



ACCOUNTABILITY AND ETHICAL STANDARDS OF PROSECUTORS

The Role of Prosecutors Associations

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3RD IAP GLOBAL FORUM FOR ASSOCIATIONS OF PROSECUTORS



**Distretto della
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MEDEL Naples Declaration 1996

- MEDEL DECLARATION OF PRINCIPLES CONCERNING THE PUBLIC PROSECUTOR

FUNCTION - to promote the application of the law while ensuring the respect of legality, of the fundamental rights and of equality in front of the law.

INSTITUTIONAL POSITION - judicial organ - autonomous from the executive – no specific instructions from the executive power to the Public Prosecutor.



MEDEL Naples Declaration 1996 (II)

- FUNCTIONAL STATUTE - subject to the law alone - criteria of legality, impartiality and objectivity.- judicial control
- PERSONAL STATUTE – magistrates - statute, rights and guarantees equivalent to those of judges.
- INTERNAL ORGANIZATION - allocation of cases, substitution of magistrates transfer of files submitted to objective and predetermined criteria
- APPOINTMENT, ADMINISTRATION AND DISCIPLINE – Superior Council (common to the judges or autonomous), composed by magistrates elected by their peers. Appointment of magistrates responsible for the coordination of the Public Prosecuting service for a given period.
- CONTROL OF THE JUDICIAL POLICE



Council of Europe – Standard setting

- **Consultative Council of European Judges (CCJE) – advisory body of the Council of Europe on issues related to the independence, impartiality and competence of judges**
- **Consultative Council of European Prosecutors (CCPE) – advisory body of the Council of Europe, with the task to prepare opinions on issues related to the prosecution service, to promote the implementation of **Recommendation Rec(2000)19**, and to collect information about the functioning of prosecution services in Europe**



Council of Europe – Standard setting (II)

- **The European Commission for Democracy through Law (Venice Commission) – advisory body on constitutional matters – contributes to the dissemination of the European constitutional heritage, based on the continent’s fundamental legal values while continuing to provide “constitutional first aid” to individual states – composed by independent experts (senior academics, supreme or constitutional court judges, members of national parliaments) – issues, *inter alia*, opinions on specific national laws and studies on general constitutional topics, e.g.: Study 494/2008 – Report on the independence of the judicial systems – The independence of judges; PART II – THE PROSECUTION SERVICE**



Council of Europe – Opinion No. 9 (2014) CCPE

The Opinion – on **European norms and principles concerning prosecutors** - contains:

- a Charter, called “the Rome Charter”,
- a detailed Explanatory Note of the principles which appear in the Charter.



Council of Europe – Opinion No. 9 (2014) CCPE (II)

In the Charter:

VI. Prosecutors should adhere to the highest ethical and professional standards, always behaving impartially and with objectivity. They should thus strive to be, and be seen as, independent and impartial, should abstain from political activities incompatible with the principle of impartiality, and should not act in cases where their personal interests or their relations with the persons interested in the case could hamper their full impartiality.

IX. Prosecutors enjoy the right to freedom of expression and of association. In the communications between prosecutors and the media, the following principles should be respected: the presumption of innocence, the right to private life and dignity, the right to information and freedom of the press, the right to fair trial, the right to defence, the integrity, efficiency and confidentiality of investigations, as well as the principle of transparency.



Council of Europe – Opinion No. 9 (2014) CCPE (III)

In the Explanatory report:

94. Prosecutors operate on the basis of public liability. Their decisions are based on the law and other regulations, and they remain within the scope of their discretion. In particular, prosecutors should respect and ensure the protection of human rights.

95. Prosecutors act in a transparent manner, unless legislation restricts their actions or the publicity of the documents they have drafted. They should particularly be careful to express their decisions in an understandable manner to the parties concerned and when communicating with the public and media.

96. The professional knowledge and skills of prosecutors, particularly as regards management, communication and cooperation, including at international level, must be at a high level and must be maintained through training. Prosecutors must manage cases, for which they are responsible, with speed and optimum quality and they should use resources available to them in a responsible manner.



Council of Europe – Opinion No. 9 (2014) CCPE (IV)

In the Explanatory report:

98. The sharing of common legal principles and ethical values by all prosecutors involved in the legal process is essential for the proper administration of justice and for the respect of the highest professional standards. Prosecutors must be able to identify ethical problems in their work and to refer to clear principles to solve them.

99. Codes of professional ethics and of conduct should be adopted and made public, based on international standards developed by the United Nations, as well as those set out in the European Guidelines on Ethics and Conduct for Public Prosecutors (The Budapest Guidelines) adopted by the Conference of Prosecutors General of Europe on 31 May 2005.



Council of Europe – Opinion No. 9 (2014) CCPE (V)

In the Explanatory report:

100. Prosecutors enjoy the freedom of opinion and speech and freedom of association in the same manner as other members of the society. When making use of these rights, they must take into account the duty of discretion and be careful not to jeopardise the public image of independence, impartiality and fairness which a prosecutor must always uphold.



Council of Europe – Rec.(2010)12 on judges: independence, efficiency and responsibility

25. Judges should be free to form and join professional organisations whose objectives are to safeguard their independence, protect their interests and promote the rule of law.

72. Judges should be guided in their activities by ethical principles of professional conduct. These principles not only include duties that may be sanctioned by disciplinary measures, but offer guidance to judges on how to conduct themselves.

73. These principles should be laid down in codes of judicial ethics which should inspire public confidence in judges and the judiciary. Judges should play a leading role in the development of such codes.

74. Judges should be able to seek advice on ethics from a body within the judiciary.



Council of Europe – Standard setting and Prosecutorial Council

- **Opinion n. 10 CCJE (2007)- Council for the Judiciary in the service of society**
- - specific body, entrusted with the protection of the independence of judges, as a an essential element in a state governed by the rule of law and thus respecting the principle of the separation of powers
- mixed compositions
- election by peers of judges members, without interference from political authorities or judicial hierarchies, through methods guaranteeing the widest representation
- full-time, guarantees for independence and impartiality
- own budget



Council of Europe – Standard setting and Prosecutorial Council (II)

- Reasoned decisions, possibility of a judicial appeal, accountability, reporting
- competent in selection, appointment and promotion (carried out in independence from the legislature or the executive as well as in absolute transparency)
- involved in the assessment of the quality of justice, in the implementation of techniques ensuring the efficiency, in training
- promotion and protection of the image of justice;
- Consultation on draft legislation likely to have an impact on the judiciary
- co-operation and networking with the different Councils for the Judiciary at the European and international levels



Council of Europe – Standard setting and Prosecutorial Council (III)

- **Venice Commission Report on the independence of the judicial systems – Prosecution service**
- *A Prosecutorial Council is becoming increasingly widespread in the political systems of individual states. A number of countries have established prosecutorial councils but there is no standard to do so.*



Council of Europe – Standard setting and Prosecutorial Council (IV)

- composed in a balanced way (prosecutors, lawyers and civil society), and independent
- input in the appointment and disciplinary process
- Depending on their method of appointment, they can provide democratic legitimacy for the prosecution system.
- Include prosecutors from all levels



Council of Europe – Standard setting and Prosecutorial Council (V)

- **RULE OF LAW CHECKLIST (2016)**
- Is sufficient autonomy of the prosecution service ensured?
- i. Does the office of the public prosecution have sufficient autonomy within the State structure? Does it act on the basis of the law rather than of political expediency?
- ii. Is it permitted that the executive gives specific instructions to the prosecution office on particular cases? If yes, are they reasoned, in writing, and subject to public scrutiny?
- iii. May a senior prosecutor give direct instructions to a lower prosecutor on a particular case? If yes, are they reasoned and in written form?
- iv. Is there a mechanism for a junior prosecutor to contest the validity of the instruction on the basis of the illegal character or improper grounds of the instruction?



Council of Europe – Standard setting and Prosecutorial Council (V)

- **RULE OF LAW CHECKLIST (2016)**
- v. Also, can the prosecutor contesting the validity of the instruction request to be replaced?
- vi. Is termination of office permissible only when prosecutors reach the retirement age, or for disciplinary purposes, or, alternatively, are the prosecutors appointed for a relatively long period of time without the possibility of renewal?
- vii. Are these matters and the grounds for dismissal of prosecutors clearly prescribed by law?
- viii. Are there legal remedies for the individual prosecutor against a dismissal decision?



Council of Europe – Standard setting and Prosecutorial Council (VI)

- **RULE OF LAW CHECKLIST (2016)**
- ix. Is the appointment, transfer and promotion of prosecutors based on objective factors, in particular ability, integrity and experience, and not on political considerations? Are such principles laid down in law?
- x. Are there fair and sufficient salaries for prosecutors?
- xi. Is there a perception that prosecutorial policies allow selective enforcement of the law?
- xii. Is prosecutorial action subject to judicial control?



EU standards - Judiciary in the context of Enlargement policy of the EU

- **Method: exchange of information, questionnaires, peer review missions, Commission's Opinion and progress reports, lessons learnt from previous enlargements**
- **Purpose: identifying key principles and best practices as common standards and denominators of EU countries and ensuring mutual trust and confidence in the respective legal systems in a common area of Justice, Freedom and Security**



EU standards - Judiciary in the context of Enlargement policy of the EU (II)

- **Appointment and career development** of Judges and Prosecutors should be based solely on merit and be free from any political or external influence.
- Independent **appointing body or panel** responsible for appointments, assignment to judicial and prosecutorial posts, and promotions (Judicial/Prosecutorial Council or other body), independent of the government and of the Parliament.



EU standards - Judiciary in the context of Enlargement policy of the EU (III)

- **Objective and transparent criteria** for appointment – *qualifications, integrity, ability and efficiency* -. A **national public competition**, including a written exam and systematic interviewing of all candidates is one effective method of guaranteeing fair selection of candidates and avoiding political influence. **Judicial vacancies** should be **assessed regularly** and systematically in order to appropriately plan the recruitment of judges and ensure a fair competition for posts.
- **Career progression**, and in particular appointment to **leadership posts** must be based on objective, pre-established and transparent criteria, based on applications and an objective assessment of professional experience, skills and merit.



EU standards - Judiciary in the context of Enlargement policy of the EU (IV)

- Decisions regarding the **discipline or dismissal** of judges and prosecutors must be free from external or internal influence. Permanence of tenure is one the core guarantees of judicial independence. Reasons for dismissal should be limited to major breaches of duty following disciplinary action. The conduct which may lead to removal from office or disciplinary sanctions should be clearly defined and there should be set procedures for dismissals and disciplinary sanctions. The decision of disciplinary bodies must be **subject to an appeal** and the bodies must be fully accountable. It also should not be possible (apart from disciplinary grounds) to permanently transfer a judge or prosecutor from a particular post or court without his/her consent.



Judicial Councils from judicial associations' perspective

- Need for positive “*minimum standard*” common rules on the organization of the judicial power in all EU Member States.
- Need for *High Judicial Councils* in Europe;
- Standards on the Independence of the Judiciary and European statutes of Judges and Prosecutors;
- Standards on Public Prosecution autonomy;
- Freedom of judicial associations as an essential instrument to the democratization of Justice.



Judicial Councils from judicial associations' perspective (II)

- The existence of an independent body that ensures self-governance of the Judicial Power is a fundamental guarantee of the independence of the Judiciary
- Self-government of the judicial power is a cornerstone of the independence of the judiciary.
- Absence of EU or other international legislation in this area - key *soft law* instruments developed by the Council of Europe (Recommendation (2010)12 on judges: independence, efficiency and responsibilities, Recommendation (2000)19 on the role of public prosecution)



Judicial Councils from judicial associations' perspective (III)

- MEDEL carried out a Survey from the perspective of the “*governed*” body, i.e. magistrates - judges and prosecutors
- European judges and prosecutors have regular interlocution with HJCs for professional aspects of their work, such as organisation of judicial activities, career developments, transfers, training, and relationships with other organs of the State.



Judicial Councils from judicial associations' perspective (IV)

- Significant differences in the concrete, daily implementation of the principles of independence and self-government of the judiciary at the basis of HJCs.
- While judicial associations are in principle committed to the institutional value of the establishment of HJCs, with constitutional guarantees, the risk of distance, lack of transparency, and not sufficiently explained decisions by HJCs is frequently at stake.



Judicial Councils from judicial associations' perspective (V)

- Differences in composition include the issue of the memberships and the role of the Minister of Justice, representing the Government, in HJCs.
- Openness of composition of HJCs to civil society, academia, lawyers, political representatives finds a wide range of models and solutions
- Specific issue of General State Prosecutor (with different systems of appointment) – head of hierarchy of State Prosecution service - as head of Prosecutorial Council



Judicial Councils from judicial associations' perspective (VI)

- Findings:
- need for pluralism in HJCs' composition,;
- need to clearly establish that the decisions issued by a HJC concerning the scope of its competences must always and only respect objective criteria;
- need that professional evaluation of judges and prosecutors is not mingled nor confused with disciplinary procedures;
- principle of fair and complete disciplinary proceedings;



Judicial Councils from judicial associations' perspective (VIII)

- Need to define, preferably at European level, a catalogue of faults and the standards of the disciplinary procedural law of Judges and Public Prosecutors, including the right to legal remedy;
- Common European training;
- Need for full implementation of the principle of accountability of HJCs for their work to the public and to the judges and prosecutors;
- Adoption by HJCs of a transparent and open to criticism culture of discussion and decision-making.



Judicial Councils from judicial associations' perspective (IX)

- **Definition of a minimum common standard on the composition and election method of the HJC in order to improve the basis for mutual recognition of the independence of the judiciary as a cornerstone and prerequisite for mutual trust among the different judicial systems in Europe**



Some information on the Italian system

- **Prosecutors belong to the judiciary, same national competition for access to profession together with judges, same High Council (CSM)**
- **Possibility to change function from prosecutor to judge and vice-versa (with limitations)**
- **Common election by peers to CSM**
- **Professional associations common with judges (Associazione Nazionale Magistrati and groups within it)**



Some information on the Italian system (II)

- **Code of ethics adopted by ANM on 13 Nov.2010**
- **General rules (Fundamental Principles, Relationships with institutions and citizens, Training, Use of Resources, Treatment of Information, Relationships with Media)**
- **Independence, Impartiality, Fairness**
- **Conduct in performing judicial functions**



Some information on the Italian system (III)

- **Specific rules for prosecutors**
- Impartiality
- Investigation directed to objective truth, including on evidence discharging defendants
- Respect for parties, witnesses, judges, lawyers
- Coordination
- Principle of confidentiality of information



GRAZIE PER L'ATTENZIONE!

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