court on all criminal appeals.

- Strategy and Corporate Group led by a Deputy Chief Executive.
- System Leadership Group led by a Deputy Chief Executive.

The Deputy Solicitor-General at the head of each legal Practice Group is responsible for the professional development and management of the teams falling under their leadership, and reports to the Solicitor-General/Chief Executive.

In addition to legal teams, Crown Law also features a Strategy and Corporate Group, which supports overall performance under the organisation's governance and accountability frameworks and a System Leadership Group, which provides leadership and support across the government legal system.

Connected ways of working are valued at Crown Law, and with both legal and corporate groups strongly linked to the wider whole, the organisation's structure is designed to optimise the co-ordination of work, pooling of knowledge, and delivery of excellent services to Ministers, and government departments and agencies (Crown Law of New Zealand, 2020[42]).

1. The Crown Solicitors Network is made up of private legal practitioners appointed on the recommendation of the Attorney-General and by warrant of the Governor-General (Crown Law of New Zealand, 2017[43]). The Crown Solicitors are appointed for a particular district, usually in a High Court centre, and are responsible for the conduct of Crown prosecutions (previously known as indictable prosecutions) in the High Court and District Court on behalf of the Crown. The Solicitor-General has overall responsibility for the supervision of Crown Solicitors, with assistance from the Deputy Solicitor-General (Criminal Group) in relation to prosecutions. Crown Solicitors serve "at pleasure". The Crown Solicitor network currently consists of 17 Crown Solicitor warrants which are held by partners in private law firms throughout New Zealand. By having access to a national network of Crown Solicitors, the Crown Law can draw on regional expertise in all High Court districts throughout New Zealand. They are paid by Crown Law in respect of their Crown prosecution work. The lawyers within these firms assist each Crown Solicitor in exercising their prosecution-related responsibilities. These lawyers must be formally recognised by the Solicitor-General as a Crown prosecutor and categorised as junior, intermediate, senior or principal counsel under the Crown Solicitor's Terms of Office before they undertake this work. In addition to the work obtained pursuant to their warrants, Crown Solicitors are regularly engaged by enforcement agencies to conduct the non-Crown prosecutions that they initiate.
2. The Serious Fraud Prosecutors Panel is a panel of prosecutors who conduct prosecutions on behalf of the Serious Fraud Office (SFO). The Serious Fraud Prosecutors Panel is established by section 48 of the Serious Fraud Office Act 1990. This section requires the SFO to use Panel members for all its proceedings relating to serious or complex fraud. The function of the Serious Fraud Office is to detect and investigate cases of complex or serious fraud offences and expeditiously prosecute offenders. The Panel members are appointed by the Solicitor-General after consultation with the Director of the SFO. They are all senior lawyers, many of whom are Crown prosecutors and/or have experience in commercial law and civil proceedings.
3. The Police Prosecution Service (PPS) is the service that conducts non-Crown prosecutions (less serious crimes) that are initiated by the Police. Established in 1999, the PPS is an autonomous, nationwide prosecution service within the Police. It is administratively separate from the criminal investigation and uniformed branches of the Police. It has over 300 staff (including 212 prosecutors). They are spread between a national office in Wellington and 41 offices throughout the country, servicing over 60 district courts. These prosecutors include sworn Police officers with law degrees, sworn Police officers without law degrees and non-sworn lawyers. The PPS has responsibility for managing non-Crown prosecutions after initial charges are laid by Police investigators. This role includes conducting prosecutions right through until sentencing and initial

stages of prosecutions that become Crown prosecutions. In practice, this means that the PPS conducts most of the non-Crown prosecutions each year. The Police Prosecution Service:

- conducts proceedings for all category 1-3 criminal and traffic prosecutions commenced by Police, from first appearance to disposal, including Case Review and Trial as required (except where the proceeding becomes a Crown Prosecution e.g. jury trials)
- conducts proceedings for Youth Court prosecutions
- advocates for Police at coroners' inquests as required
- supports Districts at miscellaneous hearings as required
- administers the Police Adult Diversion Scheme.

The Police operate the New Zealand Financial Intelligence Unit (FIU). It collects, analyses and disseminates financial intelligence relating to suspicious transactions/activities, money laundering and the financing of terrorism. The FIU fulfils the functions and exercises powers of the Commissioner of Police as set out in the Anti-Money Laundering and Countering Financing of Terrorism Act 2009.

1. Departmental (agency) prosecutors conduct non-Crown prosecutions on behalf of the agencies that employ them. Under the Cabinet Directions for the Conduct of Crown Legal Business, enforcement agencies (including the Police) must refer Core Crown Legal Matters to Crown Law, unless the matter may be handled by the agency's own staff as authorised by the Directions. These Directions apply only to Government Departments and not all prosecuting agencies). In relation to non-Crown prosecutions, Cabinet has given enforcement agencies the option of either: a) using an in-house prosecutor; or b) briefing the matter to a Crown Solicitor. The Police, as one prosecuting agency, has opted to use the PPS for almost all its non-Crown prosecutions. Only the most complex non-Crown prosecutions are briefed to Crown Solicitors. The Corrections department also prosecute most cases by themselves. In relation to the other enforcement agencies a number of them rely on the Crown Solicitors (e.g. Commerce Commission, Maritime NZ, Civil Aviation Authority).
2. Private prosecution: Any person may commence a proceeding under section 15 of the Criminal Procedure Act 2011 by submitting a charging document in the District Court. The document is considered for filing in accordance with section 26 of the Act. The document must meet the requirements of section 16 of the Act and be disclosed to the defendant as part of the initial disclosure. This is a practice recognised mutatis mutandis in other countries outside the Commonwealth such as France or Spain.

The Government Legal Network (GLN): It is a network of government lawyers. Led by departmental Chief Legal Advisors and the Principal Law Officers (Attorney-General and Solicitor-General), the Government Legal Network (GLN) comprises over 1 000 lawyers in central government and Crown entities. By leveraging collective legal expertise, the GLN addresses a broad spectrum of complex legal matters and assists the Crown in the delivery of better public services.

The Solicitor-General's Prosecution Guidelines 2013

By convention, the Attorney-General and the Solicitor-General have issued guidelines for prosecutors. The latest incarnation of these is the Solicitor General's Prosecution Guidelines 2013 (Solicitor General of New Zealand, 2013[44]). The Prosecution Guidelines are issued by the Law Officers to assist all those whose function is to enforce the criminal law by instituting and conducting criminal prosecutions. Their purpose is to ensure that prosecution principles and practices are underpinned by unified values, so that there is consistency, openness and fairness. Specifically, the Guidelines are intended to assist in determining whether criminal proceedings should be commenced; what charges should be laid; and whether proceedings should continue. They also provide guidance for the conduct of criminal proceedings and establish standards of conduct and practice that the Law Officers expect from prosecutors.

The Cabinet Directions for the Conduct of Crown Legal Business 2016

The Cabinet Directions explain the process that must be followed when a Government Department (including the Police) requires legal services, in the form of advice or representation. The Directions stipulate those services that are to be provided by Crown Law, and those that may be undertaken by in-house lawyers or briefed to external counsel, including Crown Solicitors (Department of the Prime Minister and Cabinet, New Zealand, 2016[45]).

In very general terms, the Cabinet Directions create two categories of legal business. Any requests for legal services that fall within category one must, unless stated otherwise, be referred in the first instance to Crown Law. Any requests falling within category two may be dealt with by in-house lawyers, briefed external counsel or referred to Crown Law. Issues relating to the enforcement of criminal law fall within category one. However, non-Crown prosecutions do not need to be referred to Crown Law. Instead Government Departments may either use an in-house lawyer to conduct the prosecution or brief the case to a Crown Solicitor. If they wish to use a private sector lawyer other than a Crown Solicitor, then they must obtain permission to do so from the Solicitor-General. Police and departmental legal staff may not appear in the High Court unless the government agency has general or specific approval from the Solicitor-General. No appeal from the decision of any court or tribunal, or application for judicial review is to be instituted by any Crown party without the specific approval of the Solicitor-General. The Cabinet Directions apply to Ministers of the Crown and all Government Departments. It does not apply to other public entities such as the Parliamentary Counsel Office, Crown entities, local government bodies and statutory bodies.

Investigation and prosecution

In general, in New Zealand the role of the prosecutor in pre-trial investigations is to provide legal advice to the investigators. They do not conduct or supervise the investigations themselves; they remain independent but provide advice as needed. Within some small prosecuting agency, the prosecutor and investigator may be the same person, carrying out different functions at different times. The assignment of responsibilities to prosecutors and investigators varies from agency to agency.

Prosecutors Discretion

Prosecutors enjoy discretion on whether to prosecute a case, but this discretion is subject to two tests: evidence test and public interest test. According to the Solicitor General's Prosecution Guidelines 2013, prosecutions ought to be initiated or continued only where the prosecutor is satisfied that the Test for Prosecution is met. The Test for Prosecution is met if: a) The evidence which can be adduced in Court is sufficient to provide a reasonable prospect of conviction – the Evidential Test; and b) Prosecution is required in the public interest – the Public Interest Test. Each aspect of the test must be separately considered and satisfied before a decision to prosecute can be taken. The Evidential Test must be satisfied before the Public Interest Test is considered. The prosecutor must analyse and evaluate all the evidence and information in a thorough and critical manner.

A reasonable prospect of conviction exists if, in relation to an identifiable person (whether natural or legal), there is credible evidence which the prosecution can adduce before a court and upon which evidence an impartial jury (or Judge), properly directed in accordance with the law, could reasonably be expected to be satisfied beyond reasonable doubt that the individual who is prosecuted has committed a criminal offence.

Once a prosecutor is satisfied that there is sufficient evidence to provide a reasonable prospect of conviction, the next consideration is whether the public interest requires a prosecution. It is not the rule that all offences for which there is sufficient evidence must be prosecuted. Prosecutors must exercise their discretion as to whether a prosecution is required in the public interest. Broadly, the presumption is that the public interest requires prosecution where there has been a contravention of the criminal law. This presumption provides the starting point for consideration of each individual case. In some instances, the

serious nature of the case will make the presumption a strong one. However, prosecution resources are not limitless. There will be circumstances in which, although the evidence is sufficient to provide a reasonable prospect of conviction, the offence is not serious, and prosecution is not required in the public interest. Prosecutors for instance should positively consider the appropriateness of any diversionary option (particularly if the defendant is a youth).

If the prosecutor decides that there is insufficient evidence or that it is not in the public interest to prosecute, a decision of "no prosecution" will be taken. A decision of "no prosecution" does not preclude any further consideration of a case by the prosecutor, if new and additional evidence becomes available, or a review of the original decision is required. It is anticipated that such a step will be rare.

The Crown Solicitor or a senior manager of the relevant government agency may if he or she sees fit, issue a statement giving broad reasons why a decision to prosecute or not to prosecute was made. This step may also be taken by a Crown Solicitor in relation to a stay of proceedings or application to dismiss a charge under s 147 of the Criminal Procedure Act 2011 or a decision to offer no evidence. The Solicitor-General should be consulted before any statements of reasons are issued by a Crown Solicitor.

Alternative action

Sometimes the police prosecutor will decide alternative action is appropriate rather than going through the formal court prosecution process. The measures commonly available are diversion; civil enforcement regimes; pre-charge warnings; restorative justice programmes; community justice panels. For younger offenders, the Children, Young Persons, and Their Families Act 1989 (now known as the Oranga Tamariki Act 1989/Children's and Young People's Well-being Act 1989) introduced a set of diversionary measures as an alternative to prosecution. Under the Police Adult Diversion Scheme, if an offender completes agreed conditions, the prosecutor can seek to have the charge withdrawn and a conviction will not be recorded. The New Zealand Police administer and operate the Adult Diversion Scheme.

Restorative justice involves a meeting between the victim and the offender and may take place as part of diversion. The victims can explain the impact of the offence on them and learn more about the reasons for the offence. The victim is involved in the discussion about what conditions might be appropriate to redress the offence (focusing on the benefits for both the victim and the offender). The Diversion Officer will determine whether a restorative justice process is a suitable way to balance the needs of the victim and/or community and the offender, and will find out if the victim is willing for a restorative justice meeting to occur. Following successful compliance with the conditions agreed at the restorative justice meeting, the charge will be withdrawn.

Case management

According to the Prosecution Guidelines 2013, the case management provisions of the Criminal Procedure Act 2011 aim to reduce the time taken for cases to be resolved; better focus the next court appearance after the defendant enters a plea; and increase the proportion of cases in which pleas are entered or charges are withdrawn as a result of out-of-court discussions. The obligation of a prosecutor is to engage in case management discussions and to jointly complete a case management memorandum. Prosecutors should use their best endeavours to engage the defence counsel in discussions and assist with the completion of the memorandum and should document their efforts in this respect. There are sanctions for failure to comply with these and other obligations under the Criminal Procedure Act 2011. In accordance with usual practice, prosecutors should be prepared to conduct case management discussions without prejudice considering the purposes of the case management procedure in s 55(1)(a) of the Act.

Any agreement reached by the prosecutor as part of the case management discussions and recorded in the case management memorandum should bind any other prosecutor (for example, a different prosecutor who attends the case review hearing). Departure from an agreement reached as part of case management discussions should only occur in exceptional cases and should be authorised by the Crown Solicitor or senior manager within the relevant government agency. Examples of exceptional circumstances may

include where significant new evidence has come to light since the agreement was reached or where the prosecutor was unaware of information so that it should negate the agreement in the interests of justice. In cases where the defence counsel will not discuss case management or jointly complete the memorandum, the prosecutor should not file a unilateral case management memorandum. Prosecutors should, however, be prepared to discuss case management at the review hearing that will be held in the absence of a case management memorandum and be in a position to draw upon their record of the efforts taken to engage in the case management process.

Principled plea discussions and arrangements have a significant value for the administration of the criminal justice system (Prosecution Guidelines 2013 s 18). Subject to the requirements of these Guidelines, the Solicitor-General views it as appropriate for a prosecutor to engage with defence counsel in a process concerning disposition of charges by plea. In most cases, plea discussions are likely to occur as part of the preparation of a joint case management memorandum following the entry of a not-guilty plea. Where it is practical and appropriate, the victim or complainant should be informed of any plea discussions and given sufficient opportunity to make his or her position as to any proposed plea arrangement known to the prosecutor. The Solicitor-General must approve all plea arrangements in relation to murder charges.

Management Tools

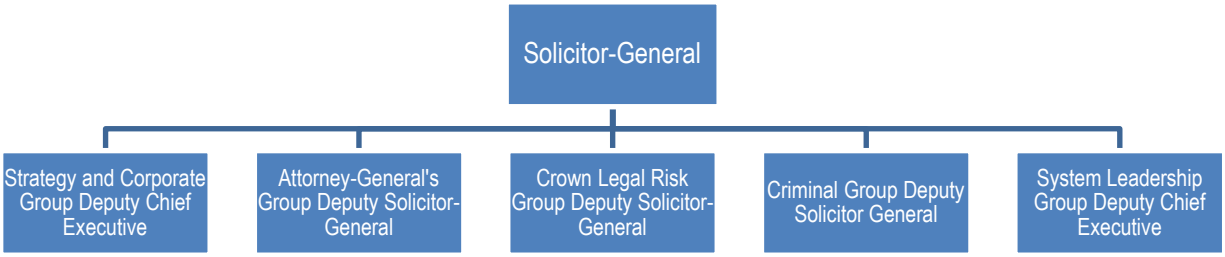
Strategic management of Crown Law

The strategic direction seeks the following core outcomes (Crown Law of New Zealand, 2020[46]):

1. *Demonstrably better government decisions.* This refers to the ambition for government lawyers right throughout the State sector to be sought out by decision makers as partners who add real value. They help with identifying lawful options, spot opportunities and solutions to problems, identify legal risk and management options and provide advice in policy and business areas in which those lawyers are experts. This will mean successive governments are best placed to implement their policy choices lawfully and with better identification and management of risk and opportunity. It should, over time, result in Crown conduct that is less susceptible to successful challenge, increased transparency of process and compliance with the rule of law and, therefore, a more robust democracy.
2. *Strengthened influence of the rule of law.* This refers to the Crown Law role in upholding respect for the legal and constitutional framework, including the Treaty of Waitangi and the New Zealand Bill of Rights Act 1990.[14] Governments have legitimacy in our democracy because they are subject to the law of the land like everyone else. New Zealand's reputation on a world stage is also largely dependent on how its domestic governance is seen to respect and protect the rule of law and democratic institutions. New Zealanders have access to fair and impartial resolution processes, including the courts, through which they can access the checks and balances on the use of executive power. Strengthening the influence of the rule of law will be demonstrated by greater public confidence in the systems that ensure governments act according to law.
3. *Improved criminal justice*. This refers to Crown Law's vital role in the justice sector, including: enhancing the quality of Crown prosecutions (through the network of Crown Solicitors who prosecute the most serious offences); improving the quality, consistency and decision making of the approximately 140 000 public (i.e. departmental) prosecutions every year; contributing leadership to a streamlined and efficient mutual assistance and extradition regime; and ensuring the quality of the conduct of criminal appeals.

Organisation

Figure A C.1. Crown Law's organisational structure



Source: Crown Law of New Zealand, 2018.

Crown Law's organisational Structure

Crown Law's organisational structure is based on its core service lines and is spread across five groups that encompass one or more teams. Figure A C.1 notes the structure as at 30 June 2020. The Crown Legal Risk Group provides legal advice and representation services on public law issues excluding specific Treaty of Waitangi claims and issues addressed by the Attorney-General Group. The Attorney-General Group provides advice on constitutional and human rights issues and Treaty of Waitangi claims and issues. The Criminal Group conducts criminal appeals from Crown prosecutions, provides oversight of public prosecution services and provides advice on criminal law issues including criminal mutual assistance and extradition matters. The System Leadership Group provides support and leadership across the Government legal system. The Strategy and Corporate Group provides support services to the rest of Crown Law including finance, information technology, human resources, historical research, policy, information management, library services and legal administrative support.

Human resource management

Prosecutor personnel staff numbers:

- 197.05 full-time equivalent Crown prosecutors, as at the end of the 2019 calendar year.
- 518.80 full-time equivalent non-Crown (agency) prosecutors, as at the end of the 2018/2019 financial year.

Unlike Crown prosecutions, which are funded by Crown Law, the budget for non-Crown prosecutions lies with each individual prosecuting agency and it is for them to manage. Since 1 July 2013, the Crown Solicitors have operated under a bulk funding model where payment for services is based on case disposal rather than hours spent on a matter. There is an annual fund which is proportionately split and paid to Crown Solicitors throughout the year based on the cases disposed each month and ultimately for the year.

Recruitment: government agencies are required to publicly advertise all vacancies, but Crown Solicitor firms are private practices and can apply their own hiring policies and procedures. Appointments of Crown Solicitors are based on the recommendation of the Attorney-General and by warrant of the Governor-General. The Crown prosecutors are recruited by the Crown Solicitor. Prosecutors at government agencies are recruited by each agency independently.

The Public Service Commissioner has oversight of public servants and has developed a code of conduct (Public Service Commissioner, 2020[47]). Crown prosecutors are not public servants and codes which apply to public servants do not apply to them. The Solicitor-General does however have a set of Terms of Office for Crown Solicitors, which includes provisions for such things as independence and integrity. Individual law firms may also have their own internal codes. All lawyers are also subject to the Lawyers and

Conveyancers Act 2006 and must always act in accordance with the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008. Where a lawyer does not meet these standards, a complaint can be made to the New Zealand Law Society (Law Society of New Zealand, 2020[48]). All prosecutions must also be conducted in accordance with the Prosecution Guidelines (Solicitor General of New Zealand, 2013[44]).

Legal staff must maintain a programme of continuous professional development, as monitored by the New Zealand Law Society.

Specialisation

Government agencies that conduct their own prosecutions will naturally be specialised in their specific area. For example, Maritime NZ will specialise in maritime matters, the Civil Aviation Authority will specialise in civil aviation matters, etc.

Accountability: Monitoring and reporting

New Zealand does not have a single centralised prosecutorial service, and each is managed individually. Pursuant to section 185 of the Criminal Procedure Act 2011, the Solicitor-General is responsible for maintaining general oversight of the conduct of public prosecutions, which includes maintaining guidelines and providing general advice on the conduct of public prosecutions. However, the Solicitor-General does not manage individual prosecutions and is not responsible for the conduct of any public prosecution.

The Public Prosecutions Unit (PPU) was established in 2012. Its initial focus was to manage the funding for Crown Prosecutions, which includes those conducted by Crown Solicitors and the Serious Fraud Office. The PPU also provides oversight of all public prosecutions for the Solicitor-General and provides advice to the sector on prosecution related activities and initiatives. This is supported by reporting frameworks developed by the PPU and is used by the Crown Solicitor Network and prosecuting agencies.

“The Public Prosecution Unit (PPU), within the Crown Law, is headed by the Public Prosecution Manager who is responsible to the Deputy Solicitor General (Criminal Team). The initial focus of the PPU was on managing the Crown Solicitor funding within the budget appropriation. Its current focus is providing the Solicitor-General with greater oversight of all public prosecutions. A significant aspect of that work is improving the methodology for reviewing the performance of the Crown Solicitor Network and the prosecuting agencies. The PPU has established an online platform for prosecutors called POP. This platform promotes a collaborative and electronic approach to information and knowledge sharing across the Crown Solicitor Network. It allows prosecutors to share their expertise and request information through discussion boards. It helps ensure consistency of approach. It has been widely adopted throughout the Crown Solicitor Network.” (Crown Law of New Zealand, 2018[49])

“The *Public Prosecutions Reporting Framework* is the principal mechanism through which greater oversight of public prosecutions is achieved. Data is collected about individual cases every month. High-level statistical information about the structure and resources required to administer the prosecution function is collected annually. Each Crown Solicitor firm and prosecuting agency participates in the reporting framework. The reporting framework provides a greater understanding of both the current and future sustainability of the Crown Solicitor Network. It is a crucial element in ensuring delivery of quality Crown prosecution services, both now and in the future” (Crown Law of New Zealand, 2018[49]).

The oversight functions, including the reporting framework, are also designed to provide information about the Crown Solicitor Network’s workloads and to gauge the “value for money” provided. The regular surveys and reviews may examine a) the legal acumen and performance of Crown Solicitors and their staff; b) the management of the work; and c) how the relationship with others is conducted in the justice sector.

Assessing the quality of complex technical services requires professionals to apply judgement to a range of relevant factors to form an expert opinion about standards of quality. This gives a level of assurance

about the quality of legal services provided by the Crown Solicitor Network. To assess quality, the PPU uses a three-tiered system: environmental feedback at the highest level; an annual questionnaire for Crown Solicitors at the next level; and reviews of individual Crown Solicitors at the next level. The assessment produces a four-rank scale ranging from 1 ("no serious issues identified") to 4 ("serious issues affecting the wider Crown Solicitor Network identified") (Crown Law of New Zealand, 2018[49]).

Non-Crown prosecuting agencies include New Zealand Police, departments and Crown entities. As part of increasing oversight of non-Crown prosecutions, the PPU established the Public Prosecutions Advisory Board. The Board comprises of up to 12 Board members, representing a selection of departments and Crown entities. The Board represents a wide range of agencies, including a) agencies with high and low volumes of prosecutions; b) agencies that regulate a specific sector; and c) agencies that engage with the general public. The Board helps identify and manage inconsistencies in the prosecution decision-making process.

The Controller and Auditor General audits the management of the Crown Law and reports to Parliament. Pursuant to s43 of the Public Finance Act 1989 and s150 of the Crown Entities Act 2004, government agencies are required to prepare annual reports. These reports must be published and include financial statements that have total asset values.

Portugal

Status

The Public Prosecution Service (*Ministério Público*) is the body of the Judiciary responsible for the public prosecution and the representation of the State before the courts. In accordance with article 219 of the Constitution, the Public Prosecution Service represents the State and safeguards the interests prescribed by law, takes part in the enforcement of the criminal policy, carries out the prosecution according to the principle of legality, and defends democratic legality. Public Prosecutors in Portugal always had a vast, heterogeneous and transversal set of responsibilities providing them a polymorphic nature (Dias, 2017[50]).

The functions of Public Prosecutors can be grouped into four areas: 'representing the state, namely in the courts, in the proceedings in which they are involved, acting as a type of state lawyer; instituting criminal proceedings (...); defending democratic legality, intervening in administrative and fiscal litigation amongst other areas, and monitoring constitutionality; defending the interests of certain persons who have a greater need for protection, namely, after ascertaining certain requirements, children, absent individuals, workers, etc.'

The current statute of the Public Prosecution Service was adopted by Law Nº 68/2019 of 27 August. Article 4 of this Statute describes in a long list the responsibilities of the Public Prosecution Service, which go well beyond the criminal justice system:

- to defend the democratic legality
- to represent the State, the Autonomous Regions, the local authorities, the persons lacking legal capacity, the persons having no permanent residence and those whose whereabouts are unknown
- to take part in the enforcement of criminal policy as defined by the organs of sovereignty (i.e. President, National Assembly, the Government and the Judiciary)
- to exercise the penal action oriented by the principle of legality
- to direct or promote the investigation and actions of criminality prevention within its responsibilities, assisted always by the bodies of the criminal police
- to initiate legal action before the administrative justice in defence of the public interest, the fundamental rights and the administrative legality

- to represent ex-officio the workers and their families in view of the defence of their social rights
- to defend collective and diffuse interests in the cases foreseen by the law
- to defend, within the limits of the law, the rights and interests of the children, youth, elderly people, disabled adults, as well as those of other vulnerable persons
- to defend the independence of the courts within their powers and to ensure that their jurisdictional duties are carried out pursuant to the Constitution and the laws (these powers include a binding duty to appeal in cases covered by the Law on the Organisation, Operation and Procedure of the Constitutional Court)
- to promote the enforcement of judicial decisions in which the public prosecutor is legitimated
- to watch over the constitutionality of laws and regulations
- to intervene in bankruptcy and insolvency proceedings, as well as in all other proceedings which may affect the public interests
- to perform consultative functions as laid down by this Law
- to oversee the procedural activity of criminal police bodies, in accordance with this law
- to co-ordinate the activities of the criminal police bodies, in accordance with this law
- to lodge an appeal where a decision has been reached by way of agreement between the parties with the intent to defraud the law, or where such a decision has been rendered in clear violation of the law
- to perform such other functions as may be conferred upon it by the law.

In order to fulfil their obligations, all judicial decisions must be notified to public prosecutors. Public prosecutors are judicial officials, who form part of, and are subject to, a hierarchy, and who may not be transferred, suspended, retired or removed from office except in the cases provided for by law. The powers to appoint, assign, discipline, transfer and promote public prosecutors pertain to the High Council of the Public Prosecution Service.

The Minister of Justice and the Government are banned from intervening in a criminal inquiry. The Minister of Justice, however, can, through the Prosecutor General, request information on the work carried out by the Public Prosecution Service, but has no directive powers in criminal matters or in matters related to the constitutional functions of this magistracy to represent the public interests as conferred on it, and in general in the safeguard of democratic legality. For purposes of its operation, the Public Prosecution Service is solely bound by criteria of legality and objectivity, being exclusively subject to the orders and instructions covered by law.

The Ministry of Justice is responsible for ensuring the training of prosecutors and other staff members, allowing them to fulfil specific functions in the area of justice. The *Centro de Estudos Judiciários* (Judicial Training Centre) of the Ministry of Justice is entrusted with the professional training of future judges and public prosecutors.

The number of prosecutors assigned in the courts is set by the law. Nonetheless, those vacancies may only be filled after the approval of the expenditure. In what concerns the first instance courts, such expenditure is taken by the General Directorate of Justice Administration (DGAJ), a fact conducive to that the filling of the prosecutorial vacancies becomes dependent on that ministerial body. Therefore, public prosecution activities may be restricted by the Ministry of Justice in the sense that the budget allocated to the salaries of those public prosecutors (salaries, facilities, equipment, etc.) assigned in the first instance courts is managed by the DGAJ, a body operating under the Minister of Justice).

According to Order in Council No. 123/2011 (*Decreto-Lei nº 123/2011*), of 29 December, the Minister of Justice ensures the bridging between the Government and the courts, the Public Prosecution Service, the High Council for the Judiciary, and the High Council for the Administrative and Fiscal Courts. The Ministry of Justice is responsible for the management of human, financial and material resources, as well as for the

justice IT systems, without detriment to the powers conferred on other administrative bodies and departments.

The *Instituto de Gestão Financeira e Equipamentos da Justiça,* I.P (Financial and Justice Equipment Management Institute, or the IGFIJ, I.P) is entrusted with the management of the Ministry of Justice financial resources, infrastructures and technology resources, as well as the management of the real estate allocated to the area of justice. Furthermore, this Institute is also responsible for the design, execution and evaluation of IT plans and drafts, in accord with other services and bodies within the Ministry of Justice.

The funding of the Public Prosecution services is covered by the State Budget. Like the Judiciary budget, the Public Prosecution Service budget is part of the State General Budget approved by the Assembly of the Republic. In compliance with the Government policy, the Prosecutor General's Office prepares and distributes the funds among the various budget lines, being also responsible for their implementation. The same applies to the other services in which prosecutors are assigned. However, except for the Prosecutor General's Office, the budget management concerning these services is not bestowed to the Public Prosecution Service, but the management at first instance level is entrusted to the DGAJ (for salaries), the ITIJ (IT equipment) and the IGFIJ (buildings and facilities) while the management of higher courts is mainly bestowed to the president of the concerned Court, who is no Prosecutor.

Order in Council No. 333/99, of 20 August, governs the structure, staff and assignment roles granted to the technical and administrative support services of the Prosecutor General's Office. It also determines that the support services budget shall cover the expenditure involving prosecutors and staff members carrying out duties at the Prosecutor General's Office, as well as other current and capital expenditure deemed necessary for the implementation of their functions. Moreover, Order in Council No. 333/99 provides for the State Budget and the Ministry of Justice budget to allocate sums earmarked to fund the Prosecutor General's Office's budget.

The Public Prosecution services operating at the first instance courts have no budget of their own. The expenditures derived therefrom are covered by funds from agencies integrated in the Ministry of Justice (DGAJ, ITIJ, IGFIJ) in what concerns the salaries of prosecutors and staff members, equipment, consumables, facilities, etc. For higher courts these expenditures are covered by the budget of the concerned court, except for the salaries of prosecutors holding functions by the STJ (Supreme Court of Justice), the STA (Supreme Administrative Court), the Court of Audit and the Constitutional Court, which are covered by the budget of the Prosecutor General's Office.

There is no specific department within the prosecution service responsible for the management of resources. In what concerns the Prosecutor General's Office such responsibility lies with the Technical and Administrative Services (the SATA). The responsibility for the management of resources of the Courts of Appeal lies with the District Deputy Prosecutors General's Offices (the PGD). For first instance courts and their prosecutors such responsibility is endowed to the Ministry of Justice. Overall, the management, monitoring and evaluation of any budget integrated in the financial organisation of the Ministry of Justice, including the Public Prosecution Service, are centralised in the Ministry of Justice.

Investigation and Prosecution

Portugal has three national police organisations, in addition to a border and immigration control service (*Serviço de Estrangeiros e Fronteiras*) and a coast guard (*Polícia Marítima*). The General Prosecutor (*Procurador-Geral da República*) assures legal supervision and a co-ordination council (*Conselho Coordenador*) oversees operational co-ordination.

The national police organisations include the Judicial Police (*Polícia Judiciária*, PJ) which investigates violent crime, organised and financial crime. They are under the remit of the Ministry of Justice, which appoints their national director and inspects and audits their activities.

The Public Security Police (*Polícia de Segurança Pública* PSP) assures public order and investigates non-organised crimes, and violent crimes in urban areas. The Gendarmerie or National Republican Guard (*Guarda Nacional Republicana*, GNR) assures public order and investigates non-organised crimes, and violent crimes in non-urban areas. These two latter are under the remit of the Ministry of Internal Affairs, which appoints the PSP and GNR national directors and inspects and audits their performances.

The Judicial Police was founded in 1893. The current judicial police were created on 20 October 1945 and are committed to the prevention and investigation of serious crime throughout the country. The Judicial Police Service is integrated into justice system and has been designed and shaped over decades to serve justice. Managed by judicial magistrates and prosecutors and officials with legal training, the Judicial Police deal with increasingly complex criminality in areas such as: drug trafficking, cybercrime, terrorism, money laundering corruption and crimes involving firearms. It has several specialist crime support and investigative units including those responsible for forensic examinations and international co-operation with INTERPOL and EUROPOL. The Judicial Police is geographically divided into four areas known as "Boards". Its Headquarters is in Lisbon. The powers of the Judicial Police for criminal investigation are set out in articles 7.º and 8 of LOIC – Law No. 49/2008 27 August. Competence of the Judicial Police regarding responsibility for criminal investigation.

The Judicial Police (*Policia Judiciaria*) are a highly specialised force, both at the technical and scientific levels. Their duty is to prevent and investigate serious crimes. They are operationally autonomous once delegated by the prosecutor. The Judicial Police Service reports to the Minister of Justice. Numbering around 760 staff, it operates at both the local and national levels.[15] At the local level, it maintains a presence in towns throughout Portugal and liaises with the courts and prosecutors on whose behalf they carry out investigations. At the national level, they carry out investigations of major crimes, such as subversion, drug trafficking, art thefts, terrorism and murder. The four central directorates which carry out functions at the national level focus on: combating crime; investigating corruption, economic and financial fraud; investigating drug trafficking; and maintaining a central information registry for crime prevention.

The leadership of criminal investigations lies on the public prosecutor, which is supported by the various police corps following the instructions of the prosecutor. This latter can delegate to the police corps the completion of any activity related to the investigation (articles 263 and 270 of the Penal Procedural Code). The prosecutor delimitates the scope, the strategy and the sequencing of the investigative actions. A law establishes biennial priorities for criminal investigations. The last one was Law Nº 96/2017, of 23 August, setting priorities for 2017-2019, which is further specified by Directive 1/2017 of the General Prosecutor of 13 October 2017. Investigative priorities for this biennial period were terrorism, domestic violence, human beings trafficking, crimes against the life and physical integrity of police officers, robberies in dwellings, cybercriminal actions, violence at schools, extortion, corruption, financial crime and money laundering, social security and tax-related criminality. The prioritisation of the criminal investigations shall not be detrimental to the principle of legality enshrined in the constitution whereby all crimes must be investigated and prosecuted.

While acting on urgent matters to collect evidence, the police must communicate any *noticia criminis* to the prosecutor within ten days (articles 248 and 249 of the Penal Procedural Code). The news on a crime always must lead to open a criminal investigation. The prosecutor can decide to take over an ongoing investigation from the police, according to Law Nº 49/2008 of 27 August on the Organisation of the Criminal Investigation. The investigation can terminate either by submitting criminal charges in court against the offender or by filing away the case if sufficient evidence is lacking, the perpetrator is unknown, or the crime was not committed. The prosecutor is responsible for the respect of the legality of all those participating in a criminal investigation.

Tensions often arise between the prosecutors and the police officers when it comes to interpreting the notion of "technical autonomy" of the police, as designed in the law on the Organisation of Criminal Investigation, where police officers push the limits to freeing themselves from the prosecutorial control.

Likewise, pressure rises in communications between the police and the prosecution where not always the information flows are fluid. There is also a challenge concerning media communication on ongoing investigations, where disco-ordination between prosecution and police often leads to information leakages which are counterproductive for the investigation. Equally, when several police corps are participating in a single investigation the prosecutorial co-ordination is not always up to the challenge.

Prosecutors enjoy a certain degree of discretion. They can decide not to prosecute, but only if the evidence gathered by the police seems to be insufficient to make a case in court. They must also seek alternative solutions to prosecution, which are foreseen in legislation: In minor crimes a first-time offender is not prosecuted if he complies with certain rules of conduct or pays a specific fine (penal order) and is not a recidivist for a certain period of time as specified for the case.

Prosecutors must withdraw from the case they are dealing with if they believe that their impartiality can be put into question or if a defendant claims conflict of interest of a prosecutor.

Management Tools

Organisation

The prosecutorial service is managed by the General Prosecutor, the High Prosecutorial Council and the Ministry of Justice each within their responsibilities, as defined in legislation.

Prosecutors, numbering 1327 in 2019, form a body parallel to that of the judges (1734 in 2019) (PORDATA, 2020[51]), and they are independent and autonomous from the latter (PORDATA, 2020[52]). In accordance with article 220 of the Constitution the Prosecutor General's Office is the highest body of the Public Prosecution Service and has the composition and powers as laid down by law (articles 15 and 16 of the Statute of the Public Prosecution Service).

The Prosecutor General's Office is presided over by the Prosecutor General, and it encompasses the High Council of the Public Prosecution Service, which includes members elected by the Assembly of the Republic (parliament) and members elected by the public prosecutors from and among their peers. The structure of positions and career within the public prosecutor service is as follows:

- Prosecutor-General (Procurador-Geral da República).
- Vice-Prosecutor-General (Vice-Procurador-Geral da República).
- Deputy Prosecutor-General (Procurador-Geral Adjunto).
- District (regional) Prosecutor (Procurador da República).
- Deputy District Prosecutor (Procurador da República Adjunto).

Thus, the Prosecutor General's Office, the supreme constitutional body of the Public Prosecution Service, consists of two distinct governance instruments of the Public Prosecution Service:

- One, monocratic – the Prosecutor General of the Republic – who presides over it and is appointed for a term of six years by the President of the Republic, upon the Government proposal.
- The other one is collegial, the High Council of the Public Prosecution Service. The High Council of the Public Prosecution Service (*Conselho Superior do Ministério Público*) is the highest collegial management and disciplinary body in the Public Prosecution Service and is responsible for appointing, assigning, transferring, promoting, dismissing or removing from office public prosecutors, as well as taking disciplinary action against them. The High Council consists of five members elected by Parliament, two persons appointed by the Minister of Justice, seven members elected by the prosecutors of the different hierarchical ranks within the Public Prosecution Service and the four District Deputy Prosecutors General, being chaired by the Prosecutor General of the Republic.

In accordance with article 3 of its Statute, the Public Prosecution Service is autonomous as regards the other bodies of the central, regional and local authorities, its autonomy being characterised by the compliance with criteria of legality and objectivity and by the exclusive submission of Public Prosecutors to the directives, orders and instructions set out in their own statute. The statute also sets out the possibility for Prosecutors to refuse to comply with hierarchical instructions which would violate their legal conscience, except for those coming directly from the Prosecutor General, which can only be refused on the grounds that they are contrary to the law. Instructions addressing specific proceedings must always be given in writing and the doctrine directives (guidelines) given by the Prosecutor General must be published in the Official Journal in order to meet concerns on public transparency and make those who issue them personally accountable therefor.

Pursuant to article 16 of the Statute, the Prosecutor General's Office carries out its powers as regards the disciplinary and management matters through the High Council of the Public Prosecution Service, which is composed of:

- The Prosecutor General.
- The 4 District (regional) Prosecutors General that exist (Coimbra, Evora, Lisbon and Porto).
- A Deputy Prosecutor General elected from and among the Deputy Prosecutors General.
- Two District Prosecutors elected from and among the District Prosecutors.
- Four Deputy District Prosecutors elected from and among the Deputy District Prosecutors, one per each judicial district.
- Five members elected by the Assembly of the Republic.
- Two persons of recognised merit designated by the Minister of Justice.

The Minister of Justice has a restricted sphere of intervention on the public prosecution service. He may appoint two members for the High Council of the Public Prosecution Service under article 22 of the Statute, on the one hand, and to attend meetings of the High Council of the Public Prosecution Service whenever he considers it to be appropriate, or where he intends to make a communication or clarify a specific matter. The intervention of the Minister of Justice in the Public Prosecution Service is extremely unusual in practice.

Human resource management

Recruitment of prosecutors is made through public competition and carried out by sitting theoretical and practical tests in front of an ad hoc selection committee. Promotion is carried out through an internal competition on announced vacancies and the main criterion, but not the only one, is the seniority in the prosecution service and other professional achievements.

Remuneration is in detail established in legislation

There is as an induction training at the beginning of the career and regular in-service training is also provided and is mandatory. The *Centro de Estudos Judiciários* (Judicial Training Centre) of the Ministry of Justice is entrusted with the professional training of future judges and public prosecutors and their in-service continuous training.

Specialisation

There are specialised sections within the prosecution departments. The most complex cases of violent criminality, financial and organised crime, terrorism and corruption are dealt with by the *Departamento Central de Investigação e Ação Penal* DCIAP (Central Department of Criminal Investigation and Prosecution) which is a Department within the Prosecutor-General's Office that centralises these cases, and has competence all over the whole Portuguese territory, so this kind of specialisation may be considered as a specific condition aiming at facilitating the prosecutorial work in this area and allowing for best results. The instructions are published in the Prosecutor's Office Platform (SIMP).

Given the fact that in Portugal prosecutorial services jurisdiction extend far beyond criminal law, there are prosecutors specialised in administrative law, civil law, family and children's rights law, labour law, judicial executions law, bankruptcy law, tributary law, maritime law, intellectual property law, etc.

Case management

The main criteria for assigning cases to individual prosecutors are random assignment, the specialisation and experience of the prosecutor and the distribution of the territorial responsibility. The mechanism for case allocation is defined in legislation and guidelines and derogations of those rules in singular cases are not allowed.

Management by objectives

In the criminal justice domain and in accordance with the Framework Law on Criminal Policy, the government submits to parliament a bill establishing criminal policy goals, priorities and guidelines every two years. The policy requires consultation with a wide range of stakeholders, including the High Council of the Judiciary, the High Council for the Public Prosecution, the Coordinating Council of the Criminal Police Bodies, the High Council of Internal Security, the Security Coordinating Office and the Portuguese Bar Association.[16] The priorities are defined and outlined when the annual budgets are drafted, although they may undergo adjustments throughout the year.

Firstly, there is a phase of definition of strategic objectives followed by a definition of procedural objectives and of projects to pursue the fulfilment of the strategic objectives. Finally, there is a phase of monitoring and evaluation of results. Thus, every three years, the Prosecutor-General's Office defines strategic objectives in selecting priority areas of intervention, in performance quality, in procedural promptness and in organisational quality. Based on the objectives thus outlined, annual strategic objectives are defined in July. Every department of the Public Prosecution Service (not only the 23 local "*Procuradorias da República*" - District Prosecutor Offices, into which the national territory is divided, but also central departments, namely the Central Department of Criminal Investigation and Prosecution – DCIAP, which deals with the most serious type of criminality) accordingly define, also on an annual basis, in September, projects and local procedural objectives which are then submitted for approval to the Prosecutor-General's Office.

For the triennium 2015-2018, the following strategic areas were defined by the Prosecutor General:

- Priority areas: Corruption and economic and financial criminality (by adopting a Plan of the Public Prosecution Service against corruption), domestic violence, cybercrime and digital proof, terrorism, recovery of assets, protection of the victims, rights of children and youth, rights of the elderly, environment and urbanism, consumer rights, workers' rights and human rights.
- Quality of performance: Promotion of equality of citizens before the law, integrated conception of the intervention of the Public Prosecution in the different procedural stages and jurisdictions, co-ordination of the intervention among different jurisdictions, strengthening the effective direction of the inquiry, co-ordination with Criminal Police and law enforcement agencies and other entities, quality in public attendance, simplification and clarity of the intervention of the Public Prosecution, valuing the intervention of Public Prosecution during the trial stage, international judicial co-operation and co-operation with other legal professions.
- Procedural promptness: Timely decision on the merits and facilitating access to the service by the public.
- Organisational quality: Communication policy, Public Prosecution Service's portal/Homepage of the district communication and Press Office, human resources training, adequate deployment of human resources as regards the activity of the Public Prosecution, financial and administrative autonomy, harmonisation of procedures and of registration criteria, improvement of information technologies and support technologies as regards the activity of Public Prosecution.

Once the objectives have been established, the "*Procuradorias da República*" are responsible for the implementation of the relevant projects and for the preparation both of a biannual, as well as of an annual report, for the purpose of assessing to what extent these objectives have been met, the measures that were adopted thereto and amendments that should be proposed. Reports thus submitted are then evaluated by the Prosecutor-General's Office to serve as a basis for the definition of the objectives for the following year.

Accountability: Monitoring and reporting

The Prosecutor General's Office annual report includes all the Public Prosecution services, the respective findings being broadly expanded and assessed therein. The same applies to the inspection activities made by the inspection service (which is composed of 15 inspectors operating in the dependence of the HCPPS) to the Public Prosecution services (Portuguese Ministério Público, 2019[53]). The objectives are established in their entirety for all prosecutors, taking into account the various areas of action of the Public Prosecutor's Office, being applied on a case by case basis according to the work developed and existing in each court or jurisdiction (the territorial organisation of the prosecutorial service matches that of the courts). The annual report shall contain statistics on the number and types of cases and on training activities and attendance records. The effectiveness of criminal proceedings is still mainly based on the number of convictions.

The criteria adopted to evaluate the quality and efficiency of the professional conduct of prosecutors are related to the degree of fulfilment of the objectives on an annual basis:

- The degree of fulfilment and of the efficiency of co-ordination mechanisms among jurisdictions and with external entities, involving co-ordination meetings, sharing of best practices and setting up networks with court assistants.
- The degree of fulfilment of objectives of reduction of the duration of proceedings relating specifically to the Public Prosecution, reduction of case-pendency and degree of success of Public Prosecution during the trial stage.
- Adequate deployment of human and material resources in view of coping with the service volumes variations in each department of the Public Prosecution Service.

As regards the general qualitative monitoring, the co-ordinating prosecutors of the 23 "*Procuradorias da República"* must inform the Prosecutor-General's Office, in their annual reports, about the general quality of the activities performed by the Public Prosecution, as evaluated by the members of the Public Prosecution themselves and by the general public, pointing out, whenever necessary, measures to improve it.

There are statistical indicators to assess the quantity and quality of the work performed by public prosecutors (PORDATA, 2020[52]). Regarding criminal investigation, there are data available defining, for a specific time period: the number of cases lodged; the number of cases closed; of these cases, the number of cases leading to accusation or to dismissal, and those where one of the simplified and consensual forms of proceedings, as laid down in the Criminal Procedure Code was used. These are: *sumário* (summary proceeding), *sumaríssimo* (highly summarised proceeding), *abreviado* (shortened proceeding) and *suspensão provisória do processo* (provisional suspension of the criminal proceedings).[17]

There is also an overall control of all criminal inquiries highlighting those where a criminal investigation took long than 8 months. Finally, it is possible to ascertain the number of lodged and closed cases according to the complexity and type of crime and how many of them were against unknown perpetrators.

Regarding the areas of representation by the Public Prosecution Service, be it in criminal, civil, commercial, family and children or labour cases, statistical data show the number of lodged and closed cases (even if in some of these jurisdictions there might not have been the intervention of a public prosecutor), as well

as the number of appeals lodged by the Public Prosecution Service or the number of appeals to which the public prosecutor service had to reply. In these areas (except for criminal cases), there are indicators to determine how major actions were instituted by the Public Prosecution Service.

The main internal supervision mechanisms to monitor the performance and professional behaviour of individual prosecutors are the internal inspectorate, the supervision by the hierarchical superior and a complaints procedure, which can be activated by any person.

District prosecutors and deputy district prosecutors are periodically evaluated on their functional performance and merit. The inspections have a formal character and are planned on an annual basis by the High Council of the Public Prosecution Service, which chooses, based of pre-defined criteria, the prosecutors to be inspected. Internal inspections of each prosecutor (performance evaluation) take place approximately every 4 or 5 years. Newly recruited prosecutors are evaluated at the end of their first year in office. The inspectorate is composed of 15 inspectors and all of them are members of the Public Prosecution Service and 15 administrative assistants (Portuguese High Council of Prosecutorial Services, 2019[54]).

The individual performance of a prosecutor is evaluated with the following marks: Very good, Good with distinction, Good, Sufficient and Insufficient. This evaluation is relevant for career advancement of prosecutors through transfer or promotion. The mark 'Insufficient' entails the suspension of duties and the initiation of an inquiry to find out whether the person is unfit for the office.

The criteria for the evaluation of public prosecutors, as well as the definition of the degree of function performance corresponding to each one of the classifications above mentioned, are laid down in the Statute of the Public Prosecution Service and in the Regulation on the Inspections of the Public Prosecution Service and they are publicly accessible.

Once the individual inspection is concluded, the inspector drafts a report in which he/she describes, in a concrete manner, the work carried out by the inspected prosecutor, and proposes a mark. Such report is, initially, only submitted to the inspected prosecutor, who has then the possibility, if he/she so wish to reply within 15 days. After the expiry of such period, and if the inspected prosecutor has replied, the inspector makes his/her remarks, but shall not refer to new facts that are disadvantageous to the prosecutor concerned. The inspected prosecutor shall be informed of such remarks. The inspector shall then submit the whole inspection proceedings to the High Council of the Public Prosecution Service. If the inspected prosecutor does not reply, the inspector submits the inspection proceedings without delay to the High Council of the Public Prosecution Service.

The inspection proceedings, composed of all the elements collected by the inspector, along with the comments by the inspected prosecutor, will be considered in a meeting of the Disciplinary Section of the High Council of the Public Prosecution Service. The disciplinary section is composed of a certain number of members of this Council. They shall pronounce a written and reasoned granting an evaluation mark to the inspected prosecutor. This mark is not necessarily coincident with the one proposed by the inspector. Should the inspected prosecutor disagree with the evaluation given to him/her, he/she may react by lodging an application before the plenary of the High Council of the Public Prosecution Service (as such, composed by all its member and later on, lodge an appeal concerning the decision rendered by the *Conselho Superior do Ministério Público* (High Council of the Public Prosecution Service) before the Supreme Administrative Court.

A high-grade positive appraisal can give access to specific jurisdictional courts and a low-grade appraisal leads to a new appraisal after two years.

DGPJ – *Direcção Geral das Políticas da Justiça* or General Directorate for Justice Policies is the national organisation responsible for collecting criminal justice statistics (Portuguese Ministério Público, 2019[53]).

Significant reforms

On February 17, 2010, the Portuguese Council of Ministers approved a Resolution designed to improve the efficiency of the judicial system. The Resolution is the result of a project developed by the Ministry of Justice through the Commission on the Operational Efficiency of Justice. The Ministries of Justice and Finance, along with the Superior Council of the Magistracy, the Portuguese Bar Association, and the Permanent Observatory of Justice (a centre for the study of justice), took part in the Commission.

The Resolution establishes the guidelines and priority reforms to be adopted in the justice system, which include (Government of Portugal, 2011[55]):

- the introduction of new management models in the courts
- the promotion of efficiency in tackling disputes and procedural delays
- procedural simplification and organisational improvement
- improvement of the relevant judicial means to strengthen competitiveness
- completion of the digital agenda of the justice sector
- the launch of new media for public information and transparency of justice
- the strengthening of instruments to combat organised crime and corruption
- the reform of the system of recruitment and of the initial and continuing training of judges and prosecutors
- greater commitment to alternative means of dispute resolution
- improvement of some measures designed to reform administrative litigation
- rehabilitation of pending tax litigation
- steps to ensure the sustainability of the judiciary's finances.

Portugal has recently introduced a new model of court management, which aims to improve overall efficiency and performance (administrative tasks traditionally belonging to the judge president of each court are now allocated to the court administrator and registrar, thus leaving judges free to exercise their technical legal competencies) (OECD, 2020[56]).

This model was introduced with a view of strengthening the quality of management processes in the judiciary. Each district (*comarca*) is headed by a management committee consisting of a president judge (designated by the High Council), a judiciary administrator (designated by the presiding judge among candidates previously selected by the Ministry of Justice) and a representative of the general prosecutor (designated by the High Council of the Public Prosecution).

Each party has its own powers and the presiding judge must communicate with the High Council of the Judiciary, the co-ordinating prosecutor with the High Council of the Public Prosecution, and the judiciary administrator with the Ministry of Justice (through the Directorate-General for the Administration of Justice – DGAJ).

The administrator, with the general orientation of the presiding judge, can temporarily or permanently relocate court clerks inside the county and under the limits legally established. The presiding judge can propose to the High Council the reallocation of judges or of cases, aiming to even the workload of judges and the efficiency of the court. The co-ordinating prosecutor can reallocate cases and can propose to the High Council of the Public Prosecution the reallocation of public prosecutors.

The committee has the authority to:

- approve the semi-annual and annual reports
- approve a draft budget of the judicial demarcation (*comarca*, based on the pre-determined allocation) to be submitted to the Ministry of Justice
- propose budget modifications
- approve a proposal for the modification of the staff map to be submitted to the Ministry of Justice
- monitor budget execution.

Sweden

Status

The Swedish Prosecution Authority (SPA) is an independent organisation. It is an autonomous agency accountable to the Government and it is independent both from the police and the courts. The autonomy is guaranteed by the Swedish Constitution. The prosecution service in Sweden also includes the Swedish Economic Crime Authority, a special prosecution authority for fighting economic crime.

The Swedish Prosecution Authority, like all government agencies within the Swedish judicial system, falls within the area of responsibility of the Ministry of Justice. The Government determines the general mandate, guidelines and the allocation of resources for the agencies' activities. The Government appoints the Prosecutor-General. The Prosecutor-General is the head of the Swedish Prosecution Authority. The Prosecutor-General is also the highest-ranked prosecutor in the country and the only public prosecutor in the Supreme Court. The creation of prosecutor positions is the responsibility of the prosecution authority. The prosecution services match the police districts.

The prosecutorial service is regulated mainly by chapter seven of the 1998 Code on Judicial Procedure. The Swedish Prosecution Authority incorporates all prosecutors in Sweden except for the prosecutors who are employed at the Swedish Economic Crime Authority. The Prosecutor-General, however, is also the highest-ranked prosecutor for the prosecutors attached to the Swedish Economic Crime Authority.

The Swedish prosecutor has three main tasks: a) to conduct the investigation of an offense (with the assistance of the police, see below), b) to decide whether to prosecute, and c) to represent the state once a case goes to court.

Apart from support departments for the operative prosecution activities (e.g. communication, human resources and IT), the Head Office consists of two departments: a) Legal Department, with operations in the Supreme Court and general international issues, b) Legal Supervision Department is responsible for the Prosecutor-General's legal supervision and control.

Separate from the Head office is the authority´s Prosecution Development Centre.

The Prosecution Authority's prosecution development centre has offices situated in Stockholm, Gothenburg and Malmö. The task of the development centres is to conduct methodology and legal development work within their respective criminal fields, and act as knowledge centres in their areas of responsibility. They also carry out legal follow-up and inspection; an example of this is that all appeals against decisions by prosecutors are handled by the development centre. The centre is responsible for maintaining general expertise within its areas of responsibility.

The main principles that apply to the work of the prosecutor are the principle of legality (i.e., in principle, cases have to be investigated and taken to trial if there is reason to expect a conviction) and the principle of impartiality or objectivity (the prosecutor should also take into account factors that point in favour of the defendant). High importance is also attached to the value of equality and homogeneity in the application

of the penal code: the result should ideally be the same no matter who the prosecutor is or where in Sweden the case is dealt with.

All prosecutors within the Prosecution Service are completely independent in their decision making, which means that a senior prosecutor may not decide what decisions a subordinate prosecutor may make in a case for which the subordinate is responsible. Prosecutors do not enjoy criminal or civil immunity, but the compensation owed to a third, aggrieved party, will be paid by the state.

An important aspect of the prosecutor's work is the preparation of cases and appearance in court. Through the decision to bring charges, and the prosecutor's description of the crime, the prosecutor sets the framework for the criminal proceedings in court. Most prosecutors spend at least one or two days a week in court. The Prosecutor-General is the only prosecutor allowed to instigate or pursue proceedings before the Supreme Court. He/she may, however, appoint an assistant prosecutor at the Office of the Prosecutor General, or appoint another public prosecutor to represent the Prosecutor General at the Supreme Court.

Prosecutors have no role outside the criminal justice system. Nevertheless, they participate in working groups for policy and law drafting in criminal justice-related matters. There is no professional association of prosecutors. Investigation and prosecution

Investigation (known as “preliminary investigation” in Sweden) belongs to the police. Budgetary resources for investigations are only allocated to the police. However, the prosecutor heads the preliminary investigation for crimes that are not regarded as minor, in which a person can reasonably be suspected of the crime. A prosecutor may lead an investigation in other cases too if there are special grounds for doing so (e.g. when the perpetrator is under arrest, when the victim is underaged, in case of domestic violence, and so forth). As leader of the preliminary investigation, the prosecutor is responsible for ensuring that the crime is investigated in an optimal way. For less serious crimes, the investigation is handled entirely by police officers.[18]

When a prosecutor is leading the preliminary investigation, he or she is assisted in the investigation by the police. The prosecutor continually monitors the investigation and makes decisions about the investigative measures and decisions required. When the preliminary investigation is complete, the prosecutor decides whether to initiate legal proceedings before court. This also applies to the preliminary investigations of minor crimes for which the police are responsible.

The minor crime investigations that the police have completed are always handed over to the prosecutor who will decide whether to prosecute or not. The decision on prosecution will depend on the evidence presented by the police. The prosecutor can also request supplementary material from the police before a decision on prosecution is made. Investigations concerning more serious crimes can also be conducted by the police if there is still no identified suspect in the investigations.

Both a police authority (*polismyndighet*) and a Public Prosecutor have the competence to open a preliminary investigation. Formally it is the police authority as such, as opposed to a police officer, who makes the decision to open a preliminary investigation, although this function can be delegated within the authority. In the case of the prosecutor, it is the individual prosecutor who makes the decision. However, a public prosecutor should take over a preliminary investigation initiated by a police authority when a person is identified who on reasonable ground can be suspected of having committed the crime being investigated, unless it is a minor crime.

When a preliminary investigation is led by a public prosecutor, he/she will have at his/her disposal the resources of the police authority. It is for the chief investigator to decide which measures to take during the investigation and when and how to conclude the investigation; the actual investigative measures such as surveillance and questioning of suspects and witnesses are normally conducted by the police. The use of some forms of investigative measures is, however, subject to the approval of the court.

The preliminary investigation follows the general features of an inquisitorial model, in that the suspect is not considered to be a party to the investigation. Contrary to current attempts in many countries, including Sweden, to shift from inquisitorial to adversarial (accusatorial) systems, the Swedish law on criminal procedure of 1948 switched from the accusatorial to the inquisitorial criminal procedure (Taleb and Ahlstrand, 2011[57]). The inquisitorial model is expressed through – inter alia – the requirement of objectivity on the part of the investigator. It is explicitly stated in the statute that the investigation should consider not only circumstances that are disadvantageous for the suspect, but also those circumstances that speak in his/her favour. In this sense, the suspect is an object of investigation in a process that aims at the establishment of truth.

The prosecutor's decision to prosecute will lead to a judicial process. The accused cannot attack the prosecutor's decision as such; once an indictment has been lodged, it is for the court to decide on all matters related to the prosecution. If, on the other hand, the prosecutor decides not to proceed with prosecution (either by a negative decision on prosecution, or a decision to close the preliminary investigation), the aggrieved party may request that a superior prosecutor should review the case. This request for review is constructed as an administrative – i.e. not judicial – remedy, and is based on the principle that an administrative body may re-examine its own decision and a superior administrative body may review the decisions of an inferior body within the same hierarchical structure (Wong, C., 2012[58]).

The same system of rules applies to all criminal investigations regardless of the nature of the offence concerned. A special Prosecution Authority, however, has been established to co-ordinate the work of different authorities under a common leadership: The Swedish Economic Crime Authority (*Ekobrottsmyndigheten)* was established to co-ordinate measures against economic crimes such as those committed in connection with bankruptcies, tax frauds, insider trading and crimes against the financial interests of the EU. This Authority has its own budget and its own Director-General; the Authority is staffed by Public Prosecutors, police officers, accountants and experts on financial matters who can contribute their knowledge in the investigation of economic crimes. The Economic Crime Authority is the Swedish contact point for OLAF (the European Anti-Fraud Office of the EU Commission). When carrying out criminal investigations, the staff members of the Economic Crime Authority exercise their power and functions as Public Prosecutors and police officers. For financial crimes involving corruption, there is a National Unit against Corruption (*Riksenheten mot korruption*) within the Prosecution Authority. The Customs Office (*Tullverket*) and the Coast Guards (*Kustbevakningen*) assume some investigative functions as part of their normal activities.

There are several other public (administrative) authorities that may initiate their own investigations into certain conduct that later becomes the subject of a criminal investigation, e.g. the Financial Supervisory Authority (*Finansinspektionen*), the Social Insurance Office (*Försäkringskassan*) and the Tax Authority (*Skatteverket*). These authorities may forward the information obtained from their investigations to the Economic Crime Authority, the Police or the Prosecution Authority, but those other authorities are not part of the preliminary criminal investigation.

The public prosecution service and the police are bound by the principle of legality. According to law, the prosecution shall be initiated as soon as a crime is reported or for some other reason there is a cause to believe that an offence subject to public prosecution has been committed. Under such circumstances, the law, to prevent the overloading of courts, needs to contain rules which make it possible to keep a significant number of offences outside the judiciary (Zila, J., 2006[59]).

There are four different ways in which investigation/prosecution of offences can be terminated (or not initiated at all) before the case would reach the court, i.e. cases in which the conviction of the suspect could be expected. Offences that are not prosecuted in court (or the pre-trial prosecution is dropped) because of lack of evidence or for other reasons that prevent a trial are not included here:

1. The first rule that should be mentioned, even if it does not play an important role in practice, is the right of the police to refrain from report petty offences (the police can never prosecute a crime).

The police, as mentioned above, are bound by the principle of legality. There is one legal exception to the principle of legality as regards police activity. According to Sec. 9 of the Police Act, a police officer may refrain from his general obligation to report all offences, if the offence in question, in view of the circumstances in the specific case, is of a trivial nature and it is obvious that no other sanction than a fine would be imposed on the offender. To refrain from reporting an offence means, practically, that the offence will not be prosecuted. The other ways to refrain from investigating or prosecuting a crime may be decided only by the public prosecution service.

2. The possibility to drop an investigation with respect to public interest follows from Chapter 23, Sec. 4a Code of Judicial Procedure (CJP). According to this provision, a preliminary investigation may be discontinued (a) if continued inquiry would incur costs not in reasonable proportion to the importance of the matter and, at the same time, the offence has a penalty value of no more than three months imprisonment (changes in the legislation in 2010/2011), or (b) if it can be assumed that prosecution in court will not be instituted pursuant to the provision on waiver of prosecution, or on special examination of prosecution and dropping the investigation would not be against the public or any individual interest.
3. The public prosecution service is empowered to finish prosecution by a decision on waiver of prosecution (åtalsunderlåtelse) (Chap. 20, Sec. 7 CJP). The waiver of prosecution means that the prosecutor refrains from further prosecution, that is, from bringing the case to court, and stops the proceedings. No other action is taken. The waiver of prosecution is possible (a) if it may be presumed that the offence would not result in any other sanction than a fine, (b) if it may be presumed that the sanction would be a conditional sentence and special reasons justify waiver of prosecution, (c) if the suspect has committed another offence and no further sanction in addition to the sanction for that offence is needed in respect of the present offence; or d) if psychiatric care or special care in accordance with the Act on Support and Service for Certain Persons with Functional Impairments (1993:387) is rendered. And also in other cases if, in view of the circumstances, it is manifest that no sanction is required to prevent the suspect from further criminal activity or the institution of a prosecution is not required for other reasons.

   There are further possibilities to waiver of prosecution when it comes to juvenile offenders and which is stated in a special legislation. The legislation on juvenile offenders is prior to the CJP.

   The decision to waiver prosecution is recorded in the criminal register of the suspect. The number of waivers of prosecution is also recorded in criminal statistics as successfully finished prosecutions of persons who committed crime, alongside the number of judgments and penal orders. The waiver requires that the guilt of the offender is clarified (which in general means that the offender pleads guilty, even if it is not a requirement).
4. The fourth way of finishing a criminal procedure without judicial intervention is by sanctioning offences through decisions of the prosecutor or the police. These are the penal orders (imposed by the prosecutor) and the summary fines order (imposed by the police). These instruments also require that the guilt of the offender is clarified. These instruments are controversial from the liberal democracy viewpoint but have been successful in significantly reducing the workload of the courts. A satisfactory balance is still to be achieved (Zila, J., 2006[59]).

Management tools

Specialisation

There are several specialised public prosecution offices with nationwide responsibilities, the National Unit against Organised Crime the National Anti-Corruption Unit, the National Unit for Environment and Working Environment Cases, the National Security Unit, and the Separate Public Prosecution Office. Apart from these specialised offices, within the 32 public prosecution offices, the prosecutors are to some extent specialised in specific types of investigations, such as crimes committed by young offenders and domestic

violence. Large public prosecution offices are generally more often divided into separate specialised teams of prosecutors than the smaller ones. Even the smaller offices, however, often have specialists assigned to investigations of the abovementioned crimes. As said, the Swedish Economic Crime Authority (*Ekobrottsmyndigheten)* was established as a specialised agency to co-ordinate measures against economic crimes such as those committed in connection with bankruptcies, tax frauds, insider trading and crimes against the financial interests of the European Union.

Strategic prioritisation

The priorities according to which the prosecutors operate are established primarily by the legislator, by establishing mandatory deadlines for e.g. finalising investigations against young offenders. Priorities are further established by the Prosecution Authority and set out in internal documents such as the annual general planning document and other operational guidelines.

Applicable laws, the annual general planning document of the Swedish Prosecution Authority and internal guidelines provide that investigations in which a suspect is in custody, investigations against young offenders and investigations of crimes against children shall be prioritised by the prosecutors in that order before other investigations.

The Swedish Prosecution Authority participates in the efforts to fight organised crime within the Operative Council (*Operativa rådet*). The Operative Council, in which eight national agencies take part, makes decisions regarding the national operative direction in the struggle against organised crime and is authorised to deploy specially assigned police resources, called action groups, in all parts of the country (Swedish Economic Crime Authority, 2016[60]). The actions decided in the Operative Council are prioritised by the co-operating agencies since special resources are assigned to those investigations.

Organisation and human resources

As said, the Prosecution Authority consists of three legal levels. The Prosecution Authority's rules of procedure state that the prosecutors at the local Public Prosecution Offices and the National Public Prosecution Department form the first legal level. The Directors of Public Prosecution and the Deputy Directors of at the Prosecution Development Centres form the second legal level. The Prosecutor-General, who is the supreme leader under the government, and the Deputy Prosecutor-General form the third legal level, which is stated by law. Appeals against decisions of a prosecutor at the first legal level are handled by the superior prosecutors at the second legal level. The Prosecutor-General and the Deputy Prosecutor-General supervise the prosecutors at the second legal level. The Prosecution Authority has rules and guidelines for how appeal matters are to be handled within the authority.

Some 1 500 employees work within the Swedish Prosecution Authority, out of them 1 000 are prosecutors while the remainder work on various support functions. Prosecutors are selected through a public open competition which includes merit-based, non-partisan and non-political procedures among Swedish citizens. The recruitment criteria are theoretical and practical tests, publicity of vacancies and thorough scrutiny of the curriculum vitae by a permanent selection committee. To ensure that principles are followed, an applicant who is denied a position can appeal the Prosecutor-General´s decision to a State Committee, which is supervising all appointments of civil servants.

They are career civil servants but of a special—highly autonomous—kind. Prosecutors need to have a Swedish degree in law and have completed a period of practical legal training, working for two years as a clerk at a district court or administrative court. Prosecutors are first taken on as trainee prosecutors for nine months, during which the prosecutor has a mentor to guide him or her in the work. After this, the prosecutor undergoes a two-year mandatory course of training while working as a prosecutor, before being appointed Public Prosecutor.

There also is regular in-service training provided and mandatory. The bigger part of the training is provided by more senior prosecutors, but there is also training provided by other public and private entities such as the Police, the National Forensic Centre (part of the Police), judges, lawyers of the Bar Association and journalists. Regular training needs analysis is carried out by the Prosecutor General Office and by each prosecutorial unit. The SPA offers extensive internal training to ensure a quality baseline and has many internal guidelines on different topics addressing how to implement legislation in practice. The case handling systems also support compliance via templates etc. Internal thematic and case-by-case supervision and case review are part of the evaluation of prosecutorial offices.

Promotion is based on internal competition based on professional merit. A certain board makes recommendations regarding positions as senior public prosecutor and chief prosecutor.

Remuneration of prosecutors is not fixed in legislation. Superiors decide on individual remuneration of prosecutors within certain limits.

The operative prosecution activities are conducted at four public prosecution areas and the National Public Prosecution Department. The prosecution areas consist of the country's 32 public prosecution offices, with a geographical sphere of operation that is approximately equivalent to a county. In Stockholm and Malmö there are several local public prosecution offices. Each are a head of area (a chief prosecutor) with responsibility for co-ordination of the operative activities at the local public prosecution offices. The Directors have the possibility to redeploy staff, reallocate budget means or reassign cases among the local offices. A formal decision can also be taken by the Prosecutor-General to reallocate budget means during the fiscal year.

The National Public Prosecution Department consists of those national units and public prosecution offices that have national responsibilities, namely the National Anti-Corruption Unit, the National Unit for Environment and Working Environment Cases, the National Security Unit and the National Unit against Organised Crime. This also includes Sweden's representation in the European prosecution collaboration Eurojust. These four national public prosecution offices administer all crimes, regardless of where they took place geographically, within their respective areas of responsibility.

The “Separate Public Prosecution Office” is a national operative unit within the Swedish Prosecution Authority, which answers directly to the Prosecutor-General. The “Separate Public Prosecution Office” primarily administers the following matters regarding police, prosecutors, judges, members of the *Riksdag* (parliament) and certain other holders of official positions:

- Cases of crimes committed by police employees and certain others referred to in ordinance (2014:1106) on administering matters of crimes committed by employees within the police and certain other holders of official positions.
- Cases stated in the Swedish Prosecution Authority's regulations and general guidelines (ÅFS 2014:16) regarding where matters of crimes committed by certain holders of official positions shall be administered etc. The regulation refers to prosecutors, judges, members of the *Riksdag*, etc., as well as cases regarding crimes connected to activities of criminal investigations conducted outside of the police authority.
- In accordance with the Swedish Prosecution Authority regulations (ÅFS 2014:4) on the division of the operative activities, the head of the Special Public Prosecution Office and another head of department can agree on a matter being administered at the Separate Public Prosecution Office if the prosecution task for a particular reason should not be conducted by another office.
- Matters involving crimes in service committed by prosecutors or judges where the Parliamentary Ombudsmen (JO), the Chancellor of Justice (JK) or the Prosecutor-General have decided to initiate a preliminary investigation and other administration has not been specially agreed upon. The Swedish Commission on Security and Integrity Protection (SIN) can also surrender cases to the Separate Public Prosecution Office.

The Prosecutor-General can also decide that a matter in a certain case shall be administered at the Separate Public Prosecution Office. The head of the Separate Public Prosecution Office is Director of Public Prosecution and the deputy is Vice-Director of Public Prosecution. Other prosecutors are Chief Public Prosecutors. The prosecutors have offices in Malmö, Göteborg and Stockholm. The head office in Malmö is led by a Senior Administrative Officer. Other employees at the office are prosecution administrators.

Financial resources

The Swedish Prosecution Authority yearly provides the Ministry of Justice with background budget material, specifying the budget needs for the next year. The work with analyses and estimates of the complete budget proposal is led by the Ministry of Finance that receives background material from all ministries. The budget proposal is finally submitted by the Government to the Parliament for decision. The Prosecutor General decides on how to divide the budget between different units within the Prosecution Authority. While the Parliament is considering the Budget Bill, the ministries produce appropriation directions for the government agencies. The Government adopts the appropriation directions for the government agencies after the Parliaments decision on the central government budget before the end of the calendar year.

The budget is prepared in the yearly planning and budgeting process, which involve all management levels within the Prosecution Authority. Budget is delegated from the Prosecutor-General to the regional Prosecution Area, to the development centre and to the departments at the office of the Prosecutor-General. Budget delegated to the departments at the office of the Prosecutor-General also include budget lines to cover the authority's joint and common costs for premises (rent, electricity and capital cost on investments), training of prosecutors and administrative staff, IT, etc. Delegated budgets to the local public prosecution offices cover salaries and benefits for employees and running costs.

The finance department at the office of the Prosecutor-General co-ordinates the budget allocation and budget execution for the entire organisation. The department is responsible for financial management, monitoring of financial outcome, forecasts, accounting, internal rules and guidelines, etc. The Prosecutor General reserves a specific budgetary amount for interim/temporary measures if there is pressing uncertainty about the likely evolution of the workload and/or other essential preconditions in a given work area.

Every year (by the 1st of March) the Prosecution Service Authority submits a proposal for financing its operations in the coming years to the Government. The proposal does not only include a funding proposal but also describes the consequences if the requested resources are not allocated. As a part of the budget process within the Prosecution Authority the allocation of resources to regional Prosecution Areas is based on a model where budget means are distributed in relation to the average number of received crime suspicions where different types of crime are weighted differently.

Information and financial management

The Prosecution Authority has a centralised IT system – "Agresso" –for accounting and for budget management and monitoring of financial outcome. The Agresso business system is used by most central government agencies in Sweden. The business system is an important tool for an efficient resource management. The business system gives easy access to consolidated financial outcome for management purposes. The Prosecution Authority, like all central government agencies in Sweden, reports financial outcome monthly to the central government accounting system "Hermes". Hermes is a national IT system for managing and monitoring of the Swedish state budget. The system is also used for submitting forecasts to the Government on the expected total expenditure for the current and future years.

Management by objectives

The Ministry of Justice has the possibility to include specific objectives in the annual appropriation directions, but at present, this is not the case. The Prosecutor-General decides upon both budget and internal goals and objectives for the Prosecution Authority in the annual general planning document. In the annual operations plan for the Prosecution Organisation, the Prosecutor General specifies the Government's operational objectives and makes them measurable. The Prosecution Authority has a high degree of autonomy to set its own objectives.

The regional Prosecution Areas thus receive an objective for prosecutions, case-flow and production expressed numerically or as percentages. In parallel with this, the prosecution authorities can in a corresponding manner decide on and follow-up measurable objectives for the local prosecution offices within the authority.

The Prosecutor General considers that the follow-up of results and communication of results is an important precondition to enable the attainment of improvements. When the prosecutor reform was implemented, substantial resources were therefore devoted to developing a modern system to follow results up. Its most important components are a computerised case-management system where all cases and suspicions of crime are registered (see below), a statistical database and a new finance system. A pay and personnel accounting system is also in place.

The Prosecution Organisation's system for operational follow-up mainly comprises standards that measure the extent to which the goals that the Government and the Prosecutor General have formulated have been achieved. The results from the follow-up system are also presented regularly for the Prosecution Organisation in various forms, in order to make it possible for the regional Prosecution Areas to control and follow-up the operation and thereby enhance the prospects of achieving the Government's objective.

The performance management system in place contains long-term objectives, a yearly plan on how to meet those objectives and describes how results are to be measured. The drawback is that it can be difficult to find result measures that correspond well with the actual goals. There is also a risk that what gets measured tends to be viewed as an objective rather than an indicator to monitor the results.

At present, there are no explicit externally imposed objectives for the Swedish Prosecution Authority, other than the general task which is to reduce criminality by ensuring that those who commit crimes are held responsible in an efficient and legally secure manner and that proceeds of crime are restricted. However, in the annual appropriation directions, issued by the Ministry of Justice, several statistics and other types of operations information are defined, which are to be accounted for in the annual report. These indicate what legal areas are prioritised by the government (e.g. juvenile delinquents). An additional number of specific tasks are also given in this document.

The Ministry of Justice co-ordinates the annual appropriation directions within the judicial system. Some specific tasks are given priority jointly to the police and the Prosecution Authority and the prioritised legal areas are usually the same. On all levels, from the Prosecutor-General to local prosecution offices, there are regular meetings where co-ordination matters are discussed with the corresponding counterparts from the police and the courts.

There are five general (internal) goals set for the Swedish Prosecution Authority:

1. The quality in our casework is high and uniform, performed within a cost-efficient operation.
2. The Prosecution Authority contributes to the legal development and a uniform legal practice.
3. The Prosecution Authority is an attractive employer.
4. The Prosecution Authority is viewed upon with high confidence.
5. The quality in internal management, support and services is high.

These are measured by various statistics. No 1 is supported by statistics from the case management system, primarily case turnaround time and prosecution rate in prioritised legal areas. These statistics are published on the IntraNet and are used in extensive benchmark activities. To measure no 3 and 4 outcomes from recognised annual polls are relied upon. No 2 and 5 are subject to internal evaluation.

National strategies that are central to the prosecution service are the Mobilisation to combat organised crime, youth offenders and efficient exchange of information in the criminal justice system. The national efforts focused on organised crime and the improvement of exchange of information have been allotted increased resources.

Information and case-management

Information management in the judicial system involves eleven authorities: the Swedish National Council for Crime Prevention (*Brå*) (Swedish National Council for Crime Prevention, 2020[61]),[19]the Crime Victim Compensation and Support Authority, the Swedish National Courts Administration, the Swedish Economic Crime Authority, the Swedish Prison and Probation Service, the Swedish Coast Guard, the Swedish Police, the National Board of Forensic Medicine, the Swedish Tax Agency, the Swedish Customs and the Swedish Prosecution Authority. The work is known by the abbreviation RIF (Ministry of Justice of Sweden, 2014[62]).

Every year, the authorities in the judicial chain manage large numbers of criminal cases. The management of a criminal case begins when a crime is reported. The criminal investigation authorities and prosecutors produce a preliminary investigation report. If there are grounds for prosecution, the prosecutor can apply to a court to institute proceedings. The court delivers a judgment and the Prison and Probation Service decides on enforcement. Replacing paper-based, manual information exchange with electronic information exchange leads to more efficient management of criminal cases. The Ministry of Justice oversees and co-ordinates the joint development work on information management in the judicial system. A special council consisting of the heads of all the authorities involved has been established, the “Council for Information Management in the Judicial System”. The Council serves as a decision-making forum where the authorities agree on relevant issues. Each authority then implements its part of the joint agreements reached.

Since it is an extensive, long-term undertaking, the work is being conducted in stages. In the first stage, the authorities, acting on government instructions, have created an electronic information flow between the bodies that manage the largest volumes of cases, i.e. the Swedish Police, the Swedish Prosecution Authority, the Swedish Tax Agency, the Swedish Economic Crime Authority and the Swedish courts.

The “Swedish National Council for Crime Prevention” (*Brå)* receives data continuously and converts them into statistics. Direct electronic transfer of information in the criminal justice process between the authorities’ different IT systems requires, apart from technical solutions, harmonisation of the concepts used and the authorities’ routines. Often, training is needed before the new working methods introduced can take effect in the authorities’ activities. To benefit from the efficiency and quality gains that the work offers, activities must be adapted to the new conditions.

A secure solution for electronic communication has been introduced between the authorities’ IT services, from the police and tax fraud units to prosecutors and on to courts. For example, this is the way in which summons applications and information about parties are now transferred electronically, which saves a great deal of time, since data only need to be entered once. As the authorities’ IT services are linked up, the same data can accompany cases through the entire criminal justice process, resulting in shorter processing times. As the information is checked and reviewed at the receiving authority and is only changed if it proves to be out of date, this reduces the number of sources of error. Thus, the quality of the information that is processed and passed on to the next authority in the judicial chain is improved.

The process has substantially reduced the amount of paperwork for the authorities. One example of this is that police preliminary investigation reports, which were previously sent in paper form to prosecutors and courts, are now transferred electronically along the judicial chain. This measure alone reduces the

amount of paperwork for the police by hundreds of thousands of preliminary investigation reports per year. When information is available electronically and immediately, staff at authorities in the judicial system no longer need to scan documents or search for them in physical folders.

A more efficient criminal justice process leads to shorter processing times. When authorities have better and quicker access to information, they can also provide a better service to the parties in a case and to the general public. In the longer term, the development of information exchange in the judicial chain, combined with the ongoing work on e-Government, will create the conditions for e-Services that will enable parties to follow their case along the judicial chain, for instance.

Work on developing information management is being conducted to safeguard the protection of privacy and maintain security of information. It also contributes to keeping the information managed by the authorities correct and up to date. In addition, secure transfer of personal data is being made possible. This is particularly important, as the personal data processed are often sensitive. The electronic management of reports of crimes, preliminary investigation reports and indictments between authorities means that unnecessary paperwork and double registration is avoided. This saves both time and resources.

An electronic information flow in the criminal justice process provides better access to high-quality information. This substantially improves information analysis opportunities in the judicial chain, which can contribute to new knowledge about authorities' activities and performance, and about crime. To ensure that this potential is realised, the Government has instructed the Swedish National Council for Crime Prevention to prepare the development of new statistics.

When a reported crime is given a unique identity, it can be traced through the entire judicial chain. This results in new and unique opportunities for statistics on crime, criminal offences and victims of crime. These statistics make it easier to identify environments where crimes are frequently committed and groups that are particularly at risk, which in turn creates new and better conditions for crime prevention work. The possibility of following the criminal justice process also provides data for research and methods development. Successful criminal investigation work, for example, can be identified and analysed. It is also easier to evaluate and compare the results of different methods.

The possibility to follow information along the entire judicial chain allows throughput times and other information about the criminal justice process to be extracted. Flow statistics of this kind can be used in analysing the efficiency of the judicial system. They can also provide more reliable measures of the proportion of crimes that are cleared up, or other types of performance measures. Such statistics can be produced at national level and broken down at authority or smaller organisational unit levels, which increases possibilities for comparisons. Hence, being able to follow information through the entire judicial chain creates new conditions for following up all parts of the criminal justice process and ultimately better governance data for the Government. It is easier to identify and evaluate where and how the resources in the judicial system are used and what sort of consequences any changes in resources can be expected to have. This increases the chances of implementing reforms in the justice area that will achieve the intended objectives. It also facilitates the authorities' internal quality assurance and follow-up.

Finally, there exist guidelines for adopting diversionary measures and for ensuring homogeneity in the application of the penal code.

The work has been going on for many years and has been difficult for many authorities. We have also not succeeded in digitising all flows according to RIF's structure, but the digitisation rate is around 70%, with the remainder usually sent via secure e-mail or physical paper mail. However, further development is underway and the degree of digitisation is increasing every year.

Accountability: Monitoring and reporting

The Swedish Prosecution Authority (SPA) must, like all Swedish government agencies, submit an annual report to the Government concerning the activities and the economy of the agency. The yearly report gives information on general performance, spending and other areas specified in the appropriation directions. Internally, the Prosecution Authority monitors all objectives set in the annual general planning document of the previous year.

The government uses several indicators to assess the performance of authorities, presented in the annual Budget Bill. Indicators for crime investigation and prosecution directly concerning the prosecution services are:

- number and percentage of suspected crime resulting in prosecution (or summary imposition of a fine)
- number and percentage of suspects resulting being prosecuted (or receive a summary imposition of a fine)
- case handling time.

As said, the Swedish National Council for Crime Prevention (*Brå*) plays a fundamental role in monitoring and information gathering about the performance of the criminal justice system. *Brå* is an agency under the auspices of the Ministry of Justice and a knowledge centre for the criminal justice system. The agency's mandate is to contribute to the development of knowledge within the criminal justice system and the criminal policy area, as well as to enhance crime prevention. *Brå* is responsible for the official criminal statistics and other statistics, which includes producing, following, analysing, and reporting on criminality and the criminal justice system's responses to crime. For that purpose, *Brå* generates statistics, which are based on large-scale surveys and other special data collection mechanisms.

The Prosecutor-General has a Supervision Department, which can review any decision made by a prosecutor within the Prosecution Authority. The Supervision Department, operating directly under the Prosecutor-General, supervises individual cases from a legal perspective. Cases can be initiated by a party but can also be initiated ex officio. The Prosecution Development Centre (part of the Prosecution Authority) supervises cases, with the aim to identify areas in need of development and then take measures to raise awareness regarding certain issues by manuals, trainings, etc. The centre also handles all cases where decisions made by a prosecutor are subject to revision.

There is no mechanism for the performance appraisal of individual prosecutors. The individual prosecutor is responsible for the investigations led by him or her. The decisions made or the actions taken by the prosecutor during an investigation can be tried for example by a superior prosecutor or in retrospect, by the Parliamentary ombudsmen. Such review of the activities of the prosecutor is, however, conducted primarily from a legal standpoint and does not focus on the manner in which the prosecutor has managed the resources of the Swedish Prosecution Authority, the Police or any other government agency. Similarly, the review exercised by the courts through their judgments primarily focuses on legal issues and only indirectly on the resource management of the prosecutor during the investigation that preceded the indictment.

Data on the Swedish judicial system in total including the entire process from reported crime until judgment and prison is provided by *Brå*: https://bra.se/bra-in-english/home/crime-andstatistics (in English). For the SPA statistics can be found in the annual reports (https://www.aklagare.se/om-oss/dokument/planering-och-uppfoljning/, in Swedish).

The resource management of the Swedish Prosecution Authority, in general, is subject to review of separate government agencies, e.g. the Swedish National Audit Office (*Riksrevisionsverket*) and the Swedish Agency for Public Management (*Statskontoret*). The Prosecution Authority has been governed

by the ordinance on internal audit since 2010. The internal audit function was established the same year. The audits carried out have been valuable and most internal audit recommendations have been followed.

When the investigation is led by the prosecutor, the legislation provides that the prosecutor may request assistance from the police or other investigative authorities. In that capacity, the prosecutor calls for the use of resources of another authority. Although the prosecutor can invoke the resources of the police, the prosecutor neither controls nor is responsible for the management of police resources. The prosecutor, however, constantly strive to combine the focus on achieving work of high quality with an efficient resource management.

As said, the Swedish National Council for Crime Prevention (*Brå*), which functions as the Swedish Government's body of expertise, research and development within the judicial system conducts an annual survey, the Swedish Crime Survey, on attitudes and experiences of the general population of Sweden regarding victimisation, fear of crime and public confidence in the justice system.

Significant reforms

In the middle of the 1990s, a comprehensive reform was conducted of the Public Prosecution Service, which was given a modern and flexible organisation with the operational activity concentrated in local, larger prosecution offices (Prosecutor General of Sweden, 2002[63]). In conjunction with the reform, substantial renewal work was initiated within many areas, such as personnel policy, working methods and IT support. Furthermore, new forms for control, management and follow-up of the prosecutorial activities were introduced. Functions designed to support the strategic and operational management of the office and its resources were built up.

In 2000, the Prosecutor General concluded that the overall objectives of the 1996 Prosecutor Reform had been achieved, and that there were reasons and preconditions to further develop the activity in the forthcoming years. Renewal work was therefore initiated to improve the Public Prosecutions Service’s performance in critical areas, expanding and re-shaping capacity to meet new challenges.

A vision was set up and several areas and activities were identified as priority themes for development and change. This renewal work was conducted in close collaboration with the staff and, in 2001 a strategic plan for the period 2001-2006 was presented (Prosecutor General of Sweden, 2002[63]).

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[2] ***Chapter 5 – Co-operation between the criminal investigation authority and the public prosecutor***

Section 1 – Notification to the prosecutor. *The criminal investigation authority shall inform the public prosecutor without delay of a matter in which a police officer is a suspect in an offence unless the matter is to be dealt with as a summary penal fine or summary penal judgment matter. In addition, the public prosecutor shall be notified of an offence that has come under investigation, and the criminal investigation and the prosecutorial be given of such offences, or the public prosecutor has requested that notice shall be given of such offences.*

Section 2 – The competence of the public prosecutor in the criminal investigation

> *(1) Upon request of the public prosecutor, the criminal investigation authority shall conduct a criminal investigation or perform a criminal investigation measure. Also, otherwise the criminal investigation authority shall comply with orders given by the public prosecutor intended to ensure clarification of the matter in the manner referred to in Chapter 1, section 2.*

(2) After a matter has been transferred to the public prosecutor following the conclusion of the investigation, the public prosecutor decides on criminal investigation measures.

Section 3 – Obligation to co-operate

(1) The criminal investigation authority shall, in the manner required by the nature or scope of the matter, notify the public prosecutor of the conducting of a criminal investigation and of the circumstances connected with criminal investigation measures and otherwise of progress in the investigation. If the criminal investigation authority has notified the public prosecutor of the opening of an investigation on an offence, the head investigator shall, before concluding the criminal investigation, hear the public prosecutor on whether the matter has been clarified sufficiently in the manner referred to in Chapter 1, section 2, if the nature or scope of the matter require that the public prosecutor be heard, or if the intention is to conclude the criminal investigation without submitting the matter to the prosecutor. The Coercive Measures Act contains provisions on the notification obligation concerning the use of coercive measures.

(2) The public prosecutor shall participate to the extent necessary in the criminal investigation in order to ensure that the matter is clarified in the manner referred to in Chapter 1, section 2.

(3) The criminal investigation authority and the public prosecutor shall discuss questions relating to the arrangement of co-operation in the criminal investigation.

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

[4] Constitutionality question on article 5 of the Ordinance nº 58-1270 of 22 December 1958 lodged by the *Union syndicale des magistrats*.

[5] The law of 2013 July, 25 expressly distinguishes the criminal policy leads by the Ministry of justice (criminal procedure code, art. 30) from criminal proceedings leads by the Prosecutor of the Republic (criminal procedure code, art. 31).

[6] Article 40-1 of the Criminal Procedural Code states that any prosecutor holds a broad discretionary power and can decide to prosecute, to divert the case from prosecution or to end it straightforwardly with no further action.

[7] On 27 November 27 of 2017, the French authorities published a *Convention judiciaire d'intérêt public* (CJIP) with HSBC Private Bank Suisse SA (HSBC PB), the first such agreement under the so-called Sapin II law that was enacted in December 2016 and provided for the use of CJIPs by French prosecutors. Available at https://www.agence-francaise-anticorruption.gouv.fr/files/2018-10/CJIP_English_version.pdf. At the origin of this decisions was the whistleblowing by Hervé Falciani, a former employee of HSBC. In the HSBC PB case, the total settlement amount of EUR 300 million consisted of compensation to the French state (EUR 142 million), disgorgement of profits (EUR 86 million) and a financial penalty (EUR 72 million). The last two aspects, totalling EUR 158 million, equal about 30% of HSBC PB's average annual revenue over the preceding three-year period, which is the maximum fine allowed under Sapin II. It therefore appears that the Parquet National Financier (PNF) sought to warn companies that, under circumstances it deems appropriate, it is willing to impose the maximum fine available under the CJIP procedures of Sapin II. An important recent CJIP was signed with Airbus Industries on 29 January 2020, on several cases of bribery, whereby Airbus SE shall pay the sum of EUR 2 083 137 455 euros as provided by Article R.15-33-60-6 of the Code of criminal procedure within ten days after the Agreement becomes final, available at https://www.agence-francaise-anticorruption.gouv.fr/files/files/CJIP%20AIRBUS_English%20version.pdf.

[8] See them at www.dppireland.ie.

[9] The Commission, appointed by the Government, is an independent body established under the Law Reform Commission Act 1975, which states that the Commission's role is to keep the law under review and to conduct research with a view to the reform of the law.

[10] See Organisational Chart at https://www.dppireland.ie/about-us/organisation-chart/.

[11] The Attorney General of Ireland (*An tArd-Aighne*) is a constitutional officer (article 30 of the Constitution) who is the legal adviser to the Government and is therefore the chief law officer of the State. The Attorney General is not a member of the Government but does participate in cabinet meetings when invited and attends government meetings. His term follows that of the government appointing him.

[12] Statistics relating to the work of the judge, compared to the work of other judges of the same chamber or court, are attached to the assessment forms. Such statistics either directly show, or allow to calculate, quantitative indicators.

[13] Most of the information on the Dutch Prosecution Service used in this paper is drawn from the official website of the Public Prosecution Service of the Netherlands: https://www.prosecutionservice.nl/.

[14] The Treaty of Waitangi (Māori: *Te Tiriti o Waitangi*) is a treaty first signed on 6 February 1840 by representatives of the British Crown and Māori chiefs of New Zealand. It has become a document of central importance to the history, to the political constitution of the state and has played a major role in framing the political relations between New Zealand's government and the Māori population, especially from the late-20th century.

[15] The police had the following staff in 2018: Criminal Investigation Department (Judicial Police):767-strong; Public Security Police: 21141-strong; Republican National Guard (Gendarmerie): 22623-strong; and Aliens and Borders Department: 851-strong. (PORDATA, 2020[52]).

[16] The criminal policy goals, priorities and guidelines for the biennium 2017-19 were established by Law no. 96/2017 of 23 August.

[17] The main performance indicators for the prosecutorial service can also be found at: http://www.ministeriopublico.pt/sites/default/files/documentos/pdf/vrp

[18] A feature of the Swedish criminal justice system is that it makes no formal distinction between serious and minor offences (e.g. felonies and misdemeanours). Both are classified as “crime”. However, the Penal Code usually divides offences of major importance into three categories: minor, normal, and serious infractions of the law.

[19] *Brå* is an agency under the auspices of the Ministry of Justice and a knowledge centre for the criminal justice system. The agency's mandate is to contribute to the development of knowledge within the criminal justice system and the criminal policy area, as well as to promote crime prevention work.

Performance of the Prosecution Services in Latvia

A COMPARATIVE STUDY

Latvia has embarked on an ambitious agenda to tackle the challenges posed by complex types of criminality to public prosecution services, with particular emphasis on economic and financial crimes. This report carries out a benchmark analysis of Latvia's prosecution practices along with those in ten OECD member countries, international good practices and the experience of globally renowned prosecution experts. It takes stock of the good practices implemented in the prosecution to date, and examines the importance of a broad range of policy aspects that can drive better performance. These include strategic management tools, the use of data and strengthening co-operation across the whole of the justice chain. Finally, it formulates policy recommendations to support Latvia in strengthening the performance of its prosecution services.

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