

**INTERNATIONAL STANDARDS:  
INTERNATIONAL BILL OF RIGHTS,  
UNITED NATIONS AND EUROPEAN  
GUIDELINES**

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# The International Bill of Rights

- The Universal Declaration of Human Rights (1948)
- The International Covenant on Civil and Political Rights (1966)
- UN Guidelines on the Role of Prosecutors, which were adopted by the eighth United Nations Congress on the prevention of crime and the treatment of offenders held in Havana in 1990 (The Havana Guidelines)

# Havana Guidelines: Safeguards for Independence

- Persons selected as prosecutors shall be individuals of integrity and ability, with appropriate training and qualifications (Guideline 1)
- States shall ensure that selection criteria for prosecutors embody safeguards against appointments based on partiality or prejudice (Guideline 2(a))
- States shall ensure that prosecutors have appropriate education and training and should be made aware of the ideals and ethical duties of their office, of the constitutional and statutory protections for the rights of the suspect and the victim, and of human rights and fundamental freedoms recognised by national and international law. (Guideline 2(b))

# Status and conditions of service

- “Prosecutors, as essential agents of the administration of justice, shall at all times maintain the honour and dignity of their profession.” (Guideline 3)
- “States shall ensure that prosecutors are able to perform their professional functions without intimidation, hindrance, harassment, improper interference or unjustified exposure to civil, penal or other liability.” (Guideline 4)
- “Prosecutors and their families shall be physically protected by the authorities when their personal safety is threatened as a result of the discharge of prosecutorial functions.” (Guideline 5)
- Reasonable conditions of service, adequate remuneration, etc. (Guideline 6)
- Promotion “shall be based on objective factors, in particular professional qualifications, ability, integrity and experience, and decided upon in accordance with fair and impartial procedures.” (Guideline 7)

# Freedom of expression and association

- Prosecutors like other citizens are entitled to freedom of expression, belief, association and assembly. In particular, they shall have the right to take part in public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights and to join or form local, national or international organizations and attend their meetings, without suffering professional disadvantage by reason of their lawful action or their membership in a lawful organization. In exercising these rights, prosecutors shall always conduct themselves in accordance with the law and the recognized standards and ethics of their profession.(Guideline 8)
- Prosecutors shall be free to form and join professional associations or other organizations to represent their interests, to promote their professional training and to protect their status. Guideline 9)

# Role in criminal proceedings

- The office of prosecutors shall be strictly separated from judicial functions.(Guideline10)
- Prosecutors shall perform an active role in criminal proceedings, including institution of prosecution and, where authorized by law or consistent with local practice, in the investigation of crime, supervision over the legality of these investigations, supervision of the execution of court decisions and the exercise of other functions as representatives of the public interest.(Guideline 11)
- Prosecutors shall, in accordance with the law, perform their duties fairly, consistently and expeditiously, and respect and protect human dignity and uphold human rights, thus contributing to ensuring due process and the smooth functioning of the criminal justice system.(Guideline 12)

# Guideline 13. In the performance of their duties, prosecutors shall:

- (a) Carry out their functions impartially and avoid all political, social, religious, racial, cultural, sexual or any other kind of discrimination;
- (b) Protect the public interest, act with objectivity, take proper account of the position of the suspect and the victim, and pay attention to all relevant circumstances, irrespective of whether they are to the advantage or disadvantage of the suspect;
- (c) Keep matters in their possession confidential, unless the performance of duty or the needs of justice require otherwise;
- (d) Consider the views and concerns of victims when their personal interests are affected and ensure that victims are informed of their rights...

# Role in criminal proceedings (Guidelines 14-16)

- 14. Prosecutors shall not initiate or continue prosecution, or shall make every effort to stay proceedings, when an impartial investigation shows the charge to be unfounded.
- 15. Prosecutors shall give due attention to the prosecution of crimes committed by public officials, particularly corruption, abuse of power, grave violations of human rights and other crimes recognized by international law and, where authorized by law or consistent with local practice, the investigation of such offences.
- 16. When prosecutors come into possession of evidence against suspects that they know or believe on reasonable grounds was obtained through recourse to unlawful methods, which constitute a grave violation of the suspect's human rights, especially involving torture or cruel, inhuman or degrading treatment or punishment, or other abuses of human rights, they shall refuse to use such evidence against anyone other than those who used such methods, or inform the Court accordingly, and shall take all necessary steps to ensure that those responsible for using such methods are brought to justice.

# The IAP Standards

- Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors adopted by the International Association of Prosecutors on 23 April, 1999.
- Not an instrument adopted by states but drafted and adopted by an association whose organisational members are prosecutors' offices and prosecutors' associations from many parts of the world.
- The United Nations Commission on Crime Prevention and Criminal Justice at its 17th session held on 14-18 April, 2008 approved the IAP Standards.

# European Standards

- European Convention on Human Rights
- Recommendation REC(2000)19 of the Committee of Ministers of the Council of Europe to member states on the role of public prosecution in the criminal justice system
- The European Guidelines on Ethics and Conduct for Public Prosecutors (The Budapest Guidelines) adopted by The Conference of Prosecutors General of Europe in 2005, held under the auspices of the Council of Europe.
- In 2005 the Council of Europe established the Consultative Council of European Prosecutors (CCPE). In 2014 it adopted the Rome Charter (Opinion No.9 on European norms and principles concerning prosecutors) which is a comprehensive consolidation of the principles already established. Since then it has adopted a large number of opinions, of which Opinion No.13 (2018) on Independence, accountability and ethics of Prosecutors is the most relevant to the principal theme of this paper.

# Article 5 ECHR

- Article 5 Right to liberty and security. Arrest, detention, rights of arrested persons, information about reason for arrest, prompt bringing before judge, trial within a reasonable time or release pending trial, right to challenge lawfulness of detention, compensation for breach of rights.

# Article 6 ECHR: Right to a Fair Trial

- Fair and public hearing
- Within a reasonable time
- Independent and impartial tribunal established by law
- Judgment in public (subject to some exceptions)
- Presumption of innocence
- Prompt information of nature and cause of accusation
- Time and facilities to prepare defence
- Right to lawyer and legal aid
- Right to examine witnesses
- Right to interpreter

# Impartiality-ECtHR

- Subjective impartiality: “no member of the tribunal should hold any personal prejudice or bias” *Daktaras v Lithuania*, 10 October 2000, para 30
- Objective impartiality: the tribunal must also be impartial from an objective viewpoint, in that it must offer guarantees to exclude any legitimate doubt in this respect. It must be determined whether there are ascertainable facts, which may raise doubts as to the impartiality of the judges. In this respect even appearances may be of a certain importance.

# Functions of the public prosecutor: Council of Europe's Recommendation REC (2000)19: Preamble

- Considering that the criminal justice system plays a key role in safeguarding the rule of law;
- Aware that the public prosecution also plays a key role in the criminal justice system as well as in international co-operation in criminal matters;
- Convinced that, to that end, the definition of common principles for public prosecutors in member states should be encouraged;

# Functions of the public prosecutor: Council of Europe's Recommendation REC (2000)19

1. "Public prosecutors" are public authorities who, on behalf of society and in the public interest, ensure the application of the law where the breach of the law carries a criminal sanction, taking into account both the rights of the individual and the necessary effectiveness of the criminal justice system.

2. In all criminal justice systems, public prosecutors:

- decide whether to initiate or continue prosecutions;
- conduct prosecutions before the courts;
- may appeal or conduct appeals concerning all or some court decisions.

3. In certain criminal justice systems, public prosecutors also:

- implement national crime policy while adapting it, where appropriate, to regional and local circumstances;
- conduct, direct or supervise investigations;
- ensure that victims are effectively assisted;
- decide on alternatives to prosecution;
- supervise the execution of court decisions; – etc.

It is the task of public prosecutors, as of judges, to apply the law or to see that it is applied. Judges do this reactively, in response to the cases brought before them, whereas the public prosecutor pro-actively “ensures” the application of the law. Judges sit on the bench and deliver decisions; public prosecutors are in the business of vigilance and action to bring cases to court. Explanatory Memorandum page 14

4. States should take effective measures to guarantee that public prosecutors are able to fulfil their professional duties and responsibilities under adequate legal and organisational conditions as well as adequate conditions as to the means, in particular budgetary means, at their disposal. Such conditions should be established in close co-operation with the representatives of public prosecutors.

Like judges, public prosecutors can only perform their duties and properly discharge their professional responsibilities if they have the appropriate status, organisational back-up and resources, whether in terms of personnel, premises, means of transport or simply an adequate budget. Consulting representatives of the prosecution service about these requirements is a sure method of determining what the real needs are. Explanatory Memorandum p16

# Other provisions (Paragraphs 5-8)

- Need for fair and impartial procedures concerning recruitment, promotion and transfer of prosecutors.
- Careers, promotions and mobility are to be governed by known and objective criteria, such as competence and experience.
- Reasonable conditions of service, including tenure.
- Fair and objective disciplinary proceedings subject to independent and impartial review.
- Access to a grievance procedure.
- Physical protection of prosecutors and their families when their safety is threatened.
- Rights to freedom of expression, belief, association and assembly
- Training (described as a duty and a right for prosecutors) should cover the principles and ethical duties of prosecutors, the constitutional and legal protection of suspects, victims and witnesses, as well as human rights and freedoms.
- Recommendation to prioritise specialisation

# Work issues

- Assignment and reassignment of cases should meet requirements of impartiality and independence (Paragraph 9)
- All public prosecutors enjoy the right to request that instructions addressed to him or her be put in writing. Where he or she believes that an instruction is either illegal or runs counter to his or her conscience, an adequate internal procedure should be available which may lead to his or her eventual replacement. (Paragraph 10)

# Relationship between public prosecutors and the executive and legislative powers

- No unjustified interference with the professional duties and responsibilities of prosecutors (Paragraph 11)
- “Public prosecutors must enjoy such independence or autonomy as is necessary for the exercise of their duties, and in particular to be able to act whatever the interests at stake, “ *without unjustified interference*” (unjustified i.e. in cases other than those provided in the law) not only from any other authority, whether executive or legislative – ...but also from economic forces and local political authorities. Generally speaking, the law itself provide such safeguards, indeed in some cases unjustified interference is a criminal offence. But interference can be more insidious, for example taking the form of a squeeze on the public prosecution’s budget, thus making the service more dependent on sources of financing not originating in the State. (Explanatory Memorandum pp 22-23)

# Where the public prosecution is part of or subordinate to the government (Paragraph 13)

- Government's powers should be established by law
- Powers should be exercised in a transparent way
- Instructions of a general nature must be in writing and published
- No instructions in a specific case without prior written advice from the prosecutor
- Duty to explain the written instructions especially where they deviate from the prosecutor's advice
- Notwithstanding instructions public prosecutors remain free to submit to the court any legal arguments of their choice
- Instructions not to prosecute in a specific case should, in principle, be prohibited but where such instructions can be given they must be exceptional and subject to an appropriate specific control with a view in particular to guaranteeing transparency.

# **Where the public prosecution is independent of the government (Paragraph 14)**

- “In countries where the public prosecution is independent of the government the state should take effective measures to guarantee that the nature and scope of the independence is established by law.”

# Duties of the public prosecutor towards individuals: Paragraphs 24- 36

- To be objective and fair during court proceedings, ensure that all relevant facts and legal arguments are put forward, carry out functions fairly, impartially and objectively, respect and protect human rights, abstain from discrimination, and ensure equality before the law
- To make themselves aware of all relevant circumstances irrespective of whether they are to the suspect's advantage or disadvantage
- Not to prosecute when an impartial investigation shows the charge to be unfounded
- Not to present evidence known or believed on reasonable grounds to have been obtained unlawfully
- To disclose any information which may affect the justice of the proceedings
- To keep confidential information received from third parties
- To take account of the interests of witnesses and the views and concerns of victims