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PEER 2 PEER 4 JUSTICE UKRAINE

ASSESSMENT REPORT: PROSECUTION SERVICE

In cooperation with



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1. Introduction

Phase I of the *Peer 2 Peer 4 Justice Ukraine* project started in October 2016. This is a collaborative project between the Center for International Legal Cooperation and the Centre for Judicial Studies, financed by the Dutch Ministry of Foreign Affairs. The goal of this project is to strengthen the rule of law in the Lviv region in Ukraine. Phase 1 consists of an in-depth assessment of the playing field of the Public Prosecution Service (PPS) offices in the region (similar to the assessment of the courts in the region that took place in November/December 2016), followed by a presentation of the findings and recommendations. The intention is to complete the report during this meeting and to discuss the findings and the proposed future activities (for the phase II project). Three experts from the Netherlands, Jeroen Steenbrink, LL.M, deputy Chief Public Prosecutor, Hessel Schuth, also deputy Chief Public Prosecutor, and Ruud Oerlemans, MA, Director of Operational Management, were involved in this first activity – a report on the difficulties facing the Public Prosecution Service (PPS) in the Lviv region.

The expert team drew up an assessment framework and a programme for the visit, together with CILC and an expert from CJS. This assessment of the PPS offices in the Lviv region focused on looking for possibilities to improve the work of the public prosecution service in this region.

To gain a good impression of the position of the local Public Prosecution Service, the primary process in the criminal law chain and the working method and organisation of the PPS, the research team spoke with many different parties, including members of the regional and local PPS. The team spoke with supervisors and Public Prosecutors from the regional office of the Lviv region, from various districts and also with chain partners and others: judges, police investigators, university staff, local council officers, lawyers and NGO employees. During the discussions, Dutch and Ukrainian colleagues shared experiences and together looked for concrete and practical improvements in the working activities within the existing framework in Ukraine.

The research team would like to express its sincere gratitude to the partners in the discussions for their hospitable reception and the open and constructive discussions. The discussion partners also asked many questions about how judicial work is organised in the Netherlands so that they could learn from different examples. The open and reflective discussions meant that the research team gained a good insight into the challenges in the criminal justice chain in Ukraine and from the PPS in Lviv in particular. It allowed the team to provide targeted advice for improvements or directions for improvement that will hopefully contribute to the daily operations of the public prosecutors in legal practice.

This report first gives a brief explanation of the structure and approach of the assessment and information on the regional and local context and then addresses:

- Findings within the scope of the research, suggestions for improvement in the PPS in the Lviv region;
- Findings outside the scope of the study. Mainly issues at national level that can make a positive contribution to improving the work in the Lviv region.

The research team hopes that on the basis of this advice the parties concerned can formulate a follow-up approach for strengthening the quality and efficiency of their work in the short and mid-term. The research team will be very happy to contribute to this by discussing the findings and the recommendations based on these findings.

2. Approach

The exploratory study comprised a number of different steps.

Preparation

The preparation consisted of a document study of Ukrainian sources such as the national figures from the General Prosecutor's Office in Kiev. Regional and where possible district data on the influx and handling of cases, the organisation structure and similar factors were gathered and examined.

The research team also used the research model of the European Foundation for Quality Management (EFQM) as a guideline for this exploratory study (see page 10). We modified this model specifically for this exploratory study of the PPS in Lviv. An assessment framework was used as a guideline for the discussions. This framework is available on request.

The CILC and CJS team made contact with colleagues from the regional and local PPS in Lviv. To gain a fuller picture of the activities of the PPS and of the possibilities for improvement, the research team also held discussions with chain partners of the PPS and other relevant parties: university, courts, lawyers, local municipal authorities and police.

Study in the Lviv Region

Over a period of two weeks in February and March 2017, the research team conducted a large number of discussions in the Lviv region with the aforementioned organisations on the basis of the assessment framework formulated specifically for this purpose. The key questions that the discussions aimed to answer were: what is going well and what could go better in the daily working activities? Where are the opportunities for improvement, and to what extent could these be influenced by the PPS in the Lviv region?

We visited the regional PPS office and three district offices, speaking with the managers of the offices and also with the individual public prosecutors.

During the discussions with various chain partners, we focused on the different perspectives where they each have experience with the PPS. In the case of the courts, the working relationship, the quality of the cases and agreement on the settlement of the cases were discussed and a number of different criminal hearings were attended. In one municipality, the discussions centred on agreeing priorities in the local area and public visibility, and at the university the issues discussed included legislation in the area of criminal law and criminal proceedings, the build-up of knowledge and the influx of new talent from the university to the PPS.

Formulation of findings and advice

This report of our findings and recommendations for improvements is based on an analysis of the interviews and the other information that was collected in the course of the study.

The draft report will first be presented to CJS for comments and suggestions and will then be sent to the PPS of the region and the Lviv districts. The report will then be discussed in June 2017 during a round table conference with the research team and the PPS in the Lviv region, and with CILC and CJS.

3. Changes in criminal law and the position of the Prosecution Service

The PPS in Ukraine and consequently in the Lviv region has undergone radical changes in recent years. These changes relate to the statutory tasks and authorities of the PPS, the position of the Public Prosecutor, the shaping of the criminal process, the legal position and the working conditions of the Public Prosecutors. The PPS is under considerable external pressure, which calls for a high level of adaptation and resilience on the part of the organisation and the individual Public Prosecutor. This context should be taken into consideration in the findings and recommendations relating to the activities of the PPS in the Lviv region.

The legislation and procedures of the criminal law system have been modified fairly recently for the police, the PPS, the judicial system and other government organisations, resulting in rapid changes in their activities. The background to this is understandably the need for greater transparency and to reduce the vulnerability of the system to corruption. The crux of the changes to the system is to make the various government bodies more accountable for how they exercise their authorities. This also means more controls and more regulations, and consequently more work.

The criminal law system in Ukraine is based on the principle of legality. This means that a case where there is a suspect must in principle always be brought before a judge, unlike in the Netherlands where the principle of opportunity applies. The PPS can itself decide which cases will be brought before the judge and for reasons of prosecutorial discretion (for example, a less serious offence, or if some other factor than criminal law prevails, or the scope of the conflict is limited, etc.) the decision can be taken not to prosecute, or to dismiss a case against a suspect. The criminal law system in Ukraine is also subject to the principle of immediacy. Under this principle, all evidence relating to the criminal offence must be provided at a public hearing, and as a consequence all the witnesses in the case must be examined at this hearing. This consequently occupies much of the session capacity of the courts, and certainly much more so than in a system such as the Dutch system where there is greater emphasis on the preliminary examination by the police and the investigating judge. At the criminal hearing, justice is primarily dispensed on the basis of written documents, and witnesses are only heard or camera images viewed if there is some point of discussion.

Since 2012, the role of the PPS in the legal system in Ukraine has reduced, particularly in terms of monitoring and supervising other government authorities. As a result, the relationship between the PPS and such parties as the mayor and the municipality is now on a more equal level.

The investigating judge checks the preliminary examination by the police and PPS and has to give permission for enforcement measures such as telephone tapping and house searches to be applied. Under the terms of the law, the PPS must bring a case to court within two months after a person has been declared a suspect. If there is adequate cause, a public prosecutor from a higher authority can extend this term of two months.

Since the changes to the law in 2012, the PPS no longer has legal authority over the police in concrete criminal law investigations. The police are themselves responsible for such investigations.

These changes bring the authorities and the working methods of the PPS more in line with practices in other European countries. A system of checks and balances now ensures greater parity between the different players in the criminal justice chain. These changes also entail changes in the working methods and relationships between the different stakeholders. All those involved (government bodies, stakeholders and citizens themselves, in fact the whole of society) still have to discover exactly how the division of roles will work in practice. Put simply, it will take time to find a new balance; in effect this is likely to be a process of some years.

Ukraine has stipulated in law that all reports of crimes have to be recorded in an administrative system and that all cases must be investigated by the police. All cases where there is a suspect must be brought to trial within two months. The Code of Criminal Procedure makes no distinction here between serious and minor cases.¹ In special instances, if the complexity of a case precludes it being handled within the term of two months, a public prosecutor from a higher authority can extend the period of investigation: up to six months for minor cases and those of average seriousness, and up to twelve months for serious and very serious cases.

This promotes legal security, but these statutory stipulations also increase the pressure of work for the police, the PPS and the courts. The parties we interviewed indicated to us that the legislator is considering making it possible to distinguish between minor and more serious offences. This distinction may have a strong positive effect on efficiency, but has not yet been introduced.

In addition, the responsibilities of the PPS in Ukraine extend beyond criminal law enforcement. The PPS also carries out civil law and public administrative tasks and receives individual citizens with complaints and/or questions on a diverse range of issues. Such a broad package of activities gives rise to quality problems, and calls for more specialisation with regard to particular tasks within the PPS organisation.

In terms of staffing, several years ago a new procedure for the selection of Public Prosecutors was introduced, including relevant examinations. The higher salary promised to the Public Prosecutors appointed under this new system has in practice never been implemented. Personal and financial details of the Public Prosecutors appointed and their close family members are published on the website of the PPS in order to give the public insight into the background, details and assets of these officials. These measures aim to strengthen the checks and balances in the criminal justice system and improve the quality and transparency of the PPS. This is expected to boost public confidence in the PPS.

These major changes place high demands on the organisation and on the individual Public Prosecutors. The issues they are having to deal with include a lack of public confidence, the change from old working methods to new ones, a transparent but still labour-intensive primary process, a salary promise that has not yet been met and a significant shift in the role of the PPS – all within a short period of time.

The study team has every respect for the individual Public Prosecutors who in this environment commits every day to carry out their professional activities and serve the constitutional state.

The PPS in the Lviv region asked us to advise on possible improvements. A number of the changes mentioned, for example the changes in legislation, are the responsibility of the national

¹ The Code of Criminal Procedure makes a distinction between cases, categorising them as minor, averagely serious, serious and very serious.

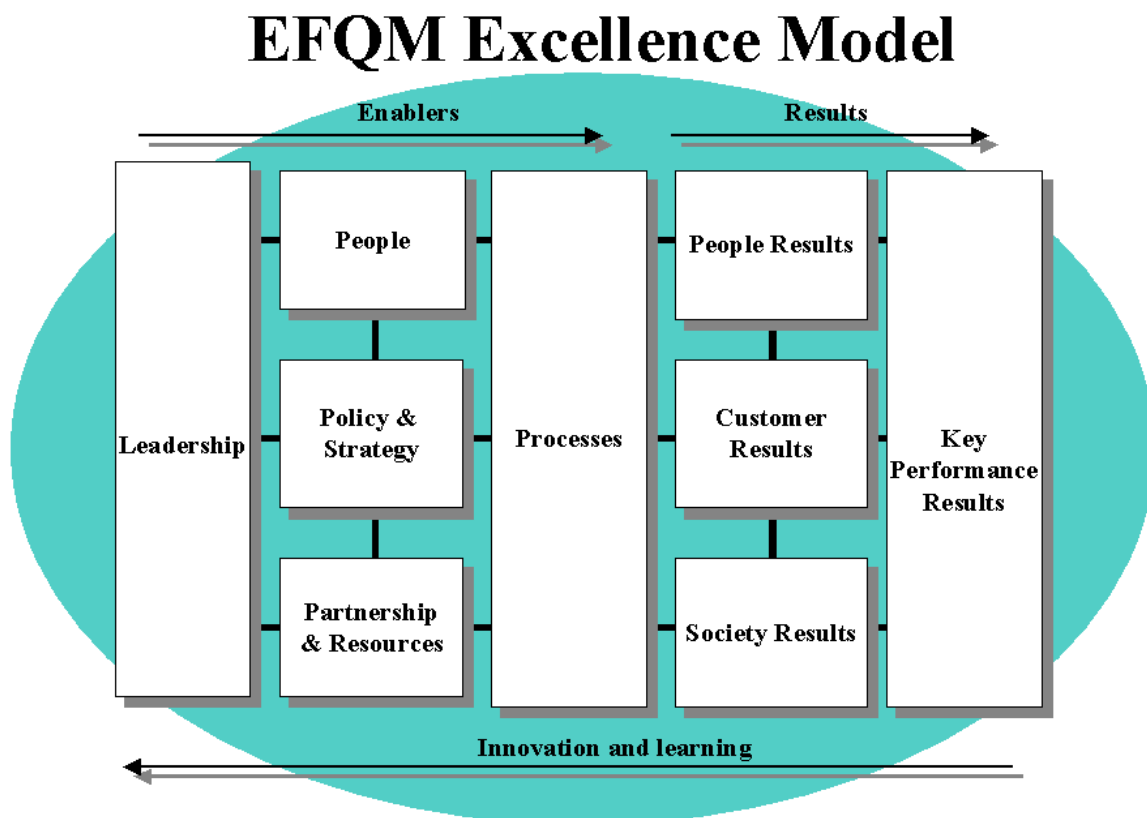
authorities in Ukraine. We are aware of these changes and the impact they are having. However, it is not within our remit to provide advice on them.

Our recommendations focus on practical and feasible improvements in the sphere of influence of the PPS in the Lviv region that will contribute to the proper working of the PPS in terms of quality, confidence and productivity. We focus on concrete actions and measures aimed at the work of the Public Prosecutor.

4. Findings within the scope of the project – possibilities for improvement within the PPS in Lviv

This chapter describes the concrete possibilities for improvement as we – as experts from the Netherlands – see them following our assessment. The study has given us a good impression of the daily work of the Public Prosecutor in the Lviv region and the common ground between the Public Prosecutor and other professional partners.

In view of the exploratory nature of our study, the possibilities for strengthening the functioning of the PPS and the Public Prosecutor are mainly intended as the starting point for possible improvements.



The assessment model customised by us for the PPS in Lviv addresses the following aspects:

- Environment (context)
- Policy and mission of prosecution
- Work processes and operations
- Staff (support) and knowledge systems
- Quality and quality assurance
- Communications (internal and external)
- Resources
- Integrity and professional standards
- Results (key performance results of the PPS)

Findings and recommendations for improving the work and organisation of the Public Prosecution Service in Lviv

The recommendations given below that have arisen from the study relate to the issues indicated. The statutory and societal context described in the previous chapter will be mentioned as far as they are relevant for this study.

Setting goals – Determining the priorities of the PPS, police and mayor by region and district

It is important that the PPS is able to fulfil its core task, namely to contribute to a safe society by combatting criminality. Good – result-oriented – agreements need to be made between the chain partners in the region regarding the priorities to be set in order to combat criminality over a period of several years. People and resources can then be deployed in line with these priorities.

In the Lviv region regular discussions are already held several times in the course of the year between the mayor, the police and the Chief Public Prosecutor. One of the subjects covered in these discussions is the number of cases to be handled, for which the PPS is accountable to the municipal council. Our impression is that the aims are currently focused on the short term and the agreements made are mainly operational (they relate to specific issues and are therefore not strategic). Figures show that, in terms of the types of cases dealt with, minor cases where a charge is brought clearly predominate. We refer to these as ‘bring cases’ (*brenzaken*, cases that are reported to the police). The question is whether the PPS is able to devote sufficient time to examining the more significant cases in terms of undermining criminality and corruption, where generally no charge has been made. To do this, there needs to be a good flow of information and targetted tracking of these so-called ‘pro-active cases’ (*haalzaken*, cases where the police have to gather the information required to bring a case to court).

Setting longer-term goals relating to combatting and preventing crime and working towards these goals together with the police and the local (municipal) council makes it easier to align the activities of the chain partners. A more integrated approach will make it possible to apply the available knowledge and capacity in a more focused way and will almost certainly generate results that will be noticed by society. A good example of this is the wave of break-ins in the Stry region where the local council, police and PPS are taking concerted action.

We recommend that this prioritising should be intensified and made more strategic, including regular and targetted professional discussions on patterns of criminality, a focused approach by the police and PPS, a plan of action by the local municipality on crime prevention and citizen contact, joint action plans relating to youths, habitual offenders and/or serious problems, and clear agreements regarding the contribution to be made by each of the parties. This approach will generate a clear set of priorities, including the division of roles, the optimum use of each party’s capacities and a concrete result agreed by all parties in terms of controlling and reducing criminality in the region. These arrangements can be set out in law enforcement provisions. A number of different countries already have good experiences with these methods. Monitoring such results as the progress of charges/arrests and the number of cases decided by a judge can be used to modify actions or adjust objectives.

Selectiveness in the working activities and screening of cases

It is clear that a responsible selection of cases brought by the police and a targeted use of the capacity of the PPS (and consequently, of the court) will make the biggest contribution to society's aim of reducing criminality. The PPS needs to develop a mission and vision that will guide them towards achieving this. At the present time, there is too little insight in the different departments of the PPS into what could constitute this mission. The question is: What does the PPS stand for and what are its priorities?

The PPS has to make choices in concrete cases in line with the mission and vision in terms of what will and will not be done, and must at all times be prepared to account for its actions. The law prescribes that all cases must be adjudicated and describes the division of roles. We looked at what is possible within the limits of the law so that the necessary work can be carried out as effectively as possible.

Nationally and locally, 70% of all cases reported are not pursued due to lack of evidence or lack of a suspect. Internationally, this is not exceptional. The many activities involved in this 70% and the processing time taken up by these cases are relatively high. In practice this means increased pressure of work and little opportunity for depth, as well as a high risk to the quality of an individual case. It also limits the possibilities for the PPS to deal with complex and serious cases.

Our advice is to examine in practice what is possible in different areas, such as:

- case screening together with the police: for each case, determine what the investigative indications are and, depending on the seriousness and social relevance of the offence, guide the investigation. The following principles should be applied:
 - o select cases that probably do not have to be handled via criminal law and that can be resolved via mediation
 - o make use of the possibilities of summary justice: cases that can be proved easily in which the suspect confesses should be dealt with via a fast track procedure
 - o look for meaningful alternative sanctions and interventions (other solutions), such as study and work orders, compensation for victims, confiscation of assets gained through criminal activities
 - o intensify collaboration with chain partners in practice, 'as quickly/simply/jointly/victim-focused as possible'

Revision of the primary work processes: reducing wastage

Many changes have taken place recently in the law and in the working methods of the PPS and the whole criminal justice chain. Our observations showed that in practice there are different ways of working, with prescriptions about working methods dating from some time ago still in existence, and new working methods not yet fully incorporated. This applies within the PPS and at the interface with the police and the courts.

Our advice is to carry out a proper and thorough reappraisal of the working methods used in the primary operational process with a view to improving quality and efficiency by:

- identifying and eliminating duplicate activities in the process
 - o between police investigator and Public Prosecutor

- o within the tasks of the Public Prosecutor (archiving, carrying out checks at different levels, authorisations, etc.)
 - o between the Public Prosecutor and the investigating judge
 - o between the Public Prosecutor and court hearings
- speeding up the process by eliminating waiting times. Files often wait a long time for a final check or some other action. If a file is delayed for a longer period, this necessitates re-inspection, a transfer in the event of a change of Public Prosecutor and extra file actions that are not needed when cases are handled rapidly.
 - reducing time wastage: by determining what is really needed for a case to be dealt with and brought to a conclusion, those activities that are redundant and add no value can be identified. In many cases, working methods have expanded and become more complex, and particular checks, additional actions or process steps may not really be necessary.

When carrying out such a reappraisal, use can be made of internationally recognised quality systems, such as Lean (6Sigma), and the principles on which these systems are based.

This point also relates to the professional space of the Public Prosecutor. Confidence in his judgement and having the Prosecutor himself make decisions in investigations, in preparing for a case prior to a hearing and in deciding whether or not to appeal to a higher court will reduce the administrative burden and strengthen the quality of the work of the Public Prosecutor.

Another element can be the reappraisal of the working process in the criminal justice chain. Besides the internal PPS processes, concrete efficiency and quality benefits can be gained in the working processes and in the interface with partners in the chain by looking together with police and PPS at unnecessary wastage in the day-to-day work. For example, in sharing information relating to the charge and discussing aspects of the investigative proceedings, such as the gathering and weighing of evidence. Our discussion partners indicated that besides capacity issues there are also problems of laborious working methods, having to wait for one another and police work that is not properly in line with the wishes of the PPS.

Taking a closer look at the coordination of the working activities with the court may also have many benefits. The discussion partners indicate that here, too, there is room for improvement, for example by looking together at reducing unnecessary work or waiting times related to the examination of witnesses, applying for special measures such as house searches, etc. It may well be possible to put something on paper for such working agreements, which do not impact judicial independence, so that these matters are handled in a uniform way.

Support in the everyday work by logistical, administrative and legal assistants

One surprising aspect of the PPS offices is the almost complete lack of staff support for Public Prosecutors. From the necessary work at management level to the practical implementation of activities, all the work is done more or less only by the Public Prosecutors. At regional level, there is a small support staff available for personnel matters and in the districts a small secretariat. Apart from this, all the work is prepared, planned and carried out by the Public Prosecutors. This is clearly very different from how work is organised in the courts and in legal practice and at the PPS in other countries.

The Public Prosecutor currently does almost everything himself. Supervising and monitoring the police investigator, maintaining all files by hand, sending post or even delivering it personally to a court some distance away, organising authorisations, instructing new staff, referring appeals to a higher authority, etc.

This is an inefficient way of working given that a Public Prosecutor is more expensive than a legal or administrative assistant. Even more importantly, it prevents the highly educated Public Prosecutor from carrying out those activities where he has added value: namely legal work and directing investigations and prosecutions. In short, the Public Prosecutor currently has too many non-added-value activities, to use management jargon. To improve the quality and efficiency of the working practices, a start should be made on organising administrative support and recruiting trainees from the university. Trainees can probably also contribute in terms of the legal content of the work.

The recruitment and training of new young Public Prosecutors is a further point for improvement, and at the same time it is a major opportunity. University students can be employed for much longer as trainees/interns to gain work experience. One option would be to have new Prosecutors work in the practical environment for a longer period as Assistant Prosecutors prior to being appointed. It is important to see whether the possibility of such a new – at this moment non-existent – position offers perspectives. This proposal would make it possible to have legally trained support staff available and candidates for the position of Public Prosecutor would be able to gain a thorough understanding of the day-to-day work. This proposal can be further developed in partnership with the University of Lviv and would give rise to internships and a new influx of Public Prosecutors and Assistant Public Prosecutors.

Digital working will speed up the process of investigation and prosecution and generate capacity gains

We have seen that the criminal process makes little or no use of digitisation; almost everything is still done on paper. Cases are registered digitally in a system that is used by the PPS and the police. However, once a case is entered into the records, what follows is mostly done on paper. This means that work is duplicated, files can only be viewed and updated in one place and if documents need to be transferred to another court, people and transport are always needed. Numerical summaries always have to be made manually.

It would be useful to explore whether a simple digital file system would work. The necessary technology is already available in various countries: from a basic digital file application such as SharePoint to a complete digital workflow. Our advice is to see in the short term whether a secure digital shared file can be created between police and PPS where, for example, all the documents relating to a single case are filed, discussions can be held on progress, notes and investigative material can be saved, emails stored, etc. This would allow a file to be shared in a less location-dependent system, which would save a great deal of time currently spent travelling, searching for information and archiving documents, as a result of which the quality of the file and consequently the structure of the case would improve. An investment in software and hardware such as computers and scanners will be needed to achieve these savings.

Further improvements could be achieved by more frequent use of video conferencing. This is currently only used for examining witnesses and detainees by the courts away from the courtroom. This method can also be used for discussions between police and PPS during

investigations or between districts/regions. It would be useful to carry out a comparison with countries where the population and the justice apparatus have a large geographical spread. The USA and Australia would be useful countries for comparison; both countries have good experiences with practical solutions for working with digital and video facilities.

Scale of operations and uniform organisation structure

A number of PPS offices in the Lviv region have recently been merged. A good balance is recommended between presence and availability locally and the possibility of locating the PPSs together as a group of professionals.

There is currently still considerable fragmentation of the Public Prosecutors over small offices. In some other countries, a PPS office serves a larger proportion of the population than in Ukraine, although this has to do with the broader core tasks of a Public Prosecutor in Ukraine and the preferred level of local presence.

Our advice is to opt for an organisation structure and size that allow more grouping of manpower and more specialisation. There are also many advantages to implementing a location policy where police, PPS and courts are structured correspondingly in geographical terms and players in the criminal law chain are located in close proximity. Both these recommendations are explained further below.

At the present time the Public Prosecutors in the districts do not specialise in a specific legal field. Each Public Prosecutor handles minor and serious cases and has a role both in criminal justice and in other areas of the law. A Public Prosecutor's caseload is on average 200 to 300 cases at any one time.

There are two possible types of focus that could be applied. First, a number of Public Prosecutors could concentrate on non-criminal justice work, which would allow the other Public Prosecutors to focus more fully on criminal justice cases.

Second, the internal staffing capacity could better be divided between minor and serious cases. There are a number of different options for the division of tasks within the PPS under the law. Some of the Public Prosecutors could handle mainly the more minor cases, which would allow them to build up a routine for these cases and more intensive collaboration with the police investigators. This work is more appropriate for Public Prosecutors with fewer years of experience. The Public Prosecutors with more experience can then focus on the more complex and serious cases and would also have more opportunity to bring tougher cases to an appropriate conclusion for the court and in competition with the more specialised legal advocates. The caseload may on the one hand be higher than the current 200-300 cases for Public Prosecutors specialised in more minor cases - in the Netherlands the caseload is around double this – and less for Public Prosecutors specialising in more serious cases. Such an arrangement would raise the efficiency and quality of case handling for each Public Prosecutor.

If this internal division of work is to be possible, it is important to have an effective system of allocating cases. This means that insight will be needed into the caseload and type of cases handled by each Public Prosecutor.

For this internal division of work to be possible, further grouping/upscaling of the organisation at district level is needed. This could be achieved by, for example, having a Public Prosecutor in every PPS office who primarily handles minor cases and who also has a public function, and by

grouping the other specialist Public Prosecutors at district level. In this scenario, the district becomes the basis for the division of work among the Public Prosecutors, and their presence in the local offices could be on the basis of a rotation arrangement. Scaling up to district level will also aid cooperation between Public Prosecutors and will increase the possibilities for harmonisation and contact.

The second aspect of operational scale and organisation structure relates to the congruence in the criminal justice chain. In the present situation the working fields of police, PPS and courts are not uniform. These differences make it difficult to effectively set priorities in an area (see objectives for crime prevention) and at the same time they restrict ease of cooperation. Our initial advice here is to align the areas of work. Our second recommendation is that those people who work on a case together should be located physically in the same place. If police investigators, for example, are close to the Prosecutors who are working on a particular case, they will be able to work more quickly and efficiently and it will be easier and quicker to reach agreement on the content of cases.

Informing the public about the tasks of the PPS and partners in the chain

The citizens of Lviv do not yet have a good understanding of the tasks and roles of the PPS in the new government system. Municipalities have an important role in attending to public interests, and NGOs and Legal Aid organisations, too, can play a part in serving the public. Many citizens with individual questions on broad and diverse areas of the law can still visit a PPS office in their local area with their questions. Professional service to the public in this phase calls for proper and professional public information.

The regional office, headed by a Deputy Chief Public Prosecutor, has only been engaged in this task for a short while, and is currently making contacts with stakeholders in society. The media can play a positive role here, as can public information from the municipalities. A good long-term programme should be drawn up for this project, together with other chain partners.

Providing a good system of referral for the public is a task for the government and is in the interests of citizens. This will give the PPS the opportunity to focus more on the defined core tasks and will at the same time enhance the ability of the PPS to combat criminality.

Integrity and public confidence

We observed that citizens' confidence in the PPS (and in other parties in the chain, such as the police and judges, and more generally the government) is low because of a history of corruption and a lack of integrity in the conduct of these bodies in many different forms.

It is crucial that citizens should have greater confidence in the PPS. This is not something that will happen overnight; nor will it happen of its own accord. Gaining public confidence will take time and has to be earned in everyday practice. As the Dutch say, "Confidence comes slowly and disappears rapidly". Separation of powers is an important criterion in all democratic societies. The PPS can take a broad approach to this issue and work on winning back the confidence of citizens, step by step.

This approach will take place within the PPS and in close collaboration with society. The different elements of the approach are as follows:

- Rules, checks and sanctions in the event of violations of integrity. Disciplinary sanctions and where necessary criminal justice investigation and punishment. From high to low in the organisation, to avoid 'class justice'.
- Transparency within the organisation and towards society regarding sanctions for violations of integrity.
- A culture within the PPS that promotes open discussion on integrity.
- A set of basic values set out in the Code on Integrity will underpin this open discussion.
- The removal of temptations and the introduction of preventive measures relating to unscrupulous behaviour, for example by reducing payments in cash, applying the 'four eyes' principle (having critical activities carried out by not one, but two individuals) and building in administrative checks.
- A good example of ethical behaviour should be set by all supervisory staff.

Strengthening victim support

The low level of public confidence in the PPS and the criminal justice chain has already been mentioned. An important key to improving confidence may lie in the attention to victim support by the police, PPS and courts. The task of the PPS is to provide good support to victims, including assistance in obtaining compensation and proper treatment. One important means of support could be the introduction of a victim support organisation by the state, as is in place in other countries.

Focus on the strengths and professional position of the Public Prosecutor

In concluding this chapter, we will review what has been said previously from the specific perspective of the individual Public Prosecutor. We are convinced that empowering Public Prosecutors as professionals in all kinds of different aspects of their work will raise the quality of the PPS and enhance society's confidence in the service.

It is important that in all the changes mentioned relating to the PPS, the Public Prosecutor himself as the professional who is responsible for the daily activities of the department should receive proper support and guidance. The new-style Public Prosecutor will not only have solid professional knowledge, but will also be skilled in collaboration, and will have the mental resilience required in a broad judicial arena. This calls for not only a safe environment in his own organisation in which it is permissible to make mistakes provided the individual and the organisation learn from them. One of our most important recommendations is that professional Public Prosecutors should receive good support on these issues. As a result, the individual Public Prosecutor himself will be better served and the quality of his work will improve. The areas of support that we recommend are as follows:

- *Support services from members of staff*: Making use of administrative, logistical and legal support will bring cost savings because part of the work will be done by less expensive and more appropriately qualified workers. This measure will also deliver a quality improvement because the highly educated Public Prosecutor will be able to focus on the substance of a case.
- *Resources*: The Public Prosecutor should be provided with good ICT facilities, improved office accommodation and other logistical resources. In addition, a step-by-step programme of

digitisation of the work of the Service and the use of video-conferencing between different parts of the PPS and in the criminal justice chain should be implemented.

- *Modern leadership*: Transition away from directive and controlling towards a more coaching style of management: focus on supporting and developing Public Prosecutors in their new role; evolve towards a culture of learning and developing, guiding and training, professionalism and innovation.
- *Increasing the professional scope* of the individual Public Prosecutors to take independent decisions, for example on investigations, screening cases for the required depth of investigation, closing cases, bringing cases to court and whether or not to refer a case to a higher appeal court.
- *Peer review and support from colleagues*: Talk about work pressure, improve public confidence in the Public Prosecutor, share experiences, discuss cases as a means of enhancing quality and building experience.
- *HRM policy*: Regular performance reviews should be held; the agreed working conditions and other forms of explicit appreciation of the Public Prosecutor in his daily work should also be implemented.

Supporting and empowering individual prosecutor



5. Findings outside the scope of this study

As we have explained, in this study we have focused on the potential for practical improvements in the work and organisation of the PPS in the Lviv region. A number of improvements and changes in the national context would make a very positive difference for local PPS offices and for the individual Public Prosecutors. These issues fall expressly outside the scope of our study and advice. Nonetheless, we mention here several points that could have many benefits for the quality and productivity of the local PPS.

Distinction set out in law between minor and serious offences

Amendments to legislation on the criminal justice process will make it possible to take a tailor-made approach to organising and handling different case flows. The differences in investigating and prosecuting serious criminal cases and minor offences are key here. In many countries, the criminal justice process for minor offences is organised much more simply than for serious crimes. The lead times can then be shortened substantially and work pressure will be considerably reduced if the different caseflows can be handled by relevant specialists. This will raise the quality level of all cases. Targetted forms of collaboration can be set up between police investigators, Public Prosecutors and the courts for each type of case (minor vs serious). In the case of minor offences, other parties can also look at alternative solutions such as a family-based approach (including working with family members on dealing with problem behaviour), education or community service.

Budgetary autonomy for PPS departments

Budgets are organised centrally, with decisions on budgets, staffing and investments in office modernisation being taken by the General Prosecutor's Office in Kiev. Local tailor-made solutions, investments or experiments would benefit from a degree of budget autonomy. This would be possible in a system where there is a basic budget, that includes a level of funding for decisions by the local departments themselves. If this funding is not available nationally, the decision could be taken to determine the level of autonomy available for local decisions, for example in choices for more of one item and less of another. This will encourage local ownership and flexibility without losing central budget control.

Implementing the agreed salary for Public Prosecutors

All Public Prosecutors have again had to take an examination and to re-apply for their jobs. The promised higher salary levels for Public Prosecutors who already passed this exam some time ago have in practice never been implemented. Consequently, some police investigators even have a higher salary level than Public Prosecutors. To be able to continue to recruit good people and to retain the motivation for this important work, good working conditions are necessary – or as good as possible – and commitments made have to be properly implemented.

The competitive position of the PPS compared to judges, universities and the police is under pressure in terms of the recruitment of new talent and experienced staff.

Operational capacity of the PPS

Our discussion partners indicated that they experience a high level of work pressure. In our recommendations we have proposed measures that can reduce the pressure of work or that can achieve an increase in productivity. We as a research team are unable to determine what the required capacity of the PPS should be and how far the present structure diverges from this ideal: this falls outside the scope of our study. It may be worthwhile making comparisons internationally, in parallel with the actual implementation of the current capacity plans for the PPS, the police and the courts (filling of vacancies).

Quality of investigative activities

In all the discussions, appreciation was expressed for the investigative work of the police but there were complaints about the quality and duration of the investigations: files are not always produced properly, instructions are not followed up and such like. In practice almost all Public Prosecutors indicate that they have to repeat much of the work of the police investigator or they have to take an active part in directing the investigations. We were also told frequently that the police force suffers from structural under-staffing. In one particular district, police staffing is at half the planned capacity.

The PPS can only work well and efficiently if the quality of the investigative work is good and there are enough investigators. This falls outside the scope of our study and advice, but is a real bottleneck in the region that has to be resolved. An improvement in quality can be achieved immediately, for example by sharing case investigations and learning experiences, talking about best-case approaches for different cases and making performance agreements. Our advice about setting up a system for minor cases to be handled in direct cooperation between Public Prosecutor and police investigators could be a means of gradually improving the quality of the investigations.

Focus of PPS on criminal law enforcement and divesting of other tasks

In many countries the task of the PPS is limited to maintaining the legal order by means of criminal law enforcement. In Ukraine the core task of the PPS is more broadly defined, although the statutory tasks of the PPS have reduced in recent years. Nonetheless, the multiplicity of tasks of the PPS is still an important point of attention, because a diverse and varied package of tasks can only be executed effectively if there is also a degree of specialisation within the PPS according to commercial and family law, public administrative law and criminal law, just as there is among lawyers. A PPS that cannot specialise cannot be a strong player relative to other legal players.

6. Recommendations for follow-up programme

As has been said, our recommendations are aimed at practical possibilities for improving the quality and efficiency with which cases are handled, and streamlining the organisation and the daily work of the Public Prosecutors.

The recommendations can be regarded as a summary of possibilities, some of which can be implemented simply and on a small scale and others that are likely to be most effective in a joint context.

Our advice is to choose a package of improvement actions that can be implemented by region and gradually expanded or amended. The actions taken can then be reviewed to see which improvements generate the most benefit and how they can be incorporated into the existing working methods of the regional/local PPS.

It is up to the PPS in the Lviv region to make a choice and to select the approach that is most appropriate for them. Our proposal is attached for how this could be achieved bearing in mind what we have seen and heard.

Actions at regional level

A serious and effective approach should be taken to public information at regional level. The PPS regional office in Lviv has a role in providing public information. A good start has been made recently with this activity and we recommend that further attention should be paid to contacts with the public, in particular on such issues as:

- Advising where citizens can go for what types of questions
- Explaining what the PPS is responsible for in the new structure and what is it not responsible for (e.g., reducing general public activities that have now been transferred elsewhere)
- Communicating on the role and activities of the PPS by means of broad contact with citizens, NGOs and advisory boards
- Showing the work of the PPS more explicitly: current investigations, successes in investigations and research, cases of fraud that have been addressed, policy priorities in Lviv for the coming years. Disappointments can also be shared: major cases that have not been successful, or internal fraud that has been uncovered, for example. This strategy may pose difficulties at times, but it will enormously strengthen public confidence in the new PPS.

Improvements should be made in the training of new, young Public Prosecutors and the influx of experienced legal experts from outside the PPS should be encouraged. In order to achieve this, it would be advisable to make appropriate agreements with the university, which has expressed its willingness to cooperate. A programme of targeted training of new Public Prosecutors is needed with a solid practical content. As an example, prospective Public Prosecutors can work for the first year as assistants, supporting the Public Prosecutors with operational activities relating to cases. Another interesting question is how the PPS can be made attractive for good legal experts

who have first gained experience outside the PPS, for example in legal practice, at a court or in the business sector.

The use of digitisation in the primary process has considerable advantages for sharing knowledge, increasing the speed with which cases can be handled and improving work productivity (less need for physical transport of people and files). Digital solutions are already in use in a number of countries. We advise that careful consideration should be given to proven successful digital applications that allow digital files to be used by the PPS and the police (and possibly the court), along with smart applications for monitoring deadlines and automatic processing of forms and case documents. Further use of videoconferencing between chain partners in view of the distances involved should also be considered. Our suggestion is for this to be agreed with the General Prosecutor's Office in Kiev and implemented from the Lviv region, with Lviv taking the leading role in a pilot scheme.

An investigation should be carried out to examine whether the working area between police, PPS and courts can be made uniform. Efforts should also be made to determine whether the scale of the PPS locations can be organised such that there is an effective division of the work, taking into account the specialist areas available and present in the different locations.

Experiments distributed over the districts

Placement of administrative staff in one or two districts to support the Public Prosecutor with such tasks as copying, filing, compiling files, administrative checks of files and documents for the hearings, monitoring deadlines, postal services and file logistics. This can be done in all districts and we believe it will lead to direct positive results for work pressure and will allow the Public Prosecutor to focus more on his area of expertise and core task.

Allocation of cases and structuring of daily working processes according to minor or more serious cases. We suggest making a selection of around 50 minor cases and looking at how, on the basis of these cases, the criminal process can be speeded up, temporarily halted in the event of a lack of evidence or a suspect, and how the procedure for handling cases can be simplified. Leadership is an important factor here because this is a matter of devising a working method within the law but based on a creative approach, in partnership with police investigators and the Public Prosecutor. This can best be done with an experienced Public Prosecutor (who has extensive knowledge) and a new Public Prosecutor (to test to what extent an inexperienced Public Prosecutor can handle minor cases independently) and experienced police investigators. It is important that this should be a learning process where making mistakes or experiencing disappointments are part of the journey. We believe that Local PPS office in Lviv № 3 can take a good exploratory position in this process in view of the style of working and the culture of amicable agreement and development that we observed there.

A city in the region/district should explore, in partnership with the municipality, whether it is possible to seek alternative solutions than criminal justice, for example a family-oriented

approach or an educational approach. Stryy could be a suitable location for this in view of the wishes and organisation of the municipal lawyers and youth supervisors there. The municipality can probably also take a more active role in informing the public regarding what the municipality can help citizens with and what the PPS does (or no longer does).

This programme entails an important role for the regional office and the managers of this office. The Chief Public Prosecutor and/or his deputies should become ambassadors for a particular point of improvement, giving the districts the freedom to try new activities within the framework of the law and the agreements made with the General Prosecutor's Office in Kiev. In adopting the recommendations below and implementing concrete changes and improvements, it is important that there should be room to explore and try new things. Room in terms of finances possibly; room and support for new things certainly.

We sincerely hope that with this initiative for a follow-up programme we can contribute to the options that lie further in the hands of the PPS in the Lviv region. We will be happy to explain our recommendations and to assist in considering further developments.

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