

***Tasks and activities of the Prosecution Service in  
2012***

*(An extract from parliamentary report)*

### *1. The structure and organization of the Prosecution Service*

In compliance with the Fundamental Law of Hungary, having entered into force on 1st January 2012, Act CLXIII of 2011 on the Prosecution Service (hereinafter referred to as *APS*) and Act CLXIV of 2011 on the Status of the Prosecutor General, Prosecutors and Other Prosecution Employees and the Prosecution Career (hereinafter referred to as *ASPGPOPEPC*)<sup>1</sup> have specified the new provisions for the Prosecution Service and the legal status of prosecutors and other employees working for the Prosecution Service.

Based on these Acts the military Prosecution Service has been integrated into the structure of the Prosecution Service, which resulted in a uniformed structure of the Prosecution Service. Commencing on 31st December 2011 the military prosecution offices ceased to exist. Retaining their legal status military prosecutors were integrated into the structure of the Prosecution Service; consequently, their responsibilities, in addition to the task of dealing with military criminal cases, now also encompass the investigation, the supervision of the investigation and the prosecution of criminal cases which fall outside of the scope of military criminal procedures.

While maintaining the previous regulations, APS defines the different levels of the Prosecution Service. It stipulates that independent chief prosecution offices or district level prosecution offices may be established to conduct prosecutorial investigations or to perform other prosecutorial duties in justified cases; defining the structure and the organization of the Prosecution Service, however, shall be the Prosecutor General's responsibility as the Prosecution Service can be most effectively adjusted to the court system and the requirements of the prosecutorial investigation in this way. This responsibility has been fulfilled by Order No. 12/2012 (VI. 8.) of the Prosecutor General of Hungary on the Organization and Operation of the Prosecution Service (Rules of Operation and Organization), which entered into force on 1st July 2012 enlisting the chief prosecution offices of appeal, the chief prosecution offices, the district and district-level prosecution offices.

Last year 5 chief prosecution offices of appeal and 21 chief prosecution offices (the Metropolitan Chief Prosecution Office, 19 county chief prosecution offices and the Central Investigative Chief Prosecutor's Office) remained under the direction of the Office of the Prosecutor General, and the number of the local prosecution offices in Budapest and in the counties was invariably 137.

The Central Investigative Chief Prosecutor's Office went through significant changes and an enlargement in its structure and complement due to the integration of the Central Investigative Chief Prosecutor's Office and the regional military prosecution offices on 1st January 2012. It has also

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<sup>1</sup> On 29th November 2011 Parliament adopted APS with 259 „yea” votes and 99 „nay” votes, while it adopted ASPGPOPEPC with the same number of ‘yea’ votes, 82 “nay” votes and 12 abstain votes.

contributed to the structural enlargement that from 1<sup>st</sup> January 2012 35 prosecutor and 20 staff member positions were regrouped to the anti-corruption branch from the central (anti-corruption complement limit) reserves. By this regrouping the anti-corruption division of the Central Investigative Chief Prosecutor's Office commenced its work with full complement on 1st January 2012.

Since 1st January 2012 the former regional military prosecution offices have been operating as the regional offices of the Central Investigative Chief Prosecutor's Office having their regional seats in Debrecen, Szeged, Győr and Kaposvár, while the Budapest Regional Office is located at the seat of the Central Investigative Chief Prosecutor's Office. The Unit for Military Cases and the Anti-Corruption Unit, which are actively involved in the investigation of public integrity cases beside military criminal cases, work within the regional offices and thus support the anti-corruption activity of the central structural unit.

Although it is not a prosecutorial body, the National Institute of Criminology (referred to as *OKRI* in Hungarian) is a structural part of the Prosecution Service and functions as the scientific and research institute of the Prosecution Service.

In 2012 training and preparing trainee prosecutors for their bar exam was the responsibility of the Hungarian Centre for the Training of Prosecutors. It directed the professional training of trainee and junior prosecutors, organized exams, held professional-methodological programmes for prosecutors involved in the training programmes as trainers, published course books, study materials and booklets as well as research essays and articles.

## *2. Prosecutorial activities within the field of criminal law*

As to the demand for prosecuting and punishing criminal offences, APS specifies the duties relating to criminal law in accordance with the former, actually fulfilled tasks, highlighting that pursuant to Act XIX of 1998 on Criminal Proceedings a prosecutor shall act as a public prosecutor. In compliance with the various stages of the criminal proceeding, Chapter III of APS briefly defines prosecutorial duties relating to investigations (including intelligence gathering with partial modifications to its process), the supervision of investigations and indictments. APS has essentially maintained the legal regulations of the former statute, but it has altered the means and measures prosecutors may have to supervise the legality of penal sanctions. APS has introduced a new measure called reminder, whereas from 1st January 2012 it has abolished the possibility of signalization, the formerly most commonly used measure by prosecutors of the respective field. The scope of application of the so called prosecutorial instruction (a direction concerning its content), which allows for the most extensive interference in the operation of penitentiary institutions, has been widened.

The alteration of the prosecutorial measures has unequivocally increased the effectiveness of supervising the execution of penal sanctions.

In the criminal law field the number of cases registered and to be dealt with in 2012 was 980,426. The total number of criminal offences has increased; 472, 236 criminal offences have been registered. Compared to the data of previous years the decreasing tendency in the number of crimes has stopped; a rise in their number can be observed again. The number of registered perpetrators (100,239 persons), however, has reduced.

Last year 26,875 crimes against the person were committed, from which the number of completed homicide cases was 113. The most significant group of registered crimes decisively determining the total number of criminal offences is represented by crimes against property, the number of which was 259,617 constituting 55% of the total number of crimes. The most frequently committed crime against property invariably included theft, fraud, and the violation of copyright and neighbouring rights. Compared to the previous years the number of thefts has risen: 186,221 thefts were committed. The number of the violation of copyrights and neighbouring rights (9,960), on the other hand, indicates a significant decline.

Last year 13,084 traffic crimes were committed and among them the rate of drunken driving cases (6,915) is significant.

The number of crimes against state administration, justice and public integrity was 7,294, and 828 corruption crimes were registered in this category. The rate of unrevealed crime is significant in this category; consequently, only a fraction of criminal acts is indicated by the statistics; the real range of corruption crimes is not reflected by the numbers.

Following crimes against property, crimes against public order provide the second highest ratio within the total number of criminal offences. This crime category includes several violent criminal offences and crimes that impose enhanced threat on society, but it also encompasses criminal acts committed in relation to official documents or instruments, which cases constitute the larger proportion of this crime category. In 2012 their number was 134,568, their ratio 28,5%.

The number of reported economic crimes (24,001) displays the second highest number within the past twenty years. Connected to this, it must be pointed out that it was primarily the spreading of cash substitutes that led to a shift in the main direction of crimes against the security of payment means and money circulation, namely to a shift from (money) counterfeiting to the various modes of committing cash substitute frauds. The aggregated number of unlawful conducts that constitute criminal offences relating to cash substitutes has proved to be the highest and continuously rising for years (17,841) within economic crimes.

Similarly to the previous crime categories, law enforcement has turned out to be no more successful in case of money laundering, either. In the previous decades criminal law provisions aimed at annihilating the economic background and financial security relating to criminal lifestyle of organized crimes as well as the conspiracy preventing the unveiling of such crimes have proved to be hardly effective. Concealing illegal incomes derived from crimes by using financial systems in a way that would pretend legality, may hinder the future detecting and proving of the initial criminal conduct.

In 2012 the sum affected by economic crimes was 37,2 billion HUF, which shows an increase of 11,3% compared to the previous year.

In 2012 10,590 criminal complaints were filed to prosecutorial investigative bodies (Central Investigative Chief Prosecutor's Office and the investigative prosecution offices). Prosecutorial investigations were ordered in 4,621 cases, while the number of concluded investigations amounted to 6,935. In the concluded prosecutorial investigations 5,196 crimes and 3,066 perpetrators were registered.

Last year the central unit of the Central Investigative Chief Prosecutor's Office received 1,302 cases, which exceeded the 1,212 cases from the preceding year by close to 7%. 753 of the cases received were cases in which criminal complaints were filed (criminal complaints), while 569 of the cases received consisted of other submitted documents. Looking at cases where criminal complaints were filed and other cases that were registered, there were 626 occasions when cases were reassigned.

The five regional offices of the Central Investigative Chief Prosecutor's Office have received 3,048 cases. The percentage ratio of these cases among the different offices was the following: Budapest 46%, Szeged 16%, Debrecen 14%, Kaposvár 12,5%, Győr 11,5%. Out of the cases received there were 2,582 cases in which criminal complaints were filed, while 466 cases were other types of cases received. Among criminal cases 223 were non-military criminal proceedings, which constitutes 8,6% of the cases. Among them attention should be given to the 81 cases of abuse of authority, 28 bribery cases, 23 cases of forgery of official documents by official persons and 14 perjury cases. The number of crimes against property totalled 16.

Military criminal proceedings were instituted in 2,359 cases. The ratio of criminal complaints was the following: 52% of them concerned persons working for penitentiary institutions, 34% persons working for the police, 13% staff members of the Hungarian defence forces, while 1% concerned persons employed by the national security services. Regional offices filed indictments in 310 criminal matters out of these cases. 44% of the defendants were members of the police personnel, 25% worked for the Hungarian defence forces, 19% for penitentiary institutions, 2% for the national security services, while 10% of the defendants were civil employees.

With the cases initiated in the previous year the Prosecution Service altogether examined 515,610 decisions in 2012. 25,999 of these were decisions dismissing criminal complaints, while 128,599 of them were decisions suspending the investigation.

Due to amendments of Act XIX of 1998 on the Criminal Proceedings the number of cases where direct prosecutorial supervision was exercised has declined by 1,6%; prosecution offices have reported direct supervision over cases in 5,711 matters. Based on case files and documents, the Prosecution Service has taken 13,328 actions, which displays a 13,5% increase compared to the previous year.

The number of complaints to be handled was 47,352. Out of these complaints 28,237 ones (59,6% of the total number of complaints to be handled) were lodged against charging persons as suspects, 3,801 against decisions dismissing criminal complaints, 1,163 against decisions suspending the investigation, and 7,280 against decisions terminating the investigation. 1,663 complaints were submitted against arresting, 1,109 against house searches, 1,489 against seizures and 2,610 for some other reasons.

Last year there were 7,332 cases where submissions for suspects' pre-trial detention were filed. Out of these cases the Prosecution Service motioned the ordering of pre-trial detention on 5,699 occasions (77,7%), and there were 162 cases where it did so without any submissions from the investigating authorities. Thus, the Prosecution Service filed altogether 5,861 motions to the investigative judge (2010: 6.355; 2011: 6.245). The court ordered pre-trial detentions in 5,334 cases (91%), issued restraining orders from leaving the territory of residence in 140 cases, and it ordered house arrests in 141 cases. On the first day of the year in question 2,331 while on the last day of it 2,298 defendants were in pre-trial detention.

It is also a responsibility stipulated by law for the prosecutor to ensure that the duration of pre-trial detention is limited to the ultimately necessary period of time. The duration of pre-trial detentions was maximum one month in 1,114 cases, between one and three months in 1,151 cases, between three and six months in 1,955 cases and it exceeded one year in 271 cases (4,6%).

In 2012 the total number of concluded investigations received from the investigating authorities with an indictment proposal where indictments were expected amounted to 112,344, and together with the 6,934 unsettled cases initiated in the previous year 119,278 cases had to be examined in order to determine whether they were suitable for indictment or not. From the 119,278 cases prosecutors filed an indictment in 58,669 cases (49,2%), they terminated the investigation in 16,968 cases (14,2%), postponed the indictments in 6,990 cases (5,9%), referred the cases to mediation in 3,936 cases (3,3%) and issued a decision suspending the investigation in 73 cases (0,1%).

In 34,852 cases prosecutors filed an indictment, in 9,292 cases they arraigned the defendants, in 16,429 cases they motioned the conclusion of the procedure without holding any trial (the omission of trial), and in 71 waiver of trial cases charges against the defendant were decided by the court in public sessions.

Last year mediation was held in case of 4,446 defendants. In 2012 indictments were postponed in case of 9,103 defendants. The effectiveness and success of this legal institution is well reflected by the following statistics: in case of 4,933 defendants (54,2%) the criminal proceeding was terminated due to the fact that the set deadline had expired; in case of 914 defendants (10%) the fulfilment of conditions while in case of 389 defendants (4,3%) some other reasons led to the termination of the criminal proceedings.

Postponing the indictment proved to be unsuccessful in case of 1,527 defendants (16,8%), and filing an indictment thus became necessary.

The simplification and acceleration of the procedure, as well as the reduction of court s' workload are aimed at when, upon the prosecutor's motion, the court inflicts a punishment or takes measures without holding a trial, hearing the accused, or examining the evidence presented. Last year prosecutors filed a motion for the omission of trial with regard to 27,1% of the indictments (in 16,429 cases).

Arraignment also serves the speedy conclusion of procedures where circumstances of the case allow for the application of provisions regulating arraignment. Arraignment applies to cases which can easily be decided, do not involve complex evidence hearing, provided the defendant pleads guilty or is caught in the act of committing a crime. In 2012 defendants were arraigned in 15,3% of cases (9,292 cases) where indictments were filed.

In 2012 courts passed final judgements in 62,430 cases concerning 83,053 defendants. First-instance trials were held in 48,645 cases where the number of defendants totalled 73,832. The number of cases concluded in second-instance procedures amounted to 11,525, and in 828 of these cases trials resulted in decisions on the merit. The proportion of cases with prosecutors representing their positions in public hearings where their attendance was not compulsory is also significant (23,7%) and it increased compared to the previous year.

The number of appeal cases tried by third-level courts shows a continuous increase. Judgements of the courts became final at the third level in 122 cases in relation to 146 defendants. In the year in question the rate of cases decided in third-level public trials, where the attendance of prosecutors is obligatory, somewhat exceeded the rate of the previous year (93,4%).

Prosecutors of the Office of the Prosecutor General elaborated their standpoint in extraordinary appeal procedures in the Curia in 294 cases on 117 days of trial.

The ratio of punishments and measures inflicted by the courts has remained almost invariable for years. In 2012 22 defendants were sentenced to the most severe punishment, namely life-long imprisonment by courts. Compared to the previous year this shows a remarkably significant increase indicating the endeavour of the Prosecution Service that exemplary punishments should be inflicted on perpetrators committing highly serious criminal offences which are in the focus of public attention and threaten the rule of law in its fundamentals.

Imprisonment sentence was imposed on 38% of the defendants by courts. The ratio of enforceable imprisonment and suspended imprisonment sentences has basically remained unchanged for years; enforceable imprisonment was imposed on 33,1% of the defendants, while conditional suspended imprisonment was inflicted on 66,9% of the defendants.

In 2012 community service was imposed in more cases, but the proportion of those defendants whom courts sentenced to community service is still not considerable (16.2%). The proportion of defendants sentenced to pecuniary penalty has been constantly decreasing (22.3%) since the new law, which considerably increased the daily amount of fine, entered into force.

Similarly to that of previous years, the efficiency of indictments was favourable (96%).

The number of motions received by prosecutors supervising penitentiaries which required measures to be taken was 14,462, representing a growth of 14.8%, and the number of prosecutorial measures taken on the basis of them was 14,159, reflecting a growth of 14.7%. All this was managed with the same number of prosecutors as the year before.

Penitentiary institutions are normally sized for 12,573 inmates. The total number of detainees amounted to 17,179 persons on the last day of the year in question. On 31<sup>st</sup> of December 2012, the level of over-crowdedness in prisons reached 136.6%, which reflects only a 0.1% growth compared to the data of the previous year. In this context it is worth mentioning that at the same time, at the end of the target year, only 57 persons were held in the 772 places of the police detention facilities. These facts can lead to the conclusion that the utilization of police detention facilities was rather low last year. From the 17,179 persons who were still detained on the last day of the year 4,888 were put under pre-trial detention, and from the latter 2,051 persons had been serving their pre-trial detention for more than 6 months.

On 31<sup>st</sup> of December 2012, altogether 23,949 persons were placed under the supervision of probation officers (14,582 adults and 9,367 juveniles). From them 3,244 persons were released on parole, 4,897 were put on probation, 9,835 were sentenced to suspended prison sentence, and 5,973 persons were placed under the supervision of a probation officer after the indictment had been postponed.



With regard to the perpetrator–structure, the number of juvenile perpetrators exceeded the ratio of 10% for the first time since 2003, which means that more than 10% of the registered perpetrators are juveniles (10,056), although the number of juvenile perpetrators has actually dropped by 8.9%. The number of minor perpetrators (2,604) has not changed significantly for years. The highest number of perpetrators is constituted by minor boys (82.9%) coming from intact, regular families (75.4%) who commit crimes against property (59.6%) typically alone or together with another minors (76%). It is still a tendency that they commit violent crimes against the person (3% of which were homicides committed with intent) in higher numbers. The ratios of the structure of registered juvenile perpetrators and the criminal offences committed by them are rather similar (62.3% live in families, 82.4% are boys, 51.1% are crimes against property). 91.3% (9,180 persons) of juvenile perpetrators have no criminal record, which ratio has not changed significantly over the past years.

In 2012 prosecutors filed indictments in 4,023 cases against 5,899 juvenile delinquents, which shows a 9% decrease compared to the previous year. At the time of indictment 215 persons were in pre-trial detention and 48 were in custody. At the time of indictment 5% of the accused were under the effect of coercive measures. A slight growth in the number of coercive measures at the time of indictment can be observed.

In 2012 courts passed final judgements with regard to 5,516 juvenile cases.

The courts inflicted punishments (43.6%) or measures (56.4%) in relation to 5,279 persons from among the 5,899 accused juveniles. 1,595 juvenile accused persons were sentenced to definite-term imprisonment. Within this number the number of enforceable imprisonments decreased in its ratios (336 persons), whereas the number of conditional suspended imprisonments grew (1,259 persons). The number of defendants sentenced to community service tends to increase. In 2012 the courts inflicted the penalty of community service on 616 juvenile delinquents, which indicates a minor growth compared to the data of the previous year. The number of pecuniary penalties has reduced to its half in comparison with the data of last year; such penalties were imposed on altogether 51 defendants.

### *3. Activities of the Prosecution Service outside the field of criminal law – Tasks relating to the protection of public interest*

Compared to previous legal regulations APS has introduced conceptual changes relating to prosecutors' responsibilities outside the field of criminal law. The objective of prosecutors' activities outside the field of criminal law is to enforce compliance with law, the fulfilment of which serves the public interest based on the rule of law defined in the Fundamental Law of Hungary. This legal institution does not aim at remedying individual

grievances caused by unlawful acts or omissions, but it intends to restore legal norms and the rule of law according to separate objective standards in cases and ways specified by law. An essential element of this is that supervision of legality has been replaced by the authorization granted for taking specific measures and by review of legality substantiating the former. Contrary to the former practice, Section 26 (2) of APS stipulates that prosecutors shall conduct reviews *ex officio* exclusively in specific cases, individually, and only if based on data or other circumstances revealed to the prosecutor it is reasonable to assume that serious legal violations, omissions have occurred or non-compliant conditions exist.

Unless otherwise provided for by law, the Prosecution Service shall act whenever the body designated to terminate the illegality fails to take the necessary measures despite its duties set forth in the Fundamental Law, other statutes or legal regulations or whenever the prevention of the impairment of rights arising from the violation of law demands immediate action from the Prosecution Service. Similarly to provisions of the Fundamental Law specifying responsibilities and tasks in the scope of criminal law, APS prescribes that prosecutors shall perform their duties relating to the protection of public interest by contributing to the administration of justice, they shall exercise the powers they are entrusted with to eliminate noncompliance with law primarily by instituting litigious and non-litigious proceedings at court (right to file lawsuits) and by pursuing legal remedy.

Actions taken by prosecutors are considered to be neither ordinary nor extraordinary legal remedies. Prosecutors exercise review of legality *ex officio* to serve the public interest even if circumstances forming the grounds for reviews are revealed to prosecutors by individual petitions or reports.

The priority areas of prosecutors' activities relating to the field of public interest include cases connected to proceedings and measures of public administration authorities, competences relating to environmental protection and consumer protection, contravention cases, duties relating to certain legal entities and organisations without a legal personality, and prosecutors' actions in civil courts. There are separate laws regulating prosecutors' duties relating to personal data protection and to the establishment of the legality of regulatory coercive measures.

Without enlisting all the cases, APS brings examples for prosecutors' right to file lawsuits. According to this, prosecutors may file lawsuits under statutory requirements particularly in connection with: *a)* disposition over national assets, *b)* misappropriation of public funds, *c)* terminating grievances of public interest caused by void contracts, *d)* data entered into public registers, *e)* the protection of the environment, nature and arable land, *f)* contesting consumer agreements (general terms of agreement) of private individuals, *g)* the modification of family status.

Prosecutors' duties relating to individual, final or enforceable decisions made by public administration authorities and other, law-applying out-of-court bodies which have not been reviewed by courts and prosecutors' responsibilities relating to regulatory measures of the same authorities and bodies have changed into the power of legality review. Unless otherwise provided for by law, prosecutors shall issue reminders to eliminate non-compliance in respect of non-compliance affecting the merits of a decision by any authority of public administration within the deadline specified by law, irrespective of acquiring and exercising legal rights in good-faith. Contrary to previous regulations, in public administrative cases it is a lawfully filed reminder that creates the possibility for public administrative authorities to remedy violations of law within their own competences even if such authorities are not entitled to withdraw or modify decisions within their own competences according to the provisions regulating public administrative proceedings. If the reminder fails to achieve the desired effect, the prosecutor shall contest at court the final decision delivered in the original case. (If the prosecutor wins the case in court, the court sets aside the non-compliant decision of the public administrative authority and, if necessary, it orders the public administrative authority to repeat the proceeding, or in some cases it may change the decision of the public administrative authority.)

APS has abolished prosecutors' right to file motions regarding the creation of future lawful practice of public administrative authorities, and warnings to the future danger of violation of law are not applicable any more, either. The role of indicative letters, used for warning to cases of petty violations of law has changed; indicative letters may only be submitted in individual cases.

The exercise of prosecutors' duties relating to the protection of public interest is also facilitated by a new provision of APS which stipulates that whenever a prosecutor is authorised under law to file a lawsuit, the proceedings shall be deemed to serve public interest. This provision has simplified court proceedings.

In 2012 the number of petitions and petitions for review indicating violations of law, received from private individuals and external bodies requesting prosecutorial actions was 6,390. In order to remedy violations of law, prosecution offices issued reminders in 3,337 cases, indicative letters in 3,580 cases, and in 2,099 cases they initiated procedures for determination of personal liability. With regard to contravention cases 19,381 arrest warrants and 117,797 decisions ordering the termination of proceedings were subjected to legality reviews, and 1,099 complaints were decided about. Prosecutors filed 1,278 lawsuits and lodged 549 appeals in court, initiated 1,034 legality supervision procedures with respect to companies, were involved in litigious and non-litigious procedures in 1,030 cases, and filed petitions for review in 16 cases.

The high-level protection of the environment invariably forms a primary task of the Prosecution Service. A provision of the Act on the General Rules of

Environmental Protection (hereinafter referred to as *Environmental Protection Act*), stipulating the complex application of legal sanctions relating to several fields of law in case liability for environmental damages is determined, requires the cooperation between the various branches and activities of the Prosecution Service. Pursuant to this provision of the Environmental Protection Act environmental fine shall not exempt one from criminal liability and from liability for damages, furthermore, from the fulfilment of obligations to restrict, suspend or ban the activities, to develop adequate protection and to restore the natural environment or the environment that existed before.

Within their own competences the contacted authorities of public administration held inspections and audits, issued orders imposing obligations, and imposed fines adjusted to the gravity of cases. In addition to fines under 100,000 HUF we have been informed of more and more cases where administrative fines of 450,000 HUF, 890,000 HUF or more than one million HUF were imposed.

As a result of reviewing proceedings and decisions of consumer protection authorities, prosecutors issued 30 reminders for serious violations of law and infringement of competences typically revealed with regard to fining small and medium enterprises.

One third of the 4,689 petitions received in the scope of legality review concerned traffic offences within which the rate of petitions relating to administrative traffic offences was by far the highest. With regard to administrative traffic offences only 32 reminders were issued, which indicates that in this group of cases concerning a wide range of individuals the practice of authorities in their proceedings essentially complies with law.

Last year prosecutors issued 2,763 reminders, 2,552 indicative letters, and initiated 1,625 procedures for the determination of personal liability in contravention cases. There were 157 cases where decisions were set aside based on contravention complaints and instructions for further administrative proceedings were issued.

The prosecutorial review of the legality of arrest warrants guarantees the legality of coercive measures. In 2012 prosecutors had to study and investigate 19,381 files pertaining to arrest warrants in contravention cases. Due to violations of law decisions were set aside in 1,979 cases, so 90% of the arrest warrants proved to comply with law.

Prosecutorial review of legality ensures that integrity testing specified in Act XXXIV of 1994 on the Police are lawfully conducted. Last year with regard to the hundreds of decisions ordering this testing and sent for approval there were 10 cases where approval was rejected.

The number of petitions requesting prosecutorial actions and received in the scope of legality review (4,689) which were rejected (1,151) indicates

that a significant portion of persons submitted unfounded petitions to the prosecution offices with high expectations even after the new Act on the Prosecution Service had entered into force.

The objective of the activity of the Prosecution Service is to assert public interest; consequently, prosecutors participate in civil proceedings as entities of public law whose legal capacities are not adjusted to private individuals' procedural legal capacity and competency but they are regulated by separate legal provisions. As court practices have differed with regard to their view about the right of prosecutors to initiate lawsuit, the Prosecutor General has initiated a uniformity decision procedure in the Curia pursuant to APS and the Act on the Organization and Administration of Courts. Uniformity decision no. 2/2012 KMPJE of the Curia serves as a clear directive regarding the theoretical issue that in his scope of responsibilities specified by law a prosecutor takes part in civil litigious and non-litigious proceedings as an abstract legal entity of public law represented by the competent prosecution body, which body is subject to change in the various stages of the proceeding. By this uniformity decision the Curia has resolved a problem concerning the application of law having emerged as a result of new laws.

In the target year there were 19 cases where lawsuits were initiated to contest the unfair standard contract terms and conditions used by financial service providers, insurance companies and business associations dealing with sales or real estates, product shows and internet purchasing. In other 11 cases the entity using standard contract terms and conditions suitably modified the standard contract terms and conditions in the pre-trial phase of the proceeding; therefore, there was no need to institute any proceedings. Since prosecutors initiated making the decision of the judgement public in every trial, lawsuits also facilitate asserting the rights of those members of the society who have suffered grievances.

Law entitles prosecutors to file lawsuits regarding consumer contracts of private individuals. Connected to this, prosecutors instituted lawsuits and initiated out-of court settlement avoiding lawsuits in 55 cases in 2012.

Section 202 of the Civil Code denominates usurious contracts as specific, individual contracts among void contracts and the Code determines such contracts to be null. Last year prosecutors used the statutory possibility of filing lawsuits in 10 cases in order to protect persons' interests who became victims of financial impossibilities.

In cases relating to the so called real estate mafia the cooperation between the criminal and public interest protection branches also plays an important role. Criminal proceedings were initiated in 169 cases where perpetrators unlawfully acquired houses or flats owned by victims especially by duress, threat or by using that state of the victims when they were unable to express their free contractual will. If conditions existed, prosecutors initiated that contracts in question should be determined null.

Prosecution bodies have also paid special attention to unlawfully concluded contracts entered into with the purpose of acquiring and using arable land.

In 2012 the Prosecution Service filed lawsuits at competent courts in 912 cases against civil societies based on provisions of the Civil Code and the Act on the Right of Associations, Non-profit Status, and the Operation and Funding of Civil Society Organisations. In these lawsuits prosecutors requested the dissolution of civil society organizations, the establishment of their termination and the restoration of their legal operation. Chief prosecution offices lodged more than 300 appeals against unlawful decisions made in non-litigious proceedings for the registration of civil society organizations and the registration of changes in data of civil society organizations.

Company registration procedure and procedures for the registration of changes in company data are unilateral procedures conducted in company courts without adversary parties attending it; consequently, prosecutors are entrusted by law with the right to initiate lawsuits in order to create and secure authenticity and lawful operation. In 2012 prosecutors filed statements of claim in 52 cases requesting that unlawful decisions on the registration (registration of data changes) of companies should be set aside, and in 1,033 cases they initiated legality supervision proceedings in company courts.

Using their traditional prosecutorial powers, prosecutors initiated 101 lawsuits last year. In 57 cases lawsuits were filed in affiliation cases, in 41 cases for the placement under guardianship and in 3 cases family lawsuits of other nature were lodged. Based on petitions lodged in accordance with Act LXXII of 2009 on Restraining Orders Applicable in Incidents of Violence between Relatives, there were 539 cases which prosecutors directed public attention to and 993 cases where prosecutors' actions were taken.

Prosecutors dealing with juvenile cases exercised the right to review legality in 15,532 cases, which constitutes 9% of the total number of cases relating to legality reviews handled by the prosecutorial branch responsible for the protection of public interest.

#### *4. The relationship between the Parliament and the Prosecution Service*

Pursuant to Section 11 (1) of APS the Prosecutor General may participate in the sessions of Parliament in advisory capacity, where – according to the general rules – MPs may address questions to the Prosecutor General. In 2012 the Prosecutor General answered 8 prompt questions and 18 written questions in the Parliament, whereas no verbal questions were addressed by the MPs.

In 2012 the Parliament suspended the immunity of 1 MP at the motion of the Prosecutor General. In the year in question the Prosecutor General

also initiated the suspension of immunity - similar to that of MPs - of 9 judges, 3 public prosecutors and one attaché.

Regarding contravention cases, four requests for the suspension of immunity were received by the Prosecutor General. The requests concerned two MPs and two judges. One of the MPs waived his parliamentary immunity, the President of Hungary decided on suspending the immunity of one judge, whereas the initiation for the suspension of the immunity of another judge was unfounded, therefore it was not suspended.

##### *5. The international activity of the Prosecution Service*

Between 28<sup>th</sup> May 2011 and 26<sup>th</sup> May 2012 the Hungarian Prosecutor General occupied the position of the President of the Network of Public Prosecutors or Equivalent Institutions at the Supreme Judicial Courts of the Member States of the European Union. In this capacity he took part in the prestigious ceremony organized for the 290<sup>th</sup> anniversary of the foundation of the Russian Prosecution Service in Moscow, on 12<sup>th</sup>-13<sup>th</sup> January 2012, and delivered a speech as the President of the Network when heads of delegations were received by the Russian President, Mr. Medvedev.

At the end of his presidency on 24-26<sup>th</sup> May 2012 the 5<sup>th</sup> Conference and General Assembly of the Network was held in Budapest.

In the past year the Prosecution Service of Hungary was represented by the Prosecutor General or the Deputy Prosecutor General at the following events:

- at the joint conference of the OLAF and the Office of the Prosecutor General of Bavaria on 25<sup>th</sup>-27<sup>th</sup> January 2012 in Munich,
- at the 1<sup>st</sup> working meeting of the Prosecutors General of the Visegrad Group (V4) in Stará Lesná on 25<sup>th</sup>-27<sup>th</sup> April, 2012 held upon the initiative of the Deputy Prosecutor General acting on behalf of the Prosecutor General of Slovakia,
- at the meeting of the EU Prosecutors General in Brussels initiated by Ms Viviane Reding, Vice-President of the Commission to discuss the issue of enhanced fight against crimes against the financial interests of the European Union,
- at the Consultative Forum of Prosecutors General and Directors of Public Prosecutions in the EU Member States organized by the Cyprus Presidency in The Hague,
- as the member of the Consultative Council of European Prosecutors (CCPE) of the Council of Europe he took part in the discussion of Opinion No. 7 on the management of the means of prosecution services and participated in two working meetings as

well as in the 7<sup>th</sup> plenary meeting of CCPE in Strasbourg on 25-27 November 2012,

- at the celebration of the 10<sup>th</sup> anniversary of the establishment of Eurojust in The Hague, on 27<sup>th</sup>-28<sup>th</sup> February;
- at the symposium on the Rule of Law of the Katar Law Forum in Doha, on 4<sup>th</sup>-7<sup>th</sup> May.

Since her accession to the European Union Hungary has been the member of the European Judicial Training Network (EJTN), which plays a fundamental role in the international training of prosecutors. Apart from taking part in EJTN-trainings abroad, in 2012 the Prosecution Service joined the short and long term exchange programme of the organization. As a result of the good professional relations with EJTN and us joining the exchange programme, the meeting of the contact points of the EJTN exchange programmes was held in Budapest on 27<sup>th</sup>-28<sup>th</sup> February, in the organization of which the Office of the Prosecutor General also took part.

Since Hungary's accession to the European Union the amount and the content of legal assistance requests among the Member States has not changed significantly. The Convention on Mutual Legal Assistance in Criminal Matters between the Member States of the European Union dated 29<sup>th</sup> May, 2000, and its Supplementary Protocol dated 16<sup>th</sup> October, 2001 (Act CXVI of 2005) allows judicial authorities of its parties to exchange legal assistance requests directly.

In 2012 1,637 legal assistance requests were received directly by local prosecution offices from judicial authorities of Member States. Direct legal assistance requests from Hungary to foreign jurisdictions amounted to 1,453.

In cases where a Hungarian citizen committed a criminal offence abroad, the criminal procedure was transferred from the judicial authorities of foreign countries on 156 occasions, whereas there were 21 cases where the perpetrator, who was a foreign citizen, committed a criminal offence in Hungary and the cases were transferred to foreign judicial authorities. In 2012 there were 4,756 foreign citizens who committed criminal offences in Hungary, of which 1,324 perpetrators were Romanian, 524 Serbian, 510 Ukrainian and 337 Afghan citizens. From the total number of criminal offences committed by foreign citizens, amounting to 6,626 criminal offences, 2,718 were crimes against public order, 1,373 crimes against state administration, justice and public integrity and 1,059 crimes against property.

In the year of the report, the courts ordered the pre-trial detention of 313 foreign citizens (108 of whom were Romanian, 58 were Serbian, 43 Vietnamese and 17 were Slovak).



In Hungary there were 8,353 criminal offences committed against foreign citizens. The majority of these criminal offences (6,336) were crimes against property.

In 20 cases the Prosecution Service filed criminal complaints to foreign countries, and in 1,005 cases decisions were served abroad.

In 2012 4,430 legal assistance requests concerning contravention cases were received at the Office of the Prosecutor General. The Hungarian authorities requested legal assistance on 118 occasions in such cases. The overwhelming majority of such requests were sent by Austrian authorities, namely 4,253 out of the total 4,430. These requests related mainly to traffic contraventions: they aimed at the disclosure of the personal data of the owner of the vehicles involved in speeding or the contravention of not maintaining a safe distance between vehicles. We were able to execute half of these requests but in 1,891 cases we could not provide assistance as the requesting authorities failed to supplement their deficient letters of request.

The Hungarian contravention authorities and courts sent legal assistance requests to foreign authorities on 118 occasions; our office forwarded 28 letters of request to Romania, 22 to Slovakia, 19 to Austria and 17 to Germany.

Judicial authorities of the Member States of the European Union submitted 1,553 cases to Eurojust. This indicates an increase compared to the data of recent years. The proportion of cases in which more than two Member States are involved has also increased. The majority of cases submitted to Eurojust do not concern drug trafficking (263), but rather different kinds of frauds, including tax evasion (302). The number of cases concerning other crimes committed in affiliation with organized crime grew from 197 to 231, whereas the number of cases of money laundering increased from 122 to 144. The number of cases registered at Eurojust for human trafficking and prostitution dropped from 79 to 60.

The Hungarian section had altogether 117 new cases in 2012, which are four cases less than in the previous year. 48 cases were initiated by the Hungarian judicial authorities which are six cases more than in the year before.

#### *6. The Status of the personnel in the Prosecution Service and training programmes*

ASPGPOPEPC retains the traditional practice, according to which prosecutors are obliged to execute the instructions of the Prosecutor General and those of their superior prosecutors. At the prosecutor's request, the instruction has to be committed to writing. The prosecutor must refuse to execute an instruction if, by virtue of the execution thereof, he/she were to commit a crime or contravention, and if the execution thereof were to directly and grossly endanger his/her life, health or physical state. If the prosecutor

finds the instruction incompatible with a rule of law or his/her legal conviction, he/she may request exemption from the administration of the given affair in writing with a view to his/her legal position. Any such request may not be refused; in this case, the administration of the given affair shall be entrusted to another prosecutor or the superior prosecutor may withdraw the given affair within his/her own competence. Although the centralized structure of the Prosecution Service has not changed, these regulations enhance prosecutorial autonomy and ensure the standard of case administration.

Compared to the previous years there was a significant change in the personnel and human resources management in the Prosecution Service commencing from the beginning of last year. The main reason for this is that pursuant to the new Fundamental Law, entered into force on 1<sup>st</sup> January 2012, the service relationship of prosecutors – with the exception of the Prosecutor General – shall terminate when they reach the general retirement age specified for them. Prosecutors who had reached the upper age limit until the law's entry into force or did so in 2012 were exempted, thus the service relationship of 99 public prosecutors ceased.

The provisions independent of the form of the employer of the new Labour Code [Act I of 2012] are to be applied adequately for the prosecutorial service relationship. From among the new provisions it is worth highlighting one according to which employees are not allowed to conduct themselves outside the workplace in a way which directly and effectively endangers the reputation of the employer. Ethics provisions inserted in the APS comply with these provisions.

On 1<sup>st</sup> January 2012, due to the integration of the military organs, the number of approved positions grew further. The number of approved positions increased by 181 new positions and 4 blue-collar workers allocated for maintenance works in the newly acquired office buildings (adding these two together equals 185 places), and it comes out at a total of 4,626 places. On the first day of the year from these positions 2,018 were prosecutor positions, which number dropped to 2,004 by 31<sup>st</sup> December 2012. The decrease in the number of positions is mainly due to the fact that in order to ensure the new generation of prosecutors 16 prosecutor positions were temporarily changed into trainee prosecutor positions as of 1<sup>st</sup> September 2012.

The number of prosecutor positions allotted to the different organizational units dropped from 2,012 to 1,998, and the number of prosecutor positions filled decreased from 1,842 to 1,809 between 1 January and 31 December 2012. The number of prosecutor positions in the central reserve is still 6. The number of vacant positions – in spite of the 74 appointments of prosecutors – increased from 177 to 189 due to the compulsory attendance and participation by prosecutors in trials. This indicates a 9.7% shortage in the complement – as opposed to the 8.6% in 2011. The growing shortage was mainly the result of the termination of service relationships due to retirement age.

As opposed to the 74 appointments of prosecutors 119 prosecutorial service relations terminated. The number of appointments is similar to that of the previous year (77), the number of terminations, however, was much higher (47).

Between 1<sup>st</sup> January and 31<sup>st</sup> December 2012 104 prosecutors were exempted from work while one prosecutor resigned due to pensionability, two prosecutors resigned for other reasons, three died and one prosecutorial service relationship ceased for a different reason. The service relationship of 7 prosecutors was terminated by mutual agreement and one prosecutor left the Prosecution Service due to deprivation of office.

In 2012 the number of the permitted positions for junior prosecutors was 121, of which 101 were filled. In 2012 the number of appointments to junior prosecutor positions was 63, whereas no junior prosecutors' service relationship terminated. In 2012 the number of trainee prosecutors reached 396 compared to the 414 positions permitted. Beside the 125 appointments to trainee prosecutor positions, there were only 4 trainee prosecutors whose service relationship terminated.

The Hungarian Centre for the Training of Prosecutors (Hungarian abbreviation: *MŰK*), providing an institutional basis for the training of trainee and junior prosecutors, has reached the seventh year of its operation. In 2011 and 2012 300 new trainee prosecutors joined the organization. Based on a four-semester uniform syllabus and educational program, even the exceptionally large number of trainee prosecutors was successfully trained for their bar exam and was provided with the theoretical knowledge needed for the exam. This adequately complements the practical experience acquired by trainee prosecutors at the local offices of the Prosecution Service under the guidance of their instructors.

In the year in question within the framework of the centralized training we organized courses for 9 groups, 4 classes for 22 weeks in the Balatonlelle Training Centre. The lectures were held by prestigious, experienced senior prosecutors and heads of the Prosecution Service who did not receive any stipend for their training activity. Their lectures are accessible to the students and participants of the trainings on the Intranet.

Different competitions and professional events offering opportunities for participation also contributed to the training of trainee and junior prosecutors (Professional Scientific Conference, Kozma Sándor Scientific Competition, courses, conferences abroad, etc.).

The training of prosecutors is a highly accentuated, prioritized field of trainings and it also serves as a significant means of influencing the professional direction of the prosecution service while also affecting efficiency. In 2012 24 centrally organized trainings were held with the participation of 960 public prosecutors.

It is a great progress that the compulsory training system for prosecutors, which was developed on the basis of professional discussions, is now regulated by an Order of the Prosecutor General [25/2012. (XI. 16) LÜ utasítás/Order 25/2012. (XI. 16) of the Prosecutor General, effective from 1<sup>st</sup> January 2013].

### *7. Information technology within the Prosecution Service*

In accordance with provisions of law, the information technology strategy of the Prosecution Service treats the connection of the Prosecution Service to the IT-based data flow system, the development of cooperation with partner organs in the field of information technology, the reduction of administrative workload and the securing of wide access to records and databases supporting the work of the Prosecution Service as high priority.

The Prosecution Service operates a national, remote data transport network (Praetor Net) connected to every office and premise of the Prosecution Service. As of 1<sup>st</sup> June 2012, the integrated data- and internet services necessary for this are provided by the National Information Communication Service Ltd, whereas the Prosecution Service has the ownership and the right for operation of network devices necessary for data protection and security.

The services of Praetor Net include internet access, e-mail services ensuring fast information exchange, and downloading data bases and registers which facilitate work within the Prosecution Service and which have been developed either by the Prosecution Service or by external sources. Via their own workstation and authorization code more than 4,000 employees of the Prosecution Service have presently access to this network which is able to secure continuous on-line access to applications and data.

In the past year about 700 employees of the Prosecution Service were given a secure signature creation device which enables the creation of qualified electronic signature and access to the electronic system of real estate and company registers.

Our own developed management applications provide up-to-date information on the activity of the Prosecution Service in the field of criminal law and protection of public interest, and the entered data serve as the basis for the centrally controlled and approved information systems which are parts of the National Statistical Data-gathering Programme of the Government (OSAP).

In 2012 the Prosecution Service fully introduced the use of the Unified System of Criminal Statistics of the Investigative Authorities and of the Public Prosecution Service (EnyÜBS).

### *8. The financial conditions of the operation of the Prosecution Service*

Last year 36,869.6 million HUF original expenditure appropriations were made available for the professional duties of the Prosecution Service within its budgetary title. Compared to the appropriation of the previous year, this meant an increase by 4,778.2 million HUF, a growth of 14.9%. The increase in the expenditure appropriation was caused by a 4,781.7 million HUF rise in the subsidy appropriation and a 2.5 million HUF drop in own incomes.

In the target year, due to the modifications of appropriation on different grounds, the modified expenditure appropriation rose to 40,587.2 million forints.

At this title the balanced liquidity conditions could be maintained throughout the whole year. More emphasis was laid on establishing undisturbed conditions for daily functioning, on maintaining and servicing the IT equipment park and guaranteeing the increasing revenue expenditure of the newly acquired office buildings.

The accumulation of balance reserve of the title was 972.1 million forints.

In 2012 the structure of the available sources did not change compared to that of previous years; some 92.6% of the source of expenditure was covered by the support allocated for the year in question, 6.8% by the remainder of the appropriation of the previous year and only 0.6% by own income.

In the period of account the available support appropriation was financed fully by the Hungarian State Treasury.

Similarly to the previous years, 80.9 % of the used appropriation was made up by personnel-related expenses and related contributions, only 4.1% of them could be spent on developments and 14.9% could be used on operational costs.

For personnel allowances, 24,001.1 million HUF were used, from which sum the regularly granted personnel allowance was 16,354.7 million HUF, personal allowances not granted regularly 6,933.3 million HUF and the external personnel allowance was 713.1 million HUF.

For personal allowances not granted regularly 6,933.3 million HUF were spent, which sum was primarily accounted for under the following legal titles: rewards in the sum of 1,079.9 million HUF, jubilee rewards in the sum of 739.2 million HUF, and for allowances specified by the cafeteria plan regulations of the Prosecution Service 200.0 thousand HUF gross per capita.

In 2012 112.3 million HUF ex interest employer loan was granted to the employees of the Prosecution Service to improve their housing conditions

or the early repayment of their debt in foreign currency. 88 persons were granted an average sum of 1,276 thousand HUF.

For non-personnel expenses 4,002.0 million HUF were used, which exceeds the amount of the year before by 337.2 million HUF. Similarly to the years before, operation costs went up as a result of inflation, the rise in VAT, as well as the growth in territory of newly acquired or refurbished office buildings being necessary because of the rise in the complement of the Prosecution Service. Savings could only be realized in the field of communication services. The amount of reverse charge VAT payment obligation related to investments grew remarkably.

8.4% of such expenses was spent on purchasing stationeries, printed forms, handbooks, official bulletins and other information carrier equipment required for the performance of professional duties, 7.7% on operating the country-wide PC network of the Prosecution Service, 5.5% on expert fees, defence attorney fees, translation and interpretation expenses, fees related to public procurement procedures.

By the end of the reporting period the gross value of the invested assets was 16,845.9 million HUF, which exceeded the closing value of the preceding period by 839.9 million HUF.

Due to the interim amendments of the appropriation the original expenditure appropriation for institutional investments of 834.9 million HUF was increased to 3,105.9 million HUF. The source of the amendment was chiefly the remainder of the appropriation of the previous year, as well as the re-arrangement of appropriations among high priority targets.

Austerity measures, introduced in previous years applied for the management of the Prosecution Service in 2012, as well. Apart from guaranteeing personal and material conditions for professional functioning, the title paid special attention to ensure continuous operation and liquidity.

#### *9. Prosecutors' scientific activity and the National Institute of Criminology*

Prosecutors are respected participants in academic legal research. Their essays and studies are regularly published in *Jogtudományi Közlöny (Legal Jurisprudence Review)*, *Magyar Jog (Hungarian Legal Review)*, *Ügyészek Lapja (Prosecutors' Bulletin)*, *Belügyi Szemle (Internal Affairs Journal)* and in other professional-scholarly journals. In 2012 the *Ügyészek Lapja (Prosecutors' Bulletin)* issued its special edition, which contained the edited version of the 18 best lectures presented at the Professional Academic Conference. Several prosecutors are authors of handbooks, university textbooks, and other publications used for educational purposes in the higher education. There are 13 prosecutors and 29 employees of the Prosecution Service who possess academic titles. Two of them have been

awarded the academic title D.Sc (Doctor of Science) after they successfully argued for their doctor for science dissertation in public disputes held at the Hungarian Academy of Sciences, and 31 prosecutors, junior prosecutors, trainee prosecutors are PhD students at various universities on their own effort. Close to 70 prosecutors are university professors and lecturers at the legal faculties of Hungarian universities, at other institutions of higher-education, or they teach subjects in postgraduate programs.

As a scientific and research institute, the National Institute of Criminology carries out comprehensive researches on the causes of criminality, the possibilities of crime prevention, the current theoretical and practical issues of criminality and criminal law enforcement. The Hungarian Academy of Sciences, the legal faculties of the universities, and the agencies of criminal law enforcement delegate members of high position to the Academic Council, which assists and controls the Institute's work. The results and outcomes of the researches carried out by the Institute as well as its proposals are regularly used by the bodies showing interest in the Institute's work and projects.

There are 12 researchers working for the Institute who possess academic titles. Among the researchers 2 have been awarded the title of D.Sc, 10 the C.Sc. or PhD titles, while 3 researchers are habilitated associate professors.

In the year in question, the number of publications by the researchers totalled 81, 26 of which were written in foreign languages (and 17 of the latter were published abroad). Among the publications there were 6 monographs and 18 book chapters, 23 essays published in scientific journals, 12 papers in Criminology Review and 3 scientific articles in various conference volumes.

In 2012 the researchers of the Institute delivered altogether 116 lectures and presentations at various conferences and professional forums, out of which 32 were held in foreign languages at 16 conferences abroad.