

COUNCIL OF EUROPE

COMMITTEE OF MINISTERS

Recommendation Rec(2000)19 of the Committee of Ministers to member states on the role of public prosecution in the criminal justice system

*(Adopted by the Committee of Ministers
on 6 October 2000
at the 724th meeting of the Ministers' Deputies)*

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Recalling that the aim of the Council of Europe is to achieve a greater unity between its members;

Bearing in mind that it is also the Council of Europe's purpose to promote the rule of law; which constitutes the basis of all genuine democracies;

Considering that the criminal justice system plays a key role in safeguarding the rule of law; Aware of the common need of all member states to step up the fight against crime both at national and international level;

Considering that, to that end, the efficiency of not only national criminal justice systems but also international co-operation on criminal matters should be enhanced, whilst safeguarding the principles enshrined in the Convention for the Protection of Human Rights and Fundamental Freedoms;

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;

Taking into account all the principles and rules laid down in texts on criminal matters adopted by the Committee of Ministers,

Recommends that governments of member states base their legislation and practices concerning the role of public prosecution in the criminal justice system on the following principles:

Functions of the public prosecutor

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.

Safeguards provided to public prosecutors for carrying out their functions

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.
5. States should take measures to ensure that:
- a. the recruitment, the promotion and the transfer of public prosecutors are carried out according to fair and impartial procedures embodying safeguards against any approach which favours the interests of specific groups, and excluding discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth, or other status;
 - b. the careers of public prosecutors, their promotions and their mobility are governed by known and objective criteria, such as competence and experience;
 - c. the mobility of public prosecutors is governed also by the needs of the service;
 - d. public prosecutors have reasonable conditions of service such as remuneration, tenure and pension commensurate with their crucial role as well as an appropriate age of retirement and that these conditions are governed by law;
 - e. disciplinary proceedings against public prosecutors are governed by law and should guarantee a fair and objective evaluation and decision which should be subject to independent and impartial review;
 - f. public prosecutors have access to a satisfactory grievance procedure, including where appropriate access to a tribunal, if their legal status is affected;
 - g. public prosecutors, together with their families, are physically protected by the authorities when their personal safety is threatened as a result of the proper discharge of their functions.
6. States should also take measures to ensure that public prosecutors have an effective right to freedom of expression, belief, association and assembly. In particular they should 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 organisations and attend their meetings in a private capacity, without suffering professional disadvantage by reason of their lawful action or

their membership in a lawful organisation. The rights mentioned above can only be limited in so far as this is prescribed by law and is necessary to preserve the constitutional^{1[3]} position of the public prosecutors. In cases where the rights mentioned above are violated, an effective remedy should be available.

7. Training is both a duty and a right for all public prosecutors, before their appointment as well as on a permanent basis. States should therefore take effective measures to ensure that public prosecutors have appropriate education and training, both before and after their appointment. In particular, public prosecutors should be made aware of:
 - a. the principles and ethical duties of their office;
 - b. the constitutional and legal protection of suspects, victims and witnesses;
 - c. human rights and freedoms as laid down by the Convention for the Protection of Human Rights and Fundamental Freedoms, especially the rights as established by Articles 5 and 6 of this Convention;
 - d. principles and practices of organisation of work, management and human resources in a judicial context;
 - e. mechanisms and materials which contribute to consistency in their activities.

Furthermore, states should take effective measures to provide for additional training on specific issues or in specific sectors, in the light of present-day conditions, taking into account in particular the types and the development of criminality, as well as international co-operation on criminal matters.
8. In order to respond better to developing forms of criminality, in particular organised crime, specialisation should be seen as a priority, in terms of the organisation of public prosecutors, as well as in terms of training and in terms of careers. Recourse to teams of specialists, including multi-disciplinary teams, designed to assist public prosecutors in carrying out their functions should also be developed.
9. With respect to the organisation and the internal operation of the Public Prosecution, in particular the assignment and re-assignment of cases, this should meet requirements of impartiality and independence and maximise the proper operation of the criminal justice system, in particular the level of legal qualification and specialisation devoted to each matter.
10. 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.

Relationship between public prosecutors and the executive and legislative powers

11. States should take appropriate measures to ensure that public prosecutors are able to perform their professional duties and responsibilities without unjustified interference or unjustified exposure to civil, penal or other liability. However, the public prosecution should account periodically and publicly for its activities as a whole and, in particular, the way in which its priorities were carried out.
 12. Public prosecutors should not interfere with the competence of the legislative and the executive powers.
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13. Where the public prosecution is part of or subordinate to the government, states should take effective measures to guarantee that:
- a. the nature and the scope of the powers of the government with respect to the public prosecution are established by law;
 - b. government exercises its powers in a transparent way and in accordance with international treaties, national legislation and general principles of law;
 - c. where government gives instructions of a general nature, such instructions must be in writing and published in an adequate way;
 - d. where the government has the power to give instructions to prosecute a specific case, such instructions must carry with them adequate guarantees that transparency and equity are respected in accordance with national law, the government being under a duty, for example:
 - to seek prior written advice from either the competent public prosecutor or the body that is carrying out the public prosecution;
 - duly to explain its written instructions, especially when they deviate from the public prosecutor's advices and to transmit them through the hierarchical channels;
 - to see to it that, before the trial, the advice and the instructions become part of the file so that the other parties may take cognisance of it and make comments;
 - e. public prosecutors remain free to submit to the court any legal arguments of their choice, even where they are under a duty to reflect in writing the instructions received;
 - f. instructions not to prosecute in a specific case should, in principle, be prohibited. Should that not be the case, such instructions must remain exceptional and be subjected not only to the requirements indicated in paragraphs *d.* and *e.* above but also to an appropriate specific control with a view in particular to guaranteeing transparency.
14. In countries where the public prosecution is independent of the government, the state should take effective measures to guarantee that the nature and the scope of the independence of the public prosecution is established by law.
15. In order to promote the fairness and effectiveness of crime policy, public prosecutors should co-operate with government agencies and institutions in so far as this is in accordance with the law.
16. Public prosecutors should, in any case, be in a position to prosecute without obstruction public officials for offences committed by them, particularly corruption, unlawful use of power, grave violations of human rights and other crimes recognised by international law.

Relationship between public prosecutors and court judges

17. States should take appropriate measures to ensure that the legal status, the competencies and the procedural role of public prosecutors are established by law in a way that there can be no legitimate doubt about the independence and impartiality of the court judges. In particular states should guarantee that a person cannot at the same time perform duties as a public prosecutor and as a court judge.

18. However, if the legal system so permits, states should take measures in order to make it possible for the same person to perform successively the functions of public prosecutor and those of judge or vice versa. Such changes in functions are only possible at the explicit request of the person concerned and respecting the safeguards.
19. Public prosecutors must strictly respect the independence and the impartiality of judges; in particular they shall neither cast doubts on judicial decisions nor hinder their execution, save where exercising their rights of appeal or invoking some other declaratory procedure.
20. Public prosecutors must be objective and fair during court proceedings. In particular, they should ensure that the court is provided with all relevant facts and legal arguments necessary for the fair administration of justice.

Relationship between public prosecutors and the police

21. In general, public prosecutors should scrutinise the lawfulness of police investigations at the latest when deciding whether a prosecution should commence or continue. In this respect, public prosecutors will also monitor the observance of human rights by the police.
22. In countries where the police is placed under the authority of the public prosecution or where police investigations are either conducted or supervised by the public prosecutor, that state should take effective measures to guarantee that the public prosecutor may:
 - a. give instructions as appropriate to the police with a view to an effective implementation of crime policy priorities, notably with respect to deciding which categories of cases should be dealt with first, the means used to search for evidence, the staff used, the duration of investigations, information to be given to the public prosecutor, etc.;
 - b. where different police agencies are available, allocate individual cases to the agency that it deems best suited to deal with it;
 - c. carry out evaluations and controls in so far as these are necessary in order to monitor compliance with its instructions and the law;
 - d. sanction or promote sanctioning, if appropriate, of eventual violations.
23. States where the police is independent of the public prosecution should take effective measures to guarantee that there is appropriate and functional co-operation between the Public Prosecution and the police.

Duties of the public prosecutor towards individuals

24. In the performance of their duties, public prosecutors should in particular:
 - a. carry out their functions fairly, impartially and objectively;
 - b. respect and seek to protect human rights, as laid down in the Convention for the Protection of Human Rights and Fundamental Freedoms;
 - c. seek to ensure that the criminal justice system operates as expeditiously as possible.
25. Public prosecutors should abstain from discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth, health, handicaps or other status.

26. Public prosecutors should ensure equality before the law, and make themselves aware of all relevant circumstances including those affecting the suspect, irrespective of whether they are to the latter's advantage or disadvantage.
27. Public prosecutors should not initiate or continue prosecution when an impartial investigation shows the charge to be unfounded.
28. Public prosecutors should not present evidence against suspects that they know or believe on reasonable grounds was obtained through recourse to methods which are contrary to the law. In cases of any doubt, public prosecutors should ask the court to rule on the admissibility of such evidence.
29. Public prosecutors should seek to safeguard the principle of equality of arms, in particular by disclosing to the other parties – save where otherwise provided in the law – any information which they possess which may affect the justice of the proceedings.
30. Public prosecutors should keep confidential information obtained from third parties, in particular where the presumption of innocence is at stake, unless disclosure is required in the interest of justice or by law.
31. Where public prosecutors are entitled to take measures which cause an interference in the fundamental rights and freedoms of the suspect, judicial control over such measures must be possible.
32. Public prosecutors should take proper account of the interests of the witnesses, especially take or promote measures to protect their life, safety and privacy, or see to it that such measures have been taken.
33. Public prosecutors should take proper account of the views and concerns of victims when their personal interests are affected and take or promote actions to ensure that victims are informed of both their rights and developments in the procedure.
34. Interested parties of recognised or identifiable status, in particular victims, should be able to challenge decisions of public prosecutors not to prosecute; such a challenge may be made, where appropriate after an hierarchical review, either by way of judicial review, or by authorising parties to engage private prosecution.
35. States should ensure that in carrying out their duties, public prosecutors are bound by “codes of conduct”. Breaches of such codes may lead to appropriate sanctions in accordance with paragraph 5 above. The performance of public prosecutors should be subject to regular internal review.
36. a. With a view to promoting fair, consistent and efficient activity of public prosecutors, states should seek to:
 - give prime consideration to hierarchical methods of organisation, without however letting such organisational methods lead to ineffective or obstructive bureaucratic structures;
 - define general guidelines for the implementation of criminal policy;
 - define general principles and criteria to be used by way of references against which decisions in individual cases should be taken, in order to guard against arbitrary decision-making.

b. The above-mentioned methods of organisation, guidelines, principles and criteria should be decided by parliament or by government or, if national law enshrines the independence of the public prosecutor, by representatives of the public prosecution.

c. The public must be informed of the above-mentioned organisation, guidelines, principles and criteria; they shall be communicated to any person on request.

International co-operation

37. Despite the role that might belong to other organs in matters pertaining to international judicial co-operation, direct contacts between public prosecutors of different countries should be furthered, within the framework of international agreements where they exist or otherwise on the basis of practical arrangements.

38. Steps should be taken in a number of areas to further direct contacts between public prosecutors in the context of international judicial co-operation. Such steps should in particular consist in:

a. disseminating documentation;

b. compiling a list of contacts and addresses giving the names of the relevant contact persons in the different prosecuting authorities, as well as their specialist fields, their areas of responsibility, etc;

c. establishing regular personal contacts between public prosecutors from different countries, in particular by organising regular meetings between Prosecutors General;

d. organising training and awareness-enhancing sessions;

e. introducing and developing the function of liaison law officers based in a foreign country;

f. training in foreign languages;

g. developing the use of electronic data transmission;

h. organising working seminars with other states, on questions regarding mutual aid and shared crime issues.

39. In order to improve rationalisation and achieve co-ordination of mutual assistance procedures, efforts should be taken to promote:

a. among public prosecutors in general, awareness of the need for active participation in international co-operation, and

b. the specialisation of some public prosecutors in the field of international co-operation, To this effect, states should take steps to ensure that the public prosecutor of the requesting state, where he or she is in charge of international co-operation, may address requests for mutual assistance directly to the authority of the requested state that is competent to carry out the requested action, and that the latter authority may return directly to him or her the evidence obtained.

[3] The word "constitutional" is used here with reference to the legally established aims and powers of the public prosecutor, not to the Constitution of any state.