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# Emerging Ethical Challenges to the Legal Profession

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## ABSTRACT

*Within the scientific paper we will get acquainted with the Code of Ethics that governs the Public Prosecutor's Office, as an institution with a specific rule of conduct. For this purpose, firstly, it will be presented in the introductory part, the historical development and evolution of the public prosecution, its beginnings, affirmation and evolutionary development.*

*Throughout the topic I will have the opportunity to present what kind of code of ethics exists in the state of Missouri in the United States of America, because through the prism of a state, we can draw conclusions about ethical codes in other states in the United States.*

*The subject of the research will be ethical code of judges and public prosecutors in Italy, which is named "Ethical Code of Judges in Italy". The reason for the common codex is the fact that it is adopted by the Association for Judges and Public Prosecutors in Italy. The main emphasis would be placed on the comparative review of the European aspects of the code of ethics and behavior of public prosecutors and the code of ethics of the public prosecutors in the Republic of North Macedonia. What is that our country should have in order to be characterized as a state in which the public prosecutor's office enjoys high moral values as an instigation?*

*In the end, in the concluding observations, I would ask the question about the body that adopts the Code of Ethics in the Republic of North Macedonia. Why in other countries does the codex bring associations of public prosecutors, and in our country the public prosecutor?*

**Keywords:** *public prosecution, ethics, code, association.*

## I. INTRODUCTION

The Public Prosecutor's Office is a necessary feature of the modern administration of criminal procedure. Nowadays, people consider with certainty that when a crime is committed, the public prosecutor will assume responsibility for bringing the suspected perpetrator to court. The public prosecutor's office, as we know it today, is, however, a product of long evolution. For Centuries,

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crime was a private matter that the damaged party was supposed to solve.

In ancient times and the early Middle Ages, private retaliation was the dominant form of crime response. In the later Middle Ages, kings and tribal leaders introduced restrictions on the use of private vengeance to minimize the disruption caused by "wild" justice. The injured party was required to first request monetary compensation from the offender and was allowed to resort to retaliation, only when the offender refused to pay the legally prescribed compensation. With the appearance of the court, private reprisals and settlement were replaced by a court settlement of the dispute. The establishment of the courts, however, did not change the nature of the crime. Committing a crime remained a private wrongdoing and the injured party is the one who should file charges in court.

In modern times, students of comparative law are familiar with the difference between the English accusatory system and the continental inquisitorial system. Before the 13th century, however, there would have been no possibility to do a comparative analysis of the two systems, as both systems were identical. In both England and continental Europe, the dominant mode of accusation was private, and guilt or innocence was determined by divine judgment.

The thirteenth century brought significant changes in the manner of criminal trial and prosecution. Irrational methods of determining guilt were condemned in England and on the European continent. By abandoning the archaic methods of proof, Englishmen and people from the old continent were looking for alternative, or more rational ways of determining guilt or innocence. At that point, the English and the Europeans diverged in terms of a common understanding of criminal trial and prosecution and turned to different approaches to criminal trial and prosecution. England turned to the use of laymen in its own justice system, while continental Europe embraced the inquisitorial system. Regarding the manner of accusation, England was prosecuted for the next six years, while on the other, on the European continent, they opted for the public prosecutor's office.<sup>2</sup>

It is precisely this body that takes over the dominant role in prosecuting perpetrators of criminal acts and others by law criminal acts. The primacy and the role that it played through the historical development, evolved into a solid institution with pre-set tasks, rules of behavior that will enable a comprehensive approach in fulfilling the set goals.

Through this paper I will try to catch the precisely established rules of the game, the ethical code that is present in this institution.

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<sup>2</sup> Yue Ma & John Jay, *Exploring the origins of public prosecution 190-191*, (College of Criminal Justice) (2008).

In that direction, I will use several methods. Through the normative-legal method, the arrangement of the specific issue in the regulation for the public prosecution of the Republic of North Macedonia will be considered, and through the comparative-legal method, of course, the arrangement in the corresponding legal systems of the United States of America will also be considered, and the subject of interest will also be the ethical code in the public prosecutor's offices in a country from the old continent, how would we manage to get acquainted with the ethical-legal arrangement there and the corresponding legal literature. The synthesis method will be used in the final part of the preparation of the topic, specifically in the conclusion, to make final observations and give directions for the future.

## **II. NATIONAL PUBLIC PROSECUTOR'S STANDARDS IN MISSOURI, UNITED STATES**

### **(A) Responsibility of public prosecutors**

The prosecutor is an independent administrator of justice. The primary responsibility of the prosecutor is to seek justice, which can only be achieved through advocacy and presentation of the truth. This responsibility includes, but is not limited to, ensuring that the guilty are held accountable, that the innocent are protected from undue harm, and that the rights of all participants, especially victims of crime, are respected.

### **(B) Social and individual rights and interests**

The prosecutor should zealously protect the rights of individuals, but without representing any person as a client. The prosecutor should put the rights and interests of society in a dominant position in the performance of the public prosecution function in individual cases.<sup>3</sup>

### **(C) Standards of behavior**

A prosecutor should behave with a high level of dignity and integrity in all professional relationships, in and out of court. Appropriate behavior includes, but is not limited to:

- The prosecutor should behave with honesty, goodwill and courtesy in all professional relations.
- The prosecutor should act with integrity in all communications, interactions and agreements with opposing counsel.<sup>4</sup>
- The prosecutor should not express personal animosity towards the defense counsel, regardless of personal opinion.

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<sup>3</sup> [http://www.prosecutors.mo.gov/Files/MAPA%20Docs/NDAAProsecution%20Standard%203rd.pdf](http://www.prosecutors.mo.gov/Files/MAPA%20Docs/NDAAProsecutionStandard%203rd.pdf), 2

<sup>4</sup> Id at 5

The above standards clearly and unequivocally show the role of the public prosecutor as an active stakeholder in the process of making a correct, legal and fair decision. In a situation where the prosecutor decides on a case, where individual or group interests are strongly emphasized, at the expense of the interests of the social environment, his firm attitude and unequivocal action should come to the fore. The image of the entire organization, in the case of the public prosecutor's office, is presented through the behavior of the individual.

The fact that he does not only represent the interests of the injured party, the victim of the crime, but the social interest as a whole, gives him an additional responsibility and obligation to be committed to objective observation of the truth. In this context, it is significant to mention the relationship between the public prosecutor and the defense attorney. In practice, there are many complex cases, in which the public prosecutor and the defense attorney, intending to represent and defend their side, often come to a confrontation. In such a situation, the public prosecutor must not engage in a duel with the defense attorney on circumstances that do not relate to the specific case. It should be approached with full respect and great conscientiousness in every sense, no matter how tense the situation.

In terms of his relationship with all parties concerned in criminal proceedings, a fundamental maxim is full respect for the personality of each individual, regardless of his role. The dignified performance, regardless of whether it is in the court or in some other place, confirms the inviolability of the public prosecutor's office.

#### **(D) Relations with the court**

The prosecutor should show proper respect for the justice system and the court at any time. The prosecutor should vigorously present all appropriate arguments. The prosecutor must not seek an unfair influence on the appropriate course of justice by taking advantage of any personal relationship with the judge, or by engaging in any communication with the judge unless authorized by law or a court order.<sup>5</sup>

#### **(E) Relations with the victim**

Victims of violent crimes, serious crimes, or any activities where the victim may be subject to physical or other forms of revenge, should be informed of all important stages of the proceedings. Special assistance should be provided to children, victims of domestic violence and their families, whenever possible.

#### **(F) Media Relations**

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<sup>5</sup> Id at 24-26.

The prosecutor should seek to maintain relations with the media that will facilitate the proper flow of information to and from the public. The prosecutor should provide sufficient information to the public, so that citizens can be aware that the alleged perpetrator of the crime has been arrested and that there is sufficient competent evidence that can continue the prosecution.<sup>6</sup>

Regarding the communication of the public prosecutor's office with other entities, the primary and basic task that every prosecutor should fulfill is that the interaction should be based on honesty, fairness, transparency, publicity and efficiency. In relations with state bodies and institutions, the prosecutor's office should always ensure a high level of respect for the institution with which it is dealing.

The prosecution should have a particularly serious and careful approach with the victims of crimes, and especially with child victims. As soon as the opportunity arises, the prosecution is obliged to inform them of any change in the procedure, constantly paying attention to their position in the procedure and respecting their rights to the maximum with extreme care, so as not to leave long-term consequences and traumas.

Regarding the relationship with the media, the prosecutor's office should protect the presumption of innocence of the accused, and at the same time inform the public about the course of the procedure and its success. Only ethically well-grounded prosecutors, with truly accepted values, can consistently respond to the stated tasks.

### **III. ETHICAL CODE OF JUDGES IN ITALY \***

\* Adopted by the Italian Association of Judges and Public Prosecutors. The Italian word "magistrati" is translated as "judges and public prosecutors", both in the Italian legal system and in many other European countries with a European continental legal system, the term "judiciary" also includes prosecutors in the public prosecutor's offices. Judges and public prosecutors are elected in the same way, they are part of the same body and enjoy the same status.<sup>7</sup>

#### **(A) Basic values and principles**

In public life, judges and public prosecutors will deal with dignity, correctness and respect for the interests of the public. In the performance of their duties, as well as in the exercise of any other activity related to their profession, judges and public prosecutors should act in accordance

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<sup>6</sup> Id at 31-39.

<sup>7</sup> [http://www.cejamerica.org/index.php/biblioteca/biblioteca-virtual/doc\\_view/2809-c%C3%B3digo-de-%C3%A9tica-judicial-de-italia-documento-en-ingl%C3%A9s.html](http://www.cejamerica.org/index.php/biblioteca/biblioteca-virtual/doc_view/2809-c%C3%B3digo-de-%C3%A9tica-judicial-de-italia-documento-en-ingl%C3%A9s.html), 1.

with the values of personal selflessness, independence and impartiality.

**(B) Prohibition of giving professional information**

Judges and public prosecutors are not allowed to make improper use of any information relating to their functions. They may neither give nor ask for confidential information about ongoing proceedings, nor provide such information in order to influence the way in which a decision should be made.

**(C) Membership in Associations**

Judges and public prosecutors must not be members of associations seeking a solemn oath of faith or who do not provide full transparency for the participation of their members.<sup>8</sup>

**(D) The duty of the president of the court (the chief public prosecutor)**

Judges or public prosecutors who act as superiors should take care of organizing and using their function as well as human resources so that better results can be achieved, taking into account the public service provided by these institutions.<sup>9</sup> They should monitor the behavior of their colleagues, as well as the rest of the administrative staff, and possibly intervene in their way of functioning in order to prevent any improper behavior

The existence of a single code of ethics for judges and public prosecutors in Italy is aimed at jointly valorizing the two institutions in the field of the judiciary by unifying a common code of ethics.

From the aspect of the relevant topic, the prosecution in Italy has the primary goal of respecting everyone involved in the procedure and completely directing to discover the objective truth through legal and ethical permitted means. In that direction, the code of ethics clearly states that prosecutors should act with the dignity of their profession both in the courtroom and outside it. The decisions they make are completely free from pressure, influence and bias. Their reservation is especially emphasized with regard to the mass media, emphasizing that giving any information from a professional point of view must be completely subordinate to the idea of preserving professionalism.

The superior public prosecutor should treat all his colleagues and administrative staff with care, carefully monitor their work and, if necessary, intervene. The existence of the code set in this way is a guarantor of full respect for the public prosecutor's function and essential appreciation of her work.

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<sup>8</sup> Id at 2.

<sup>9</sup> Id at 4-5.

## **IV. EUROPEAN DIRECTIVES ON ETHICS AND THE BEHAVIOR OF PUBLIC PROSECUTORS VERSUS THE CODE OF ETHICS OF THE PUBLIC PROSECUTORS IN THE REPUBLIC OF NORTH MACEDONIA**

### **(A) European Directives on Ethics and Behavior of Public Prosecutors**

#### **a. Core competencies**

Public prosecutors should at any time and under any circumstances:

- carry out their responsibilities, including the competence to undertake action, always in accordance with domestic and international law;
- to perform their functions fair, impartial, continuous and effective.<sup>10</sup>
- respect, protection and adherence to human dignity and human rights.

#### **b. Professional behavior as a whole**

Public prosecutors should at all times adhere to the highest professional standards:

- practicing their functions on the basis of the weight of their facts and in accordance with the law, free from external influences.<sup>11</sup>

#### **c. Professional conduct within the criminal procedure**

When acting within the criminal procedure, public prosecutors must at any time:

- to abide by the principle of fair trial, guaranteed in Article 6 of the European Convention on Human Rights and in the case law of the European Court of Human Rights.

#### **d. Behavior in private life**

- public prosecutors should not question their integrity, honesty, impartiality through activities in their private lives;
- public prosecutors should act in such a way as to give public confidence to their profession.<sup>12</sup>
- public prosecutors must not accept any gifts, favors from third parties or undertake obligations that may appear to compromise their integrity, honesty and impartiality.

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<sup>10</sup> [https://www.coe.int/t/dghl/monitoring/greco/evaluations/round4/Budapest\\_guidelines\\_EN.pdf](https://www.coe.int/t/dghl/monitoring/greco/evaluations/round4/Budapest_guidelines_EN.pdf) , 2.

<sup>11</sup>Id at 3.

<sup>12</sup> Id at 3-4.



## **(B) Code of Ethics of the Public Prosecutor's Office in the Republic of North Macedonia**

Public prosecutors, in the performance of their duties, in relations with other bodies, parties and citizens, in public, as well as in their mutual relations, are obliged to abide by the following principles:

- principle of legality;
- principle of impartiality and legality;
- principle of diligence and professional behavior;
- the principle of honesty and intransigence;
- principle of professionalism;
- the principle of dignity and
- the principle of restraint.

### **a. Legality**

Public prosecutors are obliged to act legally and professionally, in accordance with the Constitution of the Republic of North Macedonia, laws, ratified international agreements in accordance with the Constitution and other by-laws, so that the legality and regularity of their decisions can be checked and can always be determine the reasons for making such decisions.

### **b. Honesty and intransigence**

Public prosecutors must not use their official position and reputation for the purpose of realizing property and other benefits for themselves or for others; they must not receive gifts and free services if this can jeopardize their impartiality and objectivity.

### **c. Relations and cooperation in the public prosecutor's office**

Public prosecutors should inform the superior, that is, the higher public prosecutor, before undertaking a certain job or a decision that they think may be interested in the public or affect the reputation and position of the public prosecutor's office.

### **d. Relations with the court**

Public prosecutors, when representing themselves in the courts and in daily communication with the court, are obliged to respect and preserve the dignity of the court, their personal dignity and the dignity of the public prosecutor's office.

### **e. Relation to the opposite side**

Public prosecutors are obliged to act honestly with the opposing party, they will always be open to an agreement with them, paying attention to the interests of the state and other parties that represent them in the procedure.

### **f. Ethical Council**

For the purpose of overseeing the respect and the interpretation of the Code of Ethics, an Ethical Council is formed, consisting of a president and four members of the public prosecutor's office.<sup>13</sup>

Analyzing the European directives on the ethics of the public prosecutors, we can immediately note that public prosecutors in their actions must devote equal importance to both domestic and international law.

Another important aspect of their functioning is the principle that clearly states that prosecutors in the cases they represent should always be guided by the facts and evidence in support of those facts while avoiding any external pressure. The public prosecutor must, in addition to representing the case before a court, previously well succeed in investigating and collecting all the necessary information regarding the case.

An ethically well-appointed prosecutor must adhere to and respect Article 6 of the European Convention on Human Rights, the principle of a fair trial, in order to satisfy all the minimum rights of the defendant.

The behavior of public prosecutors in private life is as important as their behavior during working hours. They are expected to act in every situation with restraint, decisiveness, thoughtfulness, without prejudice to their status and social role.

Regarding the Code of Ethics of Public Prosecutors in the Republic of North Macedonia, we can notice that several aspects of the functioning of the public prosecutors are covered. The main question posed by analyzing the code of ethics of the public prosecutors in the Republic of North Macedonia and their behavior in practice is whether the ethical code of the public prosecutors in Republic of North Macedonia is respected, and if yes, to what extent?

Unfortunately, from my modest experience as a trainee in the Primary Public Prosecution, I can conclude that the answer is negative, and if we could draw any positive conclusion, then the degree of implementation of the Code of Ethics among the public prosecutors is very small. I

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<sup>13</sup> Ethical Code of Public Prosecutors in the Republic of North Macedonia, by-law, Official Gazette no.194 / 2014, 25.12.2014.

do not write this by accident. Article 2 of the Code of Ethics of the Public Prosecutors of the Republic of North Macedonia contains the principle of impartiality and independence. It further states that "public prosecutors must not have inadequate connections with the legislative and executive powers, nor allow the influence of them on their side."

Public prosecutors should not only have inappropriate links with legislative and executive power, but should also be visible to the public, that is, the public has no doubt about the (non) existence of such links and influences.

"Public prosecutors are obliged to protect the general interest and strive to strike a balance between the general interest and the rights and justified interests of individuals".

If we would compare the European directives on ethics and behavior of public prosecutors and our code of ethics, we will notice that we have normatively and legally accepted them in a good way, the suggestions and guidelines of the European institutions, and that we have included them in our legislation. The disenchantment comes from inadequate application in practice, the complete disregard and gross neglect of the code from those who need to respect and enforce it. It takes a lot of effort and energy, a stake from all stakeholders, in order to succeed in our intention to have a serious institution.

## **V. CONCLUSION**

From the overall research on the mentioned topic, one undoubtedly comes to the conclusion that the code of ethics in the public prosecutor's office occupies a very significant place in the overall relations in the institution. Their way of acting during work, the preservation of dignity and restraint in their private life, the relationship with colleagues, citizens, victims of crimes are elaborated in an appropriate code of ethics of the public prosecutors.

The Italian joint code of ethics of judges and public prosecutors and finally I will make a comparative aspect of the European directives on ethics and conduct of public prosecutors and the Macedonian code of ethics of public prosecutors.

From my overall research, I drew the conclusions with a serious analysis of the topic in question in each of the mentioned countries, in order to finally put emphasis on the Macedonian code of ethics of the public prosecutors.

The first question that raised a dilemma for me while I was developing the common code of ethics for judges and public prosecutors in Italy, and then the Macedonian code of ethics, was the authority that adopts the code of ethics for public prosecutors in the respective countries. Namely, in Italy the code of ethics for judges and public prosecutors is adopted by the

association of judges and public prosecutors. And the code of ethics of the public prosecutors of the Republic of North Macedonia is adopted by the Public Prosecutor of the Republic of North Macedonia.

The Association of Judges and Public Prosecutors in Italy is undoubtedly a non-profit, non-governmental, independent association that strives for the full affirmation of the dignity, values and integrity of public prosecutors. As the most appropriate body, whose task is precisely in terms of strengthening the status of public prosecutors, it is a defense for a body that will adopt the Code of Ethics for judges and public prosecutors. But what is the situation regarding this issue in Republic of North Macedonia? Why does the state public prosecutor adopt the code of ethics for the public prosecutors of the Republic of North Macedonia?

The Association of Public Prosecutors also exists in Republic of North Macedonia. One of the main goals of this association is to strengthen and improve the social status and reputation of the public prosecutor profession.

Why was the leading role in the adoption of the code of ethics for public prosecutors in the Republic of North Macedonia not left to this association?

Finally, the code of ethics does not only represent a moral evaluation of things from the aspect of formalizing the rules, but it also represents a code of rules aimed at maximum generation of a positive atmosphere for work, a precise attitude towards things and an honest and respectful attitude towards citizens, regardless whether or not they participate in the procedure.

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