



WHAT DO WE (NOT) KNOW ABOUT THE PROSECUTORS GENERAL IN THE EU MEMBER STATES

**A comparative legal study of Open Society Institute –
Sofia**

S O F I A | J A N U A R Y 2 0 1 9

This text presents the findings of a comparative legal study of the functions, selection procedures and profiles of Prosecutors General in the EU Member States. The study was carried out in the period from November 2018 to January 2019 by the following team: Ivanka Ivanova, PhD, (Project Manager, author), Georgi Angelov (expert, data gathering) and Yani Kirov, PhD (expert, data gathering).

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1) Objectives of the study¹

In 2019 a new Prosecutor General will be appointed in Bulgaria. The term of office of the current Prosecutor General will expire in January 2020 and pursuant to Article 173 of the Judicial System Act (JSA) the procedure for the selection of a new Prosecutor General may be launched anytime between 6 and 4 months prior to the expiry of the term of office of the incumbent.

Appointments of persons holding high positions in the judiciary are subject to special monitoring by the European Commission under the Cooperation and Verification Mechanism (CVM)². Previously, the European Commission has followed with particular attention the appointment of the current Prosecutor General in 2012, the appointments of the Presidents of the Supreme Court of Cassation (SCC) and the Supreme Administrative Court (SAC) as well as the members of the Supreme Judicial Council (SJC).

The second recommendation to Bulgaria in the CVM report (November 2017) is to “establish a track record of transparent and merit-based appointments to high-level judicial posts. ...”³. The Technical Report from January 2017 points out that “the conduct of such appointments in a merit-based and transparent manner is a key test of its [SJC] capacity to function as a professional and independent institution which can command the trust of the judiciary and of broader society”.⁴

This text is a comparative study of the functions, appointment/election procedures and professional profiles of Prosecutors General across the EU Member States and it shows how recruitment procedures guarantee professionalism and efficiency of governance of the prosecution service and its independence from corrupt influences. The study makes it possible to identify some major differences between the model of regulation established in Bulgaria for the position of the Prosecutor General and the practice in the other EU Member

¹ Last update of the report from Feb.19, 2019. We would like to extend our sincere gratitude to assistant professor Ekaterina Salkova, PhD, from the Institute for the State and the Law at the Bulgarian Academy of Science, who provided some valuable comments on an early draft of this text.

² The Cooperation and verification mechanism was established by a decision of the European Commission of December 13, 2006, as a provisional measure to sustain the monitoring and the support for the reforms of the judiciary and the fight against organised crime and corruption in Bulgaria and Romania after their accession to the EU.

³ Report from the Commission to the European Parliament and the Council on progress in Bulgaria under the Co-operation and Verification Mechanism, COM (2017) 750 final, Brussels, 15.11.2017, p.3.

⁴ Commission staff working document, Bulgaria: Technical Report, accompanying the document Report from the Commission to the European Parliament and the Council on the Progress in Bulgaria under the Cooperation and Verification mechanism, SWD (2017) 700 final, Brussels, 15.11.2017, p.5.

States. The study first and foremost aims at informing the public debate in Bulgaria about the role and functions of the Prosecutor General and to contribute to the implementation of the recommendation formulated by the European Commission about transparent and merit-based appointments to high-level judicial posts.

The study was carried out in several stages: first, the relevant literature and documents issued by bodies with the Council of Europe (the Venice Commission and the Consultative Council of European Prosecutors) have been reviewed to establish the main elements that constitute a European standard with regard to the appointment/election procedure of the Prosecutor General. Then these main elements have been extracted and included in a matrix with questions used to gather and summarize data about each EU Member State.

The matrix includes information about five groups of questions: the prosecution service as an organization (subordination, place in the system of separation of powers), the main functions of the Prosecutor General, the main participants in the appointment/election procedure of the Prosecutor General (who nominates, who appoints, who is consulted), professional experience and demographics of the preferred candidate and the grounds for dismissal of the outgoing Prosecutor General (a complete list with the names of the Prosecutors General in each EU Member State included in the study is available in Appendix 1 to this document). Data was gathered mainly through the review of the texts of the relevant national legislation (the Constitution, the Law on the Prosecution Service, the Judicial System Act), the websites of national prosecution services and media publications.

We faced some difficulties during the gathering of data, in particular data related to the biographies of the current Prosecutors General and the reasons for the vacancy of the position. In most EU Member States the responsibility for the criminal policy rests with the government and the Minister of Justice is the one who attracts public scrutiny, not the Prosecutor General. The Prosecutor General in some EU Member States is simply the chief prosecutor at the Supreme Court; as such he/she does not have a lot of power and is rarely in the limelight.

However, our main difficulties had to do with the analysis of the information gathered. The prosecution service as an organization combines elements of political power and the organization of the judiciary, they are specific for each country and it is necessary to study the historical development of the organizations and the specificity of the national context in each country to end up with the right assessment of the facts. However, the historical development of prosecution services in the EU Member States is not the subject of this study.

Therefore we have tried to stay away from too general conclusions and we have focused the analysis not so much on bringing out common European trends but on the identification of certain specific features of the Bulgarian model compared to the ones observed in the other EU Member States.

As far as we could establish, similar comparative legal studies have not been published in Bulgaria so far but several publications exist about a similar subject. The status and the powers of the Prosecutors General have been examined separately in a comparative legal study published in 2008 by Open Society Institute – Sofia on *Promoting the accountability, independence and efficiency of the prosecution service* (506 p.). The study gives a thorough description of the organization of the prosecution service in nine countries, only six of them being EU Member States. The study begins with a comparative analysis that we used as the basis for the development of the matrix for data gathering in this study.

We also referred to two other publications as a source of information about some of the countries examined: Ivan Petrov's *Prokuraturata v Evropa* published in 2001 (Siela, 207 p.) contains information about the structure and organization of the prosecution service as an institution in various countries. Data has been presented schematically in the form of questions and brief answers about each national legal system; however, no analysis and no references to literature have been made; the role and the functions of the Prosecutor General have not been examined as a separate subject.

In 2005 the Centre for the Study of Democracy (CSD) published the findings of a comparative legal study titled *The reform of the judiciary: the prosecution service and investigating authorities in the context of the EU membership* (123 p.). The study also contained data about the status and legal regulation of the prosecution service in most EU Member States including all former Socialist states as well as the statements made by the participants in an international conference on this topic. A table has been enclosed as an appendix with data about the appointment/election procedure for prosecutors and the Prosecutor General in each of the examined states. This table does not include data about all EU Member States (Austria, Greece, Ireland, Cyprus and Malta have not been included); in addition, in the period of 13 years following the publication of the study of CSD, some of the states have introduced legislative changes with regard to the subject in question (Poland, Hungary) and that is why we have gathered data anew and prepared a new table (Appendix 2 herein).

2) Prosecution service as an organization

A great diversity of models of organization of the prosecution service can be observed across the EU Member States. The trend established by the Venice Commission in its opinions has been one of convergence: despite diversity, a number of common features can be identified between prosecution services and these common features increase over the time.

The prosecution service is a relatively new organization; it appeared in most European states as late as the 19th century when Napoleonic wars spread constitutions, declarations of fundamental rights and codification of criminal laws across Europe. The prosecution service emerged across Europe together with the latter, under dominant French influence, as an organization that monitored and guaranteed the application of criminal laws. In 1870s even the common law states instituted a separate organization to support the public prosecution.

Public prosecution nowadays is a main function of the state in all EU Member States. Prosecutors everywhere, regardless whether they are part of the executive power or the judiciary, enjoy relative independence in making decisions as to whether to initiate criminal proceedings. The organization of all prosecution services is based on the principles of unity (the decisions of a single prosecutor are binding on the service) and hierarchy (subordination of the lower levels in the organization to the higher).

In most of the EU Member States the prosecution service is under two types of institutional scrutiny: judicial and political. The predominant opinion in the related research is that the judicial control alone is not sufficient. It is an effective remedy in the cases where the prosecutors abuse their power to initiate criminal proceedings and thus violates the basic rights of the people affected. The judicial control though can hardly mitigate the dangers that emerge due to the arbitrary refusal to initiate criminal proceeding.⁵

The prosecution service is not always built as a unitary structure or even if it is, the structure is not necessarily a pyramid. Military prosecution services in some countries have not been included in the structure of the national prosecution service but have been left separately. Austria has Financial Prosecution Service with the Ministry of Finance. This prosecution service is run by legal counsellors, providing legal advice to the government and appearing in court as a defendant when court proceedings are initiated against the state. The prosecution

⁵ Waters, T. Overview: Design and Reform of Public Prosecution Services, In – Promoting Prosecutorial Accountability, Independence and Effectiveness, Comparative research, S: Open Society Institute – Sofia, 2008, p.29 (see note 25 there for several articles on the topic).

service with the specialized court in Spain (Fiscalía de la Audiencia Nacional) is relatively independent from the Office of the Prosecutor General. In addition, the structure of the Office of the Prosecutor General in Spain includes a number of specialized prosecutors' units headed by practising prosecutors who manage and supervise certain types of proceedings: there is a dedicated national Prosecutor General responsible for the investigation and prosecution of violence against women, national Prosecutor General for protection and support of minors, one for cases of occupational accidents, road safety, etc.

Despite convergence of the functions and organization of prosecution services in the examined states, significant differences can be observed between them that are reflected in the different functions and position of the Prosecutor General as well as the requirements to the persons occupying this post.

a. Different models of the organization of the prosecution service

In its opinions the Venice Commission examines two alternative models of organization of the prosecution service and deems them to be equally acceptable in the European context: the prosecution service can be part of the executive power or a separate, independent body. Examples of the first model can be seen in Germany, Denmark, Estonia, Poland and Czechia. The Venice Commission clarifies that subordination of the prosecution service to the executive authority is more of a question of principle than reality in the sense that the executive is in fact particularly careful not to intervene in individual criminal cases.⁶

France, Belgium, Spain, Italy, the Netherlands and Romania are usually cited as examples of legal systems in which the prosecution service is organized as a separate and independent authority. Prosecutors in these states are located at the courts, part of the court structure, the way the system in Bulgaria used to be up until the Constitution of 1947. The concept of *Ministère Publique* used in France and in the Roman-language states to indicate the prosecution service refers to a separate organization but not to a legal entity that is separate from the court system. There is no such legal entity either in France, Belgium or in Romania.

The gaining of prominence of the totalitarian regime in Central and Eastern European countries in the middle of the 20th century was connected with the emergence of a new model

⁶ Report on the European Standards as Regards the Independence of the Judicial System: Part II – The Prosecution..., p.6.

of independent prosecution service that differed considerably from the models of independent prosecution services in Western Europe.

In 1947 in Bulgaria prosecutors were removed from the court structure and they became part of a separate organization whose scope of action went far beyond the boundaries of criminal law: the prosecution service in totalitarian state exercised the function of general supervision of legality (i.e. watched for any violations of the rules and not just for committed crimes) in the work of state bodies, companies and any organizations. This type of prosecution service cannot be related to any of the branches of state power outlined in the contemporary democratic constitutions because the totalitarian state does not recognise the principle of separation of powers. Formally, the prosecution service reported to the supreme legislative authority and the latter authority appointed and dismissed the Prosecutor General, however, in reality, only the Communist party was entitled to exercise control over the prosecution service.

Boris Spasov notes that in 1947 the draft of the new constitution prepared by the Government of the *Otechestven Front* was sent for review in Moscow: “The proposals made by the Soviet specialists were adopted and the following more important amendments were introduced to the draft constitution: (...) a single system of elective courts, headed by the Supreme Court of the Republic, was established; the Supreme Administrative Court was removed from the judiciary; the prosecution service was organized as an independent arm of the state apparatus, headed by Prosecutor General elected by the National Assembly (...)”.⁷

The main elements of this model are still in place in some of the former Socialist states. In Bulgaria the prosecution service nowadays can also exercise the function of general supervision for legality on the activity of public institutions, private firms and any organisation and in spite the fact that the prosecution is regulated in the Constitution under the chapter “Judicial Authority”, in reality the prosecution service is an autonomous legal entity. In Latvia the prosecution service is an independent public institution with its own budget voted by the Parliament; it is not within the structure of the judiciary or the Ministry of Justice. In Hungary the prosecution service is also an independent institution with its own budget. It is headed by Prosecutor General and it does not belong with the executive or the judiciary but with a separate power, known as “the fourth power”.

⁷ Spasov. B. Konstituzionno pravo na Republika Balgaria – tchast parva, S.: JURISPRESS. UI St. Kliment Ohridski, 2002, p.88

b. What do we mean by “Prosecutor General”?

By referring to a Prosecutor General, this study has examined the heads of public prosecutions in the EU Member States, i.e. the most senior official making decisions about the initiation and carrying out of criminal indictments in the state and the official usually giving guidance/instructions to prosecutors as to how to apply the law and what priorities to pursue.

The common law states (England and Wales, Ireland) and Malta, whose model has been influenced by the common law, have the position of Attorney General, who is a member of the Cabinet and plays the role of the Government’s chief legal advisor because he/she provides advice to the Government on all legal issues. Officially this is the highest position in the public prosecution system in England and Wales. However, an officer holding a separate position is responsible for the enforcement of the criminal law in particular, i.e. Director of Public Prosecutions⁸. With regard to England and Wales and Ireland, this study presents the biographies of the Directors of Public Prosecutions instead of the Attorney General’s. The Director of Public Prosecutions in England and Wales is the third topmost position in the hierarchy of public prosecutions after Attorney General and Solicitor General. However, we have selected the Director of Public Prosecutions because of the specialization in the field of criminal law and because this is the most senior officer performing prosecutorial functions. The Directors of Public Prosecutions in England and Wales and in Ireland have functions that resemble more the ones of Prosecutors General of the other EU Member States. It is the Director of Public Prosecutions, not the Attorney General, who is a member of the Consultative Forum of Prosecutors General and Directors of Public Prosecutions of the Member States of the European Union.

Federal states are a bit more special case in point. Germany and Austria have two separate judiciaries: the first one is the judiciary of the provinces, each of which has its own judicial system, own prosecution service and own Prosecutor General. The second one is the federal judiciary, headed by Federal Supreme Court and Public Prosecutor General. The federal prosecution service has jurisdiction only with regard to certain types of crime that affect the territory of the whole state or national security. The federal prosecution service does not have powers over prosecutors in the judiciaries of the federal provinces. With regard to the

⁸ We have translated “public prosecutions” into Bulgarian as “darjavno obvinenie” because this is the common understanding about the role of the prosecution service in Bulgaria and because “obshtestveno obvinenie/obvinitel”, that would have been a more accurate equivalent in Bulgarian, refers to a different concept into the Bulgarian legal system.

Prosecutor General in Germany and Austria, we have examined here Public Prosecutors General of the two states.

3) European standards regarding the status and election/appointment procedure of the Prosecutor General

There is no binding European standard the EU Member States have to take into account in the structure and organization of their prosecution service and the position of the Prosecutor General. However, several common principles might be drawn from the recommendations of some of the bodies with the Council of Europe (the Committee of the Ministers of the Member States, the Consultative Council of European Prosecutors, the Venice Commission).

Recommendation (2000)19 of the Committee of the Ministers to the Member States on the role of public prosecution in the criminal justice system does not lay down expressly the functions or the appointment/election procedure of the Prosecutor General.⁹ The position of “Prosecutor General” is mentioned only with regard to recommendations to improve international judicial cooperation in item 38, which recommends that “steps should be taken to create favourable conditions to further direct contacts between public prosecutors in the context of international judicial co-operation. Such steps should in particular consist in (...) establishing regular personal contacts between public prosecutors from different countries, in particular by organising regular meetings between Prosecutors General”.

However, Recommendation (2000)19 includes common requirements to the career development of prosecutors. Pursuant to art. 5, the Member States of the Council of Europe should take measures to ensure that:

a) the recruitment, the promotion and the transfer of public prosecutors are carried out according to fair and impartial procedures embodying safeguards against any approach which favours the interests of specific groups, and excluding discrimination on any ground (...);

b) the careers of public prosecutors, their promotions and their mobility are governed by known and objective criteria, such as competence and experience.

⁹ Recommendation (2000)19 was adopted by the Committee of Ministers on 6 October 2000 at the 724th meeting of the Ministers’ Deputies.

In the Explanatory Note to its Opinion No. 9 (2014) on European norms and principles concerning prosecutors¹⁰, the Consultative Council of European Prosecutors points out two aspects with regard to the Prosecutor General:

§55 The manner in which the Prosecutor General is appointed and dismissed plays a significant role in the system guaranteeing the correct functioning of the prosecutor's office;

§56 If governments have some control over the appointment of the Prosecutor General, it is important that the method of selection is such as to gain the confidence and respect of the public as well as of the members of the judicial and prosecutorial system and legal profession. The Prosecutor General should be appointed either for an adequately long period or permanently to ensure stability of his/her mandate and make him/her independent of political changes.

The issue of the appointment/election of the Prosecutor General has been also examined in some of the opinions of the European Commission for Democracy through Law (the Venice Commission) and a few more rules, that are valid for the Member States of the Council of Europe, can be brought forward.

According to the Venice Commission, in countries where the prosecution service is under the government control, it is normal for the government to appoint the Prosecutor General; where the prosecution service is autonomous, the Prosecutor General is appointed either by the President or by the supreme legislative authority. Both models correspond to the European understanding of the rule of law. The Venice Commission does not exclude the opportunity of government involvement in the appointment of the Prosecutor General in the countries where the prosecution service is separate and independent institution as well by noting that "it is reasonable for a Government to wish to have some control over the appointment, because of the importance of the prosecution of crime".¹¹

According to the Venice Commission, an appointment process of the Prosecutor General which involves the executive and/or legislative branch gives greater democratic legitimacy to

¹⁰ Opinion No9 (2014) of the Consultative Council of European Prosecutors to the Committee of Ministers of the Council of Europe on European norms and principles concerning prosecutors, CCPE (2014) 4 Final, §55 and §56.

¹¹ Report on the European Standards as Regards the Independence of the Judicial System: Part II – The Prosecution, Adopted by the Venice Commission at its 85th plenary session in Venice at 17-18 December 2010, p.8

the appointment.¹² It is also recommended to take into account the opinion of the professional community about the merits of the candidates and make it clear who nominates the candidates.

With regard to the duration of the term of office of the Prosecutor General, the Venice Commission notes that the Prosecutor General should be appointed permanently or for a relatively long period without the possibility of renewal to ensure that the Prosecutor General will not seek to do favours to the Government. It is recommended that the period of office should not coincide with Parliament's term in office.

An important aspect of the European norms and principles concerning prosecutors has to do with what happens with the Prosecutor General after the expiry of the term of office: the Venice Commission recommends to regulate this issue clearly in the law in advance, for instance providing for the opportunity to become a judge in the Supreme Court. It is recommended not to impose any general ban in the law on the Prosecutor General's possibilities of applying for other public offices after his/her term of office has expired.

According to the Venice Commission the grounds for dismissal of the Prosecutor General should be clearly laid down in the law and it is recommended prior to adopting a decision about the dismissal of the Prosecutor General to have an independent body examine to what extent the request for dismissal is founded.

4) Functions of the Prosecutor General

Timothy Waters calls the Prosecutor General "a kind of interface between the functioning prosecution system and the political branches".¹³ The Prosecutor General may perform several types of functions which can be in general grouped as follows:

- *functions related to the law*: a Prosecutor General monitors legality in the actions of courts and prosecution services and files cassation appeals to the Supreme Court; gives mandatory instructions to prosecutors; can repeal their acts; can pass a decision on the transfer of criminal proceedings from one area of jurisdiction to another (under particular circumstances);

¹² Compilation of Venice Commission Opinions and Reports concerning Prosecutors, 06-07 October 2017, p.18.

¹³ Waters, T. Overview: Design and Reform of Public Prosecution Services, In – Promoting Prosecutorial Accountability, Independence and Effectiveness, Comparative research, S: Open Society Institute – Sofia, 2008, p.46

- *functions related to the criminal policy*: a Prosecutor General may participate in defining the priorities of the national criminal policy, ensure the implementation of the policy by instructing prosecutors from lower hierarchical levels of the organization and report to the institutions and the public on the work of the public prosecution;
- *functions related to the administration of the prosecution service*: a Prosecutor General can decide independently or issue opinions on the internal structure and organization of the prosecution service, on the appointment, discipline, transfer and career development of prosecutors and employees of the prosecution service and can be responsible for the planning and management of the budget of the prosecution service;
- *representative functions*: the Prosecutor General can decide on certain issues related to the participation of the country in European or international judicial cooperation in criminal matters and can represent the prosecution service before the other public bodies.

The functions regarding the application of the law and the filing of cassation appeals are common for the highest levels of prosecution services of all EU Member States. In some of them the position of the Prosecutor General is limited to him/her being the only prosecutor with the Supreme Court of Cassation (SCC) (Austria, Belgium, France, Netherlands). Then the Prosecutor General is mainly responsible for the application of the criminal law, performs prosecutorial functions and is the only one who may try cases before the Supreme Court of Cassation, has powers only over the employees of the public prosecution with the Supreme Court of Cassation and in France, in particular, the latter are not hierarchically subordinate to the Prosecutor General. In such cases the Prosecutor General is not the first public accusatory of the state. Due to the specific status of the SCC as a court of cassation, i.e. court ruling on the law, not on the facts, the Prosecutor General with the SCC does not appear in court as bringing or defending charges but as somewhat of a legal advisor to the court. This is why in France the members of the public prosecution with the Supreme Court are not hierarchically subordinate to the Prosecutor General with the SCC. The Austrian legal system defines the role of the Prosecutor General with the SCC as *Rechtswahrer* (“guardian of the law”). Germany is a special case in point, as the Federal Prosecutor General may appear in court as public prosecutor on certain crimes against the national security and may oversee investigations of such cases.

Where the Prosecutor General has mainly duties related to the law, the issues regarding the budget, appointment and career development of prosecutors are decided solely by the Minister of Justice (Austria, Germany) or with a collective prosecutorial body in an advisory capacity (Belgium, France). The Minister may also give instructions to prosecutors under certain circumstances. In such cases the Prosecutor General has usually a small or only advisory function in defining the criminal policy of the state; thus, for instance, the Prosecutor General with SCC in Belgium and the Netherlands is a member of a collective body which sets the priorities of the criminal policy.

At the other extreme is the Prosecutor General who is not only responsible for the application of the law but also performs the main functions related to the setting and implementation of the national criminal policy. In the most extreme case, the Prosecutor General might even be a politician. In Poland, the functions of the Minister of Justice and the Prosecutor General are combined. The latter person has powers over all prosecutors in the system, gives guidance with regard to the law and the criminal policy, formulates criminal policy, is fully in charge of the appointment and career development of prosecutors and the judges and has the right to a legislative initiative as a member of the Cabinet. In this case the Prosecutor General does not appear at all before the court, neither to defend charges nor to uphold points of law.

The Polish model of combining functions related to the law with functions related to the public prosecution policy is more of an exception. The common European model is to have these functions distributed in a balanced manner between the Minister of Justice and the Prosecutor General instead of delegated exclusively to either of them. In the states where the prosecution service is part of the executive (Austria, Germany, Czechia etc.), the Minister of Justice may give guidance to prosecutors regarding both the application of the law and the criminal policy; he is also responsible for career and disciplinary matters of prosecutors.

In many of the states where the prosecution service is independent, the matters related to the career development of prosecutors are also mainly decided by the Minister of Justice. In France, the Minister of Justice nominates candidate prosecutors who, with the approval of the Council of Prosecutors with the High Council of the Judiciary, are appointed by the President. The Minister may decide independently on transfer of prosecutors and their disciplinary liability. The Minister may also give instructions to prosecutors in general and specific matters even though this power is limited under the law and is rarely exercised.

5) Participation of collective bodies in the management of the prosecution service

Even though the prosecution service everywhere is a hierarchical structure, it is not always headed by a sole-member authority. There are different models of participation of a collective body in the management of the prosecution service in the national legal systems of the EU Member States. We will examine three models in this study: a collective body manages the prosecution service (Belgium, the Netherlands), a collective body assists the Prosecutor General with the exercising of his/her powers (Spain) and a collective body upholds the independence of the prosecution service (Portugal, Poland, Slovakia, Slovenia).

Each of these models of collective decision-making, the first two most of all, is based on the relative independence of prosecutors at middle management level in the hierarchy (equivalent to district and appellate prosecutors in Bulgaria). Appellate prosecutors of court districts in the Netherlands and Belgium are called “Prosecutors General” and they are relatively independent from the Prosecutor General of the SCC.

The prosecution service in Belgium and the Netherlands is headed by a collective body. The Prosecutor General with the SCC in Belgium and the Netherlands has powers that are limited only to the application of the law and only with regard to the structure of the prosecution service that is with the SCC. The prosecution service in the Netherlands is headed by Board of Prosecutors General which consists of 3-5 heads of regional prosecution services. The Board is responsible for the formulation and application of the national criminal policy; the Board gives general and specific instructions to prosecutors. The Minister of Justice may also give general instructions to prosecutors but only after the Minister requests the opinion of the Board first. The Minister and the Board of Prosecutors General formulate together the criminal policy.

Belgium also has a Board of Prosecutors General which consists of six members: the Prosecutors General of each of the districts and the Federal Prosecutor. The Board is chaired by each of the Prosecutors General on a rotating basis. Competence is distributed among them by law: the Prosecutor General of Antwerp is responsible for the general criminal policy, the application of the criminal procedural law, fighting against cybercrime and enforcement of sentences. The Prosecutor General of Brussels is responsible for combating terrorism; the Prosecutor General of Ghent is responsible for fighting against organized crime, etc. The Board is responsible for the formulation of the national criminal policy and for giving instructions to prosecutors; the Board advises the Ministry of Justice in all matters

related to public prosecutions. The Minister of Justice may also give instructions to prosecutors after requesting the opinion of the Board. The Board of Prosecutors General itself is supervised by the Minister of Justice. The decisions of the Board are binding on all prosecutors. In addition to the Board of Prosecutors General, Belgium also has a Council of the Prosecution Service with a broader composition which is responsible for the application of the criminal policy the way it has been formulated by the Board of Prosecutors General.

The prosecution service in Spain is headed by Prosecutor General but the latter is assisted in the exercising of his/her duties by three collective bodies. The most important of them is the Council of Prosecutors made up of 9 members which represents the profession and assists the Prosecutor General in his/her work, helps him/her solve arbitration disputes, difficult disciplinary matters and changes in the internal structure. In addition, Spain has Council of Prosecutors within the structure of the court system (who attend court sessions) who advise the Prosecutor General on matters of application of the law and unification of jurisprudence. Apart from that, Spain also has Council of the Prosecutors General of its autonomous provinces.

The Office of the Prosecutor General in Portugal has the highest position in the Prosecution service. Part of the structure of the latter is the High Council of the Public Prosecution Service (Conselho Superior do Ministerio Publico) which appoints, transfers, promotes prosecutors and institutes disciplinary proceedings against them.

Poland has National Council of Prosecutors which is set up by order of the Prosecutor General (who is also Minister of Justice). Some of the members of the Council are prosecutors appointed by the Prosecutor General but others are elected by their peers. The mandate of the Council is two years. It is chaired by the Prosecutor General. The sessions are convened at the initiative of the Prosecutor General or on a proposal from a third of its members. The goal of the Council is to uphold the independence of prosecutors. The National Council of Prosecutors issues opinions on draft bills that have impact on the prosecution service and on career and disciplinary matters related to prosecutors.

Slovakia has Council of Prosecutors which expresses the opinion of the prosecutors from the General Prosecution Service. The Council is elected by prosecutors themselves. The Council issues an opinion on the nomination of the Prosecutor General.

The State Council of Prosecutors in Slovenia is an institution which aims at carrying out self-governance and upholding the independence of prosecutors. It is made up of 9 members, 4 of them elected by prosecutors, 4 elected by the Parliament and one is appointed by the Minister of Justice. The Council appoints heads of regional prosecution services; it is responsible for

the promotion, transfer, the discipline and the relocation of the prosecutors. It makes proposals for the appointment of the Prosecutor General.

6) The most frequent reasons for vacancy of the position of the Prosecutor General. Term of office.

As mentioned above, the Venice Commission has recommended to some countries to avoid setting a fixed term of office of the Prosecutor General or provide for as long a term of office as possible without an opportunity for re-election.

Our empirical study shows that in at least 8 of the EU Member States the Prosecutor General is appointed for unlimited time, the mandatory retirement age of magistrates being the only limit to staying in office. The states where the position may be occupied for life are more of an exception: Germany (for the position of Federal Prosecutor General) is a case in point, however, in practice the freedom of the Government to appoint and dismiss the Federal Prosecutor General under certain circumstances balances the lack of a term of office. In the period 1950 - 2015 Germany has had 10 Public Prosecutors General in total, i.e. the average duration of staying in power being 6.5 years per person. The Federal Prosecutor General of Austria is appointed without a fixed term but cannot occupy the position after the age of 65 because this is the statutory retirement age of magistrates. The same is valid for Malta.

Half of the EU Member States have a term of office for the position of the Prosecutor General and it varies between 3 and 9 years. In the majority of states (5), the term of office is 5 years long (England and Wales, Belgium, Estonia, Latvia, Lithuania). The term of office of the Prosecutor General is 3 years in two of the states (Greece and Romania) and 4 years in two other states (Spain and Croatia), 6 years in two states (Portugal and Slovenia), 7 years in two states (Bulgaria and Slovakia), 9 years in one state (Hungary) but with mandatory retirement at the age of 70.

The most common reason for replacement of the Prosecutor General is the expiry of the term of office: this is the reason for replacement in 13 of the states examined. The second most common reason for replacement of the Prosecutor General is retirement (in 7 of the EU Member States), resignation in 4 cases, and dismissal in 2 cases. In Poland the reason for the replacement of former Prosecutor General has been the adoption of a new law in 2016 laying down the merging of the positions of Prosecutor General and Minister of Justice. We were

not able to establish the reason for replacement of the Prosecutor General for one of the countries (Lithuania).

It is difficult to classify some of the cases, e.g. former Prosecutor General of Bulgaria, Professor Boris Velchev, resigned 6 months before the end of his 7-year term of office but this case was classified as “expiry of the term of office”. In 2015 former Federal Prosecutor General of Germany Harald Range retired several months earlier due to a conflict with Federal Minister of Justice Heiko Maas. However, insofar as the decision for early retirement of Range was made by the Federal Minister of Justice, this case was classified as a “dismissal”.

In 4 of the 28 examined cases of replacement of the Prosecutor General in the EU Member States, the replacement involved doubts for illegal or unethical behaviour on behalf of the Prosecutor General. These four cases will be examined in some detail below:

Resignation of Petros Clerides, Attorney General of Cyprus (2013). Clerides resigned on 15.09.2013, several months before he became of the mandatory retirement age. He admitted in a TV interview prior to his resignation that he used his power to refuse to initiate criminal proceedings when his son was arrested by police for drunk-driving. His statement caused a scandal. He was also severely criticized by the media for the manner in which the prosecution service had been carrying out several investigations that attracted public interest.¹⁴

Dismissal of Harald Range, Public Prosecutor General of Germany (2015). In April 2015 a German blog (Netzpolitik.org) published two articles claiming that the Federal Office for the Protection of the Constitution planned to increase monitoring of people’s behaviour in the social media. The information was based on leaked secret government documents and some of the documents were also posted in the blog. Due to the dissemination of classified information the Federal Prosecution Service started investigating the journalists suspected of national treason. A scandal erupted in the press because such investigations against the media are extremely rare and are regarded as attempts to curb media freedom. In early August public protests followed to protect freedom of speech. Opposition politicians demanded from the Federal Prosecutor General to resign. On 4th August 2015, however, he blamed Federal Minister of Justice of interference with the independence of the investigation and claimed that the Minister, under pressure from public discontent, demanded that the investigation did

¹⁴ Attorney general steps down ahead of time, 06.09.2013, (last checked on 10.01.2019) www.cyprus-mail.com

not take into account a report of an expert which proved that the leaked documents were classified indeed. On the very same day the Federal Minister of Justice announced that the Federal Prosecutor General nor longer enjoyed his confidence and proposed the latter's resignation in the form of early retirement.¹⁵ Harald Range was 67 at the time and had to retire in one way or another in early 2016. An article published on 5.08.2015 by Deutsche Welle, titled *How the world misunderstood Germany's Netzpolitik affair*, claims that the sacking of Range was just "pawn sacrifice" which ended the scandal and concealed the responsibility of the Minister of Justice, the head of the German Domestic Security Agency Hans-Georg Maassen, who was the first to press national treason charges against the journalists, and the Minister of Interior who was in charge of security services.¹⁶ The federal prosecution service is by far not an independent institution; it is subordinate to the Minister of Justice and he knew about the investigation from the very beginning.

Resignation of Tiberiu Nitu, Prosecutor General of Romania (2016). Tiberiu Nitu was appointed as Prosecutor General of Romania on 16.05.2013 with a 3-year term of office. On 2.02.2016, that is about 3 months before the expiry of his term of office, Nitu resigned. His name was involved in an investigation carried out by the National Anticorruption Directorate (DNA) against Senator Gabriel Oprea, former Deputy Prime Minister and Minister of Interior. The investigation was carried out on suspicion that Oprea, in his capacity as Minister of Interior, abused his office by permitting Nitu to use motorized escort of road police officers when moving about the city. In their request to have the parliamentary immunity of Oprea lifted, the prosecutors from the DNA pointed out that under the law only the President or Prime Minister had the right to such police escort and Nitu had misused it at least 500 times in 2015 only.¹⁷ The investigation against Oprea started following the death of one of the motorized police officers in a road accident. Later Nitu was charged with being an accomplice of Oprea but was acquitted by the court in 2018.

Dismissal of Matti Nissinen, Prosecutor General of Finland (2018). In March 2017 pre-trial proceedings were launched against Matti Nissinen, Prosecutor General of Finland, to investigate abuse of office: while occupying the position of Prosecutor General, he commissioned to a company owned by his brother to organize training courses for

¹⁵ German Justice Minister Maas terminates Federal Prosecutor Range, DW, 04.08.2015, available online at (last checked on 10.01.2019) <https://www.dw.com/en/german-justice-minister-maas-terminates-federal-prosecutor-range/a-18625000>

¹⁶ How the world misunderstood Germany's Netzpolitik affair, 05.08.2015, available online at (last checked on 10.01.2019) <https://www.dw.com/en/how-the-world-misunderstood-germanys-netzpolitik-affair/a-18630649>

¹⁷ Romania's Prosecutor General Resigns, 02.02.2016, (last checked on 10.01.2019) www.romaniajournal.ro

prosecutors. The training contracts covered a period of several years and the total amount of public funds spent accounted to approximately 74,000 EUR. Nissinen signed several contracts for training with the company of his brother even though he had been warned that he could be suspected of nepotism. After investigation was launched, Nissinen took a temporary leave voluntarily. In September 2017 the investigation ended and it became clear that charges would be brought against him. Then the government temporarily suspended Nissinen from office until the ruling of the court. In Finland cases brought against high-profile public servants are tried by the Supreme Court which found Nissinen guilty in December 2017 and sentenced him to a fine in the amount of 1,720 EUR. Following the court ruling, on 25.01.2018, the government dismissed Nissinen as Prosecutor General of Finland. It is the first case in the history of the country to have a Prosecutor General sentenced.¹⁸ The court verdict itself does not include a prohibition for Nissinen to occupy governmental posts. He was dismissed based on the decision of the Government.

The Venice Commission recommends in cases of dismissal of the Prosecutor General to have a separate collective body examine the case and rule on whether grounds for dismissal were present. However, as it can be seen from the four most recent examples from EU Member States, the ground for removal from office of the Prosecutor General might be disagreement with the Minister of Justice about the way particular pre-trial proceedings are carried out as well as suspicion of committed offence. In practice, in none of the four examined cases has a separate collective body ruled on the presence of grounds for dismissal of the Prosecutor General. This is due to the fact that in case the Prosecutor General is suspected of committing an offence, a separate collective body could not rule on his/her liability, as only a court can rule on that. In such case it is only possible to follow the example of the Finnish government, i.e. suspend the Prosecutor General first to guarantee an objective investigation and then wait for the court ruling before passing a decision about the dismissal of the Prosecutor General.

7) Profile of Prosecutors General in the EU

As mentioned above, the functions of the Prosecutor General may be placed on a scale, where at one end of the spectrum is the Prosecutor General whose main function is to ensure the application of the criminal law and at the other end of the spectrum is the Prosecutor General who is mainly a politician and a manager and is responsible for the adoption of the criminal

¹⁸ Supreme Court fines Prosecutor General for official misconduct, 20.12.2017, (last checked on 10.01.2019) www.yle.fi

policy of the state. In the first case, candidates for the position of the Prosecutor General are mainly expected to show thorough knowledge of law. In the second case, motivation, energy, management experience and skills matter. The functions of the Prosecutor General in each of the EU Member States examined combine simultaneously both types of duties, in a different proportion, and therefore the profile of the candidates selected for the position combines specialization and in-depth knowledge of criminal law with a sense of responsibility and management skills.

a. Demographic characteristics

As of the end of 2018 the majority of Prosecutors General in the EU Member States are men, just in 8 of the Member States, Prosecutors General are women (Greece, Estonia, Ireland, Spain, Luxembourg, Portugal, Finland and Sweden). The access of women to the position of Prosecutor General is a relatively new development: Claire Loftus, Director of Public Prosecutions of Ireland, Martine Solovieff, Public Prosecutor of Luxembourg and Petra Lundh, Prosecutor General of Sweden, are the first women in their states to occupy the office of the Prosecutor General. María José Segarra (Prosecutor General of Spain), Xenia Dimitriou (Prosecutor General of Greece) and Lucilia Gago (Prosecutor General of Portugal) are the second women in their states to hold the position.

A similar study carried out 5 years ago among Presidents of Supreme Courts of the EU Member States showed that as of 2014 only 6 of them were women.¹⁹ At the same time, in many of the Member States the number of women employed in the legal profession in general and as prosecutors at lower levels of the prosecution service exceeds the number of men. However, the high levels of the judiciary are still accessible to women only in rare cases.

Some attempts have been made outside the EU to lay down in the law that the recruitment procedure of prosecutors needs to guarantee that the composition of the prosecution service should reflect correctly the gender and race balance in the public in general but we have not discovered similar attempts in Europe.²⁰

¹⁹ Kakvo (ne) znam za predsedatelice na varhovni sadilishta v darjavite tchlenki na ES, S: Institut Otvoreno obshtestvo – Sofia, 2014, p.4. Available online in Bulgarian at www.osis.bg

²⁰ Pursuant to Article 8 of the Public Prosecution Service Act of South Africa from 1998, appointments of prosecutors should take into account the need for the professional makeup of the public prosecution service to reflect in general the gender and race composition of the population of South Africa.

The average age of candidates at the time of coming into office as Prosecutor General in the EU Member States is 54. It is slightly lower than the established average age for occupying the position of President of the Supreme Court for the first time which is between 55 and 60.

b. Education and academic career

All Prosecutors General of the EU Member States have graduated with a degree in law and in the majority of cases they have acquired a “master” degree. Legal education systems in some of the Member States allow for specialized master degrees; thus, for instance, Johannes Silvis (Prosecutor General at the Supreme Court of the Netherlands) has graduated from a specialized master programme in criminal and constitutional law. In some cases the degree in law is combined with other sciences: thus, for instance, Pavel Zeman (Prosecutor General of Czechia) has a university degree in law and political science; Claire Loftus (Director of Public Prosecutions of Ireland), in addition to her degree in law from University College Dublin, has also degrees in history and politics, public sector management and European law.

Insofar as the main function of the Prosecutor General is to guarantee uniform application of the law, in-depth knowledge of law is a key criterion for access to the position. There is data about five of the Prosecutors General of the EU Member States that they have graduated with a PhD degree, 10 of the Prosecutors General have publications on criminal law topics and 8 are known to teach law in university or a centre for training of magistrates.

c. Professional experience

The majority of Prosecutors General (19 out of 28) can be defined as career prosecutors, i.e. they developed their career mainly at the prosecution service and have gradually moved up the hierarchy. 22 out of 28 Prosecutors General have experience as prosecutors and 6 of them do not. For those who have experience as prosecutors, the average length of service as of the time of coming into office as Prosecutor General is a little more than 21 years. Most Prosecutors General have experience as prosecutors at the highest level of public prosecution (usually the prosecution service with the Supreme Court): 18 out of 22 Prosecutors General of the EU Member States, who have been prosecutors, have worked there. Their average length of service at the highest level of the prosecution service is a little more than 9 years.

With regard to the position last occupied: 10 out of 28 Prosecutors General of the EU Member States come from the position of Deputy Prosecutor General or the second top position in the hierarchy of the prosecution service which might not be called “Deputy

Prosecutor General” in some systems; in some of the countries there is only one prosecutor in the prosecution structure with the Supreme Court, while the other employees of these structure hold the positions of “Avocat Général“; 10 of the Prosecutors General of the EU Member States come from another position at the prosecution service (they used to be a head of a specialized unit at the prosecution service, Prosecutor General of a federal province, Prosecutor General with a Court of Appeal), and 8 come from a different profession. Out of the 8 Prosecutors General who come from jobs outside the prosecution service, five held various positions as judges: the Prosecutor General with the Supreme Court of the Netherlands served as a judge in the ECtHR; the Prosecutor General of Cyprus used to be a Supreme Court judge; the Prosecutor General of Lithuania was a judge; Sotir Tsatsarov (Prosecutor General of Bulgaria) and Petra Lundh (Prosecutor General of Sweden) used to be Presidents of District Courts. Prior to becoming Prosecutor General of Poland, Zbigniew Ziobro used to be Minister of Justice (the two positions were merged with a legislative amendment in 2016); Pavel Zeman, Prosecutor General of Czechia, prior to holding the position of Prosecutor General used to be a national representative in EUROJUST, and Max Hill (Director of Public Prosecutions in England and Wales) used to be a barrister, Head of Red Lions Chambers and of an association of lawyers specialized in criminal law.

Two of the Prosecutors General of the EU Member States, Jan Reckendorff (Prosecutor General of Denmark) and Evaldas Pasilis (Prosecutor General of Lithuania) have also been professionally trained as police officers and have served as such. Pasilis worked as a police officer and an investigating officer for the tax service for 5 years. The Minister of Justice of Denmark, Søren Pape Poulsen, says about Reckendorff: “Jan Reckendorff started his career as a police officer and then worked as a judge and a prosecutor. Owing to his professional experience, he understands very well what the main task of all links of the chain in a criminal case is, i.e. security and protection of Denmark. With his long-standing experience as top-level head in this field, I am sure that Jan Reckendorff is the right person to head the prosecution service”.

Most Prosecutors General of the EU Member States also have legal experience outside the prosecution service: 10 of them have served as judges, 7 held positions at the Ministry of Justice, 5 used to be lawyers, 4 held positions as legal professionals in other organizations.

In some of the countries, the positions of experts at the Ministry of Justice are often filled in by magistrates that may be temporarily posted or permanently hired. Timothy Waters has an

interesting take on this. When describing the political control exercised by the Ministry of Justice over the prosecution service, Waters says that the control might be softened by recruiting prosecutors for positions at the Ministry of Justice; thus the instructions of the Ministry to prosecutors will be proposed by their peers. Waters refers to Italy as an example where the top circles of public servants at the Ministry of Justice are made up mainly of magistrates.²¹

It can be seen that career prosecutors are favoured as Prosecutors General, as they know the system from within and they can be assumed to enjoy the confidence of their colleagues. This choice is directly linked to the organization of the prosecution service as a hierarchical structure: in cases where instructions have been given by a competent Prosecutor General, they stand higher chance to be followed by prosecutors at lower levels. The recruitment of the Prosecutor General in at least two of the Member States is restricted by law to persons who already hold a certain position: pursuant to Article 29 of the new Hungarian Constitution (2011), only a prosecutor may be recruited as Prosecutor General; pursuant to Article 90, para 5 of the Constitution of Greece, the Prosecutor General is selected among the Supreme Court judges and prosecutors.

In 2016 in Bulgaria a revision of the Judicial System Act (JSA) was carried out and new requirements were added to Article 170, para 5, for the occupation of the positions of President of the Supreme Court of Cassation, President of the Supreme Administrative Court and Prosecutor General. These requirements included “ability to uphold and set a high ethical standard” (Article 170, para 5, item 1 of the JSA), “high professional competence: have in-depth knowledge of law, large practical experience in the relevant field of law, managerial and administrative skills, clear analytical ability” (Article 170, para 5, item 2 of the JSA), “clear independence, a will to uphold the law, determination in performing his/her professional duties and contribution to upholding the rule of law” (Article 170, para 5, item 3 of the JSA) and “to possess advanced skills for teamwork, motivation of his counterparts, holding people responsible and taking on responsibility” (Article 170, para 5, item 4 of the JSA).

²¹ Waters, T. Overview: Design and Reform of Public Prosecution Services, In – Promoting Prosecutorial Accountability, Independence and Effectiveness..., p.48

However, the requirements to the candidates for the position of the Prosecutor General are not regulated in great detail by the law in most of the EU Member States. If any requirements are laid down, they are similar to the requirements for high-level positions in the magistracy, as was the case in Bulgaria until 2016.

We can see detailed criteria laid down for the recruitment of the Prosecutor General only in cases where the candidates are selected in an open competition (Ireland, England and Wales). In such cases the criteria depend on the discretion of the Government and they are not laid down in great detail in advance in the law. The appointment of the current Director of Public Prosecutions of England and Wales, Max Hill, is a particularly interesting case in point. He is a prominent barrister specialized in criminal cases who enjoys high prestige in the professional circles; he has been Head of Red Lion Chambers. He has examined and criticized in public the counter terrorism measures passed by the UK. By appointing a critic of the measures applied as head of the prosecution service, the Government has indeed managed to improve the criminal policy pursued so far. This is in fact the main advantage of an approach where the criteria for holding the position are not exhaustively listed (apart from the conditions for access to a high-level position in the judiciary): there is greater flexibility of judgment and the recruitment of the candidate is linked to the current priorities of the criminal policy.

Even though in most cases there are no detailed selection criteria laid down (apart from the requirements for holding high-level positions in the judiciary), in the majority of cases governments nominate a career prosecutor for the position of the Prosecutor General. The freedom of judgment of the Minister of Justice/ the Government is not limited by law but by political considerations: the Government is responsible for the criminal policy and it is interested in the first place to select a competent and responsible person to head the prosecution service.

Such dependence the current priorities of the criminal policy and the selection of the most appropriate person as Prosecutor General hardly exists in the Bulgarian practice. According to the dominant understanding in literature, the Bulgarian prosecution service does not implement a policy; the freedom of judgment of individual prosecutors is limited by the principle of legality: prosecutors are obliged to initiate criminal proceedings every time there are legal grounds and sufficient data about the crime committed.

d. Involvement of the Prosecutors General with social issues

There is no data about the social activity of 13 of the 28 Prosecutors General examined here. In cases when such information has been available, it is about membership of national or international organizations active in the field of legal education/science or protection of the rights of vulnerable people. Franz Plöchl (Federal Prosecutor General of Austria) is a member of the Austrian Institute for the Sociology of Law and Criminology; Peter Frank (Federal Prosecutor General of Germany) is a chairman of a foundation supporting the education of students of law and young scientists; Max Hill (Director of Public Prosecutions in England and Wales) is also the chairperson of a charity supporting young people to study law; Petra Lundh (Prosecutor General of Sweden) is a member of the *Hilda* network, an organization supporting women in the legal profession and aiming at improving women's access to management positions in law firms and the judiciary; Zbigniew Ziobro (Minister of Justice and Public Prosecutor General of Poland), prior to entering politics, set up an association in 1998 for free legal aid to people in need; Lucilia Gago (Prosecutor General of Portugal) is a specialist in protection of children's rights and is a member of the National Commission for the Protection of Children and Young People.

At least five of the Prosecutors General of the EU Member States are or have been members of a professional organization of magistrates on national level. Drago Sketa (State Prosecutor General of Slovenia) is a member of a disciplinary court with the Association of Prosecutors; María José Segarra (Attorney General of Spain) is a member of the Progressive Union of Public Prosecutors and has been nominated by them for a member of the Prosecutorial Council of Spain; Riccardo Fuzio (Prosecutor General of Italy) is a member of the *Union for the Constitution*, a professional organization of magistrates; Costas Clerides (Prosecutor General of Cyprus), while serving as a judge, used to be the Secretary of the Cyprus Judges Association and Sotir Tsatsarov (Prosecutor General of Bulgaria) was also a member of the Bulgarian Judges Association when he served as a judge.

Apart from involvement with professional and legal organizations, there is hardly any data about involvement of Prosecutors General in other forms of social activity. Where data is available, sports and hunting seem to be the activities some Prosecutors General most often prefer. Peter Grech (Prosecutor General of Malta), while working as a lawyer in the 1980s, was President of a football club, Disciplinary Commissioner of the Football Union and the Aquatic Sports Association of Malta. Martine Solovieff (Prosecutor General of Luxembourg)

is a member of a Disciplinary Council investigating drug abuse in sports. She is also a member of Animal Protection Society, in interesting contrast to Eriks Kalnmeiers (Prosecutor General of Latvia), who is a hunter and a leader of a hunting posse, and Peter Polt (Prosecutor General of Hungary), who is also a hunter.

At present the Prosecutor General in two of the Member States is a politician or closely affiliated to the ruling political party. Zbigniew Ziobro (Prosecutor General and Minister of Justice of Poland) is a career politician and an activist of the Law and Justice party. He was a member of the Sejm, Member in the European Parliament and he has been Minister of Justice since 2015. In early 2016, by means of legislative amendments, the position of the Minister of Justice was merged with the position of the Prosecutor General. The Prosecutor General of Hungary (Peter Polt) has been closely affiliated with the ruling party *Fidesz* since mid 1980s and has been a party member and a candidate for MP. He also held positions outside the judiciary which were political appointments: he used to be advisor of the Minister of Justice and the Minister of Interior and Deputy Ombudsman.

The Prosecutor General in Poland is appointed by the President on a proposal from the Prime Minister and afterwards the Parliament votes for the composition of the Cabinet. The Prosecutor General in Hungary is elected by the Parliament with qualified majority based on the proposal of the President. In this sense, the voting for the Prosecutor General by the Parliament does not prevent at all politicians or politically affiliated persons from being elected to the position; on the contrary, insofar as there are two cases at present, both of them have been elected by the Parliament, with qualified majority at that in the case of Hungary.

Contrary to the popular opinion in Bulgaria that the appointment/election procedure of the Prosecutor General that is managed by the executive might result in politicization of the position, in countries where the government is responsible for the criminal policy, it is a common practice for the government to propose a career prosecutor for the position of the Prosecutor General.

8) Procedures to appoint/ elect the Prosecutor General

There is no European standard laid down by law about the public body that should nominate and appoint the Prosecutor General. The report of the Venice Commission on European Standards on the Independence of the Judiciary (Part II – the Prosecution Service) examines

two possible models of appointment/election of the Prosecutor General: in the countries where the prosecution service is subordinate to the Government, the Government appoints the Prosecutor General, and in the countries where the prosecution service is an independent authority, the Prosecutor General is appointed by the President or the supreme legislative body. The Venice Commission regards both models as equally acceptable from the point of view of guaranteeing the independence of the service. The Venice Commission sets out two conditions: the right of nominating candidates should be clearly defined and advice should be taken from the representatives of the legal community on the professional qualification of candidates.

a. Competent authorities for the nomination of candidates for the Prosecutor General

In 2008 Timothy Waters notes that “(...) most chief prosecutors are political appointees of some sort, in that they are appointed by the political branches in a more or less discretionary process.”²²

Our study has confirmed to a great extent that this statement is true for the majority of the EU Member States. In 19 out of 28 states, the Prosecutor General is appointed/elected on a proposal from an executive body: on a proposal from the Minister of Justice in 11 states, the Government in 6 states and the Prime Minister in person in 2 of the states. In two of the states the Prosecutor General is nominated by the President and in one case by the supreme legislative body, i.e. in 22 out of 28 EU Member States, a political body proposes the nomination of the Prosecutor General and an executive body usually has the initiative to organize the procedure.

Even where political bodies do not appoint the Prosecutor General, they issue an opinion on the candidacy. In two of the cases, the opinion of the Government is requested, in one case of the Minister of Justice and in three of the cases of the supreme legislative body. The head of state/President never acts as someone who has only been advised on the issue.

Two of the jurisdictions of the EU Member States (Ireland, England and Wales) are a more special case in point because the candidacies for the Director of Public Prosecutions are submitted not through nomination but in an open competition. In England and Wales the

²² Waters, T. Overview: Design and Reform of Public Prosecution Services, In – Promoting Prosecutorial Accountability, Independence and Effectiveness, p.47

submitted candidacies are examined by a committee chaired by the Civil Service Commissioner. The committee makes a recommendation and ultimately the Attorney General selects the Director of Public Prosecutions, i.e. in these two cases as well the procedure is organized with the leading role of the members of the Government.

States where the Prosecutor General is nominated by a non-political body seem to be rather an exception. In three of the states the Prosecutor General is nominated by a body equivalent to the Supreme Judicial Council (Belgium, Bulgaria, Slovenia), in one of the cases by the President of the Supreme Court (Latvia).

b. Competent authorities for the appointment/election of the Prosecutor General

In half of the cases (15 out of 28), the Prosecutor General is appointed by the head of state (the King/the President). In 6 of the cases a supreme legislative body appoints the Prosecutor General. In 4 cases the Government appoints the Prosecutor General and in one of the cases, the Minister of Justice has single discretion to appoint. Only in one EU Member State a collective body of magistrates (equivalent to the Bulgarian SJC) appoints the Prosecutor General (Italy). However, prior to appointing the Prosecutor General, the Italian SJC requests the opinion of the Minister of Justice about the candidacies proposed.

Our empirical study shows that the common European model for appointment of the Prosecutor General is carried out with the leading role of the Government for the nomination and of the head of state for the appointment.

Even though the Venice Commission regards the participation of a supreme legislative body in the nomination and appointment/election of the Prosecutor General as an equally valid alternative, just like nomination and appointment carried out with a leading role of the Government, the empirical study shows that in the states where the legislative body is involved in the procedure, scandals and delays in appointment are much more common than in the states where the appointment takes place as a process with the participation of the Government and the head of state.

In Hungary the Prosecutor General has a term of office of 9 years and is elected with qualified majority of 2/3 in the Parliament. The current Prosecutor General, Peter Polt, has occupied the position once (2000 – 2006) and has been re-elected again in 2010 for a 9 years term. He is a friend of the President of Hungary from his university years, closely affiliated to

the *Fidesz* party as early as 1980s, a former party member, a former candidate for MP, elected to other positions as well based on political decisions (Deputy Ombudsman). An investigative journalism website calls him “the Orban’s regime most important pillar”.²³

In Slovakia in June 2011 the Parliament elected Jozef Čentěš to the post Prosecutor General. The President Ivan Gašparovič refused to appoint him for almost 2 years. Jozef Čentěš filed a claim to the Constitutional Court due to the President’s refusal to appoint him. Meanwhile there are parliamentary elections and the new parliament, dominated by the Smer party, elects Jaromir Čiznár as Prosecutor General. The President appointed him to the post on July 17, 2013 almost immediately after the decision of the Parliament and did not wait for the decision of the Constitutional court on the matter.²⁴

In Lithuania the current Prosecutor General is in fact the third proposal of the President for Prosecutor General: the Parliament voted against the first two nominations of the President. In the cases of Slovakia and Lithuania, both states remained for a long period without a head of the prosecution service.

The Venice Commission takes into account the fact that the involvement of the Parliament in the nomination and appointment/election of the Prosecutor General entails a risk of “politicization” of the process (§36), but recommends, as a way to mitigate the risk, to take into account the opinion of a parliamentary committee and the advice of experts, first, and second, use qualified majority of 2/3 in the voting by the Parliament. However, as it can be seen from the examples above, it seems questionable whether any further delay of the process and discussion of the nomination by a parliamentary committee might help make a faster and better choice.

It is worth considering the legal position of the head of state in a situation where the head of state appoints/dismisses the Prosecutor General on a proposal from another body. The head of state has in principle right to independent decision; however, a different view has gained ground in Romania since last year. In February 2018 the Minister of Justice requested from the President of the state to remove from office Laura Kovesi, then Prosecutor General of the National Anti-Corruption Directorate. The Romanian professional body of magistrates issued

²³ Radi, A. The Orban regime’s most important pillar – the career arc of Peter Polt, published in Hungarian in the investigative journalism website *Atlatszo.hu* on June 27, 2016, English translation published in *The Budapest Beacon* on Sept. 9, 2016.

²⁴ UPDATED: President Appoints Ciznar as Chief Prosecutor, publication in the internet site *Spectator.sme.sk* of July 17, 2013.

a negative opinion on the proposal of the Minister and the President refused to issue a decree. The argument was referred to the Romanian Constitutional Court which had the jurisdiction since 2003 to rule on conflicts between institutions and prescribe how to solve them. On May 30, 2018 the Romanian Constitutional Court ordered the President to dismiss Laura Kovesi and thus considerably restricting his marge of appreciation and boosting the power of the Minister of Justice to decide on his own high-level career issues in the national judicial system.²⁵

c. Participation of the legal profession in the appointment/election of the Prosecutor General

As already mentioned, in only one EU Member State (Italy), the Prosecutor General is elected by a collective body of magistrates whose members also include prosecutors. It is more common for collective bodies of magistrates to take part in an advisory capacity in the procedure (in 4 Member States – Spain, Latvia, Romania, France) or with the right to nominate a candidate for Prosecutor General (in 3 Member States – Belgium, Bulgaria, Slovenia).

Detailed information about the consultations carried out during the appointment/election of the Prosecutor General was obtained about 11 of the EU Member States. These consultations are not always formal (laid down in a legislative act) and public.

In cases where candidates are selected in an open competition by an *ad hoc* committee which judges their merits, the members of the committee usually include representatives of the legal profession.

According to the Venice Commission, Prosecutorial Councils are the most contemporary form of taking into account the opinion of the legal profession. Slovenia seems to be closest to the recommendation of the Venice Commission. Slovenia launches an open competition for the selection of the Prosecutor General. The Ministry of Justice shortlists eligible candidates and sends them to the Council of Prosecutors for a hearing. The Council of Prosecutors selects one or several of the candidates (indicates the preferred candidate) to be afterwards approved by the Parliament. The Government also comes forward with an opinion. Slovakia also has Prosecutorial Council which issues its opinion on the nomination

²⁵ Neagu, B., Romanian Constitutional Court orders President to sack chief anti-graft prosecutor, EURACTIV.ro 31.05.2018.

of a candidate for Prosecutor General (the candidate is voted for by the legislative body and is appointed by the President).

Where the opinion of the legal profession on a candidacy has been requested (from Prosecutorial Council or a body equivalent to the Bulgarian SJC), the body appointing the candidate does not always have to take into account the opinion. In France the President of the Republic has to take into account the proposal of the body equivalent to the SJC for the appointment of judges but not prosecutors. Similarly in Slovenia the Parliament does not have to appoint a candidate for Prosecutor General proposed by the Prosecutorial Council. The Bulgarian Constitution provides for the right of the President to refuse to appoint a candidate for Prosecutor General, proposed by the SJC, but only once. At the end of 2018, when Laura Kovesi was to be dismissed as Prosecutor General of the National Anti-Corruption Directorate in Romania, the Romanian body equivalent to the SJC issued a negative opinion on the proposal to dismiss the Prosecutor General but she was still removed from office.

In some of the states, the opinion of the professional community about the candidacies for Prosecutor General is understood not only as the opinion of a representative body of other judges and prosecutors, but the broader legal profession. The committee for the selection of candidates for the position of Director of Public Prosecutions in England and Wales is headed by the Civil Service Commissioner and includes representatives of the bar, at least one of the ordinary Directors from the prosecution service and at least one President of a court. Ireland has a similar procedure for the selection of candidates for the position of Director of Public Prosecutions. An *ad hoc* committee is set up including a competent officer of the Government responsible for the Civil Service, the President of the Supreme Court and chairpersons of bar councils. They examine the candidacies and recommend to the Government one or several candidates that are best placed for the position.

Latvia has a specific way of involvement of the legal profession in the appointment/election of the Prosecutor General. The Prosecutor General in Latvia is elected by the Parliament on a proposal of the President of the Supreme Court. The latter may receive nominations from the Chief Prosecution Service, the plenary session of the Supreme Court, professional associations of judges and prosecutors and individuals who might also compete as candidates. The President of the Supreme Court selects the candidacy to be submitted to the Parliament. Upcoming legislative amendments provide for considering the opinion of the body equivalent

to the Bulgarian Supreme Judicial Council, after the nomination has been submitted and before it is voted by the Parliament.

9) Specific features of the Bulgarian model of the prosecution service and the Prosecutor General

The Bulgarian Constitution of 1991 regulates issues related to the status and organization of the prosecution service together with the ones of the courts in its section on the Judiciary; however, the prosecution service as an organization has kept two of its main features that she used to have in the totalitarian regime as well: individual prosecutors do not belong to the structure of the courts (as was the case until 1947) but they stay in an independent organization that is parallel to the one of the courts. In addition, while the prosecution service in most EU Member States is a body specialized mainly in the field of criminal law, the prosecution service in Bulgaria has kept its function related to general oversight of legality (Article 127, items 5 and 6 of the Constitution).

The appointments, career development and discipline of judges, prosecutors and investigating officers are regulated by the Constitution and the law in an identical manner, i.e. prosecutors and investigating officers are as irreplaceable as judges and enjoy the same safeguards of independence as the latter. Personnel issues of the three types of magistrate jobs are managed by a separate collective authority – the Supreme Judicial Council (SJC) which up until 2015 used to act as a single college but later on two separate colleges were set up: Judicial College which appoints judges and Prosecutorial College which is responsible for the appointments, discipline and career development of prosecutors and investigating officers. In the other EU Member States, the issues related to the appointments and career development of prosecutors are usually regulated in a different manner from the ones of judges and in the majority of Member States prosecutors in particular are appointed by a single-member authority (the Minister of Justice, the head of state).

Bulgaria is a special case because on the one hand a collective body appoints prosecutors (the Prosecutorial College with the SJC), a collective body (the Plenum of the SJC) selects the candidate for Prosecutor General and afterwards the Prosecutor General reports the work of the service to a collective body (the National Assembly) and can be dismissed by the President only at the initiative of a collective body (the SJC). However, collective bodies per se cannot be held accountable for their decisions and by definition act in a slower and more difficult manner than single authorities. In contrast, entrusting the procedure for the

appointment of prosecutors and the appointment/ dismissal of the Prosecutor General to single authorities, as is the most common model in the other EU Member States, guarantees the efficiency and accountability of the prosecution service itself.

In 1991 the dominant idea was that organisational independence of the Bulgarian prosecution service will best guarantee the autonomy of individual prosecutors. However, this is not the case in practice. As early as 2005 Yonko Grozev noted that “(...) The Constitution and the legislation regulated the Bulgarian criminal justice system and the structure of the institutions in the system in such a way so that they can be fully independent of the political authorities. Under these circumstances (...), greater impartiality and depoliticization were expected. The paradox is that in practice politicization in the system is much greater. Greater bureaucratic autonomy of the profession and bureaucratic anonymity were expected. Instead we witness exceptional publicity and constant arguments, conflicts and exchange of accusations between the institutions in public. A situation has arisen that is by no means particularly favourable for efficient work.”²⁶

Rumen Nenkov also commented along the same lines: “The problem of the Bulgarian judicial reform is not the criminal process. The serious problem of the Bulgarian reform is structural and it is related to the Constitution and the system of separation of powers the way it has been adopted by the Constitution (...) each political power comes forward pledging to curb corruption and reduce the crime rate within normal limits. However, when the party in question comes to power, it turns out that it does not have the mechanism, because the mechanism of public prosecution, which is otherwise a common function of the executive, does not belong to it.”²⁷

The Bulgarian Constitution does not say much about the role of the Prosecutor General: just like the President of the Supreme Court of Cassation (SCC) and the President of the Supreme Administrative Court (SAC), the Prosecutor General is appointed by the President of the state on a proposal from the Supreme Judicial Council (SJC); the Prosecutor General has a 7-year term of office without re-election and pursuant to Article 126, para 2, his/her main function is to supervise for legality and provide methodological guidance for the work of all prosecutors.

²⁶ Sadebnata reforma: prokuraturata i razsledvashtite organi v konteksta na tchlenstvoto v ES, ... p.90.

²⁷ Sadebnata reforma: prokuraturata i razsledvashtite organi v konteksta na tchlenstvoto v ES, ... p.99.

The Prosecutor General in Bulgaria reports to the Parliament about the overall performance of the institutions responsible for investigation of crimes and public prosecutions. In 2006 amendments to the Constitution provided that the Parliament may initiate a procedure to dismiss the Prosecutor General or the Presidents of the SCC and SAC. Later the same year these amendments were declared unconstitutional.

The law has provided for guarantees of independence of the Prosecutor General from political authorities that are similar to the ones of the Presidents of the two Supreme Courts. However, it is not only uncommon in the other EU Member States for the Prosecutor General to have such great safeguards of independence, but often the common model is of subordination/dependence of the Prosecutor General on the executive power and the procedure for appointment/dismissal of the Prosecutor General is different from the procedure for the President of the Supreme Court. A typical case in point can be seen in Articles 123 and 124 of the Spanish Constitution which regulates the two issues separately: the President of the Supreme Court is appointed by the King on a proposal of the General Council of the Judiciary; the Prosecutor General is appointed by the King on a proposal of the Government and the General Council of the Judiciary is involved only in an advisory capacity.

The Bulgarian Prosecutor General is *ex officio* member of the SJC and as of 2015 is *ex officio* Chairman of the Prosecutorial College with the SJC. Five of the members of the Prosecutorial College of the SJC are subordinated to the Prosecutor General which gives him disproportionately great power with regard to decisions made about the appointment and career development of prosecutors.²⁸ On the contrary, the most common practice in the EU Member States is that the Minister of Justice is responsible for the decisions about issues related to the career development of prosecutors and the collective body of prosecutors, insofar as there is one, is only involved in an advisory capacity. Where collective bodies take part in the management of the prosecution service (e.g. Belgium and the Netherlands, where the prosecution service is headed by a collective body of prosecutors as such), the prosecutors who are members of the respective collective body are sufficiently independent from the Prosecutor General.

²⁸ See in this respect Opinion No 855/2016 of the European Commission for Democracy through Law (Venice Commission) on Bulgaria's Judicial System Act – CDL-AD (2017) 018, §26 - §37.

Apart from the prosecution service, the Bulgarian Prosecutor General also heads the National Investigative Service and can transfer to it investigations at his discretion. All specialized units of the prosecution service are subordinate to the Prosecutor General and he may set up at his discretion special teams for the investigation of certain crimes. The Prosecutor General may amend or repeal the acts of all prosecutors in the country and may decide to relocate prosecutors temporarily within the structure. The latter raises the question as to whether there might be an objective and impartial investigation at all of cases where the Prosecutor General or other high-level prosecutors are involved in a crime. In 2009 in its ruling on *Kolevi v. Bulgaria*, the European Court of Human Rights gave a negative answer to this question and established a number of violations of the European Convention on Human Rights in this respect.²⁹

An important trait of the Bulgarian model of organization of the public prosecution is that the prosecution service is not regarded as a body for the implementation of the criminal policy and the national laws do not provide for any procedure and responsibility for the defining and implementation of such policy. A common understanding of the doctrine is that the prosecution service acts within the limits of legality, i.e. the prosecutors are bound to initiate criminal proceedings whenever there are legal grounds and sufficient data about the crime and have no margin of discretion. The Minister of Justice has few powers in this area which are rarely or almost never exercised. The Minister may nominate candidates for Prosecutor General but it has never happened. The Minister may submit proposals to the SJC about initiation of disciplinary proceedings against magistrates but this is rarely done in practice.

10) Conclusions

In the majority of EU Member States the functions related to giving instructions to prosecutors about the application of the law, the functions related to giving general guidance about the priorities of the criminal policy and the recruitment and career development of prosecutors are divided and the Minister of Justice is most often responsible for the policy and the career of prosecutors while the Prosecutor General is responsible for the enforcement of the criminal law. The individual autonomy of each prosecutor is guaranteed not so much by the institutional independence of the prosecution service but by the fact that neither the

²⁹ Judgement of ECtHR from Nov. 5, 2009 on the case *Kolevi v. Bulgaria* (application No 1108/02), see §205 – 215.

Prosecutor General nor the Minister of Justice may exercise full control over the career development of prosecutors and the decisions made about criminal proceedings.

And since the Prosecutor General in the EU Member States is mainly responsible for the implementation of the law, the most common practice is to choose a career prosecutor for the position of the Prosecutor General: 22 of the 28 current Prosecutors General worked as prosecutors, having an average length of service as prosecutors of 21 years, about 9 of which were spent at the highest level of the hierarchy in the prosecution service.

The Prosecutor General in most EU Member States is also a key figure in the formulation of the national criminal policy and is responsible for its implementation together with the Minister of Justice. That is why the preferred candidate for Prosecutor General usually enjoys the confidence of his/her colleagues in the prosecution service and is expected to also generate public confidence in the objectivity and impartiality of the organization. However, Prosecutors General in the majority of cases are not directly affiliated with a particular political power and are not politicians. Hungary and Poland radically differ from this model insofar as the prosecution service in Poland is headed by a politician in office and the one in Hungary by a person who used to be involved in politics.

The most common model of an appointment procedure for the position of the Prosecutor General in the EU Member States is to have a proposal submitted by an executive body (the Government/the Minister of Justice) and the appointment carried out by the head of state (the King/ the President), i.e. the procedure is driven by sole-member bodies which guarantees clear responsibility. It can be seen from the practice in the other EU Member States that the involvement of the supreme legislative authority with a decisive role in the procedure for the appointment and dismissal of the Prosecutor General is not a common model. It is practiced only in several of the EU Member States that are former Socialist republics and it entails more frequent scandals and delays of the procedure compared to the countries where the appointment/dismissal procedure of the Prosecutor General involves the Government and the head of state.

In this context the duration of the term of office of the Prosecutor General in Bulgaria is not a problem per se: the Venice Commission expressly recommends that Prosecutors General are either appointed without a fixed term of office or for a term of office of maximum possible length. The term of office of the Prosecutor General in Bulgaria is 7 years and it is comparable to the duration of the term of office in the other EU Member States. However, in

those Member States where there is no fixed term of office of the Prosecutor General, it is a common practice to appoint as Prosecutors General people who are at the end of their career and who retire after having occupied the highest position in the hierarchy. They are independent of the Government to a greater extent in exercising their powers as Prosecutors General because they do not have to look forward to a subsequent appointment.

The EU Member States propose a number of different models to guarantee the independence of prosecutors by involving collective bodies (Prosecutorial Councils) in the management of the prosecution service. Such bodies usually issue an opinion on candidacies for positions in the prosecution service and for candidacies for the position of the Prosecutor General. In at least two EU Member States the prosecution service is headed by a collective prosecutorial body (Belgium, the Netherlands), which takes part in the setting of the priorities of the national criminal policy and gives instructions to prosecutors for its implementation. The success of these models is based on the considerable autonomy from the Prosecutor General that prosecutors in collective bodies enjoy. In this respect, the reconsidering of the model of the Prosecutorial Council with the Bulgarian SJC to guarantee greater independence of its members from the Prosecutor General is the next step to consider in the reform of the public prosecution.

The appointment of a new Prosecutor General in Bulgaria which is expected to happen at the end of 2019 or beginning of 2020 will be the first procedure where the amendments to Article 170, para 5 of the JSA will apply; in 2016 these amendments introduced detailed requirements to candidates for the position, in particular the requirement for high professional competence (knowledge and practical experience in the relevant field of law). These requirements will most likely limit the choice to professional prosecutors who have already been working for the system and thus Bulgaria will formally move closer to the most common model in the EU to have career prosecutors recruited as Prosecutor General.

However, the criteria for selection of the Prosecutor General are rarely laid down in detail in the legislation of the states in question and they are not the main guarantee for the recruitment of a competent prosecutor to head the service. The main guarantee is in the clear political responsibility for the implementation of the criminal policy: if it is clear that the government is responsible for the criminal policy, it is in the interest of the government to choose a competent and experienced prosecutor to head the prosecution service.

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Appendix 1/

List of the EU Member states and the Prosecutors General included in the study

State/ Jurisdiction	Position	Incumbent	In office since
Austria	Prosecutor General	Franz PLÖCHL	Dec. 1, 2016
Belgium	Prosecutor General to the Supreme Court of Cassation	Patrick DUINSLAEGER ³⁰	April 25, 2014
Bulgaria	Prosecutor General	Sotir TSATSAROV	Jan. 10, 2013
Croatia	State Attorney General	Dražen JELENIC	April 20, 2018
Cyprus	Attorney General	Costas CLERIDES	Sept. 16, 2013
Czechia	Prosecutor General	Pavel ZEMAN	Nov.1, 2011
Denmark	Director of Public Prosecutions	Jan RECKENDORFF	June 1, 2018
Estonia	Prosecutor General	Lavly PERLING	Oct. 31, 2014
Finland	Prosecutor General	Raija TOIVIAINEN	Aug. 1, 2018
France	Prosecutor General to the Supreme Court of Cassation	François MOLINS	Oct. 26, 2018
Germany	Public Prosecutor General of the Federal Court of Justice	Peter FRANK	Oct. 5, 2015
Greece	Prosecutor General to the Supreme Court	Xeni DIMITRIOU	July 1, 2016
Hungary	Prosecutor General	Péter POLT	Dec.13, 2010
Ireland	Director of Public Prosecutions	Claire LOFTUS	Nov., 2011
Italy	Prosecutor General to the Supreme Court of	Riccardo FUZIO	Jan. 4, 2018

³⁰ Patrick Duinlaeger died on June 27, 2016. Dirk Thijs was appointed to his post until the completion of the mandate.

	Cassation		
Latvia	Prosecutor General	Eriks KALNMEIERS	July 12, 2010
Lithuania	Prosecutor General	Evaldas PAŠILIS	Dec. 29, 2015
Luxembourg	Prosecutor General	Martine SOLOVIEFF	Aug. 1, 2015
Malta	Attorney General	Peter GRECH	Sept., 2010
Netherlands	Prosecutor General to the Supreme Court	Johannes SILVIS	Sept. 1, 2016
Poland	Minister of Justice and Public Prosecutor General	Zbigniew ZIOBRO	Feb.16, 2016
Portugal	Prosecutor General	Lucilia GAGO	Dec.12, 2018
Romania	Prosecutor General	Augustin LAZĂR	April, 2016
Slovakia	Prosecutor General	Jaromír ČIŽNÁR	July 17, 2013
Slovenia	State Prosecutor General	Drago ŠKETA	May 1, 2017
Spain	State Prosecutor General	Maria Jose SEGARRA	June 29, 2018
Sweden	Prosecutor General	Petra LUNDH	Sept.1, 2018
UK (England and Wales)	Director of Public Prosecutions	Max HILL	Nov. 1, 2018

**Appendix 2 / Key steps in the national procedures for appointment/ election of the
Prosecutor General**

State	Procedure
Austria	The Federal Prosecutor General is appointed by the President based on a nomination submitted by the Federal Minister of Justice. The upper chamber of the Parliament provides an opinion on the nomination.
Belgium	The candidate for Prosecutor General is elected by the High Council of Justice. The Minister of Justice then has 50 days to decide on the nomination. The Minister can refuse a candidate once. The Prosecutor General is appointed by the King based on a nomination submitted by the Minister of Justice.
Bulgaria	Five of the members of the Supreme judicial council or the Minister of Justice may nominate a candidate to the position. The nominee is elected by the Supreme Judicial Council with a 2/3 qualified majority voting. The nomination is then submitted to the President who is appointing the Prosecutor General. The President can refuse to appoint a candidate, but only once.
Croatia	The Prosecutor General is elected by the Parliament based on a nomination submitted by the Government. The Parliamentary Legal Committee issues an opinion on the nomination.
Cyprus	The Prosecutor General is appointed by the President.
Czechia	The Prosecutor General is appointed by the government based on a nomination submitted by the Minister of Justice.
Denmark	The Prosecutor General is nominated by the Minister of Justice.
Estonia	The Prosecutor General is appointed by the Government, based on nomination submitted by the Minister of Justice. The Legal Committee of the Parliament provides an opinion on the nomination.
Finland	The Prosecutor General is appointed by the President based on a nomination submitted by the Government.
France	The Prosecutor General is appointed by the President based on a nomination submitted by the Minister of Justice. The Supreme Council of the Magistrates issues an opinion on the nomination.

Germany	The Federal Prosecutor General is appointed by the President, based on a nomination submitted by the Federal Minister of Justice. The nomination has to be approved by the upper chamber of the Parliament (The Bundesrat).
Greece	The Prosecutor General is appointed by the President based on a nomination submitted by the Government.
Hungary	The Prosecutor General is elected by the Parliament with a 2/3 majority voting, based on a nomination submitted by the President.
Ireland	The candidate for Director of Public Prosecutions is selected through open competition by an <i>ad hoc</i> committee. Members of the committee are the President of the Supreme Court, the heads of the barristers and solicitors professions, the permanent secretary of the Government and the permanent head of the Attorney General's office. The committee can select one or several eligible candidates. The Director of Public Prosecutions is appointed by the Government.
Italy	The Prosecutor General is elected by the Supreme Council of the Magistrates. The Minister of Justice provides an opinion on the candidates.
Latvia	The Prosecutor General is elected by the Parliament based on a nomination submitted by the President of the Supreme Court. The Council of the Judiciary provides an opinion on the nomination.
Lithuania	The Prosecutor General is appointed by the President after approval by the Parliament.
Luxembourg	The Prosecutor General is appointed by the Grand Duke based on a nomination submitted by the Minister of Justice. The Government as a whole provides an opinion on the nomination.
Malta	The Prosecutor General is appointed by the President based on a nomination submitted by the Prime Minister.
Netherlands	The Prosecutor General is appointed by the Government based on a nomination submitted by the Minister of Justice.
Poland	The Prosecutor General (who is also Minister of Justice) is appointed by the President, together with the entire Government, based on a nomination by the Prime Minister. Within the 2 weeks after the

	appointment, the entire government has to be voted by the Parliament as well.
Portugal	The Prosecutor General is appointed by the President based on a nomination submitted by the Government. The Prosecutor General is the only political appointment in the prosecution service; there are no legal requirements for the candidates, they are not even expected to be lawyers. However the Government usually nominates a career prosecutor for the position.
Romania	The Prosecutor General is appointed by the President based on a nomination submitted by the Minister of Justice. The Supreme Council of the Magistrates provides an opinion on the nomination. The President can refuse to appoint the candidate but only with a reasoned decision.
Slovakia	The Prosecutor General is appointed by the President based on a nomination submitted by the Parliament.
Slovenia	An open competition for the post of Prosecutor General is announced by the Government. The Minister of Justice submits all the eligible candidates for consideration by the State Prosecutorial Council. The Prosecutor General is elected by the Parliament after consultations with the Government. The Parliament is not bound to elect the candidate who is preferred by the State Prosecutorial Council.
Spain	The Prosecutor General is appointed by the King based on a nomination submitted by the Government. Usually only one candidate is submitted. The General Council of the Judiciary provides an opinion on the nomination.
Sweden	The Prosecutor General is appointed by the Government.
UK (England and Wales)	The candidates for Director of the Public Prosecutions are selected through an open competition by an <i>ad hoc</i> panel. The panel includes at least one president of court and one of the ordinary directors of the public prosecutions service and works under the supervision of the First Civil Service Commissioner. The panel selects several eligible candidates. The Attorney General selects and appoints one of them to the position Director of Public Prosecutions.