

## The rights and obligations of public prosecutors - responsibility and ethical framework

*“Without this sacred regard to general rules, there is no man whose conduct can be much depended upon. It is this which constitutes the most essential difference between a man of principle and honour and a worthless fellow”.<sup>1</sup>*

Public prosecution can be simply defined as a body for public action or as a body designed to protect the public interest in criminal as well as in other than criminal proceedings. In this context, it is important to highlight the shift in the actual perception of this institution under Czech conditions. This body, which was previously the “prokuratura”, responsible for the promotion and consolidation of socialist legality, has transformed into an institution – the public prosecutor’s office – which initially had an obligation to protect the state’s interest and then matured into the current modern European concept, when the current obligation of public prosecution is protection of the public interest. Even from this brief excursus it is clear that the prosecutor's office, with regard to its role, is not and cannot be an administrative office under the directive of the executive power and it is out of the question that it would be subject to and bound by principles that govern the activities of administrative authorities. It is also possible to assert – as regards public prosecution – that it is a judicial authority in the wider sense of the word, but primarily it is necessary to adopt the conclusion that public prosecution is a body of the state without whose expertly quality and unbiased and independent action a modern legal and democratic state cannot responsibly operate. In order for public prosecution to be able to properly fulfil all its functions, to achieve its mission, it is necessary that the state furnishes it with sufficient authorisation, requires the thoroughly responsible fulfilment of the obligations within its competency, and at the same time provides this institution with sufficient guarantees against any undesirable influences.

The question of the responsibility of public prosecutors for their own procedures and decision-making is very frequently discussed today. The ability of any individual to cope with responsibility placed upon him depends without doubt on his personal disposition, as well as on the reality that surrounds and influences him. This is no different for public prosecutors, who act on the basis of public responsibility. In order for a public prosecutor to properly perform his obligations, the state must provide him with the necessary and appropriate means (analytical support teams, advanced technology, systemic training) and ensure a high quality institutional environment that will respect the public prosecutor as a representative of an independent autonomous authority.

Yet institutional security in itself is not enough. Without personal and moral integrity and the necessary erudition a public prosecutor cannot fully meet his responsibilities. The proper fulfilment of the obligations of the public prosecutor is thus logically connected to the responsibility of those who selected the public prosecutor and participated in his appointment. A prudent and careful system for the selection of both legal trainees, as well as the public prosecutors themselves, is a prerequisite to ensure a minimum of future excesses that may even

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<sup>1</sup> Adam Smith

lead to disciplinary proceedings.

The system of guarantees that should provide public prosecutors with space for the undisturbed performance of their role is, however, balanced by the demands that the state places on them.

A public prosecutor should act transparently, and should work to ensure that he expresses himself comprehensibly when communicating with the parties to the proceedings, with the public and with the media. The expert knowledge and skills of public prosecutors, in particular those that relate to proceedings, communication and cooperation, must be at a high level and must be maintained through systemic education. A public prosecutor must gain the public trust through his behaviour, should always act impartially according to the principles of equality, respect and decency, and at the same time must comply under all circumstances with the highest professional standards and uphold the honour and the dignity of his profession. His demeanour should always meet the requirements of integrity and diligence. Respect for general legal principles and ethical values by all public prosecutors is crucial for the proper administration of justice.<sup>2</sup>

The main instruments for enhancing the accountability of public prosecutors include – alongside the appointment of public prosecutors to their office – career progression and the regulation of transfers, internal organizational rules, the educational system, and public access to information and the associated clarity and transparency. Neither can we forget the important role of professional associations and the media.

To maintain the highest professional standards public prosecutors must be able to identify the ethical problems that accompany their profession and use the proper principles to address them. A basic prerequisite is the actual ability to identify a problem that might be contrary to the rules of ethics and that could undermine general confidence in the functioning of the system of public prosecution. An important role in this respect is played by a system of education focused on ethics and legal philosophy, and this from the beginning of the education, i.e., from the preparation of the legal trainees.

The Union of Public Prosecutors, as a voluntary professional association of public prosecutors, has established an “Ethics Committee” as a permanent body. Its aim and objective is to contribute towards the reinforcement of ethics and solidarity in relations between public prosecutors and the behaviour of public prosecutors when in the eyes of the public. The activities of the Ethics Committee are governed by its statute, which is approved by the Assembly of Representatives, as the supreme body of the Union. On a practical level the Ethics Committee assesses the actual conduct of public prosecutors and issues opinions that are binding for members. The Ethics Committee bases its decisions on a Moral Code, according to which the public prosecutor is primarily obliged to carry out his duties so as to consistently advocate legality, justice and legal order in society, and to respect and protect the human rights of freedom and human dignity. In interpreting and applying the law, he should use its true meaning and resist bureaucratic, routine and evasive solutions. A public prosecutor should perform his duties in accordance with his conscience and professional honour, and not be subject to external influences, should reject any interference, coercion and wishes, political

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<sup>2</sup> Opinion No 9 of Consultative Council of European Prosecutors to the Committee of Ministers of the Council of Europe, Strasbourg, December 2014, on European norms and principles concerning prosecutors.

interests and the influences of media campaigns. A public prosecutor should keep his general education and general knowledge up to date, and constantly seek to improve his professional expertise. A public prosecutor jointly bears responsibility for the smooth running of his own office, but also the whole system of public prosecution. A public prosecutor should not be falsely tolerant of violations of ethics by other public prosecutors. He should lead such a personal life and pursue only such non-work activities that do not threaten his prestige or that of public prosecution. He should not accept positions in any political parties.

The Code of Professional Ethics of the Public Prosecutor issued by the Supreme Public Prosecutor's Office similarly addresses the duties of a public prosecutor.

Public prosecutors, however, do not live outside the real world, and we cannot deny them the opportunity to exercise fundamental rights such as the right to freedom of expression and freedom of association. However, they should pursue these in a manner that is consistent with the performance of their function, and which does not undermine independence and impartiality. Public prosecutors are free to participate in public debates, which in many cases is highly desirable when technical issues are being discussed, however they must in particular respect the principles of criminal proceedings and the cited ethical rules. In its documents the Consultative Committee of European Prosecutors even encourages public prosecutors to regularly inform the public about their activities and their results through the media. They must strive for transparency and public confidence through their actions.

However, responsibility for his own decision-making activities in the course of criminal proceedings is primarily borne by the public prosecutor. Generally, the public prosecutor should ensure that before the commencement of prosecution all the necessary and reasonable investigations are made and the criminal proceedings should only continue if the case is based on solid evidence. Criminal proceedings should be conducted strictly but fairly, and only within the limits of the evidence. In cases where the decision to participate in an investigation is within the competence of the public prosecutor, he should do so in accordance with the principles of objectivity, impartiality and professionalism. Public prosecutors should take into account the interests of the victims of crime and adopt or support measures to protect their interests. Public prosecutors should carefully consider whether to initiate a criminal prosecution or not. Public prosecutors must respect the principle of equality of arms between the prosecution and the defence, the principle of the presumption of innocence, the right to a fair trial, the principle of judicial independence, the principle of separation of powers, and the binding force of final judicial decisions. A public prosecutor should submit all the credible evidence to the court, and disclose all the relevant evidence to the defendant. Public prosecutors should refuse to use evidence that was, based on reasonable suspicion, acquired in an unlawful manner, and especially if the method of acquisition represented gross interference in basic human rights.<sup>3</sup> In contrast, however, any call for general objective responsibility of a public prosecutor for an acquittal decision in proceedings before a court indicates ignorance of the issue and the populist touch of such statements. An important boundary between unacceptable excesses and due process was defined by the Supreme Administrative Court as the disciplinary court in one of its

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<sup>3</sup> Opinion No 9 of Consultative Council of European Prosecutors to the Committee of Ministers of the Council of Europe, Strasbourg, December 2014, on European norms and principles concerning prosecutors.

decisions:<sup>4</sup>

“Criminal proceedings and indictment is an expression of the inner conviction of a public prosecutor as to the existence of the necessary degree of probability that a crime has been committed by the defendant, for which the public prosecutor should not in principle be punished, even if the suspicion of criminal activity is ultimately not confirmed. Indeed, the process of finding justice can be complicated and ambiguous. It is precisely because criminal law is not a causal discipline always resulting in a single possible outcome, that the system for evaluating the case at the various stages of criminal proceedings in order to eliminate possible mistakes made in a previous stage is so important. The remedy of deficiencies in the work of a public prosecutor in criminal matters should primarily take place during proceedings before a court, not through the submission of a disciplinary petition after the legal force of an acquittal verdict. Otherwise, the role of public prosecutor would be extremely risky, and this would discourage prosecutors from conducting criminal proceedings in factually complex or legally disputable cases, where there is a real possibility of acquittal. Depriving a public prosecutor of the courage to prosecute and bring actions would undoubtedly constitute a very undesirable consequence of a threat of punishment in disciplinary proceedings for pronouncement of an acquittal, which is not acceptable. An acquittal verdict can thus only establish the disciplinary responsibility of a public prosecutor in exceptional cases. This happens in cases where the public prosecutor flagrantly violated his obligation to act professionally, conscientiously, responsibly, impartially and fairly in exercising supervision over the legality of pre-trial proceedings, and potentially also the subsequent proceedings before the court. During the pronouncement of an acquittal verdict such an excesses can occur, for example, when someone is unjustifiably prosecuted for an act that, according to the absolutely clear wording of applied legal norms, cannot be a criminal offense, or if he is prosecuted for an act that, according to settled case-law of the supreme courts, is not criminal, while a different legal opinion by the police authority or public prosecutor was not justified. Acquittal on the grounds that the act indicated in the complaint is not a criminal offense may establish disciplinary responsibility even if the public prosecutor, in the criminal case, did not at all address the basic factual and legal issues, without which he could not consider the legal qualification of the act as a criminal offense, or if in relation to it he did not provide any evidence at all or did not petition the court for their performance. In all such hypothetical cases, the prosecution of the accused would be conducted entirely without justification, which would constitute such gross misconduct by the public prosecutor that remedy during proceedings before a criminal court would not be sufficient, and he would have to be punished through disciplinary proceedings.”

#### Conclusion:

There is no doubt that justice is important for every society, however this is not sufficient in and of itself. The idea of justice rests on basic trust between people. It is relatively difficult to gain trust, and if a public prosecutor is to be a respected and trustworthy person, he must then primarily be an honourable and therefore morally honest person. Honour is what a person earns, and also respect and trust, and what he loses if he betrays, cheats or behaves cowardly. The question of the honour of a public prosecutor should be the integrity of his conduct in terms of the internally unified conduct of a responsible person who is aware of his obligations. In

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<sup>4</sup> Supreme Administrative Court ref. 12 Ksz 7/2014

occupations where a person decides on the lives of others and where respect for ethics is expected, i.e., that the responsible person is held responsible for his decisions, not only the entitled person but primarily the obligated person is responsible for his own honour.