

ACN

**Anti-Corruption Network
for Eastern Europe and Central Asia**

Anti-Corruption Division
Directorate for Financial and Enterprise Affairs
Organisation for Economic Co-operation and Development (OECD)
2, rue André-Pascal, 75775 Paris Cedex 16, France
Phone: +33(0)1 45241319, Fax: +33(0)1 44306307,
E-mail: anti-corruption.contact@oecd.org
Website: www.oecd.org/corruption/acn

ANTI-CORRUPTION SPECIALISATION OF PROSECUTORS IN SELECTED EUROPEAN COUNTRIES

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ANTI-CORRUPTION NETWORK FOR EASTERN EUROPE AND CENTRAL ASIA

The Anti-Corruption Network for Eastern Europe and Central Asia (ACN) was established in 1998 to support its members in their fight against corruption by providing a regional forum for promotion of anti-corruption activities, exchange of information, elaboration of best practices and donor coordination.

ACN is open for countries in Central, Eastern and South Eastern Europe, Caucasus and Central Asia. The OECD and EU members, international organisations, multilateral development banks, civil society and business associations also participate in its activities.

The ACN Secretariat is based at the OECD Anti-Corruption Division. The Secretariat is guided by the ACN Steering Group and reports to the OECD Working Group on Bribery.

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INTRODUCTION

This paper was prepared on the request of the General Prosecutor's Office of Ukraine to the OECD Anti-Corruption Network for Eastern Europe and Central Asia (ACN) under the project "Strengthening the Capacity for Investigation and Prosecution of Corruption in Ukraine". It analyses international standards and presents several models of anti-corruption specialisation of prosecutors in European countries in order to inform the debate about reforms of the prosecutorial service in Ukraine. This paper can be also useful to other countries who are reforming their prosecutorial systems to ensure more effective prosecution of corruption offences. The project is funded by the US Department of State's Bureau for International Narcotics and Law Enforcement Affairs. Further information about the project is available on the ACN website¹.

The paper starts with a brief overview of relevant international standards on prosecutorial specialisation and some of the basic principles generally applied to prosecutors in European practice. The paper is further composed of four case studies of anti-corruption specialisation of the prosecution services in Hungary, Lithuania, Poland and Spain. The chosen examples cover various approaches to specialisation – from individual specialised anti-corruption prosecutors to specialised divisions/units or institutions to prosecute corruption offences.

The case-studies are prepared following the same structure and contain an overview of establishment and functioning of the anti-corruption specialisation in the prosecution services of the countries. They further cover institutional set-up, operation, human resources management, training, as well as other relevant aspects through which such specialisation is ensured in each country. They also provide an overview of various procedures and safeguards in place, such as oversight of investigation and prosecution of corruption cases, relations of specialised anti-corruption prosecutors with higher prosecutors, necessary changes in the overall institutional set-up of the prosecution system and other relevant issues. Where appropriate, the case studies also discuss rationale and ways how a crime-based approach to organisation of the prosecution service can be introduced.

¹ http://www.oecd.org/document/32/0,3343,en_36595778_36595918_41420320_1_1_1_1,00.html

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Mr. Algimantas Kliunka, Chief Prosecutor of the Department for Investigations of Organised Crime and Corruption at the Prosecutor General’s Office of the Republic of Lithuania, wrote the case study on Lithuania, Mrs. Dr. Magdolna Hajdu, Deputy Head of the International and European Affairs Department at the Office of the Prosecutor General of the Republic of Hungary, wrote the case study on Hungary, Mr. Cezary Michalczuk, Senior Prosecutor at the General Prosecutor’s Office of Poland, wrote the case study on Poland, and Mr. David Martínez Madero, then Director of the Anti-Fraud Office of Catalonia, wrote the case study on Spain.

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1.INTERNATIONAL STANDARDS

1.1. Main Sources of International Standards

International standards on the role of prosecutors in criminal justice system and in the fight against corruption are established in a large body of legally binding international treaties, "soft-law" recommendations adopted by intergovernmental organisations and self-regulatory recommendations developed by professional associations of prosecutors.

The main international legally binding treaties concerning the Public Prosecution include the following:

- The United Nations International Covenant on Civil and Political Rights, 1976;
- The United Nations Convention Against Corruption, 2005;
- The European Convention for the Protection of Human Rights and Fundamental Freedoms, 1953;
- The Council of Europe Criminal Law Convention on Corruption, 2002.

The main "soft-law" recommendations developed by international organisations include:

- The United Nations Guidelines on the Role of Prosecutors, 1990;
- Council of Europe Committee of Ministers (CM) Recommendation No. 19, 2000, on the role of public prosecution in the criminal justice system, and Explanatory Memorandum;
- The Parliamentary Assembly of the Council of Europe (PACE) Recommendation No. 1604, 2003, on the public prosecutor's office in a democratic society governed by the rule of law;
- The European Guidelines on Ethics and Conduct for Public Prosecutors, Council of Europe, 2005;
- Report on European standards as regards the independence of the judicial system, Venice Commission, 2010.

The main self-regulatory standards developed by professional associations of prosecutors are as follows:

- International Association of Prosecutors' Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors, 1999;
- The Bordeaux Declaration of the Consultative Council of European Judges (CCJE) and the Consultative Council of European Prosecutors (CCPE) on "Judges and Prosecutors in a Democratic Society", 2009.

In addition to the above legally binding treaties and "soft-law" recommendations, there is a growing body of good practice developed by individual countries and case-law, particularly of the European Court of Human Rights (see, among others, judgments in cases: *Moulin v. France*, application no. 37104/06; *Melnik v. Ukraine*, application no. 72286/01). Together these documents constitute the sources of international standards concerning the role of prosecutors in criminal justice and in the fight against corruption.

1.2. Role of Prosecutors

1.2.1. Prosecutors in the Criminal Justice System

An overarching principle concerning the role of prosecutors in the criminal justice system is the need for the institutions of law enforcement to be guided by a policy framework that would clearly define the powers and obligations of different institutions. The Council of Europe CM Recommendation 19 (2000) defines that:

The achievement of efficient and effective criminal justice will be greatly facilitated if the objectives of the various agencies are co-ordinated within a broader framework of crime control and criminal justice policies.

The international standards further establish that "Public prosecutors should not interfere with the competence of the legislative and the executive powers" (Council of Europe CM Recommendation 19 (2000), § 12). PACE recommendation 1604 (§ 7.v.c) defines:

that the powers and responsibilities of prosecutors are limited to the prosecution of criminal offences and a general role in defending public interest through the criminal justice system, with separate, appropriately located and effective bodies established to discharge any other functions.

This limitation of the role of prosecutors to the representation of the public interest in criminal proceedings is particularly relevant in post-communist countries, whose prosecution offices usually inherited the wider role of supervising adherence to the law in general, especially by the state administration.

Due to multitude of various prosecution systems it is challenging to identify universally accepted prosecutorial functions. Nonetheless an attempt to identify some core tasks has been made by the International Association of Prosecutors in its Regional and International Standards governing the role of public prosecutors. The following functions have been identified:

- deciding whether to initiate or continue a prosecution
- conducting prosecutions before the court
- appealing or conducting appeals concerning all or some court decisions
- implementing national crime policy and adapting to local, regional circumstances
- conducting, directing, advising or supervising investigations

- victim care
- diversion from prosecution
- supervising the execution of court decisions
- recommending sentences
- community engagement with the public, in order to improve awareness and promote public confidence in the prosecution service and the criminal justice system.

1.2.2. Discretionary Powers of the Prosecutor

Prosecutorial systems vary greatly in the discretion they grant to prosecutors to initiate investigations and decisions to prosecute, halt criminal prosecutions or discontinue prosecutions. International standards encourage the existence of clear rules and guidelines on the use of discretion. Council of Europe CM Recommendation 18 (1987) states explicitly (§§ I.a.1 and I.b) that:

The principle of discretionary prosecution should be introduced or its application extended wherever historical development and the constitution of member states allow; otherwise, measures having the same purpose should be devised... States which, in view of their historical development and their constitution, apply the principle of mandatory prosecution should introduce or extend the use of measures that, although different from discretionary prosecution, have nevertheless the same purpose as the latter...

Equally important, both Council of Europe CM Recommendation 18 (1987) and the United Nations Guidelines for Prosecutors enshrine the principle that discretion should be exercised on the basis of clear rules. According to these Guidelines (§17):

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

The Council of Europe recommendation establishes the general criteria by which a prosecuting authority should make decisions on waiving or discontinuing prosecution – for example, the seriousness of the offence or the effects of conviction on the alleged offender. The recommendation also states that a decision to waive should not prevent a victim from seeking civil damages from an alleged offender.

In post-communist countries prosecution is mandatory, however, in practice the mandatory requirement to investigate and prosecute leaves room for abuses and for disingenuous use of discretion, with preference given to “more easily verifiable facts” and simple cases, as well as to the use of administrative rather than criminal sanctions.

1.2.3. Relationship of Prosecutors and Judges

Although prosecutors and judges are part of the same legal system and are often part of the same professional *corps*, both the UN and Council of Europe have laid down standards that distinguish the roles of the two professions. CM Recommendation 19 (2000) states, in particular, that States should guarantee clear rules of procedure concerning the public prosecutor's capacity to act, and that a person cannot at the same time perform duties as a public prosecutor and as a court judge. The same recommendation also lays down other principles, for example that prosecutors must not cast doubt on judicial decisions.

1.2.4. Relationship of Prosecutors and the Police

International standards have tackled the issue of the relationship of the Public Prosecutor's Office to the police mainly as a result of the necessity of ensuring the fulfillment of human rights obligations by the police and the need to defend individual freedoms.

In addition to stating that prosecutors should scrutinize the lawfulness of police investigations and observe the observance of human rights by the police, CoE CM Recommendation 19 (2000) also contains recommendations directed at maximizing the effectiveness of police investigations and cooperation between the Public Prosecutor's Office and the police. Where the police is placed under the authority of the public prosecution or where police investigations are either conducted or supervised by the public prosecutor, states should take effective measures to guarantee that the public prosecutor may:

- give instructions as appropriate to the police with a view to an effective implementation of crime policy priorities, notably with respect to deciding which categories of cases should be dealt with first, the means used to search for evidence, the staff used, the duration of investigations, information to be given to the public prosecutor, etc.;
- where different police agencies are available, allocate individual cases to the agency that it deems best suited to deal with it;
- carry out evaluations and controls in so far as these are necessary in order to monitor compliance with its instructions and the law;
- sanction or promote sanctioning, if appropriate, of eventual violations.

States, where the police service is independent of the public prosecutor, should take effective measures to guarantee that there is appropriate and functional co-operation between the Public Prosecution and the police (§ 23).

PACE Recommendation 1604 (2003) further clarifies the position of the Council of Europe with regard to the division of roles between police and prosecution by stating, *inter alia*, that "the police having responsibility for prosecutions" is one of the aspects of law enforcement systems that gives rise to "concern as to their compatibility with the Council of Europe's basic principles". The document accordingly recommends in paragraph 7 that "responsibility for prosecutions should lie with a body separate from and independent of the police".

1.3. Independence

1.3.1. External and Internal Independence of Prosecutors

Independence of prosecutors from interference by other authorities or entities are addressed by several international standards. The Venice Commission distinguishes between “external” independence of the prosecutor’s office from other branches of powers and “internal” independence of individual prosecutors from their hierarchy. The former includes the impermissibility of the executive or other branches of power to give instructions in individual cases to any prosecutor. The latter covers guarantees of non-interference from the prosecutor’s hierarchical superior. Prosecutorial independence should ensure that the prosecutor’s activities are free of external pressure as well as from undue or illegal internal pressures from within the prosecution system.²

Instructions in individual cases, which are unacceptable, should be distinguished from the setting of general public policy in the criminal justice area that can be performed by the executive and/or the legislative powers. In this regard the Venice Commission notes:

It is important to be clear about what aspects of the prosecutor’s work do or do not require to be carried out independently. The crucial element seems to be that the decision whether to prosecute or not should be for the prosecution office alone and not for the executive or the legislature. However, the making of prosecution policy (for example giving priority to certain types of cases, time limits, closer cooperation with other agencies etc.) seems to be an issue where the Legislature and the Ministry of Justice or Government can properly have a decisive role.

Clear restrictions on executive powers to interfere in the activities of prosecutors are stressed in other Council of Europe document, in particular PACE Recommendation 1604 (2003) finds ‘essential’ the complete independence of the public prosecution from intervention on the level of individual cases by any branch of government. Council of Europe CM Recommendation 19 (2000), §11, calls on states to:

take appropriate measures to ensure that public prosecutors are able to perform their professional duties and responsibilities without unjustified interference or unjustified exposure to civil penal or other liability.

The Explanatory Memorandum to the Council of Europe CM Recommendation 19 (2000) elaborates that “unjustified interference” means interference “in cases other than those provided for in the law”, and “from any other authority, whether executive or legislative (this being most relevant in systems where the public prosecutor is subordinate) but also from economic forces and local political authorities.”

With regard to direct interference by the executive branch, Council of Europe CM Recommendation 19 (2000), §13, requires that states ensure prosecutorial independence in systems where the Public Prosecution is part of or subordinate to the government:

² Study No. 494/2008, Venice Commission, December 2010, §29-32.

Where the public Prosecution is part of or subordinate to the government, States should take effective measures to guarantee that:

- a. the nature and the scope of the powers of the government with respect to the public prosecution are established by law;*
- b. government exercises its powers in a transparent way and in accordance with international treaties, national legislation and general principles of law;*
- c. where government gives instructions of a general nature, such instructions must be in writing and published in an adequate way;*
- d. where the government has the power to give instructions to prosecute a specific case, such instructions must carry with them adequate guarantees that transparency and equity are respected in accordance with national law, the government being under a duty, for example:*
 - to seek prior written advice from either the competent public prosecutor or the body that is carrying out the public prosecution;*
 - duly to explain its written instructions, especially when they deviate from the public prosecutor's advices and to transmit them through the hierarchical channels;*
 - to see to it that, before the trial, the advice and the instructions become part of the file so that the other parties may take cognisance of it and make comments;*
- e. public prosecutors remain free to submit to the court any legal arguments of their choice, even where they are under a duty to reflect in writing the instructions received;*
- f. instructions not to prosecute in a specific case should, in principle, be prohibited. Should that not be the case, such instructions must remain exceptional and be subjected not only to the requirements indicated in paragraphs d. and e. above but also to an appropriate specific control with a view in particular to guaranteeing transparency.*

Where the Public Prosecution is independent of the government, the same Recommendation, §14, calls on States to “take effective measures to guarantee that the nature and scope of this independence is established by law”. As the Explanatory Memorandum explains, this is both to ensure that informal practices on the part of the Executive or other authorities do not undermine independence, and to ensure that public prosecutors themselves do not “drift towards self-interest”.

1.3.2. Budgetary Independence

External independence of prosecutors can be ensured through a variety of methods. One of the international standards in this area requires sufficient and non-arbitrary budgetary funding. The Council of Europe CM Recommendation 19 (2000), §4, states the importance of “adequate conditions as to the means, in particular budgetary means, at their [public prosecutors’] disposal”. The Explanatory Memorandum also mentions in its commentary on §11 that “interference can be more insidious, for example taking the form of a squeeze on

the Public Prosecution's budget, thus making the service more dependent on sources of financing not originating in the State."

The Recommendation 19 (2000), nevertheless, does not provide clear guidance on how to avoid interference through budgetary pressure, apart from recommending in §4 that the conditions of the service (including budget) "should be established in close cooperation with the representatives of the public prosecutors."

1.3.3. Recruitment, Promotion and Assessment of Prosecutors

Both external and internal independence of prosecutors can be guaranteed through provisions on the appointment and dismissal of prosecutors, career management and tenure, provisions on discipline and removal of prosecutors.

The Council of Europe CM Recommendation 19 (2000) lists the measures states should take in this area:

- ensuring fair and impartial procedures for the recruitment, promotion and transfer of prosecutors;
- governing careers by known and objective criteria such as competence and experience;
- ensuring that mobility of prosecutors is governed by the needs of the service;
- providing reasonable conditions of service (remuneration, tenure and pension) on a basis governed by law;
- the governing by law of disciplinary proceedings against prosecutors, including independent and impartial review;
- the existence of satisfactory grievance procedures for prosecutors if their legal status is affected.

Tenure of prosecutors is another important aspect. According to the Venice Commission:

Prosecutors should be appointed until retirement. Appointments for limited periods with the possibility of re-appointment bear the risk that the prosecutor will make his or her decisions not on the basis of the law but with the idea to please those who will re-appoint him or her.

Regarding assessment of prosecutors, the Council of Europe CM Recommendation 19 (2000), §35 emphasizes that "[t]he performance of public prosecutors should be subject to regular internal review". This requirement is primarily connected with the need to ensure that prosecutors observe the ethical standards and norms required of their office. The above Recommendation further calls on states to ensure that when carrying out their duties prosecutors are bound by "codes of conduct", breaches of which may lead to appropriate sanctions. The Explanatory Memorandum to the Recommendation stresses that the code of conduct is not envisaged as a formal code but as a "reasonably flexible set of prescriptions concerning the approach to be adopted by public prosecutors, clearly aimed at delimiting what is and is not acceptable in their professional conduct".

While there are no international standards for the assessment of effectiveness of the prosecutors, it is possible to propose criteria based on good practice developed in various countries:

- the prosecution rate: number of persons prosecuted, including decisions on waiver of prosecution, relative to the total number of indictments,
- speed of case-flow: how quickly a decision to prosecute or not prosecute is made,
- number of cases referred to the court relative to the number of cases that have been referred for prosecution by investigatory bodies,
- uniformity of application of law for the most common types of prosecutorial decisions.

Care must be exercised in applying measures of efficiency that might motivate prosecutors to put speed and number before quality of investigations/prosecutions.

1.3.4. Accountability

All systems of justice in democracies face the challenge of how to ensure that the independence of prosecutors does not undermine their accountability for their actions. While stressing the importance of freedom of prosecutors from unjustified interference or liability, Council of Europe CM Recommendation 19 (2000) also states that “the public prosecution should account periodically and publicly for its activities as a whole and, in particular, the way in which its priorities were carried out.” The Explanatory Memorandum to the Recommendation elaborates upon this in the following way:

Apart from individual decisions that are the subject of specific recommendations, all public prosecutors... must give account of their work at local or regional level, or indeed national level if the service is highly centralized. These regular accounts must be made to the general public – either directly through the media or a published report, or before an elected assembly.

1.4. Anti-Corruption Specialisation

1.4.1. Specialisation Requirements

Both United Nations and Council of Europe standards underline the need for specialisation within prosecution offices. CM Recommendation 19 (2000) states that

In order to respond better to developing forms of criminality, in particular organized crime, specialisation should be seen as a priority, in terms of the organisation of public prosecutors, as well as in terms of training and in terms of careers. Recourse to teams of specialists, including multi-disciplinary teams, designed to assist public prosecutors in carrying out their functions should also be developed.

The Explanatory Memorandum envisages two types of specialisation:

... the traditional form of specialization in which the prosecution service is organized to include (in larger offices or at regional or national level) teams of prosecutors specializing in specific sectors.

... the formation of, under the direction of prosecutors who are themselves specialists, of truly multi-disciplinary teams whose members are drawn from a variety of backgrounds... The pooling of expertise in a single unit is a vital factor in the operational effectiveness of the system.

The United Nations Convention against Corruption (UNCAC) and the Council of Europe Criminal Law Convention on Corruption further establish legally binding standards which require states to ensure anti-corruption specialisation.

According to Article 36 of UNCAC:

Each State Party shall, in accordance with the fundamental principles of its legal system, ensure the existence of a body or bodies or persons specialized in combating corruption through law enforcement.

Similar provision is contained in Article 20 of the Council of Europe Criminal Law Convention:

Each Party shall adopt such measures as may be necessary to ensure that persons or entities are specialised in the fight against corruption.

According to the Explanatory Memorandum (§ 95) to the Council of Europe Convention, this provision is inspired, inter alia, by the need to improve both the specialisation and independence of persons or entities in charge of the fight against corruption, which was stated in numerous Council of Europe documents. The requirement of specialisation is not meant to apply to all levels of law enforcement. It does not require, in particular, that in each prosecutor's office or in each police station there is a special unit or expert for corruption offences. At the same time, this provision implies that wherever it is necessary for combating effectively corruption there are sufficiently trained law-enforcement units or personnel.

It is equally important that not only there are specialised units/persons but that "those in charge of the prevention, investigation, prosecution and adjudication of corruption offences, enjoy the independence and autonomy appropriate to their functions, are free from improper influence and have effective means for gathering evidence, protecting the persons who help the authorities in combating corruption and preserving the confidentiality of investigations" (Principle No. 3, Council of Europe Guiding Principles for the fight against corruption).

A wide range of good practice examples on various models of specialised institutions is presented in the OECD ACN publication “Specialised Anti-Corruption institutions: review of models” issued in 2007.³

1.4.2. Anti-Corruption Training for Prosecutors

Paragraph 7 of Council of Europe CM Recommendation 19 (2000) notes that training is both a right and a duty for all public prosecutors, both before their appointment as well as on a permanent basis. The five core areas in which prosecutors should receive training are:

- a. the principles and ethical duties of their office;
- b. the constitutional and legal protection of suspects, victims and witnesses;
- c. human rights and freedoms as laid down by the Convention for the Protection of Human Rights and Fundamental Freedoms, especially the rights as established by Articles 5 and 6 of this Convention;
- d. principles and practices of organisation of work, management and human resources in a judicial context;
- e. mechanisms and materials which contribute to consistency in their activities.

In addition, the Recommendation advises that

Furthermore, states should take effective measures to provide for additional training on specific issues or in specific sectors, in the light of present-day conditions, taking into account in particular the types and the development of criminality, as well as international co-operation on criminal matters.

The Explanatory Memorandum expands on this recommendation by stating that there is a good case for additional training in specific sectors such as:

- cross-border crime and other forms of crime of international concern;
- organized crime;
- computer crime;
- international trafficking in psychotropic substances;
- offences related to complicated financial transactions, such as money-laundering and large-scale fraud;
- international co-operation on criminal matters;
- comparative criminal justice systems and comparative law;
- prosecution strategies;
- vulnerable witnesses and victims;
- the contribution of criminal law to the protection of the environment, in particular the Council of Europe texts in this field;
- scientific-based evidence, in particular, the recently developed technologies such as DNA profiling.

³ The full text of the publication can be found at: <http://www.oecd.org/dataoecd/7/4/39971975.pdf>

Specific targeted anti-corruption training is an integral part of specialisation. Best practices have developed in individual countries, with specialised anti-corruption courses developed in the US, Lithuania, Romania.

1.4.3. International Cooperation in Fighting Corruption

While there are prosecutors specialized in mutual legal assistance, it is an instrument, which can be used by specialised anti-corruption prosecutors as well. International instruments and recommendations contain a number of standards for prosecutor's offices concerning international cooperation. They commonly list the forms of assistance that can be provided, the rights of the requesting and requested States relative to the scope and manner of cooperation, the rights of alleged offenders and the procedures to be followed in making and executing requests.

In order to improve mutual assistance efforts, CM Recommendation 19 (2000) § 39 recommends the specialisation of public prosecutors in the field of international cooperation. The Recommendations states, in particular, that the public prosecutor in charge of international cooperation in a state requesting mutual assistance should be empowered to address requests for mutual legal assistance directly to the competent authority of the requested state, and that the latter be empowered to return directly the evidence obtained.

The UN Convention against Transnational Organized Crime and the UN Convention against Corruption establish common standards in the area of law-enforcement and judicial cooperation in criminal matters, and, in particular, in the area of organized crime and anti-corruption. Articles 13 – 19 of the UN Convention against Transnational Organized Crime provide for various forms of mutual legal assistance and introduce the concept of establishment of the joint investigative teams. UN Convention against Corruption obliges its signatories to render specific forms of mutual legal assistance in gathering and transferring of evidence and to extradite offenders (Chapter IV), and introduces a basis for asset recovery actions (Chapter V).

2. CASE-STUDIES

2.1. HUNGARY⁴

2.1.1. General overview of the prosecution system

The following main legal and normative acts define the public prosecution system in Hungary:

- Constitution of the Republic of Hungary (Art. 51-53 of Act XX. of 1949);
- Act V. of 1972 On Public Prosecution Service of the Republic of Hungary;
- Act LXXX of 1994 On Service Relationships in the Public Prosecution Service and on Prosecutorial Data Handling;
- 25/2003 (ÜK.12.) LÜ General Instruction by the Prosecutor General on the Organization and Operation of the Public Prosecution Service of the Republic of Hungary;
- 11/2003. (ÜK.7.) LÜ General Instruction by the Prosecutor General on the prosecutors' tasks at the pre-trial stage;
- The Criminal Procedural Code. (Act XIX of 1998)⁵.

Prosecution Service is a hierarchical, centralized organization, which does not form a separate branch of government, but is still an independent organisation existing on the basis of Constitution. It is headed by the Prosecutor General, who leads and directs the whole organization. The Prosecutor General is elected by the Parliament, upon proposal by the President of the Republic, for a six-year term. The President of the Republic appoints his deputies upon the nomination from the Prosecutor General, while the rest of the prosecutors are appointed by the Prosecutor General him/herself for the indefinite period of time.

The Prosecutor General is superior to all prosecutors and may intervene in any individual case. He establishes basic rules for the organization and operation of all offices and units, as well as distributes the authority and responsibility among different levels (in the line with Criminal Procedural Code and other Acts) and also assigns ranks and leadership positions. Furthermore, the Prosecutor General personally exercises exclusive authority not only over the appointment, but also promotion, discipline and dismissal of all prosecutors, as well as appointment to the leadership positions (with the exception of his deputies).

Prosecution Offices at different levels are subordinated to one another hierarchically. The Office of the Prosecutor General being at the top of the pyramid is superior to any other office. Each office has an administrative head responsible for all its operation. The

⁴ This case study was prepared by *Mrs. Dr. Magdolna Hajdu*, Deputy Head of the International and European Affairs Department at the Office of the Prosecutor General of the Republic of Hungary.

⁵ The prosecutors carry out their activity according to the rules of the Criminal Procedural Code.

administrative head of each office is superior to all lower level ranking prosecutors in the prosecution of its competent territory.

The administrative head of office is generally expected to direct the overall activity of the office and to be aware of the important problems, significant cases and major decisions relating to his/her territorial jurisdiction. S/he may instruct the subordinate prosecutors to take over any case at any point of time from any other prosecutor and assign another prosecutor to any case similarly at any point of time. S/he also has the right to ask for a report from prosecutor at any point of time in any case.

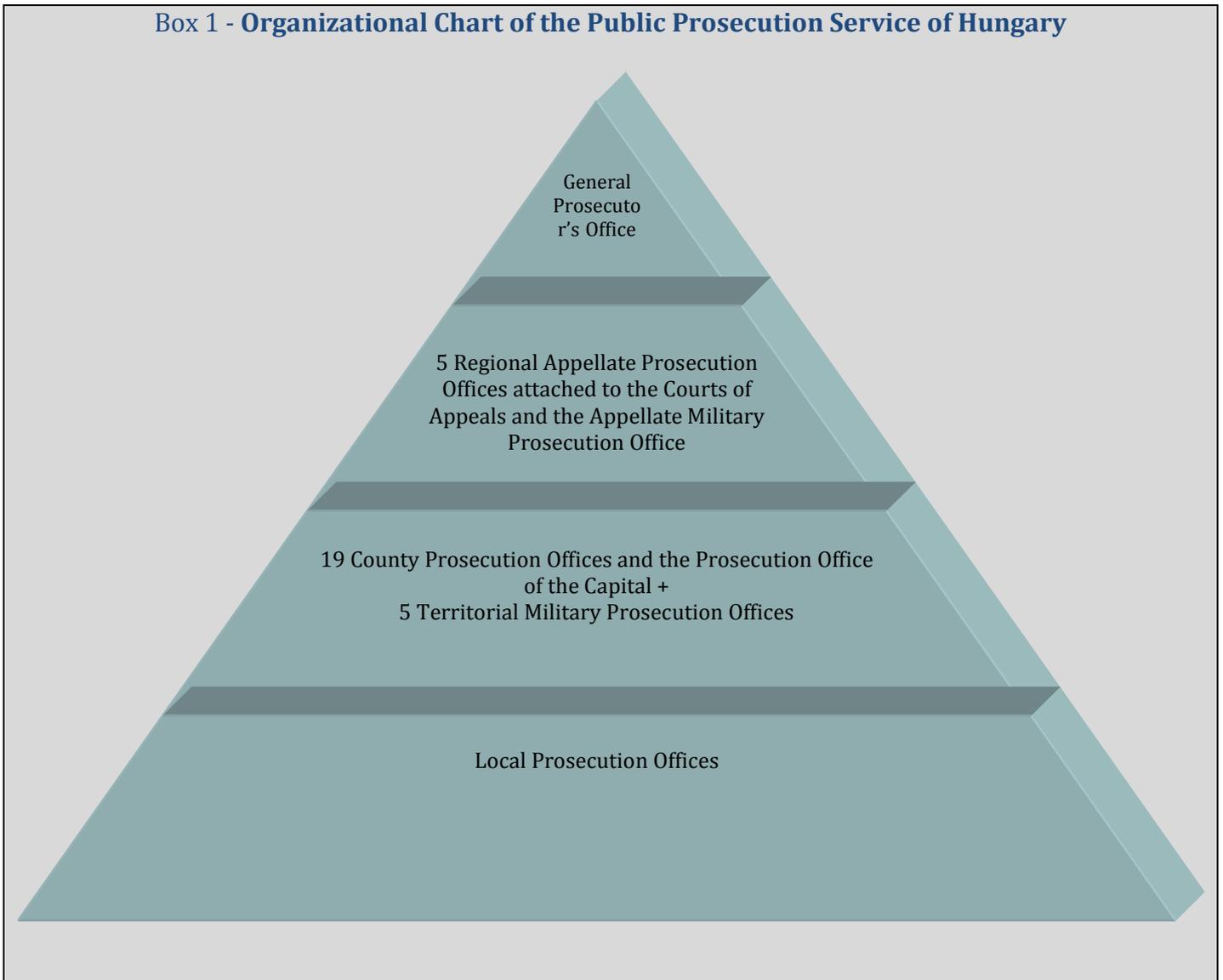
During the pre-trial phase in criminal cases the administrative head of the office may agree with the complaint filed against any measures or decisions of subordinate prosecutors. Alternatively he may also submit such complaint with the whole file to the superior office for review and decision.

The prosecutor must refuse to follow an instruction that was given by superior prosecutor if it amounts to a criminal offence and may refuse if its execution would endanger his life, health or bodily integrity. The prosecutor must report in written form if he is prejudiced or partial due to any reason in a case. The superior in such a situation must reassign the case to another prosecutor. The prosecutor may request in writing to be relieved of carrying out instructions that he considers illegal or incompatible with his legal convictions. The request must include his reasons. The superior prosecutor may reassign this case or repeat his/her instruction in written form which must be then fulfilled by the prosecutor.

Organizational Structure

The structure of the Prosecution Service generally follows the organizational set up of the courts, with the offices being organized into 4 levels.

Box 1 - Organizational Chart of the Public Prosecution Service of Hungary



I. Office of the Prosecutor General

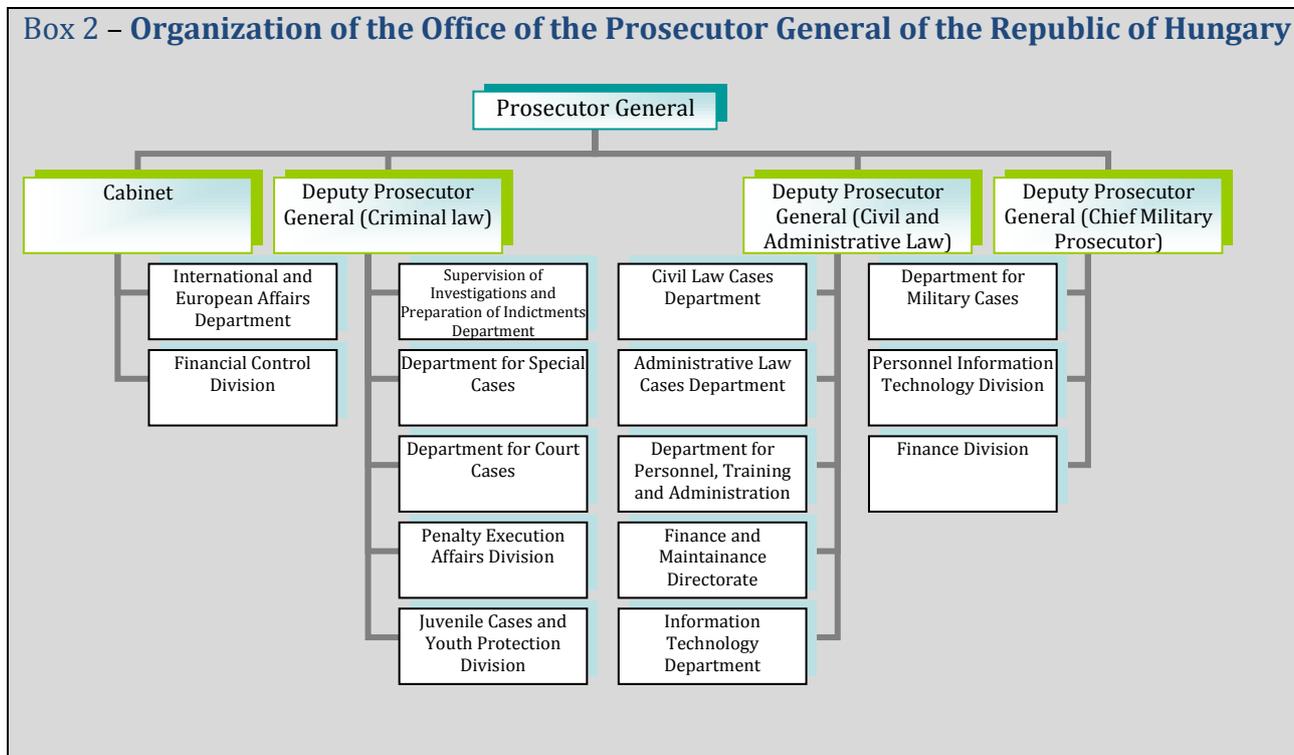
The Office of the Prosecutor General is entitled to monitor and review any case in any office within the Prosecution Service, either by request or ex officio.

The Office includes different departments supervised by the Prosecutor General or one of his three deputies. The Military Prosecution is part of the Prosecution Service which is headed by one of the deputies of the Prosecutor General.

The departments dealing with criminal cases are structured by phases of criminal procedure with the exception of the Department for Special Cases and the Department for Supervision

of Investigation and Preparation of Indictments. These two departments have a structure based on the types of crimes and both work within the pre-trial phase of the investigation.

Box 2 – Organization of the Office of the Prosecutor General of the Republic of Hungary



II. Regional Appellate Prosecution Offices

The functions of the Regional Appellate Prosecution Offices are connected to those of the regional appellate courts. While they have an organisationally separate structure, they subordinate to the Office of the Prosecutor General. They handle criminal, civil and administrative cases from the territory covered by the jurisdiction of their respective Appellate Courts, which have been appealed in the County Courts and handed over to the Regional Appellate Courts. These offices have no role in pre-trial criminal investigations; they only carry out trial-related functions.

III. County (Municipal level) Prosecution Offices

County (Municipal level) Prosecution Offices direct and supervise the activities of the local prosecution offices within their territorial jurisdiction. In this capacity they handle complaints (during the pre-trial phase) filed against lower level decisions, such as suspension of investigation, dismissal of case, etc., and appeals (during the trial phase). They are responsible for the tasks which are connected to the jurisdiction of County (Municipal level) Courts: both first instance jurisdiction (strictly defined within the Criminal Procedure Code serious cases), as well as appellate functions.

IV. Local level Prosecution Offices

Local level Prosecution Offices have authority over all criminal cases which fall within the first instance jurisdiction of the Local Courts in their territory. They are generally not divided into organizational units and represent the lowest structural level of specialisation.

The prosecutorial investigations are conducted at the local level and cover those cases which fall outside of the competency of Police or Central Investigative Chief Prosecution Office. The local level prosecutorial investigative offices are subordinated to the County (Municipal level) Prosecution Offices and not to the Central Investigative Chief Prosecution Office.

V. Special Structural Units

There are two organisational units structured by types of crimes in Prosecution Service: the Department for Special Cases (at the highest level) and Central Investigative Chief Prosecution Office.

Department for Special Cases

Under the aegis of the resolute action against economic and organized crime, as well as criminal offences of corruption, and in order to implement a structural reorganization with a view to meeting international expectations, the Department for Special Criminal Cases was established on 1 July 2003 as an autonomous organizational unit. This unit deals with pre-trial phase for the following offences:

- Crimes against public justice (Chapter XV, Title VII of Criminal Code – corruption cases);
- Crimes against international justice (Chapter XV, Title VIII of Criminal Code – corruption cases in international relations,);
- Acts of terrorism (Section 261 of Criminal Code);
- Affiliation with organized crime (Section 263/C. of Criminal Code);
- Damaging of the Environment (Section 280 of Criminal Code);
- Damaging of the Natural Environment (Section 281 of Criminal Code);
- Violation of waste management regulations (Section 281/A. of Criminal Code);
- Economic crimes (Chapter XVII of Criminal Code);
- Any criminal offences, committed by criminal organization (Section 137, item 8) of Criminal Code).
- All criminal offences, referred to the competence of the Department for Special Cases by the Prosecutor General or the Deputy Prosecutor General of Hungary.⁶

The Department for Special Cases is divided into two divisions:

- a) Division for the Economic Crime Cases;
- b) Division for the Organized Crime and Corruption Cases.

⁶ Art. 15 of 25/2003. (ÜK.12..) LÜ General Instructions of the Prosecutor General.

Central Investigative Chief Prosecution Office (CICPO)

The CICPO, having jurisdiction over the entire country, conducts an investigation if:

- the suspect or victim is a person with national or international immunity;
- the case concerns murder, international manslaughter, kidnapping, assault or robbery of a judge or professional employee of the Prosecution;
- the offences are committed by an investigative prosecutor and by the lay judge in connection with the administration of justice;
- the murder of a policeman is committed during or because of his fulfillment of duties;
- bribery of a judge or an employee of Prosecution is committed;
- offences (including all corruption crimes) are committed by a high ranking officer of the Police, Custom and Finance Guard, Special Service for National Security and Prisons and its institutions.⁷

The CICPO was established in its current form and competency in 2006 and its activities are supervised by the Department for Special Cases within the Office of Prosecutor General. The CICPO has its own structural units at the county level.

2.1.2. Establishment and institutional framework of the anti-corruption specialisation

Historical background

Situation with criminality in the late 1980s and early 1990s required reconsideration of the structure of the prosecution service, including organization of the Office of the Prosecutor General. This restructuring aimed at the establishment of new organizational units, adjusted to the new forms of crime, and subsequently their separation from other structures dealing with traditional forms of crime. Furthermore, the decision to devote certain organisational units exclusively to a determined category of criminal cases can be explained by the increased attention paid to the complex cases and the need to properly coordinate the undertaken actions.⁸

During the reform in 2001, the Department for Supervision of Investigations was restructured, and the Division for Special Criminal Cases has been established in its framework. On 1 July 2003 it was given a status of an autonomous organizational unit and turned into the Department for Special Criminal Cases.

The reorganization of the system for supervision of investigations alone proved, nevertheless, not sufficient to assure the effectiveness of the actions against the new forms of crime. To ensure unhindered functioning of the market economy, proper prosecution of economic crimes, and also to protect financial interests of the European Union it was required to separate investigation of economic crimes (Chapter XVII of the Criminal Code)

⁷ Art. 49 of 11/2003. (ÜK.7.) LÜ General Instructions of the Prosecutor General.

⁸ Further details on elaboration of this restructuring may be found in the study entitled "The Prosecution Service in the Third Millennium".

and the supervision of such investigations within the prosecution service. This was reflected by the legislator in Section 14, Subsection (7) of the Act on Criminal Proceedings. Namely, it states that in the majority of criminal offences, incriminated under Chapter XVII of the Criminal Code, one of the members of the judicial panel shall be a judge designated by National Judiciary Council.

The corruption cases were given a prominent focus in the reform and the Central Investigative Chief Prosecution Office (CICPO) was established in 2001 to ensure efficient investigation and prosecution (representation of charges in court) in corruption cases. It was similarly granted an independent status in 2006.

Bodies responsible for detection, investigation and prosecution of corruption offences

Corruption crimes are detected by the police in the Republic of Hungary. On 1 March 2002 a specialised Anti-Corruption Unit was created at the National Police Headquarters.

To further improve effectiveness of the detection of corruption crimes a special service for internal control (the Protective Service of Law Enforcement Agencies (RSZVSZ)) was established in 1995. The Service is a supervisory body of the Government currently working under the direct control of the Minister of Justice and Law Enforcement. The Government ensures through the Service the monitoring of the Police, of the Directorate General for Disaster Management, of the Customs and Finance Guard, of the penal institutions, and of the supervisory bodies of these agencies in the ministries concerned, to prevent and unveil crimes committed within these bodies and agencies.

It is important to note that the Service is not an investigation authority. Its crime detection activities do not go beyond the confirmation or denial of the occurrence of a suspected crime, with their further reporting to the competent prosecutor's office, or closing of the case, as appropriate.

The Service is responsible for revealing crimes committed or intended by the professional personnel, public employees and public officials of the above mentioned bodies and agencies in the performance of their duties or in their capacity as the official representatives of these organizations, at their place of service or in connection with their official duties. In more simple terms, the Service is tasked with unveiling corruption and other legal offences occurring within law enforcement agencies.

Investigations of the crimes fall under the competencies of the Police and are conducted under the supervision of the prosecution. Furthermore, Article 29 of the Criminal Procedural Code provides for a closed list of crimes which can be investigated only by the prosecution service. Art. 48 and Art. 49 of 11/2003 (ÜK. 7.) LÜ General Instruction by Prosecutor General further differentiates crimes listed in Art. 29 of the Criminal Procedural Code into those which are to be investigated by local prosecution investigative offices and those which are to be investigated by the CICPO. The units which investigate such cases are also responsible for their respective prosecution (representation of charges before court). Currently, there are 19 prosecutors and one investigator working for the CICPO.

The Department for Special Cases within the General Prosecutor's Office is responsible for corruption cases at the highest level.

Specialised Anti-Corruption prosecutors

Prosecutorial anti-corruption specialization was ensured with the establishment of the Central Investigative Chief Prosecution Office (CICPO) in 2001, and further strengthened with its obtaining an independent status in 2006.

Although the CICPO has no territorial specialization (its jurisdiction covers the whole territory of the Republic of Hungary), it is included in the hierarchy of the Prosecution Service and structured in the same way as County Prosecution Offices.

The CICPO is a centralized structure with all prosecutors subordinated to the Head of the CICPO, who is responsible for all its operations and direction of the overall activities of the office. The Head also bears responsibility for the quality of the work of his/her prosecutors. If any participant of the criminal case files a complaint against a decision, action or omission the Head has the right to satisfy it or to forward it, accompanied by the full written file, to the Department for Special Cases. In addition, each prosecutor must file a written report about his ongoing cases to the Department for Special Cases on a monthly basis. In some significant cases, upon decision of the Prosecutor General, Deputy Prosecutor General or the head of the Department for Special Cases, reports must be submitted on a weekly basis.

The Head, in his/her turn, receives instructions from the upper level prosecutors, namely from the Department for Special Cases. If s/he does not agree with the instruction s/he may discuss it with the Head of the Department for Special Cases. S/he also has the right in case of disagreement to turn directly to the Deputy Prosecutor General responsible for criminal field. This type of subordination ensures that the decisions, especially in the high-level cases are made independently. Prosecutorial independence is further ensured by the individual responsibility, the right to an independent decision-making (even if reviewed later) and the right to refuse an instruction (as was described above).

In addition, all prosecutors enjoy the same level of immunity as members of the Parliament. Decision on lifting the immunity is within the authority of the Prosecutor General. The immunity of the Prosecutor General him/herself can be lifted only by the Parliament.

Prosecutors working for the CICPO are required to undergo vetting by the Special National Security Service. And although there are no special written requirements for occupying of the post within the CICPO or in the local investigative prosecutorial office, nevertheless, each prosecutor there is a senior one and most of them took post-graduate courses and have second degrees. There is no system of rotation in place within the CICPO.

2.1.3. Operational and methodological aspects of work of anti-corruption prosecutors

There are no special rules regulating operational and methodological work of anti-corruption prosecutors of CICPO. Their responsibilities include initiating investigations of

the crimes, information on which they have received; carrying out the investigation in cases which fall under their competency according to the Criminal Procedural Code; and if the investigation leads them to believe that a criminal offence has been committed, they are required – with limited exceptions – to bring such cases for prosecution in court.

Local investigative prosecution offices investigate and generally also prosecute their cases, along with the Central Investigative Chief Prosecution Office. The Special Service for National Security provides assistance in applying special investigative means and methods if necessary. The local offices and CICPO in the course of their investigations have also the right to ask for assistance in fulfilling of any investigative activities from the police.

Case assignment and working on individual cases

Case-files arriving to the CICPO are assigned by the Head of the Office. In principle all ordinary prosecutors are of equal rank, but in practice the Head of the Office takes into consideration experience, specialization and the capacity of individual prosecutors.

Generally, the prosecutor to whom the case was assigned is responsible for the case from the beginning to the end; no activities are split or dis-jointed. No explanatory notes, guidelines and recommendations as to the application of methods of criminal investigation and prosecution of corruption offences are developed for anti-corruption prosecutors; they have to rely on their own experience and judgment in decision-making. All decisions and measures in the framework of the individual case are thus undertaken by the prosecutor to whom the case was assigned. The prosecutor at the following higher level deals with complaints and supervision of the case and activity of the lower prosecutor.

General system for appeal of the actions/decisions of the investigators and prosecutors is applied in corruption cases. Namely, anyone affected by the decision of the prosecutor or the investigating authority may protest it within eight days following its communication. Based on the protest, the prosecutor or the superior prosecutor shall:

- a) repeal the decision on the rejection of the complaint or on the termination of the investigation, and decide on ordering or resuming the investigation or pressing charges, or
- b) reject the protest if it is found ungrounded.

After review by the Head of the Office, the prosecutor closes the case and files charges with the court. Then this same prosecutor also supports charges before the court. After investigation is closed and final decision of the court is delivered the statistical papers must be filled out and sent to the competent department.

2.1.4. Cooperation with other authorities and outside expertise

General cooperation framework

There are no special rules which would determine how public prosecutors specialized in the fight against corruption co-operate with other prosecutors and other authorities involved in

detection and investigation of corruption. The prosecutor to whom the case is assigned is responsible for coordination and implementation of all of the activities under the case, including those which require involvement of other institutions.

Joint investigative teams

There is no practice of joint investigative task forces being formed either. The prosecutor has the right to ask for the police to execute an investigative action alone or in cooperation with him/her. S/he also has the right to ask for cooperation from the Special National Security Office if special investigative means have to be used.

Specialised expertise

Involvement of an expert (e.g. experts on financial, accounting issues, specific thematic issues) in the case is regulated by Articles 99-113 of the Criminal Procedural Code. Such an expert shall be employed if the establishment or evaluation of a fact to be proven requires special knowledge. The experts may be employed by the court, by the prosecutor and by the investigating authority.

The court, the prosecutor and the investigating authority can receive forensic expertise through involvement of a forensic expert, listed in the register of experts, or, if this is not feasible, a person or institution (an *ad hoc* expert) possessing the adequate knowledge.

The professional issues in which a specific institution or body of experts is entitled to give opinion may be defined in a separate piece of legislation. In the event of the assignment of an institution or body, its head shall designate the expert to act.

The expert shall be entitled to remuneration for the professional examination, the preparation of an expert opinion and appearance before the court, the prosecutor or the investigating authority based on a subpoena. The expert shall also be entitled to reimbursement of the verified out-of-pocket expenses incurred in the course of his actions. The remuneration of the expert shall be established in a decision by the assigning authority, or the court, prosecutor or investigating authority proceeding in the case, based on the tariff schedule submitted by the expert, after receipt of the expert opinion or – if the expert is heard – the hearing, but not later than within thirty days of his assignment. The decision establishing the remuneration of the expert shall be subject to a separate legal remedy.

2.1.5. Management of Human Resources

Appointment and dismissal of specialised prosecutors

All prosecutors, including those specializing in anti-corruption, are appointed and dismissed by the Prosecutor General of the Republic of Hungary.

Vacancies are filled through a competition that is publicized in the official gazette of the Prosecution Service. The Head of the Office, upon approval from the competent department of the Prosecutor General's Office, defines the expected qualification for the applicants. The minimum qualifications needed to file a successful application for the position within the CICPO, although not formally fixed anywhere, are as follows:

- a) being a senior prosecutor;
- b) having experience with economic crime cases;
- c) having a post-graduate degree is an advantage.

Generally, the Head of the Office interviews all applicants and proposes a candidate to the Prosecutor General. The Prosecutorial Council for the Office also reviews the proposal and submits its opinion to the Prosecutor General, but the final decision rests with him/her alone. The management of the units is being appointed through the same procedure.

The Prosecutor General may dismiss a prosecutor for a variety of reasons: failure or inability to adequately perform duties, including for medical reasons; failure to fulfill the basic requirements of service (such as absence of criminal record, non-holding of the political office) or failure to provide or maintain a truthful property record. Also the Prosecutor General may dismiss a prosecutor in the course of reorganization of the Service or due to reduction in the number of staff. The appointment to leadership positions may be withdrawn by the Prosecutor General at any time and at his/her own discretion.

Performance measurement and evaluation of the anti-corruption work of prosecutors

The general system of evaluation and performance measurement for Prosecution Service is applied for reporting on and evaluating of the work of anti-corruption prosecutors.

Performance of individual prosecutors is assessed by their superiors, primarily through the quality and quantity of their work. Quality is defined by complexity of the factual and legal problems involved in the cases handled and their proper resolution by the prosecutor.

The performance indicators, among others, include the statistical data (including the number of cases, the number of prosecutorial measures taken and the effectiveness of prosecutorial motions as reflected by judicial decisions (especially but not exclusively through conviction rates and rates of preliminary confinement asked for and ordered)).

Prosecutor's professional performance should be evaluated twice in every six years. Prosecutor may request a new evaluation at any time, if he believes his performance may receive a more favorable assessment. An evaluation may also be conducted on the superior's initiative at any time if there is a reason to believe the prosecutor has become "unsuitable" or if it is warranted by changes in the prosecutor's conduct or performance.

The prosecutor may also request the professional collegium's written opinion on the evaluation. S/he is also entitled to request a judicial remedy in cases of erroneous factual findings or insulting statements in the evaluation.

Measurement of the backlog is considered an important component in the assessment of the performance of individual offices and their Heads.

2.1.6. Specialised training

Qualifications for the profession

All prosecutors must possess basic education or qualification (five-year university law studies and the special legal exam taken after a three year legal practice) which is necessary for entering of the profession. The special legal examination composed of three parts (originally nine subjects and since 2003 - ten subjects after addition of the EU Law subject). Passing of the special legal examination is the condition for prosecutorial nomination. Special legal examination is organised by the Ministry of Justice which is independent from the prosecution service and the certificate entitles to hold any legal profession (judge, prosecutor, lawyer, legal adviser).

Initial training

The basic initial training period lasts for five semesters during a three-year traineeship, which aims to provide trainees with relevant theoretical and practical knowledge to prepare them for the national examination to obtain qualification of a public prosecutor and also to develop appropriate skills for future career.

Upon appointment, junior prosecutors are required to undergo a special training which lasts for two semesters and to pass a professional examination afterwards.

Continued professional (in-service) training

The need for continued professional prosecutorial training is based on a number of factors, namely, the following:

- legislative changes: half of prosecutors graduated from university more than ten years ago; major changes have taken place in several branches of law since then. Such changes resulted in the previously received knowledge being insufficient to the prosecutor's work. The importance of professional training has especially increased due to the changes in regulations relating to the criminal material and procedural law.

- new forms of crime: with the spread of the organised economic crime the need for expertise on specific types of institutional law became clear (*e.g.* tax law, customs law, company law, bankruptcy law), similarly, the knowledge of adjoining sciences became a must (economics, accountancy, financial transactions). Such knowledge is necessary for experts (policemen, prosecutors and judges) to recognize and investigate new types of offences.

- requirements of specialisation: it is obvious that knowledge received during university studies is not enough for prosecutors dealing with protection of children and juveniles, with

trafficking or economic and corruption crimes and that they require additional knowledge relating to the specific field of their practice.

- accession to the European Union increases the importance of knowledge of the international law. It is essential to know the regulations related to the EU institutional system, to the European criminal law co-operation, and EU *acquis communautaire*. The importance of foreign language knowledge has also increased.

Junior prosecutors and other prosecutors are entitled to free of charge education and professional training which is necessary for the practice of their profession according to the Act of Service. This means that prosecutors taking part in trainings during their working hours are given their salary and free lodging if required. Moreover, according to the Act on the Prosecution Service the prosecutor is obligated to participate in the in-service professional training. The planning of the professional training takes form of an annual programme that contains all individual and group forms of the professional training for prosecutors. The program is made known to all prosecutors. The content of the in-service professional training depends on its the topic and on its the participants.

Types of continued professional (in-service) training for prosecutors

Continued professional training or in-service training for prosecutors can be divided into four main categories:

a) Professional training courses designated for prosecutors:

Annually 15-20 courses are organised for prosecutors for 1-3 week period with approximately 30-50 participants participating in each course. These, for example, include courses on criminology, juvenile criminal law, specially tailored courses for junior prosecutors or chief prosecutors.

b) Courses and conferences organised by other national (courts, police offices, ministries, etc.) and international organisations in which prosecutors are invited to take part within their working-hours and with refund of the expenses. Topics of these frequently organised events cover economic crime, money laundering, corruption, terrorism.

c) Foreign training programmes have been embedded into the Hungarian training system of prosecutors. In 2006, 120 prosecutors participated in international conferences and professional or language courses abroad that were made possible through bilateral governmental or prosecutorial partnerships and through assistance programmes as part of the EU accession. Through establishment of the partnerships with Austrian, Dutch, German, French training institutions for judges and prosecutors, the Hungarian prosecutors participated in courses and conferences that were organised for the magistrates of relevant countries. Similarly, a great number of Hungarian prosecutors took part in the programmes in the framework of TAIEX, CEPOL, OLAF, ERA. In addition, membership of the Hungary's Prosecution Service in the European Judicial Training Network (EJTN) is supposed to provide opportunity for exchange programmes for Hungarian prosecutors to get acquainted with the legal systems of the member states and to take part in the programmes offered or

organised by the EJTN and financed by the European Committee. Among the conditions for participation in such programmes is the knowledge of foreign languages, mainly of English, German and French. Today 46% of the Hungarian prosecutors have taken at least one intermediate-level foreign language examination; the percentage for trainees and junior prosecutors currently reaches 85%.

d) Obtaining of special legal qualification by prosecutors can be done after finishing a 4-6 semesters postgraduate studies at one of the Institutions for Legal Professional Training that operate at the universities and colleges. Prosecutors apply individually for this training and the cost of their studies is paid by the Prosecution Service. In 2006, 25% of prosecutors participated in postgraduate studies programmes in the field of economic criminal law, traffic law, IT law. A great number of prosecutors act as teachers and students in these post-graduate institutions.

Institutional framework

The central training of the prosecutors is organised by the Department for Professional Training of the Office of the Prosecutor General, an official body of the Prosecutor General's Office. There was no separate educational institution for training of the prosecutors in Hungary until establishment of the Training Centre for Prosecutors on 1 October 2005. Its aim is to improve the professional training system of the prosecution service and to ensure high professional level of trainees and junior prosecutors.

Since 1 January 2006, the initial training for public prosecutors and also the training for trainers have been provided at the Training Centre. The Centre is also responsible for organisation of the public examination to obtain qualification of a public prosecutor. The Training Centre is located in Balatonlelle and provides accommodation for 45 persons.

Training Curriculum

The planning of the professional training is reflected is carried out through development of the annual personnel and professional training plan. The annual plan is composed by the Department of Personnel, Professional Training and Administration in the Office of the Prosecutor General according to recommendations of the county chief prosecutors and the heads of departments of the Office of the Prosecutor General. The plan is discussed by the Departments' Heads Meeting of the Office of the Prosecutor General and it is approved by the Prosecutor General. The annual plan includes programmes organised centrally (courses, conferences, programmes with partner institutions, postgraduate trainings, individual registrations, applications for scholarships abroad, etc.) and the costs relating to them.

The task of elaboration of the professional education concept and of educational plans and curricula belongs to the Training Council. The president of the Training Council is the Prosecutor General him/herself, its members are the Deputy Prosecutor Generals and Chief Prosecutors, altogether 8 persons. The Council also contributes to the elaboration of the programmes for the Centre.

Training Faculty

Training at the Centre is carried out by the leadership and members of the Prosecution Service and of the NCI (National Criminology Institute) who have professional experience and theoretical knowledge. The database of the trainers is being currently established.

The lecturers are the best experts in the relevant field. Selection of lecturers depends on the decision of the Department for Professional Training in the Office of the Prosecutor General. Usually the best lecturers are those who teach in other institutions, *e.g.* universities or institutions for postgraduate studies. They have pedagogical and teaching experiences too. There are lecturers from other organisations as well - judges, police officers and prosecutors. Usually the same lecturer is asked for lecturing on the same topic every year.

Anti-Corruption Training

To fulfill its tasks the CICPO needs special knowledge of investigative techniques. There are two different types of trainings: on criminalistics (investigative techniques) provided in cooperation with the Police Academy and on using covert investigative techniques provided in cooperation with the Special Service for National Security.

The anti-corruption issues are also built into the prosecutorial general in-service training at different levels (for trainees, young prosecutors, senior prosecutors, managers), such incorporation is done taking into account specialization (i.e.: specific relevant elements for investigative prosecutors, prosecutors involved in economic crime, etc.).

2.1.7. Conclusions

People involved in corruption have common interests, so detection of this kind of illicit activity is a major challenge. There is no objective estimation of the number of committed corruption offences. In Hungary the number of investigated corruption cases is about 1,000 annually as compared to the overall number of cases which stands at about 500,000.

According to the expert's opinion, the system of Prosecution Service in dealing with corruption cases is effective. This opinion is in particular based on the statistical data which shows that about 100% of final criminal court convictions agree with the charges.

Nevertheless, institutional capacity to tackle corruption crime still remains limited and although, the number of the CICPO's staff was increased from 15⁹ to 20, it seems that this number is still not sufficient. The number of staff of the Department for Special Cases should be further increased in the opinion of the expert.

⁹ In Hungary Phase 2 Report on the Application of the OECD Convention on Combatting bribery of foreign public officials in international business transactions adopted in 2005, when the number of prosecutors in CICPO was still 15, it was stated that the "(r)epresentatives of (CICPO) indicated that they handle an average of 400 to 450 cases each year, with only a quarter being investigated and less than 100 going to trial."

2.2. LITHUANIA¹⁰

2.2.1. General overview of the prosecution system

While exercising functions of the Prosecution Service, public prosecutors of the Lithuanian Republic are guided by the Constitution of the Lithuanian Republic, the Prosecution Service Act, the Statute of the Prosecution Service and public prosecutors' responsibilities, recommendations prosecution, legal Codes, the aforementioned Statute, and other legal acts.

As to other legislative acts guiding operations of the Prosecution Service of the Lithuanian Republic, those are: *acquis communautaire* of the EU, the Criminal Code, the Criminal Procedural Code, the Correctional Code, the Civil Procedural Code, the Administrative Offense Code, the Labor Code, the Act on litigation on administrative cases, and other acts and Codes.

On 1 May 2003, the Lithuanian Republic saw a major overhaul of the national legal system, including a reform of the criminal procedure and a holistic reform of the law enforcement agencies, including investigation agencies and agencies of inquiry, and the Prosecution Service. On 20 March 2003, amendments were introduced to Art. 118 of Chapter IX of the Constitution of the Lithuanian Republic¹¹, which establishes as follows:

- The public prosecutor organizes and directs pre-trial investigation and prosecutes on behalf of the State on criminal cases.
- In cases established by the law, the public prosecutor defends rights and legal interests of a person, society and the State.
- While exercising his (her) functions, the public prosecutor maintains his (her) independence and is guided solely by the law.
- The structure of public prosecution of Lithuania comprises the Prosecutor General's Office and territorial prosecution offices.
- The Prosecutor General is appointed to and released from office by the President of the Republic upon the Seim's consent.
- The procedure of appointment of public prosecutors to, and release from office, and their status are established by law.

The mission of the Public Prosecutor's Office is to:

- conduct pre-trial investigation;

¹⁰ This case study was prepared by *Mr. Algimantas Kliunka*, Chief Prosecutor of the Department for Investigations of Organised Crime and Corruption at the Prosecutor General's Office of the Republic of Lithuania.

¹¹ Official Herald, 1992, № 33-1014 (30.11.1992)

- protect public interest;
- examine petitions, applications and complaints submitted by individuals;
- take part in national and international crime prevention programs;
- contribute to the legislative process.

The public prosecution is led by the Prosecutor General who reports to the President and the Seim of the Lithuanian Republic. The parliamentary control over operations of the Prosecutor General's Office is exercised by the Seim of the Lithuanian Republic. The Seim considers the annual report by the Prosecutor General's Office and establishes, through its resolutions, priority operational avenues for the Prosecution Service. (One of such priorities is investigation into crime associated with corruption, including bribery, tampering, and fraud, among others).

While exercising his (her) functions, the public prosecutor maintains his (her) independence and is guided solely by the Constitution of the Lithuanian Republic and law.

The mandate of public prosecution offices and public prosecutors in the process of prosecution is established in every detail by the Statute on the Prosecution Service and competence of public prosecutors per Executive Order of the Prosecutor General of the Lithuanian Republic № 1-108 of 07 October 2003, as reworded by Executive Order № 1-8 of 11 January 2011 (hereinafter referred to as the Statute on Competence, or the Statute).

The public prosecutors' procedural activities are controlled by a senior-level public prosecution office and the court of law. Where a public prosecutor violates the procedural law, such breaches are established by a senior-level public prosecution office and the court of law, which have the right to cancel such illegal decisions.

In the process of exercise of procedural law by a public prosecutor, senior-level public prosecution offices are:

1. For a public prosecutor of the city, district *apylinkė* (precinct) public prosecution office – the chief public prosecutor (his (her) deputy)) of the *apylinkė* public prosecution office, the chief public prosecutor (his (her) deputy)) of the regional public prosecution office, the chief public prosecutor (his (her) deputy)) of the department (division) of the Prosecutor General's Office;
2. For a chief public prosecutor (his (her) deputy)) of the *apylinkė* public prosecution office and a public prosecutor of the regional prosecution office – the chief public prosecutor (his (her) deputy)) of the regional public prosecution office, the chief public prosecutor (his (her) deputy)) of the department (division) of the Prosecutor General's Office;
3. For a chief public prosecutor (his (her) deputy)) of the regional public prosecution office, a public prosecutor of the Prosecutor General's Office - the chief public prosecutor (his (her) deputy)) of the department (division) of the Prosecutor General's Office.

The Prosecutor General and his (her) deputy are superior prosecutors for all the public prosecutors.

A senior-level public prosecutor may not instruct a public prosecutor as to what decision he (she) should render. A public prosecutor has the right to demand to have instructions, which concern activities that are not formally established by resolutions, in writing.

Where parties to the trial are of dissenting opinion of the procedural decision rendered by a senior-level public prosecutor, they can lodge a complaint to the court of law in accordance with the procedure established by law.

Instituting a pre-trial investigation against a public prosecutor falls solely under the Prosecutor General's purview. In accordance with the Administrative Offense Code, the public prosecutor may also be brought to administrative responsibility.

The structure of the Prosecution Service

The structure of the Prosecution Service of Lithuania comprises the Prosecutor General's Office and territorial prosecution offices.

I. Prosecutor General's Office

The Prosecutor General's Office consists of divisions and departments. The Prosecutor General's Office is headed by the Prosecutor General and deputies to the Prosecutor General, who exercise their functions within their respective mandates. Departments are led by chief prosecutors of departments, while divisions – by respective head prosecutors. Amid other divisions, there is also the Department for Investigation of Organized Crimes and Corruption (hereinafter referred to as OCCI).

As far as criminal prosecution is concerned, the Prosecutor General's Office is responsible for:

- Administrative control over territorial prosecutor offices' operations;
- Development of a uniform pretrial investigation practice with regard to criminal offenses and control over procedural operations (preparation of recommendations, briefs, explanatory notes, issuance of executive orders on a trial and rendering decisions on a criminal trial);
- Pretrial investigation proceedings and prosecution on behalf of the State on particularly important cases (crimes committed by organized groups and criminal syndicates and their members or other crimes bearing the signs of organized crime; on crimes relating to corruption; on crimes associated with a particular public interest, or where there is the need to develop a uniform pre-trial investigation practice);

- Organization of pretrial investigation conducted by central pretrial investigation bodies, administrative coordination of that and control over operations of officers engaged in a pretrial investigation;
- Development a uniform practice of prosecution on behalf of the State with regard to criminal cases and participation in litigation at the court of appeals and the cassation-instance court;
- Coordination of pre-trial investigation bodies' operations;
- Interfacing with foreign agencies and institutions following the procedure established by international treaties, laws and other legal acts.

Effective April 2011 the structure of the Prosecutor General's Office will be reorganized as follows: the Operative Activities Control Division will be relinquished and its functions will be reassigned to OCCI. As well, the Special Investigations Division, which dealt with organization of investigations into genocide and other crimes against humanity, has already been relinquished, with its functions having been reassigned to the Pretrial Investigation Control Division. In April 2011, the latter Division, the one for prosecution on behalf of the State whose staff is engaged in litigation at the Court of Appeals of Lithuania and the national Supreme Court, as well as the Division for International Cooperation and Legal Assistance will be consolidated into the Prosecution Department.

In parallel with this the Prosecutor General's Office will introduce a subject-wise, that is, by types of criminal offenses, specialization of prosecutors. As well, a new division, the Special Tasks one, is to be introduced, which will report directly to the Prosecutor General. Its mission will be to examine, per the Prosecutor General's orders, progress in investigation and decisions rendered on the most pressing and high-profile cases. As well, the new Division will run agency checks of chief public prosecutors' activities, other in-house checks, and exercise immunity functions.

II. Territorial Prosecutor Offices

Territorial prosecutor offices are classified into regional and city, and district *apylinkė* ones.

Establishment, reorganisation and liquidation of territorial prosecutor offices, as well as their status, competence and activity area fall under the Prosecutor General's purview, with account of established by law jurisdictions of regional and *apylinkė* courts of law. Territorial prosecutor offices are run by respective chief public prosecutors.

Regional and city, as well as district *apylinkė* prosecutor offices:

- organize and direct pre-trial investigation;
- conduct pre-trial investigation;
- exercise control over activities of pre-trial investigation officers;
- prosecute on behalf of the State;

- coordinate operations of pre-trial investigation bodies pertaining to investigation of criminal acts;
- following the procedure and on the grounds established by law and international treaties prepare and exercise requests for rendering legal assistance.

Under the five regional public prosecutor offices, there operate Bureaus of Organized Crimes and Corruption Investigation (hereinafter referred to as OCCI branches).

2.2.2. Establishment and institutional framework of the anti-corruption specialisation

Historical Background

The principle of specialization of divisions of the Prosecution Service and public prosecutors by stages of criminal process had been in effect in Lithuania through 1995-1996. At the time, investigative officers of the Prosecution Service conducted pre-trial investigation, with their operations being overseen by public prosecutors from other divisions of the Service, while the third group of the Prosecution Service staff prosecuted on behalf of the State. Thus, prior to 1995 the investigation, oversight of investigation, and public prosecution functions had appeared strictly separated.

Since 1995, when the four-tier system of courts of three instances (*apylinkė*, district, city, regional courts, as well as the Court of Appeals and the Supreme Court of Lithuania) was created, the Prosecution Service's structure has likewise become a three-tier one: *apylinkė*, district, city, as well as regional offices, and the Prosecutor General's office.

In 1996, the institution of investigation officers was relinquished and public prosecutors began to exercise the function of pre-trial investigation by themselves. They also began prosecuting on behalf of the State with regard to cases which they investigated into by themselves. Public prosecutors also oversaw pre-trial investigation conducted by pre-trial investigative bodies and subsequently prosecuted on behalf of the State.

Therefore:

1. Officers at regional branches of the Prosecution Service controlled and oversaw pre-trial investigation with regard to cases that fell under the mandate of regional courts of law (high crimes or felonies) and prosecuted on behalf of the State on such cases at the regional courts of law.
2. Officers at *apylinkė*, district and city offices of the Prosecution Service controlled and oversaw pre-trial investigation into cases subject to the jurisdiction of *apylinkė* courts of law and prosecuted on behalf of the State on such cases.

The integral, that is, continuous and consistent, prosecution allowed a public prosecutor, who was engaged in investigation, to thoroughly prepare for the trial. This is a very efficient

method as far as investigation into corruption crimes and organized crime, and criminal prosecution of such criminal offenses are concerned.

As well, it is worth noting that until 1 May 2003 there had been in effect in Lithuania the Criminal Procedural Code (CPC) of 1961, with some subsequent amendments. The new CPC, which was adopted on 14 March 2003 with the passage of Act № IX-785, took effect on 1 May 2003, and in compliance with it, public prosecutors, who conduct and organize pre-trial investigation, prosecute on behalf of the State on respective cases by themselves.

Since 1995, the Lithuanian Prosecution Service has begun to largely practice the principle of specialization of public prosecutors by types of crimes, and specialization of divisions of the Public Prosecution offices and officers therein followed the principle in question. Meanwhile, small *apylinkė*, district and city Public Prosecution offices have failed to realize this principle in full.

Back in 1993-1995, under the aegis of the Prosecution Service there were established divisions that dealt with investigation into organized crime and corruption, as well as economic crime. Public prosecutors also specialized in the juvenile justice area.

When the legal system reform was implemented on 1 May 2003, along with the police as a universal pre-trial investigation institution, there were also established specialized pre-trial investigative bodies: the State Border Guard, the Special Investigative Service, the Military Police, the Financial Crime Investigative Service, the Customs Department, the Fire Protection and Emergency Department, which were tasked with investigation into crimes exposed in the course of the direct enforcement of legal acts regulating their operations.

Bodies responsible for detection, investigation and prosecution of corruption offences

The Department for Investigation of Organized Crimes and Corruption functions within the structure of the Prosecutor General's Office, with Bureaus of Organised Crimes and Corruption Investigation operating under all five regional prosecution offices. These units specialize in investigation into the most pressing criminal activities associated with organized crime and corruption. The CPC does not establish the competence of these units.

Investigation into corruption-related crimes can be assigned to divisions of the Internal Investigation Service, while investigation into corruption criminal offenses committed by police officers can be assigned to the Anti-Corruption Division of the Criminal Police Bureau of the Police Department or other agencies, etc. the Financial Crime Investigation Service, where corruption activities are associated with criminal ones in the financial system.

While taking on cases potentially being subject to investigation by OCCI units, higher-level public prosecutors are guided by the concept of organized group and organized syndicate stipulated in the Criminal Code of the Lithuanian Republic (hereinafter referred to as CC); types of criminal offenses provided for by provisions of Section XXXIII of CC (criminal acts

against the public service and public interest); the definition of the criminal act relating to corruption, per part 3 Art. 2 of the Act on the Special Investigation Service and part 2 Art. 2 of the Corruption Prevention Act, as well as international conventions (the 1999 EU Criminal Law Convention on Corruption, the UN Convention Against Corruption), and the Statute on the Prosecution Service and competence of public prosecutors approved by Executive Order of the Prosecutor General of the Lithuanian Republic № 1-108 of 07 October 2003, as reworded by Executive Order № 1-8 of 11 January 2011.

The above concept of criminal acts relating to corruption forms guidelines both for OCCI officers and the Anti-Corruption Division of the Criminal Police Bureau of the Police Department staff's decision making in respect to opening investigation into such cases by the said divisions.

Some public prosecutors with territorial prosecution offices and the Pre-Trial Investigation Control Division also specialize in organization and directing of pre-trial investigation into corruption activities within the Civil Service and other corruption-related activities.

Officers of the Public Prosecution Division also support the state accusation in corruption case.

Specialised Anti-Corruption prosecutors

Specialised divisions of the Prosecutor General's Office and regional prosecution offices engaged in investigation of organized crime and corruption are: the Department for Investigation of Organized Crimes and Corruption and Bureaus of Organized Crimes and Corruption Investigation, respectively.

The decision to establish a unit tasked with investigation of organized crime and corruption under the Prosecutor General's Office was made by the Collegiums of the Prosecutor General's Office of the Lithuanian Republic with its Resolution of March 1993. The Division of Organized Crimes and Corruption Investigation was created in pursuance of the Prosecutor General's Executive Order of 5 April 1993, with the first Statute of the division in question approved on 21 June 1993.

At the beginning, it was decided to establish positions of Chief Prosecutor of the Department, his (her) Deputy and 3 investigation officers on particularly important cases. In July 1993, another two positions of investigation officers on particularly important cases were added. The position of investigation officer with OCCI under the Prosecutor General's Office had been in existence through 1994.

The OCCI under Prosecutor General's Office became a pioneer within the Prosecution Service with introduction of an internal control over pre-trial investigation. That is to say, this particular Department's operations became subject to the Chief Prosecutor of OCCI and his (her) deputy's oversight, rather than to supervision by other divisions of the Prosecutor

General's Office. The Chief Prosecutor of OCCI allowed a search and approved criminal information.

In 1993, OCCI Bureaus were also established under local prosecution offices of the two largest Lithuanian cities - namely, Vilnius and Kaunas. They provided for six positions in each of them: the head prosecutor of the Bureau, his (her) deputy, three investigation officers, and a filing clerk. The distinctive feature of the Bureaus was their double subordination and a double system of control: they reported to the chief city prosecutor, the Chief Prosecutor at OCCI, the Prosecutor General and his (her) deputy. The oversight of the procedural activities was exercised accordingly.

In the course of the 1995 reform the OCCI Bureaus were established with all 5 regional prosecution offices, while positions of investigation officers therein were relinquished and investigation officers were appointed public prosecutors.

Since February 1995, the latter prosecutors became the first ones in the national Prosecution Service to implement the integral continuous criminal prosecution: that is to say, they both ran pre-trial investigation and prosecuted on behalf of the State in courts of all instances by themselves. That enabled a public prosecutor not only to conduct a pre-trial investigation, but to ensure a more adequate prosecution on behalf of the State. In some individual cases, chief prosecutors of OCCI assigned the power to prosecute to territorial prosecutors and those at the Division of State Prosecution under the Prosecutor General's Office. In 1996, investigation officer positions were relinquished in all the divisions of the national Prosecution Service.

The OCCI Department under the Prosecutor General's Office was reorganized into the OCCI Department effective 1 March 2001. The Department's organizational chart provided for 24 positions: the Chief Prosecutor, his (her) deputy, 17 prosecutors, and other personnel, including prosecutors' assistants and specialists. It should be noted that there also was the forensics position in the Department's organizational structure, who was supposed to use technical means. As well, there also earlier was the position of an economics and finance expert therein.

In the meantime, the OCCI Department under the Prosecutor General's Office is led by the Chief Prosecutor of the Department, while the OCCI Bureau under a regional prosecution office is headed by a deputy chief prosecutor of the regional prosecution office who concurrently holds the position of the head prosecutor of the OCCI Bureau.

Until recently, there have been 19 public prosecutors at the OCCI Department under the Prosecutor General's Office (the Chief Prosecutor of the Department, his (her) deputy, and 17 prosecutors), plus 2 senior experts, and 2 assistants to the Chief Prosecutor. Meanwhile, the 5 OCCI Bureaus under the regional prosecution offices have 7 to 11 prosecutors each.

In total there are 839 prosecutors in the Prosecution Service of the Lithuanian Republic, of whom 60 ones are posted with OCCI units. The latter units so far have not had any internal structure, with their staff retention rate being pretty high.

In accordance with the Prosecutor General's Executive Order of 31 January 2011 the OCCI Department under the Prosecutor General's Office will be reorganized effective 4 April 2011. The Department will be assigned functions earlier exercised by the soon-to-be-relinquished Division for Information Security and Control over Operational Activities of Prosecutor General's Office. The Division in question was responsible for controlling classified information and helped the leadership of the Prosecutor General's Office direct and coordinate operational activities of respective bodies therein. As well, the number of prosecutors' assistants and experts is going to increase for the sake of beefing up the auxiliary staff's capacity and lifting the burden of technical work from the prosecutors. The OCCI Department will henceforward have the following structure: the Chief Prosecutor of the Department, 2 Deputy Chief Prosecutors, 17 prosecutors, 5 assistants to the Chief Prosecutor, 8 experts.

The reorganization aims to deepen specialization of the prosecutors engaged in investigation of the most pressing crimes of economic, financial and corruption nature, and organized crime, as well as to bridge the gap between operations and pre-trial investigation.

2.2.3. Operational and methodological aspects of work

According to the Statute of the OCCI Department within the Prosecutor General's Office approved by Executive Order of the Prosecutor General on 17 May 2001 № 85 and Statutes of OCCI Bureaus within regional prosecution offices, the following issues fall under the purview of prosecutors of the OCCI divisions:

- Conduct of pre-trial investigation into criminal cases with regard to organized crime and criminal acts relating to corruption, as well as investigation into other particularly important cases;
- Organization of pre-trial investigation and direction of it, where pre-trial investigation is conducted by specialized pre-trial investigation institutions – namely, organized crime investigation units and the Anti-Corruption Division of the Criminal Police Bureau of the Police Department, organized crime investigation arms of territorial police commissariats, and the Special Investigation Service's units;
- Prosecution on behalf of the State on cases investigated by themselves in courts of all instances;
- Heads of the said divisions and units coordinate pre-trial investigation conducted at OCCI divisions of the Prosecution Service, organized crime investigation divisions of the police, and the Special Investigation Service;
- Collection, analysis and generalization of information about organized crime and corruption-related crime;
- Participation in development and implementation of preventive programs with regard to organized crime and corruption;

- Participation in development of legislation by means of submission of comments and proposals.

The OCCI Department within the Prosecutor General's Office provides practical and methodological support to regional, as well as district and city, prosecution offices, and the OCCI Bureaus within the regional prosecution offices in the process of investigation of organized groups and criminal syndicates' crimes and corruption offenses, evaluates and generalizes the OCCI units' operations.

Case assignment

The Chief Prosecutor of the OCCI Department and his deputy personally consider petitions, applications and reports on criminal acts or assign their consideration to prosecutors at the OCCI Department or territorial prosecution offices.

The OCCI Department, as a rule, considers the most pressing and high-profile cases (bribery, malfeasance committed by prosecutors, judges, MPs, Cabinet members, etc.), while the OCCI Bureaus under the regional prosecution offices investigate into criminal offenses committed in a given prosecution office's jurisdiction.

The leadership of the OCCI Department and the OCCI Bureaus assign prosecutors to conduct a pre-trial investigation and/or organize a pre-trial investigation conducted at specialized pre-trial investigation institutions.

As well, giving such orders falls under the Prosecutor General or his Deputy's competence. In such cases, they can assign the task of investigation into a case to a prosecutor of the OCCI Department. However, in order to ensure an even distribution of cases between the OCCI Department's prosecutors, organization of pre-trial investigation is routinely assigned to the Chief Prosecutor of the OCCI Department.

The criteria underpinning distribution of cases between the OCCI Department's prosecutors include an individual prosecutor's profile, workload, experience, and complexity and volume of a given case, among others.

In compliance with Art. 169 and 171 of CC of the Lithuanian Republic, the decision on conducting the whole pre-trial investigation or individual activities thereupon by the OCCI Department can also be made by a ordinary prosecutor of the OCCI Department upon receipt of a petition, application or claim on a crime or upon his (her) own establishment of signs of a crime, or upon receipt of a notification from a specialized pre-trial investigation body of a pre-trial investigation institution, or in the process of his (her) directing and controlling the investigation, provided he (she) has obtained a senior prosecutor's consent thereto.

Working on individual cases

Each prosecutor is authorized to conduct investigation, organize and direct it, and prosecute on behalf of the State. In practice, some prosecutors are engaged mostly in pre-trial investigation, while the other part organize and direct that.

Having instituted a pre-trial investigation, the prosecutor either undertakes all necessary pre-trial investigation actions by himself, or assigns this mission to a pre-trial investigation body.

The prosecutor gives binding orders to pre-trial investigation officials, cancels illicit and ungrounded decisions. It is solely the prosecutor who makes decisions on consolidation or separation of a case(s), suspension of investigation, its completion and compilation of the criminal information.

The procedural activities are allocated between prosecutors, where they operate in a joint investigative team. In such cases, one of them is appointed a team leader and allocates duties between the other members of the team or such tasks are assigned by a head prosecutor. Tasks for the team members are allocated per the investigation action plan.

Following recommendations of criminology, investigation action plans can take different forms (an action plan with regard to a specific case, plan of investigation into all the cases, plan of preparations for conducting a pre-trial investigation, pre-trial investigation action plan, etc.). Such plans are designed by prosecutors at the OCCI units. While giving orders and instructions, senior-level prosecutors enjoy the right to amend such plans. Where a pre-trial investigation is conducted by pre-trial investigation bodies, joint investigative plans are the fruit of team work involving the prosecutor in charge of the pre-trial investigation in question and pre-trial investigation officials.

In compliance with part 4 Art. 15 of the Prosecution Service Act, a senior-level public prosecutor may not instruct a public prosecutor as to what decision he (she) should render. Furthermore, each prosecutor shall report to the Prosecutor General (or his Deputy) a procedural decision taken by a senior prosecutor, should such decision contravene law.

Where parties to the trial are of dissenting opinion of the procedural decision rendered by a senior-level public prosecutor, they can lodge a complaint to the court of law in accordance with the procedure established by law. Meanwhile, CPC does not provide for a special procedure of challenging/appealing against a prosecutor's actions, where the latter concern a corruption case.

Where a pre-trial investigation is completed by a prosecutor of an OCCI unit, he (she) submits the respective criminal information and materials pertaining to the case to the court of law and prosecutes on behalf of the State in all the court instances by himself (herself). Where there is no such necessity or possibility, senior-level prosecutors assign the task of

prosecution on behalf of the State to another prosecutor of the OCCI unit or to a territorial prosecution office.

Methodological support and guidelines

The Prosecutor General's Office produces explanatory notes, methodological recommendations on investigation into corruption-related cases. Acting under Art. 16 of the Prosecution Service Act, the Prosecutor General approves, with his executive orders, recommendations that form the practice of pre-trial investigation and prosecution on behalf of the State, which are binding for all the prosecutors and pre-trial investigation officials. The recommendations in question specify procedures of application of provisions of CPC, organizational matters pertaining to pre-trial investigation.

More specifically, development of explanatory notes/memorandums, guidelines and recommendations on application of various investigative methods and those of prosecution of corruption offenses is done by a task force on development of recommendations established by the Prosecutor General's executive order. The task force consists of heads of OCCI units, other experienced prosecutors from the said units, prosecutors from other divisions of the Prosecutor General's Office and territorial prosecution offices, representatives of the police and other pre-trial investigation agencies.

The task force's operations are spearheaded by a Deputy Prosecutor General. As a rule, one or several task force members prepare a draft recommendation, which is subsequently communicated to all prosecutors, pre-trial investigation bodies, academic institutions for review and comments, which in turn are subject to discussion by and within the task force. Ultimately, the recommendation is to be approved by the Prosecutor General.

The OCCI Department, the State Prosecution Bureau generalize practices of pre-trial investigation into corruption cases of different categories and make them available to all the prosecutors. As well, the OCCI Department staff contributes with their comments and proposals to drafting procedures and rules of operative activities.

2.2.4. Cooperation with other authorities

General cooperation framework

Information exchange, coordination with other divisions and agencies, as well as matters of jurisdiction, assignment of cases, setting up joint investigative teams are carried out by heads of the OCCI units or other senior-level prosecutors.

The OCCI units collect information about the progress in combat with corruption in territorial prosecution offices and generalize it.

As well, the OCC units interact with divisions for civic cases under the Prosecutor General's Office and territorial prosecution offices that exercise functions with regard to protection of public interest; with the State Prosecution Bureau of the Prosecutor General's Office, whose staff, on request of the Chief Prosecutor of the OCCI Department, in tandem with prosecutors of the OCCI Department prosecute on particularly important cases; and with the Pre-Trial Investigation Control Bureau of the Prosecutor General's Office.

The Chief Prosecutor of the OCCI Department is a member of the Interdepartmental Commission for Coordination of Combat against Corruption established by the government's Resolution. Other members of the Commission are representatives of law enforcement agencies and organizations which deal with corruption prevention.

Joint investigative teams

Head prosecutors of the OCCI units may establish investigative teams comprising prosecutors from the OCCI units and other prosecutors from territorial prosecution offices, pretrial investigation officials from various pre-trial investigation bodies, prosecutors and officials engaged in pre-trial investigation.

The procedure of establishment of investigative teams is thoroughly regulated by the Prosecutor General's executive orders № I- 86 of 19 June 2008 "Recommendations on the prosecutor's activities in organization of the pre-trial investigation and direction of it" and № I-109 of 8 August 2008 "Recommendations on distribution of investigation of criminal offenses between pre-trial investigation institutions".

Basing on the EU legal acts, with his executive order № I-23 of 21 December 2004 the Prosecutor General also approved 'Recommendations on establishment and operations of international investigative teams'.

Specialised expertise

The Lithuanian Republic's CPC provides for two types of investigation into objects and special investigation for substantiation of facts of the crime - namely, an expert's examination and an evaluation.

Expert is an individual in possession of necessary expertise and skills, who has been assigned to run an examination of objects and produce a conclusion or clarifications on matters falling under his (her) competency. Both an official representing a pre-trial investigation institution or an individual not employed with such an institution can perform expert functions. An assignment in writing to the expert who is not an official representing a pre-trial investigation institution is given by the prosecutor or an official from a pre-trial investigation institution which conducts a pre-trial investigation. The expert's conclusion

may be included in the investigation progress protocol or attached thereto as a separate document (Art. 89, 90 and 205 of CPC).

An individual in possession of respective expertise and included in the list of experts of the Lithuanian Republic can be appointed an expert. Where there are no experts with a required profile in the said list, an individual not included therein may be appointed an expert. Evaluation is commissioned in the event a judge or a judiciary engaged in a prejudicial inquiry decides that the substantiation of facts of the crime demands a special research requiring a special expertise in the area of science, technology, fine arts, or other areas. To commission an evaluation, the prosecutor submits a respective request to the judiciary engaged in the pre-trial investigation. After conducting necessary research, the experts drafts an examination report (Art. 84, 208, 209 of CPC). As to more complex matters, examinations are commissioned on the basis of the adversarial principle and with participation of the parties to the litigation – namely, the complainant, the suspect and his (her) counselor.

There are no specialists in research into objects and experts on the national Prosecutor General's Office's, including the OCCI units, payroll. That said specialists and experts in finance and accounting are employed with the Financial Crime Investigation Service under the Ministry of Interior and with the Center for Judicial Investigation under the Ministry of Justice. As well, specialists of the Center for Criminal Research of the national police are engaged in different kinds of examinations– they can be tasked to deliver a specialist's appraisal and run an examination.

Specialists employed with the Financial Crime Investigation Service under the Ministry of Interior and the Center for Criminalistic Examinations of the national police concurrently also are officials engaged in pre-trial investigation and can be (are) included in joint investigative teams led by prosecutors of the OCCI Department. Meanwhile, specialists and experts not affiliated with public institutions are attracted on the basis of a voluntary contract and following public procurement procedures.

2.2.5. Management of Human Resources

Appointment and dismissal of specialised prosecutors

Prosecutors and heads of specialized divisions are appointed by the Prosecutor General's executive orders, while prosecutors having a record of investigation into organized crime and/or corruption criminal offenses are posted at OCCI units on the voluntary basis. Where there is such a vacancy, it is filled by means of selection competition.

Part 3 Art 34 of the Prosecution Service Act holds that an individual is appointed a Chief Prosecutor of a Department (including the OCCI Department) of the Prosecutor General's Office or a Chief Prosecutor of a territorial prosecution office for the term of five years. Upon

expiration of his (her) term in office, he (she) can seek re-appointment subject to conclusions by the Personnel Review Board. The Chief Prosecutor of the territorial prosecution office may not occupy his (her) position for more than 10 years. Upon the end of his (her) term in office, he (she) has the right to occupy another vacancy at a territorial prosecution office. The law does not provide for rotation for other prosecutors.

With his Executive Order № I-99 of 29 July 2010 the Prosecutor General approved Description of the procedure of the prosecutor's career. According to the act, the position of the head of an OCCI unit is subject to selection competition.

Like other prosecutors, in compliance with Art. 36, 39, 40-46 of the Prosecution Service Act, chief prosecutors and prosecutors at the OCCI units can be moved to another position, suspended, removed and released from office according to the standard procedure. Neither the Act, nor other legal acts provide for any specific requirements with regard to removal or release from office of chief prosecutors and prosecutors at the OCCI units.

Performance measurement and evaluation of the anti-corruption work of prosecutors

Art. 33 of the Prosecution Service Act establishes that prosecutors' performance, qualification and adequacy for the job are subject to evaluation by the Attestation Commission following the procedure established by the Prosecutor General.

Every prosecutor's performance undergoes the quinquennial evaluation. The prosecutor appointed to the position of Chief Prosecutor of a department (division) of the Prosecutor General's Office becomes subject to an early evaluation per a Prosecutor General's executive order. The appraisal sheet on the Chief Prosecutor of a department (division) of the Prosecutor General's Office is submitted to the Attestation Commission by a Deputy Prosecutor General; the one on the prosecutor of a department of the Prosecutor General's Office – by the Chief Prosecutor of the Department; and the one on the prosecutor of a regional prosecution office – by the Chief Prosecutor of the regional prosecution office or his deputy.

Having conducted a regular evaluation or an early one, the Attestation Commission submits to the Prosecutor General its conclusions, which provide for the following options:

- To take a favorable view of the prosecutor's performance and propose to reappoint him (her) onto the same position;
- To take a favorable view of the prosecutor's performance and propose to promote him to a more senior position;
- To take an unfavorable view of the prosecutor's performance and propose to demote him to a lower position;
- To take an unfavorable view of the prosecutor's performance and propose to dismiss him from office.

As well, the Attestation Commission proposes to the Prosecutor General to award the prosecutor a higher qualification rank, to keep it unchanged, or to downgrade it.

In compliance with Art. 34 of the Prosecution Service Act, those prosecutors keen to make career, provided their consent thereupon, and are included, on the basis of the Attestation Commission's conclusions, in the list of prosecutors striving for making career. Having been included in such a list, the prosecutor finds himself in a more advantageous position, should he (she) seeks a higher office, including positions of a prosecutor or a head prosecutor of an OCCI division.

If having been reprimanded, prosecutors may not be promoted to a higher position, including the ones of a prosecutor or a head prosecutor of an OCCI unit.

Institutional performance evaluation

Since 2006, the Prosecutor General's Office has run a departmental electronic (computerized) Information System. Its Pre-Trial Investigation and Control and State Prosecution modules process data on instituting pre-trial investigations, consolidation and separation of cases, application of procedural measures of compulsory nature, completion of an investigation, consideration of cases at the court of law, etc. Inputs therein are made by prosecutors partaking in trials and other staff assigned by head prosecutors of respective divisions. The information is available to prosecutors cleared to use the Information System.

As well, in each division, there are prosecutors or their assistants responsible for collection and generalization of such data. The OCCI Bureaus under the regional prosecution offices and specialized pre-trial investigation bodies submit statistical data to the OCCI Department of the Prosecutor General's Office, which subsequently generalizes the data in question and channels them to the Administrative Department of the Prosecutor General's Office.

Also, each prosecutor conducting a pre-trial investigation and officials engaged in it submit data to the Department for Informatics and Communications under the Ministry of Interior.

In compliance with the Statute of the Prosecution Service and prosecutors' scope of work, territorial prosecution offices and units of the Prosecutor General's Office, including the OCCI Department, submit to the Prosecutor General annual performance reports.

The Prosecutor General approves the Prosecution Service's Priority Operational Directions Plan set by the Seim's resolutions. The Plan provides in particular for measures to combat corruption, the responsibility for implementation of which is laid upon the OCCI department. On the basis of results of implementation of the said measures and tasks the OCCI Department drafts a respective section of the annual performance report of the Prosecutor General's Office, which is submitted to the Seim.

2.2.6. Specialised training

Qualifications for the profession

In compliance with Art. 25 of the Prosecution Service Act, an individual may be employed with the Prosecution Service and appointed as a prosecutor, if he (she) enjoys an impeccable reputation, has an adequate command of the national (Lithuanian) language, has earned the university degree in law, has successfully passed a respective competition-based examination and obtained a Selection Commission's recommendation.

While entering on duty, prosecutors are bound to file public and private interests. They may be employed with the Prosecution Service provided they have been granted a respective authorization and permit to familiarize them with the information which constitutes state secrets.

Positions of prosecutor of the Prosecutor General's Office, including those of prosecutor at the OCCI Department, are available to individuals with no less than a five-year record of service at the Prosecution Service or as a judge, or to individuals holding the Doctor's degree or the *Doctor Habilitatus* one in social science and with no less than a five-year record of teaching law.

Positions of prosecutor at the territorial prosecution office, including those of prosecutor at the OCCI Bureau of the territorial prosecution office are available to individuals with no less than a three-year record of service at the Prosecution Service or as a judge, or to individuals holding the Doctor's degree or the *Doctor Habilitatus* one in social science and with no less than a three-year record of teaching law.

Types of training for prosecutors

Art. 32 of the Prosecution Service Act provides for two types of training for prosecutors:

1. Internships – formation of professional skills; and
2. Advanced training – expansion and deepening of their professional expertise and skills improvement

Art. 32 of the Prosecution Service Act holds that prosecutors' training is funded by the government. The respective expenditure estimate should provide for funding, which should account for no less than 1% and no more than 3% of payroll appropriations for the Prosecution Service.

Internships are organized by the Prosecutor General's Office, while advanced training – by the Prosecutor General's Office and the Ministry of Justice.

There is the Human Resources Department at the Prosecutor General's Office, which is responsible for prosecutors' training, while at the Ministry of Justice to this end there operates the Judge Training Center.

The Prosecutor General's Office and the Judge Training Center also work in tandem to deliver joint training sessions for both prosecutors and judges. The purposes of the exercise is to ensure a target advanced training, a more uniform assessment of facts of the case collected in the process of pre-trial investigation, a uniform interpretation of matters of imposition of punishments and generalization of the respective experiences, avoidance of a radical conflict of opinions on application of provisions of CC and other legal acts.

Training Faculty

There is no full-time training faculty, with experts, both national and foreign academics and practitioners, including prosecutors, judges, and other professionals, delivering regular and advanced training.

Working in tandem with a permanent task force, the Human Resources Division generalizes information and picks faculty.

By his (her) executive order the Prosecutor General approves the list of tutor prosecutors, which comprises the most experienced staff from the Prosecutor General's office and territorial prosecution offices. Presently, the list comprises 31 prosecutors, of whom 5 ones represent OCCI units. Tutor prosecutors who teach at the Prosecution Service are also considered specialized prosecutors in this particular area and take a special training course. The guiding principles of both regular and advanced training for prosecutors and the staff of the Prosecution Service established that in accordance with the principle of economy of scale, it is appropriate to enhance the level of tutor prosecutors' qualification.

Where a training course is jointly organized by the Prosecutor General's Office and the Ministry of Justice, the right to pick tutors is assigned to the Judge Training Center, which enters in author agreements with tutors.

Training Curriculum

With his executive order № I-8 of 13 January 2006 the Prosecutor General approved the Guiding Principles of regular and advanced training for prosecutors and the Prosecution Service staff. The document establishes fundamentals, objectives, priorities, target groups, major subjects, assessment of needs, forms of regular and advanced training for prosecutors and the Prosecution Service staff. Following the Guiding Principles, the Annual Program of regular and advanced training for prosecutors and the Prosecution Service staff and the Annual Financial Program of regular and advanced training for prosecutors and the Prosecution Service staff are designed.

The Guiding Principles provide for the following target groups covered by regular and advanced training courses:

- Acting prosecutors (internship training);
- Prosecutors (regular and advanced training);
- Specialized prosecutors (advanced training);
- Senior staff (advanced training)

The Guiding Principles provide for priority directions of regular and advanced training for prosecutors, specialized prosecutors, and senior staff of the Prosecution Service.

Needs in regular and advanced training are assessed by the Human Resources Department together with the permanent task force established by the Prosecutor General's executive order. The task force includes prosecutors from the Prosecutor General's Office, territorial prosecution offices; plus, representatives from the Ministry of Justice and academic institutions are also invited to participate in the task force. The Deputy Chief Prosecutor of the OCCI Department of the Prosecutor General's Office is a member of the task force, too.

Each year, structural divisions of the Prosecutor General's Office and the regional prosecution offices generalize data on individual needs in regular and advanced training for prosecutors and the staff of the Prosecution Service and submit their proposals to the Human Resources Department with the submission deadline being 1 September. Every year the Human Resources Department together with the permanent task force generalizes the data, drafts the Regular and Advanced Training Program for prosecutors and the staff of the Prosecution Service for next year and submits it for the Prosecutor General's approval.

Anti-Corruption Training

With his executive order № I-176 of 8 December 2009 the Prosecutor General of the Lithuanian Republic approved 11 advanced training programs for specialized prosecutors, including those focusing on economic and financial crimes and organized crime and corruption, among others. The topics of lectures and workshops are: "Organized crime in the economic sphere", "Problems of investigation into corruption and data collection methods", "Identification and seizure of assets obtained by crime", "Protection of witnesses in the course of investigation into corruption-related criminal acts".

As well, the national Anti-Corruption Implementation Plan provided for design of an Interdepartmental Program of advanced training for pre-trial investigation officials, prosecutors and judges, who expose, investigate and consider corruption-related criminal activities. Such a program was approved on 24 September 2010 by a joint executive order of the Director of the Special Investigation Service, the Minister of Justice, the General Police Commissioner, the Director of the Financial Crime Investigation Service, the Commander of the Border Guard Service, and the Director General of the Customs Department. The Minister of Justice approved the 2011 program by his executive order.

The Interdepartmental Program of advanced training for pre-trial investigation officials, prosecutors and judges embraces the following subjects:

- Distinctions between criminal actions against the Civil Service and official misconducts;
- Assessment and use in the process of proving of data on corruption criminal acts obtained in the course of employment of operative activities and actions provided for by CPC;
- Subjects of criminal actions against the Civil Service and public interest and their signs, identification of damage inflicted, problems of classification and proving *corpus delicti* with regard to individual criminal acts;
- Seizure and documenting of information stored in a computer;
- Practices of application of the European Convention for Protection of Human Rights and Fundamental Freedoms in the course of investigation into, and consideration of cases of criminal acts against the Civil Service and public interest;
- The system of international law-enforcement organizations, possibilities for, and methods of cooperation with them in the process of investigation into corruption crimes;
- Peculiarities and practices of investigation into corruption crimes overseas.

Prosecutors from OCCI units also undergo a regular and advanced training at workshops organized by the Special Investigative service, the Police Department and other pre-trial investigation institutions. To ensure an adequate funding of training for prosecutors and the Prosecution Service staff, the Prosecutor General's Office of the Lithuanian Republic takes part in programs sponsored by other governments and organizations.

2.2.7. Conclusions

Overall, according to the expert, the efficiency degree of the current prosecutor anti-corruption specialization model in Lithuania can be assessed as a very high one.

As to main pluses of the selected model, it is worth noting the following ones:

- Thanks to its peculiarities, the specialization system ensures an adequate length, integrity and consistency of processes of exposure of, investigation into, and prosecution of corruption offenses. Prosecutors at the OCCI units enjoy the possibility to conduct pre-trial investigation by themselves or direct it and, largely with regard to particularly complex cases, to prosecute on behalf of the State in courts of all instances.
- The current system ensures a close cooperation between OCCI units under the Prosecutor General's Office and specialized anti-corruption pre-trial investigation and operative bodies. Prosecutors direct pre-trial investigation conducted at these bodies and prosecute on behalf of the State on the respective cases, thus finding themselves in a permanent direct contact with representatives from the said bodies.

- Information exchange channels have been thoroughly built. Thanks to a strict demarcation of an OCCI unit's jurisdiction, the specialized pre-trial investigation and operative bodies are very well aware of who cases should be channeled for investigation to and who will oversee their operative activities.

That said, the system does not appear perfect and has a number of drawbacks.

More specifically, authorities failed to create under the OCCI Department an operations unit; likewise, they failed to establish a system of delegation of operatives from other law-enforcement agencies.

In addition, it should be noted that while prosecutors of procedural units of territorial prosecution offices and the Prosecutor General Office mostly specialize on respective criminal offenses, there still remain some rudiment signs of specialization by stages of criminal process, too. For example, prosecutors from appellate divisions of territorial prosecution offices take part in appellate hearings on criminal cases in *apylinke*, district and city courts. Prosecutors from the State Prosecution Bureau of the Prosecutor General's Office take part in consideration of criminal cases at the Court of Appeals of Lithuania in the event respective cases were considered in the regional court of trial; as well, they take part in consideration of cassations on such cases by the Supreme Court of Lithuania. The authorities have been unable for the past 15 years to draw a strict line between the above prosecution offices' jurisdictions.

The expert also cited a limited number of staff as one of weak spots of the current system. The leadership and prosecutors at the OCCI Department find it fairly challenging to concurrently operate across different directions, including: (a) investigation into organized crime; (b) investigation into corruption criminal offenses; (c) investigation into particularly important cases; (d) prosecution on behalf of the State in respect to all the above cases. Specialized divisions lack a sufficient number of prosecutors to exercise all these functions. The expert believes it would be appropriate to set up additional positions of prosecutors, to modify the internal structure of the Department, i.e. to establish two bureaus therein, which would be tasked to investigate into corruption and organized crime, respectively, and to add an additional position of Deputy Chief Prosecutor of the Department. New positions of prosecutors' assistants are needed, too.

Yet another deficiency lies in an overly broad circle of senior prosecutors who exercise the procedural, as well as administrative, control over prosecutors at the OCCI units. For example, functions of the Chief Prosecutor of the OCCI Department under the Prosecutor General's Office are presently duplicated by those exercised by the Deputy Prosecutor General. It would be appropriate to have a senior prosecutor at the rank of Deputy Prosecutor General to administer the OCCI Department and the whole system of OCCI units.

2.3. POLAND¹²

2.3.1. General overview of the prosecution system

The institution of the Public Prosecution Service – unlike the courts – is not directly regulated by the Constitution of the Republic of Poland of 1997. Its organization, structure, goals as well as the scope of competences are regulated in several legislative acts of inferior character. The main instruments in this regard are as follows:

- The Prosecution Service Act dated 20th June 1985¹³ – hereinafter “the PSA”;
- The Regulation of the Minister of Justice on the internal operation of the civil units of the Prosecution Service dated 27th August 2007¹⁴ – hereinafter “the Prosecutor’s Regulation”;
- The Courts Act dated 27th July 2001¹⁵;
- The Regulation of the Council of Ministers on the base salary of prosecutors and the levels of the management allowances the prosecutors are entitled to dated 11th August 2009¹⁶;
- The Regulation of the Minister of Justice on the setting up of the prosecutor’s offices of the appellate, district and regional level and on determining their seats and the territorial competence dated 20th December 2005¹⁷.

Apart from the civilian system of the Prosecution Service there exists a separate military component of the service. The main act pertaining to the prosecutorial military units (besides the PSA) is the Regulation of the Minister of Justice on the internal operation of the military units of the Prosecution Service dated 25th November 2008¹⁸.

Besides, a number of prosecutors perform their functions within the Institute of National Remembrance – Commission for the Prosecution of Crimes Against the Polish Nation (IPN). The Institute was established by the Act of 18th December 1998.

The public prosecution service in Poland is a unified system, in which all the units of the Prosecution Service constitute one organizational entity where actions of the individual prosecutors constitute the actions of the Prosecution Service perceived as a whole. It is centralized and all prosecutorial units are subordinate to one supreme body – the Office of the Prosecutor General. The Prosecutor General supervises the services of the prosecutor’s office. The Minister of Justice performs the functions of the Prosecutor General in Poland.

¹² This case study was prepared by *Mr. Cezary Michalczyk*, Senior Prosecutor at the General Prosecutor’s Office of Poland.

¹³ Consolidated text published in the Official Journal of 2008, No 7, item. 39, as amended.

¹⁴ Consolidated text published in the Official Journal of 2007, No 169, item 1189, as amended.

¹⁵ Consolidated text published in the Official Journal of 2001, No 98, item 1070, as amended.

¹⁶ Text published in the Official Journal of 2009, No 133, item 1099.

¹⁷ Text published in the Official Journal of 2005, No 261, item 2190, as amended.

¹⁸ Text published in the Official Journal of 2008, No 221, item 1446.

The main functions of the Prosecutor General and of the public prosecutors subordinate to him can be defined as follows:

- Conducting prosecutions, supervising the penal preparatory procedures and acting as the public accuser before the courts;
- Initiating proceedings (submitting claims) in criminal and civil cases and giving opinions in civil cases and participating in judicial proceedings, civil as well as labour and social insurance, if required for the protection of legality, the social interest and the rights of citizens or property rights;
- Taking the measures provided for by law, intended to correct and uniform application of law in judicial, administrative, in misdemeanor cases and other proceedings;
- Supervising the enforcement of decisions concerning preliminary detention and other decisions in regards to deprivation of liberty;
- Conducting research in the field of criminality and taking prevention measures (including cooperation with scientific institutions; collecting, processing and analyzing data in computer systems; transmission of data and analysis results to the competent authorities, including authorities of other countries, international organizations, including the authorities of the European Union);
- Challenging before the court the administrative decisions incompatible with the law and participating in judicial procedure regarding the conformity of such decisions with the law;
- Coordinating activities led by other state bodies in prosecution of crime;
- Cooperating with the state bodies, state organisational units and social organisations in the prevention of delinquency and other infringements of rights;
- Cooperating with the national and local chiefs of criminal information centres in the realisation of their regulatory tasks;
- Cooperating and participating in activities undertaken by international organizations or transnational and international teams working on the basis of international agreements, including agreements that constitute the international organizations, ratified by the Polish Republic;
- Giving opinions on draft legislation.

The Prosecution Service in Poland has its strictly defined sphere of competence which is executed territorially irrespective of the type of offence and phases of the criminal procedure (with few exceptions). This territoriality rule and its practical application are envisaged in the Prosecutor's Regulation¹⁹. Due to the relevant provisions of this act, in case the locally competent prosecutor decides to initiate the pre-trial investigation, s/he remains competent in relation to all the offences and offenders which further come to light and relate in any way to the initial offence.

¹⁹ See § 96-98 and 103-105 of the Prosecutor's Regulation.

When there are several concurrent pre-trial investigations which relate to the same case (offence, offender) and even if carried out by different prosecutorial units, they should be allocated to one prosecutor – the one who was the first in instituting the pre-trial investigation (§ 96-97 of the Prosecutor’s Regulation). However if in one of these cases the detention on remand is applied – this case takes precedence and all other cases should be attached to it (§ 98 of the Prosecutor’s Regulation).

The prosecutor who was notified of the offence and where s/he is not territorially competent, is obliged to pass the case over to another prosecutor who has such a competence (§ 104(1))

Irrespective of all the aforementioned rules, the head of any of the superior units of the Prosecution Service may – “in exceptionally justified cases” - allocate the case to any subordinate prosecutorial unit (§ 105(4)).

The prosecutor who is competent to conduct given pre-trial investigation is also competent to appear before the court in this case.

The Prosecution Service is fully independent from any state institutions and each prosecutor is independent in the performance of his/her duties and subject only to the law. In this regard however there are several exceptions stemming from the principle of hierarchical subordination. Thus, each prosecutor is obliged to execute orders and instructions of his direct superior, however they cannot concern the content of the procedural action (e.g. the way the witness is interviewed and concrete questions to be put). All the orders and instructions are always included (in writing) in the case file to provide for a transparency of the decision making process.²⁰

Superior prosecutor monitors the legality of conduct of the subordinate prosecutors and if necessary – demands explanations and may caution the prosecutor in writing and is also empowered (in more flagrant cases) to initiate disciplinary proceedings against him.²¹

Moreover, the superior prosecutor is entitled to change or repeal any decision of the subordinate prosecutor. This requires a decision in writing which is subsequently attached to the case file.²²

Superior prosecutor may assign any subordinate prosecutor any action which is within the scope of his competence with an exception where the law explicitly requires taking a given action only by him. He can also take over any case or procedural action from subordinate prosecutors and execute it himself (if the law does not stipulate otherwise).²³

²⁰ See art. 8 (2-3) of the PSA.

²¹ See art. 8 (7) and (8) of the PSA.

²² See art. 8a(1) of the PSA.

²³ See art. 8b of the PSA.

And last but not least, every prosecutorial unit has its own budget which is an additional safeguard against external pressure. Due to Art. 101b-c of the PSA there's a separate, guaranteed position in State Budget relating to the Prosecution Service which remains at the exclusive disposal of the Prosecutor General.

Organizational Structure

The Prosecution Service is built into a hierarchical structure with all inferior prosecutorial units subordinated to their superior units and also with all the individual prosecutors being subordinate to their superior prosecutors. It is organized into four levels, as stipulated in the Article 6.1.(5) of the PSA.

I. Office of the Prosecutor General

The Office of the Prosecutor General stands at the top of the hierarchy of the Polish Public Prosecution Service. The Office of the Prosecutor General can request any kind of information from, as well as carry out inspections in all prosecutorial units in order to control the execution by these units of their statutory functions.²⁴ Moreover, the Prosecutor General acting by him/herself or through his deputies - manages the whole Prosecution Service and may direct the actions of all the prosecutors by issuing orders and instructions. Such orders and instructions similarly cannot concern the content of the procedural action.²⁵

In his/her turn, the Prosecutor General has an obligation to submit annual reports pertaining to the activities of the Public Prosecution Service to the Prime Minister. Besides, the latter may demand at any time a report concerning any information on the state of prosecutions of offences and the protection of the law and order. Such a demand cannot deal with the information on the course of proceedings in any concrete case. In case the Prime Minister rejects the annual report submitted by the Prosecutor General, he may submit an application to the Parliament to dismiss the Prosecutor General. The Parliament may approve dismissal by a 2/3 majority vote.²⁶

The overall number of staff working at the Office of the Prosecutor General amounts to around 200 prosecutors.²⁷ Within the main 8 structural units of this office the staff allocation is as follows:

- Bureau of the Prosecutor General (25 prosecutors, 5 assistants);
- Constitutional Affairs Bureau (13 prosecutors);
- Investigation Bureau (18 prosecutors);
- Organized Crime Bureau (22 prosecutors);
- Court Proceedings Bureau (42 prosecutors);

²⁴ See art. 10 (2a) of the PSA.

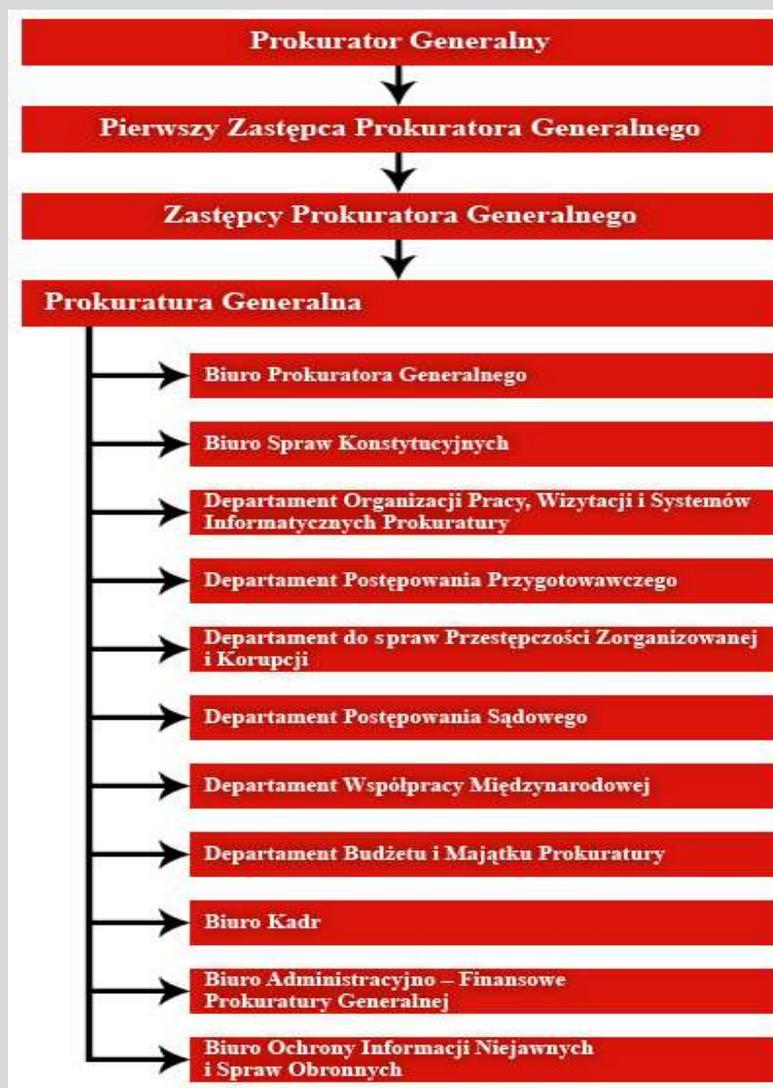
²⁵ See art. 10 (1) of the PSA.

²⁶ See art. 10e of the PSA.

²⁷ All the data concerning the numbers of staff reflect the situation as of March 2010.

- International Legal Cooperation Bureau (10 prosecutors);
- Human Resources Bureau (12 prosecutors);
- Administration and Financial Affairs Bureau.

Box 3 – Organizational chart of the Office of the Prosecutor General of Poland



II. Appellate Prosecutors Offices

The Appellate Prosecutors Offices are equipped with the same power as the Office of the Prosecutor General but only in relation to their respective inferior units. There are 11 Appellate Prosecutors Offices covering the whole territory of Poland. Within each of these offices there are the following units:

- Organizational unit;

- Court Proceedings unit;
- Administration and Financial Affairs unit;
- IT and Analytical unit;
- Organized crime and corruption unit;
- Protection of confidential data unit;
- Defense affairs unit;
- Internal auditing unit.

The overall number of staff working at the Appellate Prosecutors Offices amounts to around 415 prosecutors.

III. District Prosecutors Offices

The District Prosecutors Offices may execute similar to Appellate Prosecutors Offices powers in relation to the Regional Prosecutors Offices. There are currently 45 District Prosecutor's Offices in Poland. Within each of these offices there are the following units:

- Organizational unit;
- Court Proceedings unit;
- Administration and Financial Affairs unit;
- IT and Analytical unit;
- Serious Crimes unit;
- Commercial Crimes unit.

The overall number of staff working at the District Prosecutors Offices amounts to around 1610 prosecutors.

IV. Regional Prosecutors Offices

There are currently 356 Regional Prosecutors Offices in Poland. As a rule the internal structure of each office is individually tailored to best suit its particular needs. In a number of these offices Serious Crimes units have been established.

The overall number of staff working at the regional level is 3333 prosecutors.

2.3.2. Establishment and institutional framework of the anti-corruption specialisation

Historical background

Within the Public Prosecution Service there is no system of anti-corruption specialization as such. Corruption cases may be dealt with by any unit of the Service. However, serious

offences of such a type are usually dealt with by the specialized units within the District and Appellate Prosecutors Offices.

These specialized units were created within the system of the District Prosecutors Offices in the 90's, and within the system of the Appellate Prosecutors Offices on 1 April 2009. For several years until 2009 there have been special organized crime units functioning at the level of the Appellate Prosecutors Offices, which were directly subordinated to the Supreme Prosecutorial Body – The National Prosecutor's Office. High-profile corruption cases also fell within their competency. The Organized Crime Bureau of the General Prosecutor's Office, which represents the highest level of such specialized structures, was created in 1996.

Establishment of such specialized units which handle complex, serious and important cases was necessary due to the fact that certain crimes had to be tackled with more attention and by more experienced and dedicated prosecutors with the support of appropriate experts.

In addition to the above, it is worth mentioning that all prosecutorial units (especially the Appellate Prosecutors Offices and the District Prosecutors Offices) are obliged to report periodically (every 6 months) on all cases of serious and complex corruption, in particular when they involve:

- judges and prosecutors;
- foreign public officials.²⁸

These reports are subsequently analyzed by the Organized Crime Bureau of the General Prosecutor's Office. The results of such analyses are then communicated back to the prosecutors' offices with relevant instructions, if necessary.

Bodies responsible for detection, investigation and prosecution of corruption offences

Depending on the complexity, seriousness, gravity and 'public dimension' of the corruption offence, the given case may be dealt with by the prosecutorial unit of various levels of the system.

In cases when the offence contains all elements of corruption but does not involve a considerable sum of money, when it has been committed by a low-level public (or private) official and relates to the relatively insignificant matter (*e.g.* a single case of obtaining a driving license in exchange for a small amount of money) – the case is usually dealt with by the lowest level of the prosecution 'ladder' – the Regional Prosecutors Office. In such instances the Serious Crimes Unit usually deals with the case.

In a vast majority of high level corruption cases or where a corruption case is complex or committed in the commercial context, it is the District Prosecutors Offices that will be

²⁸ A special Order of the Prosecutor General was issued in this regard in 2008.

responsible for the case. Such a case will be allocated to the territorially competent office and will be dealt with by either a Serious Crimes Unit or a Commercial Crimes Unit.

Moreover, with respect to the most serious corruption offences, the case may be allocated (or taken over) by the third level prosecutorial units at the Appellate Prosecutors Offices. These offices have specially designated Organized Crime and Corruption Units responsible for conducting criminal proceedings involving corruption concerning legislative bodies, bodies of public administration, self government, judiciary, prosecution and control²⁹. They may also cover other types of corruption cases depending on the complexity and nature of the given offence, especially when it is committed within the framework of an organized criminal group.

And finally the most serious pre-trial investigations concerning corruption cases involving legislative bodies, bodies of public administration, self government, judiciary, prosecution and control are coordinated and supervised by the Organized Crime Bureau of the General Prosecutor's Office³⁰. These investigations are carried out by the Organized Crime and Corruption Units of the Appellate Prosecutor's Offices.

The General Prosecutor's Office may also coordinate and supervise cases concerning other forms of corruption provided the case is of a particular seriousness or complexity³¹ or the offence has been committed within the organized criminal group³².

Specialised Prosecutorial Units

The existing specialization within the public prosecution service of Poland which covers, among others the issues of corruption, can be summarized as follows:

- The Serious Crimes Units within some of the Regional Prosecutors Offices constitute the lowest level of specialization;
- The Serious Crimes Units (with 397 prosecutors and several assistants) and Commercial Crimes Units (with 254 prosecutors and several assistants) of the District Prosecutors Offices constitute the next level of specialization;
- The Organized Crime and Corruption Units (with 135 prosecutors and several assistants) within the Appellate Prosecutors Offices; and
- The Organized Crime Bureau within the Office of the Prosecutor General is at the top of the hierarchy.

All units which deal with corruption are adequately staffed. Besides secretariats that handle everyday administrative issues (handling incoming and outgoing correspondence, printing, scanning, etc.) there are also assistants of the prosecutors which assist with case analysis,

²⁹ See § 23a (1c) of the Prosecutor's Regulation.

³⁰ See § 16 (1.1.c.) of the Prosecutor's Regulation.

³¹ See § 16 (1.1.d.) of the Prosecutor's Regulation.

³² See § 16 (1.1.b.) of the Prosecutor's Regulation.

interviewing witnesses, conducting search and seizure, examining objects, conducting investigative experiments, monitoring the work of experts, conducting legal research, preparing draft decisions for the prosecutors in the course of pre-trial investigations, dealing with statistics, monitoring Police investigations, etc.³³ The introduction of such positions in 2007 relieved the prosecutors from many duties that in turn helped the latter to concentrate on the merits of cases and increased efficiency.

There is no system of turn-over and rotation *per se*. However there's a practice of secondment of inferior prosecutors for different periods to the superior units as reinforcements, if necessary.

The prosecutors within these specialized units enjoy the same status as all other prosecutors in Poland and do not have any special jurisdiction which would be different from the general rules.

Each and every prosecutor, including those working for the specialized units mentioned above, are administratively subordinated to the heads of units and further to the prosecutors who manage Prosecutors Offices of a certain level. Furthermore, as a result of hierarchical subordination within the service, these prosecutors are subordinate also to the heads of the superior Prosecutors Offices. For example, a prosecutor of the Serious Crimes Unit of the District Prosecutors Office is dependant not only on his/her direct superior (head of unit) but also on the head of the Office, and further the head of the local superior unit – the Appellate Prosecutor's Office. The same rules apply to the administrative staff of these units (secretaries, assistants, in-house experts).

2.3.3. Operational and methodological aspects of work

All the aforementioned prosecutorial units (with the exception of the Organized Crime Bureau of the Prosecutor General's Office, which has only supervisory and coordinating role) when dealing with corruption have the same functions and responsibilities as other prosecutorial units. They are defined by the Code of Criminal Proceedings of 6 June 1997 and include:

- conducting pre-trial investigations;
- supervising police investigations;
- prosecuting offenders before the court;
- recovering criminal assets.

Usually, the most important guidelines and recommendations regarding the application of methods of criminal investigation and prosecution of corruption offences are developed in the Office of the Prosecutor General – by the Organized Crime Bureau, Investigation Bureau or Court Proceedings Bureau. Such guidelines and recommendations concerning

³³ All functions of the assistants of the prosecutors are envisaged in detail in art. 100a-c of the PSA and also in the Regulation of the Minister of Justice dated 26th September 2007 (Official Journal of 2007, No 180, item 1282).

international legal assistance are also issued by the International Legal Cooperation Bureau. All these are developed on the basis of investigative and court practice and experience of prosecution offices in the country. Issues of lesser significance can also be included within the guidelines developed by the Appellate Prosecutors Offices and the District Prosecutors Offices for the subordinate local prosecutorial units.

Case assignment

The corruption cases are automatically handed over to the specialized units: Serious Crimes Units of the Regional Prosecutors' Offices, Serious Crimes and Commercial Crimes Units of the District Prosecutors' Offices and Organized Crime and Corruption Units of the Appellate Prosecutors' Offices.

Bearing in mind the specific nature of corruption cases, they are being assigned by the heads of the units to the prosecutors who can guarantee the proper level of performance. The experience in these types of cases, previous professional training, reliability and experience in cooperation with relevant services, especially dedicated anti-corruption services (like the Central Anti-Corruption Bureau or the Police's Central Bureau of Investigation) are taken into consideration.

Working on the individual cases

In Polish model the same prosecutor is responsible for methodological work in the area of detection and investigation in terms of conducting the proceedings himself or by supervising Police or other investigative law enforcement agencies. He is also responsible for the prosecution of the case before the court of justice.

Pursuant to § 115 of the Prosecutor's Regulation, the investigative plans are being developed especially for the complex and important cases and when dealing with the grievous offences. Such a plan is drawn up just after the commencement of the pre-trial investigation. It is constantly updated according to the progress of the case (discovering new circumstances). The responsibility to draw up an action plan lies with the prosecutor who conducts pre-trial investigation or supervises the Police investigation.

When conducting corruption investigations the prosecutors at the specialized units have a wide range of tools at their disposal. Those include the typical tools that are also used in other pre-trial investigations, such as:

- summoning and hearing witnesses, suspects, experts;
- conducting search and seizure;
- freezing criminal assets;
- obtaining the information from banks, companies and other entities;
- taking experts' opinion;
- making applications to the court for provisional arrest;

- using data bases;
- making legal assistance requests abroad, etc.

There are also some means (special investigative tools) which can only be used by prosecutors in relation to certain types of the most grievous offences (including corruption):

- authorizing provisional interception of telecommunications and other correspondence (tracing of telecommunications, phone-tapping, control of electronic correspondence, etc)³⁴;
- authorizing controlled delivery;
- using a special institution of a key witness (*i.e.* a criminal willing to co-operate with the prosecutor and entitled to be covered by the Witness Protection Program) as well as an anonymous witnesses;
- forming international joint investigation teams.

The independence of prosecutors within specialized units should be first of all perceived as independence from external influence. Each prosecutor is obliged to execute orders and instructions of his direct superior. But those cannot concern the content of the procedural action and all the orders and instructions are always included in the case files to provide for a transparent system of the decision making process.³⁵ In such a situation the subordinate prosecutor may also request that the superior prosecutor gives reasons in writing, changes the order or discharges him/her from his/her obligation to follow the order or even excludes the subordinate prosecutor from the case.³⁶ If the superior prosecutor does not agree to do it, the subordinate prosecutor has to execute the order but it is the superior who takes full responsibility for the act that has been ordered.³⁷

Apart from that, the prosecutor conducting pre-trial investigation acts independently.³⁸ This is both his guarantee but also his duty to perform his functions based solely on the basis of the evidence, his knowledge and judgment.

The system of appeal in corruption cases is no different from other cases and is regulated by the Criminal Procedure Code of Poland. Some decisions of the prosecutor taken in the framework of pre-trial investigation can be appealed to the prosecutor of the superior level (*e.g.* the decision on the search of premises). More important actions (decisions) of prosecutors can be appealed also before the courts (*e.g.* the decision on the discontinuance of the proceedings, seizure of assets for their subsequent confiscation/forfeiture, etc.).

³⁴ This measure requires an order from the district court but before there must be a prior authorization of the Prosecutor General or the District Prosecutor. However in cases of an absolute urgency the decision of the prosecutor is sufficient for the first 5 days – afterwards the court order must be obtained.

³⁵ See art. 8 (2-3) of the PSA.

³⁶ See § 41 (1) of the Prosecutor's Regulation.

³⁷ See § 42 of the Prosecutor's Regulation.

³⁸ See art. 8(1) of the PSA.

In case the appeal is successful the superior prosecutor (court) returns the case to the prosecutor with instructions how to deal with the case (*e.g.* which evidence to take) or – in certain cases changes the decision. Any appeal should be submitted within 7 days from the day of issuing the decision in question.

All data on the number of investigations, cases in courts, indictments, data of the accused and even prosecutorial and court decisions taken in the course of the pre-trial investigation as well as court phase (concerning detention on remand, decision on the application of seizure and confiscation and many others) are regularly inserted by all prosecutorial units into the specially designed prosecutorial data base – the Prosecution Service Information System. This database is updated on a daily basis and all prosecutors have access to it in case this data is necessary for the performance of their duties. Consequently, the heads of units can easily monitor the course of ongoing or historical proceedings to have a full picture of the case and the decision-making process. This system makes it possible to generate any desirable statistics on any aspect of the case (by making automated connections/links between types of cases, types of offences, names of the accused, measures applied, etc).

2.3.4. Cooperation with other authorities

General cooperation framework

The prosecutors usually cooperate with local Police units (in cases of less significant corruption offences) or with the special Police force – the Central Bureau of Investigation and the special anti-corruption service – the Central Anti-Corruption Bureau. This form of cooperation is about supervising their activities (with giving binding instructions if necessary), issuing procedural decisions (*e.g.* seizure of assets, requesting banking or telecommunication data, etc.), applying to the court for various types of orders (*e.g.* detention on remand, etc.), issuing MLA requests and so on. The prosecutors also discuss with officers of these services the investigative plans and coordinate with them steps to be taken in the course of the proceedings.

Joint investigative teams

When conducting pre-trial investigations in a complex or high-profile case or when there is a need to conduct a number of coordinated actions, a prosecutors' investigative teams may be formed with division of tasks amongst them. Such teams are usually created in the District Prosecution Offices and the Appellate Prosecution Offices. These teams cooperate closely with the Police or other services such as the Anti-Corruption Bureau and also experts of appropriate specializations (accountants, financial analysts, psychologists, etc). The division of tasks among the team members is the duty of the team leader – who is a designated, experienced senior prosecutor. With recent amendments to the CCP there is also a possibility to form international joint investigation teams. Again, within the team the team leader is the one who allocates duties to other team members (prosecutors, Police officers, and also foreign seconded law enforcement officials).

Effectiveness of the joint investigative teams was well illustrated in the so-called “football corruption scandal”.

Box 4 – Use of joint investigative teams in the “football corruption scandal”

The scam involving referees, players, coaches, football activists (including top level representatives of the Polish Football Association) in which a number of football matches of the Polish National League have been fixed between May 2004 and 2009 was one of the most high-profile publicized scandals involving corruption in Poland in the recent years.

The pre-trial investigation was carried out by the prosecutors from the District Prosecution Office in Wrocław (subsequently taken over by the Appellate Prosecution Office in Wrocław) in close cooperation with the Central Bureau of Investigation. Several special investigative measures were used, in particular controlled delivery. Thanks to their close collaboration it was revealed that the Polish football had been partly controlled by the net of an organized criminal character. As a result this net was dismantled. Around 300 perpetrators were charged and prosecuted, many of them were arrested. The case is now being tried in court.

Specialised expertise

There is a common practice to involve experts of various specializations (accountants, financial analysts, psychologists, etc) in the ongoing investigations. There are some in-house experts employed by the District and Appellate Prosecution Offices. These experts may form part of the investigation teams. There are however not many of such experts. Their services are used in the course of corruption proceedings.

Very often there's a need to use the services of various types of experts who are commissioned on an *ad hoc* basis (external experts). Other authorities (or even private individuals) may also provide expertise, because due to the provision of Art. 195 of the Code of Criminal Procedure an expert may be any person who has an adequate knowledge in a given area.

2.3.5. Management of Human Resources

Appointment and Dismissal of specialised prosecutors

Prosecutors performing their functions in the units which conduct pre-trial investigations in corruption cases are usually the most experienced and well trained prosecutors. There is no separate procedure for appointment or nomination of these prosecutors different from the general rules.

The heads of these units are selected from among the senior and most experienced prosecutors, usually from the local prosecution offices. The decision on the appointment is taken by the Prosecutor General him/herself or, upon his/her authorization, by the head of Appellate Prosecution Office within the territory of which the special unit is located.³⁹ Their appointment by the Prosecutor General is dependant to a large extent on the opinion of the local prosecutorial assembly.

They are appointed for a fixed term (6 for those at the Appellate level and 4 years for those at the regional and district level) and can be dismissed only in some enumerated instances envisaged in Art. 13c of the PSA:

- resignation;
- permanently unable to perform functions due to illness or loss of strength;
- conviction of a criminal offence or submission of false declaration on the non-collaboration with the communist security organs before 1990;
- performance of functions in an inappropriate way.

Such conditions do not apply to the heads of the specialized units that form part of the prosecution offices (*e.g.* Organized Crime and Corruption Unit within the Appellate Prosecutor's Office). This is due to the fact that the heads of prosecution offices should have the right to choose the heads of certain units to guarantee the coherence of the prosecutorial policy within the office. Heads of these units are usually dismissed in cases of breach of duties or severe misconduct usually followed by disciplinary proceedings.

Performance measurement and evaluation of anti-corruption work of prosecutors

Performance evaluation of the prosecutorial work is carried out permanently by the heads of the units and superior prosecution offices.

Performance of the prosecutors, assistants, secretaries and heads of units, on certain types of cases, work ethics, etc. is also evaluated within the framework of the thorough inspections conducted in accordance with the provisions of § 73-84 of the Prosecutorial Regulation. Such inspections are conducted at least once every 5 years the superior prosecutorial units which are obliged to carry out a thorough inspection of all inferior units, and in cases when signals of serious irregularities in the performance of certain prosecutorial units or individual prosecutors have been received.

According to Art. 14b of the PSA, the promotion of prosecutors is based solely on their performance. When vacant positions within the superior units appear, the Prosecutor General calls for applications for these posts. The candidates are subsequently evaluated on a case-by-case basis by the local prosecutorial assemblies. The most vital point which is taken into account covers the merits and previous performance of the candidate. Another important factor is the number of years spent by a given prosecutor at a certain level of

³⁹ See art. 13d (1-2) of the PSA.

service. The candidacy with the appraisal papers and the opinion of the local prosecutorial assembly is then submitted to the National Prosecution Assembly, which is the supreme self-government body of the Prosecution Service. The decision on the nomination to the superior unit is ultimately taken by the Prosecutor General.

2.3.6. Specialised training

An obligatory requirement on professional training for prosecutors is expressly included in the Chapter 4 of the PSA dealing with rights and obligations of the prosecutors. According to Art. 44a every prosecutor is obliged to elevate continuously his professional level by taking part first of all in professional, as well academic, training activities.

Institutional Framework

By virtue of the Act of 1 July 2005, amended by the Act of 23 January 2009, the Ministry of Justice enacted The Polish National School of Judiciary and Public Prosecution (hereinafter "The School"). The School commenced its operations on 1 September 2006. Every year it organizes seminars, conferences, workshops and practical training for judges and prosecutors (as well as their assistants and apprentices) on a variety of issues concerning Polish as well as international law. It is also active in the area of coordinating and organizing international exchange programs for prosecutors and judges who have the possibility to spend some time in various jurisdictions with their colleagues from other European Countries.

There are around 15,000 professionals that participate in the training activities every year. The School organizes training sessions in its premises in Cracow and Lublin or in several training centers scattered throughout Poland.

Moreover, each prosecution office is responsible for holding its own in-house training program which touches upon the most pressing and current issues that emerge in practice. The training deals also with new legislation and its practical application.

Besides, prosecutors are encouraged to take post-graduate courses in economics, accountancy, criminal tactics, financial instruments and many other areas which relate to their professional area of interest.

A number of training activities, especially the post-graduate courses, are followed by examinations which measure the level of comprehension of the materials presented during those courses.

The School's website is: <http://www.kssip.gov.pl/>

Training Faculty

The School does not operate on the basis of its own in-house trainers but engages instead highly qualified specialists (especially experienced and specialized judges and prosecutors) in the given area on an *ad hoc* basis.

Training Curriculum

The School prepares its annual schedule on the basis of the analysis of training needs reported by courts and public prosecutor's offices, it also takes into account recent developments in the relevant legislation making it very practical. To prepare curriculum for the next year, the School conducts a survey amongst the Prosecution Service units and courts to find out the current problems and trends that need to be included. The draft curriculum is subsequently approved by the School's Executive Board and the Curriculum Council composed of high level judges, prosecutors, academics and lawyers.

Anti-corruption training

The School and particular units are involved in organization of specific anti-corruption training. The anti-corruption trainings involve various methods of teaching. The most popular are the following:

- academic method in the form of lectures and presentations followed by the questions and answers session;
- workshops where prosecutors and assistant prosecutors deal with concrete cases of corruption that have taken place in real life;
- international exchange programs, where prosecutors are sent abroad to observe and learn the systems and practice of their colleagues;

language training (usually English, German, French) in the form of regular classes (organized by The School) and also by international courses where prosecutors and judges travel abroad to partake in language courses (e.g. organized periodically in Spain by their school for judiciary).

The trainers involved in anti-corruption courses are those prosecutors (Police officers or judges) specialized and trained in this area with the expertise in dealing with corruption cases.

The following examples of such training activities organized by the School in 2008-2010 with the focus on corruption as well as corruption-related topics can be provided:

- "Corruption in the Polish law and the law of the EU" – training conducted on 25 – 27 June 2008 for 60 prosecutors; on 3 - 5 September 2008 for 60 prosecutors and on 1-3 March 2010 for 60 prosecutors.
- "Seizing and confiscation of crime-related proceeds and dealing with seized evidence" – training conducted on 22-26 June 2009 for 60 prosecutors; on 7-11 September 2009 for 60 prosecutors; and on 29-31 March 2010 for 60 prosecutors.

- “Mutual legal assistance and extradition (European arrest warrant)” – training conducted on 25 - 27 February 2008 for 70 prosecutors; on 15 - 17 September 2008 for 50 prosecutors; on 15 - 17 October 2008 for 50 prosecutors; and on 23-25 November 2009 for 100 prosecutors.

Moreover there are several training courses designed and run by local public prosecutors’ offices.

2.3.7. Conclusions

Bearing in mind the overall picture of the country’s profile and reality, the expert opinion is that the anti-corruption specialization system in Poland is optimal and, in general, works effectively and efficiently. The corruption cases, depending on their level of complexity and gravity, are distributed amongst different levels of the Prosecution Service – from the Regional Prosecutors’ Offices to the District Prosecutors’ Offices to the Appellate Prosecutors’ Offices. The whole system is supervised and coordinated by the General Prosecutor’s Office.

In his view, the fighting against corruption requires not only a narrow specialization but first of all a comprehensive knowledge and experience in many other related areas (money laundering, accountancy and finances, seizure and confiscation, liability of legal persons, special investigative techniques and often aspects of mutual legal assistance). In this regard fighting corruption demands a multidisciplinary approach and hence the more universal prosecutor seems to be a better option. Thus, it was decided in Poland that there won’t be prosecutors exclusively dealing with corruption, they will instead cover other types of cases which are often related and have a wider perspective. Nevertheless, only those units dealing with serious crime, commercial crime, organized crime and corruption handle the cases in question which gives it a prominent focus. In addition, it allows for access to the best resources when investigating and prosecuting corruption cases, as such units are composed of only the most experienced and highly skilled prosecutors.

Among the benefits of the Polish approach, the following elements have been emphasized:

- distribution of cases amongst different level of the Prosecution Service depending on the level of their complexity and gravity;
- corruption cases are dealt with by the most experienced and dedicated prosecutors;
- supervision over the most grievous and complex cases (also committed within the framework of the organized criminal group) at the highest level that guarantees a “global view” and necessary coordination;
- the system enhances the versatility on the part of the prosecutors instead of making them narrowly specialized which could be perceived as detrimental to effective combating corruption as such fight requires multi-disciplinary approach.

There have been a number of challenges with introduction of the system of specialized units dealing with serious crimes, commercial crimes and organized crime and corruption. The

issue of selection of appropriate staff was one of them. In the very beginning a number of prosecutors were not prepared to handle complex corruption cases, they lacked practice and appropriate training in the area. In time, with the variety of investigative and prosecution practice in corruption cases accumulated, the prosecutors gained necessary experience. Also with the creation of the National School of Judiciary and Public Prosecution the training system has changed and helped strengthen professional skills and knowledge of the prosecutors.

Nevertheless, it should be noted that some practitioners, as well as academics reckon that the creation of narrow specialization amongst prosecutors in the area of corruption could further reinforce the system. In their view, corruption is of such a specific nature and involves such specific methods of investigation and prosecution that within the Prosecution Service a certain group of prosecutors should be selected to deal only with corruption cases.

Such an approach had been examined and rejected as not very practical. In this regard Polish decision makers decided that what suffices is the creation of the specialized service with broad investigative powers – the Central Anti-Corruption Bureau. This Bureau is a centralized, highly independent structure which carries out investigations supervised by the Prosecution Service. Creating a similar centralized structure within the prosecution service would be an unnecessary structural and functional overlap and would break the existing hierarchical pyramid of the service.

2.4. SPAIN ⁴⁰

2.4.1. General overview of the prosecution system

The following main legal acts define the public prosecution system in Spain:

- Section 124 of the Constitution of Spain;
- the Organic Law on the Judiciary;
- the Organic Statute of the Public Prosecution Office approved by Law 50/1981 of 30 December, and amended by Law 24/2007, which strengthens its autonomy and modernizes its territorial organization;
- The 1882 Criminal Procedure Code.

The main principles of functioning of the prosecution service are stipulated in the Constitution. According to the Constitution the Office of the Public Prosecution shall discharge its duties in accordance with the principles of the unity of operation and hierarchical subordination. All actions of the prosecutors are to be undertaken observing the principles of legality (the prosecutor is to act within the boundaries of the Constitution, laws and other regulations of the Spanish legal system) and impartiality (the prosecutor is to act with full objectivity and independence in defending the interests entrusted to him).

The Organic Statute contains the basic regulations concerning functions, organization, structure, principles, rules of action, acquisition and loss of the status of the prosecutor, rights and duties of the prosecutors and the disciplinary system.

The Spanish Public Prosecution Service is a body of the judicial power according to article 2 of the 1981 Organic Statute of the Public Prosecution Office, which stipulates the following:

The Public Prosecution Service is an integral part of the Judicial Power, although provided with functional autonomy.

On the other hand, however, the prosecutors lack the principle of strict independence, which characterizes the functioning of judges. As a result, the Public Prosecution in Spain neither represents a fourth branch of government, nor is it a member of the Judiciary, although it is integrated within the Judicial Power.

The head of the Public Prosecution Service in Spain is the Prosecutor General. The Prosecutor General is appointed by the King, based on the proposal of the Government, after consultation with the General Council of the Judiciary. He is given a four year mandate and he must leave the office with the Government that proposed him. Before the Organic Statute of the Public Prosecution Office was amended in October 2007, there was a possibility for discretionary removal of the Prosecutor General by the Government at any time. However,

⁴⁰ This case study was prepared by late *Mr. David Martínez Madero*, then Director of the Anti-Fraud Office of Catalonia.

such a possibility was eliminated, and the new Article 31 of the Organic Statute points out that the Prosecutor General can only be removed in the following cases:

- At his or her request;
- When there is a case of incompatibility, as it is the case with the rest of the members of the Public Prosecution service;
- When an incapacity or illness, which prevents him or her from performance of his or her duties;
- When there is lack of or undue accomplishment of the professional duties;
- In case of replacement of the Government which nominated him or her.

In addition, the Government cannot give instructions to the Prosecutor General regarding cases which fall within his/her competencies; it can only draw the attention of the Prosecutor General to the relevant steps which can be taken.

The functions of the individual prosecutors can be described through the following steps of the criminal procedure:

1. The examining magistrate or instructor, as in the French model, is in charge of the criminal investigation. His/her actions are guided, reviewed and inspected by the Public Prosecution Office, which formulates accusation when it considers that all the necessary evidence was gathered.

2. The investigation phase does not require a formal accusation to be initiated (with the exception of “private crimes” (defamation and slander) and “partial-public crimes” (such as violations of the company law)).

3. The restrictive measures can be ordered by the examining magistrate only on the request from the public prosecutor and only in the cases which involve crimes with the penalty of over 3 years of imprisonment and when there is a risk of escape, concealment of evidence or obstruction to justice. The decision of the judge can be appealed by the public prosecutor before the superior body, a tribunal composed of three magistrates.

4. The investigative phase may be secret/covert when the judge or the prosecutor believes that the person under investigation could reasonably interfere with its course. The period of secrecy is thirty calendar days, renewable by a decision (always motivated) based on the need for continuation.

5. The administration of justice is carried out by the professional judges, with the exception of matters which fall within the competence of the jury.

Organizational structure

The distribution of competences within the Public Prosecution system in Spain is parallel to the distribution of jurisdiction within the Judiciary. The general structure and organization of the Spanish Judiciary could be described as follows: At the apex is the Supreme Court, which is the highest judicial body. It has its seat in Madrid but possesses national

jurisdiction. The Supreme Court is primarily a court of appeal and is divided into five sections (civil jurisdiction, penal offences, administrative cases, labour problems and military matters). On a lower level there are sixteen superior courts of justice (tribunals superiores de justicia) and fifty provincial courts. Finally, the Constitutional Court was created in 1979, a year after the 1978 Constitution, being the supreme body charged with the task of monitoring the observance of the Constitution by everyone, even the legislative authorities.

The general structure and organization of the Prosecution system follows that of the judiciary and has the following element:

- The Prosecutor General's Office
- Prosecution Office at the Supreme Court
- Prosecution Office at the Constitutional Court
- Prosecution Office at the National Court
- Special Prosecution Offices:
 - Special Prosecutor's Office against Illegal Drug Trafficking
 - Special Prosecutor's Office against Corruption and Organized Crime
- The Prosecution Office at the Court of Auditors
- Legal-Military Prosecution Office
- Superior Prosecution Offices at the Autonomous Communities, Provincial Prosecution Offices and Area Prosecution Offices.

I. The Prosecutor General's Office

The Prosecutor General is the highest leader and representative of the Prosecution Service throughout Spanish territory and heads the Office of the Prosecutor General. He/she imparts all convenient orders and instructions regarding the service, the institution's internal order and the exercise of prosecution functions, whether of a general nature or referring to specific matters. General guidelines are essential for maintaining the principle of unity of action and are basically produced by means of three instruments: circulars, instructions and enquiries.

When such instructions are referred to matters affecting members of the government, the Prosecutor General shall hear, previously, the Chamber Prosecutors.

II. Prosecution Office at the Supreme Court

Prosecution Office at the Supreme Court exercises its functions before the said Court, which is the highest judicial authority and has jurisdiction throughout Spain.

III. Prosecution Office at the Constitutional Court

The Constitutional Court is regulated by the Constitution and in its own Organic Law. It has jurisdiction throughout Spain and is empowered, among other relevant matters, to take up

appeals against the alleged unconstitutionality of laws and other regulations and to take up cases when conflicts of jurisdiction between the State and the Autonomous Communities or between the later arise.

Through the Prosecution Office at the Constitutional Court, the Prosecution Service exercises its functions in the proceedings to which it is a party, in the cases of:

- Unconstitutionality questions put forward by Judges and Tribunals.
- *Amparo appeals*⁴¹. It has the right to lodge an *amparo appeal* and to be party to all proceedings of this nature representing defense of legality, of the citizen's rights and of the public interest as prescribed by the law.

IV. Prosecution Office at the National Court

Prosecution Office at the National Court exercises its functions before the said court, based in Madrid, which has jurisdiction throughout Spain in criminal, administrative and social matters, in accordance with the specialty of their content, with particular emphasis given to the cases concerning terrorism offences.

In the criminal sphere, the National Court has jurisdiction over the crimes which have been committed outside of the Spanish Territory: (i) when according to the Laws or Treaties the judgment falls within the remit of Spanish Courts; (ii) in order to continue proceedings served abroad; (iii) in order to execute judgments passed by foreign tribunals; and (iv) in order to execute a penalty or a safety measure applied by a foreign court.

V. Special Prosecution Offices

The Special Prosecution Office Against Illegal Drug Trafficking

The prosecutors from the Special Prosecution Office Against Illegal Drug Trafficking participate in criminal proceedings concerning trafficking of drugs, narcotics and psychotropic substances, as well as in money laundering cases associated with the above mentioned offences, and which fall under the jurisdiction of the National Court and of the Central Court of Inquiry.⁴²

The Office also coordinates activities of different other Prosecution Offices as they relate to the matters of their jurisdiction, identified above, as well as cooperates with the judicial authorities to monitor application of the measures used to treat drug addiction.

The Prosecution Office Against Corruption and Organized Crime

⁴¹ The amparo appeal is an appeal lodged in order to protect the fundamental rights established in the Spanish Constitution.

⁴² The Central Court of Inquiry has jurisdiction throughout Spain in criminal, administrative and social matters and has competence to prepare criminal cases which are to be referred for judgment to the National Court.

The prosecutors of the Prosecution Office Against Corruption and Organized Crime investigate and participate in the proceedings concerning certain economic crimes, as well as crimes committed by public officials in the performance of their duties. Such crimes are directly connected in both cases to the phenomenon of corruption and linked to illicit economic benefits.

It can also investigate into the economic activities of the organized criminal groups or into the respective economic proceeds from such criminal activities.

VI. Prosecution Office at the Court of Auditors

The Court of Auditors is also a constitutional body, the composition and duties of which are regulated by its own Organic Law, the Head of which is a full member of the assembly of the Tribunal.

The Prosecution Office at the Court of Auditors is the highest body in charge of auditing of the State's accounts and its financial management, as well as accounts and financial management of the public sector. It assesses the audit reports approved by the external control bodies of the autonomous communities in order to determine the circumstantial evidence of accounting responsibility⁴³ derived from them, as well as brings action of accounting responsibility, when appropriate, into the court proceedings handled by the Court of Auditors.

VII. Legal-Military Public Prosecution Office

The prosecutors of the Legal-Military Public Prosecution Office have the right to support the accusation in the procedures against persons covered by privileges or guarantees of immunity at the Supreme Court (authorities of the Ministry of Defense and Generals); to intervene on the appeals⁴⁴ before the Spanish Supreme Court against judgments passed by the Military Tribunals in the penal and the disciplinary sphere; to intervene on the appeals for judicial review of the judgments; and to report on the jurisdictional conflicts of competence between military and ordinary jurisdictions.

VIII. Territorial Prosecution Offices

The Prosecution Office of the Autonomous Communities, together with the Provincial Prosecution Offices and the Area Prosecution Offices complete the territorial structure. The Superior Prosecutor represents the Prosecution Office in the given territory and undertakes the direction of the Prosecution Offices within this territory.⁴⁵

⁴³ The term "*accounting responsibility*" refers to the actions or omissions contrary to the law which undermine the public funds or which result in the person/institution performing such actions/omissions being obliged to compensate the damages caused.

⁴⁴ In Spanish, *Recurso de Casación*: this is a final appeal or appeal regarded as a third-tier or third instance appeal against the decision of the previous court of appeal from the first instance judgment; the term *casación* is cognate with <<quash>> though the decision on appeal may, of course affirm the earlier judgment.

⁴⁵ Spain is divided territorially in 17 Autonomous Communities and, at the same time, the Autonomous Communities are divided into provinces. In line with such administrative set up, the Public Prosecution Office

Prosecution Offices at the Autonomous Communities

Such offices exercise their functions before the Superior Court of Justice and are headed by a Superior Prosecutor, to whom all other prosecutors of the community are subordinate. Their functions are established in the sections 11, 21, 25 and 26 of the Statute.

Provincial Prosecution Offices

The Provincial Prosecution Offices exercise their functions in the given territory. Depending on the nature of the subject matter and the volume of the proceedings, the Prosecution Offices at the autonomous communities and provinces may also set up their own Specialized Sections.

Area Prosecution Offices

Their territorial sphere is inferior to that of the Provincial ones. They are headed by the Chief Prosecutor, who is hierarchically subordinated to the Chief Prosecutor of the relevant Provincial Office.

2.4.2. Establishment and institutional framework of the anti-corruption specialisation

Historical background

With the establishment of democracy in the 1970s, important problems, other than terrorism, appeared in the Spanish social and political landscape. The new democratic state was provided with more efficient means of control, which permitted to visualize phenomena, such as corruption, which were impossible under the previous political regime.

Such new perception, plus the fact that some notorious cases of corruption, which involved high senior officials, were unveiled in the early 1990s, resulted in the adoption of several anti-corruption measures, including new criminal legislation against corruption and the setting up of the Anti-Corruption Specialized prosecution office. Prior to it, the Special Prosecution Office Against Illegal Drug Trafficking had been established in Spain and served as a model for the new anti-corruption agency.

The specialized anti-corruption office was established in 1995⁴⁶ and its aim was to facilitate the investigation of crimes related to corruption, to overcome the difficulties in obtaining evidence, as well as to guarantee a more efficient response when public interests are affected. The referred anti-corruption public prosecutors unit was known as “the Special Prosecutor’s General Office for the Repression of Economic Offences related to Corruption”.

of the Province is subdivided into territorial smaller units called – Area Prosecution Offices.

⁴⁶ Law 10/1995, of 15 January.

The amendments to the Public Prosecution Organic Statute on October 9, 2007 have provided the Anti-Corruption specialized office with its present framework. As a result of the 2007 amendments of the Organic Statute, the special unit received a new name: "The Prosecution Office against Corruption and Organised Crime" (POCOC).

Bodies responsible for detection, investigation and prosecution of corruption offences

At present, the POCOC is the body responsible for investigation and prosecution of corruption offences. There are also special investigative police units which are attached to the POCOC. In all cases the State prosecution service, as well as the courts is to be assisted by the law enforcement authorities.

The Spanish courts are competent for the adjudication of corruption-related cases. The ordinary territorial courts are competent for ordinary cases, while the National Court has exclusive competence over certain particular offences, as it was described in the section covering the organizational set up the judiciary above.

There are also numerous financial and economic institutions which assist in conduct of financial investigations through various tools available to them, such as audits, monitoring of suspicious transactions, etc..

Specialised Anti-Corruption prosecutors

The staff of the Prosecution Office against Corruption and Organised Crime is composed of the Chief Prosecutor who runs it, the deputy Prosecutor and thirteen prosecutors who are based in the Central Office, situated in the capital of the State, Madrid. In addition to this, there are fifteen Delegated Prosecutors in the different Autonomous Communities, designated by the Prosecutor General at proposal of the Chief Prosecutor of the POCOC, who coordinates and runs the affairs that fall within the competence of the POCOC.

Both prosecutors and administrative staff of the POCOC are subordinated to the Justice Ministry, and it is the Prosecutor General who is entrusted with the competence of supervising and coordinating their work. Budgetary-speaking, the Office is also managed through the Ministry of Justice, which is responsible for both material and personnel resources allocated to the Prosecution offices. The budget of POCOC is integrated into the general budget of the Prosecution Service and the Chief Prosecutor of POCOC has neither managerial responsibility, nor can he/she put forward any budgetary proposals or requests.

Competencies of the POCOC

The Public Prosecution Organic Statute of 1995, amended in 2003⁴⁷ and in 2007⁴⁸, lists the following offences which fall under the competencies of the POCOC:

- Offences of bribery;
- Offences against the Public Treasury, Social Security and smuggling;
- Prevarication offences (act of distortion and deception, and concealing of a crime);
- Offences of abuse or illicit use of privileged information,
- Misappropriation of public funds;
- Fraud and price fixing;
- Offences of exercise of undue influence;
- Negotiations forbidden to civil servants;
- Concealment of assets;
- Bankruptcy;
- Disruption of prices in auctions;
- Offences related to intellectual and industrial property, offences against the free market and against the consumers:
- Offences committed within a corporation by its own members,
- Money laundering and related crimes:
- Offences of corruption in international commercial transactions;
- Offences of corruption in the private sector;
- Other offences related to the above mentioned crimes.

In addition, according to Article 19.4 of the 2007 amended Organic Statute, the POCOC is also competent to endeavour any investigation related to legal business, transactions, stock movements, values or capitals, cash flows and patrimonial assets, in which organized criminal groups are involved. The POCOC will be also competent whenever there are other connected crimes. However, the POCOC will not be competent when the described criminal activities are related to drugs trafficking or terrorism.

In order to narrow down the POCOC competencies, it is essential to indicate that, besides the commission of a crime falling within the above list, the offences concerned must be of

⁴⁷ Law 14/2003, of 26 May.

⁴⁸ Law 24/2007, of 9 October.

special significance. That means that the POCOC only takes over criminal proceedings when it estimates that a particular case is of such significance that falls under its jurisdiction (i.e. according to its complexity, importance, damage produced, etc.). If that is not the case, then the offence will fall under the jurisdiction of the ordinary Public Prosecution Office where the criminal activities took place.

2.4.3. Operational and methodological aspects of work

Investigation begins as soon as the “*notitia criminis*” reaches the prosecutor, regardless of its origin. The law only requires a certain level of credibility for the “*notitia criminis*” to be investigated. When investigation is in process, all authorities are obliged to cooperate with the administration of justice.⁴⁹

If an offence falls under the competence of the POCOC, there is no need for a decision from the Prosecutor General to be able to start an investigation. However, in those cases when there is a need to determine the special significance of the offence, the Chief Prosecutor of the POCOC will require the decision of the Prosecutor General on whether it would be advisable to commence the proceedings.

The Instruction 4/2006, which regulates the functions of the POCOC, as well as article 19.4 of the 2007 amended Organic Statute, points out that it is the task of the Prosecutor General to indicate when a case is of special significance. However, the criteria for such determination are in place and are defined in the following manner:

- When the case requires investigation by the specialised police unit attached to the POCOC.
- When the crime has been committed by the organized group. (Instruction 4/2006 provides with the necessary criteria for determining of the organized group).
- When the offences have been committed by a high level public official.

In any case, it is in the hands of the Prosecutor General to attribute a specific case to the POCOC, since he/she has the last say, even when any of the aforementioned requirements are missing.

The Prosecutor General is also called to settle all potential conflicts of jurisdiction which may arise between the special and regular prosecution services. To avoid conflicts of jurisdiction, the POCOC is required to report promptly to the Prosecutor General about all undertaken cases, as well as about eventual retribution of cases.

Case assignment

The assignment of cases to individual prosecutors is made at random, and is based on the date of entry of the case into the system and the workload of the staff. It is done, of course,

⁴⁹ Article 262 of the Law of Criminal Procedure as well as article 4 of the Public Prosecution Organic Statute.

within the specialized office only. In exceptional cases the Chief Prosecutor can assign a case to a particular prosecutor based on practical reasons, for instance, if there is a clear link to the case on which the prosecutor in question is already working. In practice, the Chief Prosecutor of POCOC often does reassign the tasks and cases despite the pre-established order of random case assignment. In such circumstances, the assignment is accompanied by the motivated decision of the Chief Prosecutor and is done in a written form.

Working on individual cases

The prosecutor who is responsible for the case directs all phases of the procedure and takes decisions in regards to all of its aspects. This includes the investigation itself, with instructions being issued to the police and technical support units; as well as, the exchange of information and coordination with other agencies/institutions both national and international. Taking into consideration the special complexity of the case, the prosecutor in charge can work together with other prosecutors appointed by the Chief Prosecutor for this purpose.

The Chief Prosecutor and the Prosecutor General can give specific instructions to the anti-corruption prosecutors, with which the latter can disagree, stating his/her position in writing. Under no circumstances, can an anti-corruption prosecutor receive instructions or be removed from performance of his/her functions by any administrative authority or public official. He/she can only be removed according to the rules laid down in the Organic Statute.

Prosecutor's actions in the course of the investigation cannot be appealed. Nevertheless, when the pre-trial investigation has been submitted to the court the interventions can be made through introduction of evidence, evidence diligence, and appeals made by any party to the proceedings.

Methodological support and guidelines

Action/work plans for the anti-corruption units are developed by the relevant members of the POCOC and are being discussed at the meetings organized by the Prosecutor General. Such meetings are called by the Prosecutor General to discuss general affairs and administrative issues, as well as specific cases to discuss procedural aspects of the on-going or new investigations. Such meetings often involve outside experts and support staff.

Since year 2003 all methodological recommendations, circulars and instructions are exclusively issued by the Office of the Prosecutor General for all prosecutors, including the anti-corruption ones.

2.4.4. Cooperation with other authorities

General cooperation framework

The cooperation from the following institutions is rendered in the framework of the anti-corruption investigations: police, specialized law enforcement units and bodies of management control and supervision, such as Directorate for Customs Surveillance within the Ministry of Finance, Treasury Agency, Supervision from the Spanish National Bank, Parliamentary investigation committees, Office of the General Audit of the State Administration, SEPBLAC (Executive service on prevention of money laundering at the Spanish National Bank), National Commission on Markets value, Court of Auditors and others.

There are other agencies whose cooperation is vital in the corruption-related investigations at the regional level. For instance, in Catalonia a special role is played by the Catalanian Anti-Fraud Office which was created to prevent and to investigate potential cases of misuse or misallocation of public funds or any other irregular appropriations arising from acts that involve conflict of interests or the use for private benefit of information received when performing public functions.

As a general rule, both the authorities of the Security Forces and those from the Civil Service similarly cooperated with the prosecution in the fight against corruption by sharing their expertise. The prosecution can also collaborate with other authorities and involve them in the fight against corruption when necessary.

Joint investigative teams

The multidisciplinary approach to the investigations was adopted and institutionalized in the corruption-related investigations. The POCOC has designated support units which have been delegated to its office from the National Police, Civil Guard, Public Treasury, the Internal Audit of the States Administration, as well as other bodies of financial control.

Specialised expertise

In addition to the above mentioned experts from the delegated support units, outside expertise can be sought from other institutions both public and private. Most often such outside experts come from Tax Inspectorates, National Bank of Spain and National Market Value Commission and are rendered for financial expertise.

2.4.5. Management of Human Resources

Appointment and dismissal of specialised prosecutors

The Chief Prosecutor of the Prosecution Office against Corruption and Organised Crime is appointed for a period of five years. His tenure can be renewed for another 5-years period. The Chief Prosecutor of POCOC can only be removed from office in the cases envisaged by law, in accordance with Section 46 of the Organic Statute of the Public Prosecution Office. Voluntary or compulsory retirement has to be approved by the Government under the same conditions as those prescribed for Judges and Magistrates.

Other prosecutors are appointed to POCOC when a vacancy within the Office opens up or when a new position has been created. The vacancies within POCOC can open up in the following cases:

- When the prosecutor who formerly held the position in question has been transferred to another public institution (nationally and internationally), as it happened with the Catalanian Anti-Fraud Office, the Director of which was a prosecutor formerly occupying a post within the POCOC.
- When the prosecutor who formerly held the position in question has been moved to fill another vacancy within the Prosecutor General's Office or other body of the Prosecution Service.
- When the prosecutor who formerly held the position in question has left prosecution service all together for private practice or other profession.

Information on such openings is made public and is communicated to all prosecutors which match the qualification requirements.

CVs of the candidates are submitted for review to the Prosecution Council⁵⁰, which assesses them and proposes the best candidate to the Prosecutor General. Although the Prosecutor General is not bound by the opinion of the Council, he/she always consults with the Chief Prosecutor on the suitability of the candidate whom he/she plans to propose for eventual appointment by the Minister of Justice to the Government.

Performance measurement and evaluation of the anti-corruption work of prosecutors

In Spain, there is no established formal methodology for evaluation of the work of prosecutors. Unfortunately, there are no objective grounds or obligation by the Prosecutor General to assess the work of each anti-corruption prosecutor, often generating imbalances in the distribution of tasks.

Formally, the decisions on career development of individual anti-corruption prosecutors are to be made by their superiors based on consideration of the following three factors:

- a. Information on the objectives achieved by the evaluated prosecutor as a result of their work on inquiries, investigations and their methodological work.
- b. Training skills obtained by the evaluated prosecutor at the anti-corruption and counter organized crime courses, seminars, national and international conferences.
- c. Publications made by the evaluated prosecutor in the area of anti-corruption.

In practice, none of the three criteria allows career progression for the anti-corruption prosecutor. On the other hand, if such anti-corruption prosecutor opts for another job of equal importance, such as position of the prosecutor at the Supreme Court, Court of Auditors, or the Constitutional Court, he/she is most likely to succeed in getting the position.

⁵⁰ The Prosecution Council functions under the chairmanship of the Prosecutor General and comprises of the Deputy Prosecutor of the Supreme Court, the Chief Inspector Prosecutor and nine prosecutors of various categories selected for a period of four years by the members of the Public Prosecution Office.

Institutional performance evaluation

On an annual basis a report on the activities, crime situation and its prevention with recommendations on how to improve the efficiency of the criminal justice system is produced by the Prosecutor General's Office and is submitted to the Government and the Parliament. The report is prepared based on the information provided by various units of the Prosecution Service, including POCOC.

In addition to this, every half a year a separate report with accounts of all cases in which anti-corruption prosecutors have intervened at any procedural stage is being prepared for the attention of the Chief Prosecutor of POCOC, who then presents it to the Prosecutor General.

2.4.6. Specialised training

Qualifications for the profession

The usual selection procedure for joining of the prosecution profession means undergoing competitive examination. The competitive examination process consists of the exam on approximately 400 topics, followed by the discussion on general legal theory. Once this exam is passed, selected candidates are sent to the Center for Legal Studies to undergo a theoretical and practical course for those joining the service (such course is aimed at furthering the knowledge in the sphere of civil, criminal, administrative, litigation, commercial, European and international law). The individuals who have passed the competitive examination receive a special status of the public officials on training.

Specialized prosecutors at POCOC have to comply with the minimum requirements of belonging to the second category of Prosecution Service and have to have no less than 10 years of working experience within the Prosecution Service. In addition, they preferably should have prior experience with investigation of corruption-related and economic crimes or other complex financial investigation, and a resume that incorporates knowledge in procurement management and business law.

Anti-corruption training

The Centre for Legal Studies which trains new-comers to the prosecution profession does not offer special anti-corruption courses. There is only one educational institution in Spain – the University of Salamanca – which offers specialization in the field of anti-corruption.

Professional training of the anti-corruption prosecutors from POCOC is organized by the Office of the Prosecutor General and is often conducted in the joint-training format, involving other agencies which have responsibilities in the area of anti-corruption. Specialized prosecutors' attendance of various seminars, conferences, national and international forums is also highly encouraged.

There is no special teaching methodology used for anti-corruption trainings and, typically, it is the most senior anti-corruption prosecutors who serve as teacher, as well as develop, lead and coordinate training courses for their colleagues. Such courses often cover the issues related to the banking system, fraud involving EU funds, tax offenses, international legal cooperation, money laundering, town planning law, consumer fraud cases, etc. Very often colleagues from other countries' anti-corruption prosecutorial institutions are invited to participate in such training programs.

2.4.7. Conclusions

General impressions on the level of effectiveness/efficiency of the specialized anti-corruption in Spain

With establishment of the Special Prosecution Office against Corruption and Organised Crime (POCOC) a number of corruption cases investigated and prosecuted has grown substantially, the results are especially good in some of the regions. The office, thus, was able to achieve a high level of expertise and performance and specialization has had a good impact on the fight against corruption.

For example, in Catalonia, an autonomous community with 7.4 million inhabitants, as it was mentioned before, the Anti-Corruption Prosecutor Office was complemented with a new regional institution, the Anti-Fraud Office of Catalonia. This has helped greatly to achieve very solid results.

Box 6 – The Oficina Antifrau de Catalunya (Anti-Fraud Office of Catalonia)

The success of the Anti-Fraud Office of Catalonia (Oficina Antifrau de Catalunya) was in many respects determined by its flexibility, regional knowledge and ability to cooperate with the wide range of agencies and institutions working in the area of anti-corruption and anti-money laundering. Thus, the Anti-Fraud Office of Catalonia, in order to achieve its aims of preventing and investigating fraud involving public funds cooperates with the judicial authorities, the Public Prosecutor's Office, the Ombudsman, Accounts Inspectorate, the Generalitat (Catalan Government), General Inspectorate, the municipal intervention bodies, the Catalan Court of Audits, the local defenders of rights and liberties, as well as bodies with competencies for monitoring, supervision and safeguarding of public and private legal persons. For such purposes, the Anti-Fraud Office must gather all the information it has available and provide the necessary support to the institution or body that is carrying out the corresponding investigation or inspection.

In order to carry out the tasks which fall within the scope of its mandate, the Anti-Fraud Office collaborates and provides assistance and exchanges information with other bodies and institutions of public nature, by means of development of joint plans and programs, accords and protocols which define the terms of such collaboration.

The Anti-Fraud Office also cooperates with the autonomous regional institutions, central government institutions, EU and international institutions having similar powers or fulfilling similar functions.

The Anti-Fraud Office may adopt initiatives aiming at fostering citizens' awareness and participation in various transparency and ethics measures in the public and private sector, as well as aiming to furthering the establishment of self-regulation mechanisms in order to prevent irregular practices, in particular, those involving tendering of companies, companies that awarded contracts and the beneficiary companies of public subsidies and assistance.

The director of the Anti-Fraud Office, in the exercise of his/her powers issues explanatory reports that are sent to the competent authority, which, in turn, must inform within thirty days of the measures adopted or, if applicable, of the reasons that prevented this institution from acting in accordance with the recommendations.

If in the course of the proceedings undertaken by the Anti-Fraud Office there were signs of disciplinary breaches or of presumably illegal acts or events, the director of the Anti-Fraud Office must inform the competent authority and also immediately inform the Public Prosecutor's Office or the judicial authorities.

The Anti-Fraud Office can send reasoned recommendations to the government suggesting the alteration, cancellation or incorporation of dysfunctions administrative practices that could be improved upon.

If the social implications or importance of the facts that led the Anti-Fraud Office to act so require, the director of the Office may at his/her own initiative or following the decision of the Parliament, present an extraordinary report to the relevant Parliamentary Committee.

Overall, it would be fair to say that the establishment of a specialized institution at central level with multidisciplinary capabilities was achieved at the minimal cost by leveraging the resources and bringing together different professional cultures (police, customs, financial inspectors, auditors, etc.) from agencies already existing. To encourage the highest level of expertise the work at the Specialized Anti-Corruption office was made to be attractive both from financial, as well as moral point of view, and now as a result, the support units which compliment the work of the office are comprised of the most knowledgeable and experienced personnel.

The challenges encountered during the introduction of existing system of specialization, nevertheless, remain. For instance, to this day the design of the task-force teams and the capacity of the Chief Prosecutor to establish synergies between the various bodies that provide knowledge and information to the anti-corruption prosecutors represent a serious challenge. The problems also seem to arise not so much in investigating crimes of corruption but at the stage when such cases go to the courts charged with prosecuting such crimes, where judges lack similar expertise and training that the anti-corruption prosecutors have obtained.

Arguably, it can be affirmed that the POCOC has reached a remarkable level of excellence in performing its investigative duties. Nevertheless, there is a clear lack of material, logistical, and IT equipment support for its staff. The dependence of the budget on the decisions of the Ministry of Justice is also a constraint which should be mentioned. In Catalonia for example, the Anti-Fraud Office has among its responsibilities, the duty to collaborate with the Public Prosecution Office and its Courts. Given its independence and its own budget, it is in an excellent position to support the investigative efforts of the delegation of the POCOC in Catalonia, and such budgetary independence makes a clear difference.