

**Recommendation CM/Rec(2012)11
of the Committee of Ministers to member States
on the role of public prosecutors outside the criminal justice system**

*(Adopted by the Committee of Ministers on 19 September 2012
at the 1151st 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, *inter alia*, for the purpose of safeguarding and realising the ideals and principles which are their common heritage;

Recalling also that every member of the Council of Europe has accepted the principle of the rule of law and of the enjoyment by all persons within its jurisdiction of the human rights set out in the Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 5);

Aware that in many member States, because of their legal traditions, public prosecutors also play a role outside the criminal justice system and that this role varies considerably between different national legal systems;

Noting, in particular, that in different national legal systems this role may include representing the general or public interest, providing legal support to individuals in the protection of their human rights and fundamental freedoms, representing the State before the courts, supervising public bodies and other entities, and an advisory role to courts and that, moreover, the nature of this role may vary in private and public law;

Taking account of the relevant case law of the European Court of Human Rights, in particular in the area of fair trial principles;

Recalling its Recommendation Rec(2000)19 to member States on the role of public prosecution in the criminal justice system;

Bearing in mind Opinion No. 3 (2008) of the Consultative Council of European Prosecutors (CCPE) on "The role of prosecution services outside the criminal law field" and the conclusions of the Conferences of Prosecutors General of Europe in Budapest (29-31 May 2005) and in St Petersburg (2-3 July 2008);

Recalling the principles set out in the joint opinion of the Consultative Council of European Judges (CCJE) and the CCPE on the relations between judges and prosecutors in a democratic society ("Bordeaux Declaration") of 18 November 2009, and, in particular, as they relate to public prosecutors who have functions outside the criminal law field;

Taking note of the 2010 report of the European Commission for Democracy through Law (Venice Commission) on European standards as regards the independence of the judicial system (Part II: The prosecution service) and of its various opinions on the subject;

Noting the absence of common international legal standards regarding the tasks, function and organisation of prosecution services outside the criminal justice system;

Convinced, therefore, of the need to establish common principles for member States on the role of public prosecutors outside the criminal justice system,

Recommends that, where public prosecution services have a role outside the criminal justice system, member States take all necessary and appropriate steps to ensure that this role is carried out with special regard to the protection of human rights and fundamental freedoms and in full accordance with the rule of law, in particular with regard to the right to a fair trial, and, for this purpose, that they take full account of the principles set out in the appendix hereto.

A. Scope

1. This recommendation and the principles set out in this appendix apply in all cases where the national legal system establishes a role for public prosecutors outside the criminal justice system.

B. Mission of public prosecutors

2. Where the national legal system provides public prosecutors with responsibilities and powers outside the criminal justice system, their mission should be to represent the general or public interest, protect human rights and fundamental freedoms, and uphold the rule of law.

C. Common principles

3. The responsibilities and powers of public prosecutors outside the criminal justice system should in all cases be established by law and clearly defined in order to avoid any ambiguity.

4. As in the criminal law field, public prosecutors should exercise their responsibilities and powers outside the criminal justice system in full accordance with the principles of legality, objectivity, fairness and impartiality.

5. Recommendation Rec(2000)19 of the Committee of Ministers to member States on the role of public prosecution in the criminal justice system should apply, *mutatis mutandis*, to public prosecutors with responsibilities and powers outside the criminal justice system so far as it relates to:

- safeguards for them to carry out their functions;
- their relationship with the executive, the legislature and the judiciary; and
- their duties and responsibilities towards individuals.

6. Public prosecution services should adopt an approach to their work that is as transparent and open as possible, while fully respecting their duty of confidentiality.

7. The conduct of public prosecutors should be governed by appropriate codes of ethics.

8. Public prosecution services should have at their disposal the necessary financial and human resources and benefit from appropriate training in order to adequately fulfil their responsibilities outside the criminal justice system.

9. With a view to harmonising policy and practice throughout the national jurisdiction, the public prosecution services may consider circulating guidelines and information on best practices outside the criminal justice system to the public prosecutors concerned.

D. Principles applicable to specific responsibilities and powers of public prosecutors outside the criminal justice system

In relation to access of the public to justice and legal remedies

10. The competences of the public prosecutor outside the criminal justice system should not be such as to restrict the right of any natural or legal person to initiate or act as a defendant to defend his or her interests before an independent and impartial tribunal, even in cases where the public prosecutor is or intends to be a party.

11. Where the public prosecutor is entitled to make a decision affecting the rights and obligations of natural and legal persons, such powers should be strictly limited, defined by law and should not prejudice the parties' right to appeal on points of fact and law to an independent and impartial tribunal. The public prosecutor should act independently from any other power and his or her decisions should be reasoned and communicated to the persons concerned.

In relation to court proceedings where the public prosecutor is a principal party

12. The powers of the public prosecutor to initiate legal proceedings or act as a defendant should not compromise the principle of equality of arms between the parties to litigation.
13. The public prosecutor should not withhold evidence relevant to the issues in dispute.
14. The power to pursue pre-trial inquiries should be provided for by law. Its exercise should be proportionate and not confer an unreasonable advantage on the public prosecutor.
15. In cases where an individual's interests are represented by the public prosecutor, that person should be entitled to be a party to the proceedings. This should not prevent the public prosecutor from remaining a party to the proceedings when the general or public interest is involved.
16. The rights of the public prosecutor to appeal or otherwise have a decision of a court reviewed by a superior court should be no different from those available to the other parties to the proceedings and also subject to the same conditions, including the time limits for lodging the appeal.

In relation to court proceedings where the public prosecutor intervenes or is joined as a party

17. The parties to the proceedings should be informed either by the public prosecutor or by the court of the decision of the public prosecutor to intervene or be joined to the proceedings.
18. Where the public prosecutor presents a written opinion before the court hearing, the opinion should be made available to all parties in sufficient time to be considered. Otherwise, the hearing may be adjourned.
19. The parties to the proceedings should have the opportunity to comment on the opinion of the public prosecutor and to submit counter-arguments.
20. The public prosecutor should neither participate in the deliberations of the court, nor give the impression of doing so.
21. The principles laid out in paragraph 16 apply under this sub-heading.

In relation to the principles of legal certainty and res judicata

22. In order to comply with the principles of legal certainty and res judicata, the grounds upon which the public prosecutor may seek a review of the final decision of a court should be limited to exceptional cases and the review processed within a reasonable time limit. Except in cases where the review does not concern the rights and obligations of the parties, as set out in the decision under review, the parties to the original proceedings should be informed of the review and, should they so wish, given the opportunity to be joined to the proceedings.

E. Role of public prosecutors as a supervisory organ

23. Where public prosecutors have a supervisory role in relation to national, regional and local authorities, and also in relation to other legal entities, for the purpose of ensuring their proper functioning in accordance with the law, they should exercise their powers independently, transparently and in full accordance with the rule of law.
24. In relation to private legal entities, the public prosecutor should only be able to exercise his or her supervisory role in cases where there are reasonable and objective grounds to believe that the private entity in question is in violation of its legal obligations, including those derived from the application of international human rights treaties.
25. The authorities or other legal entities concerned by any action undertaken by the public prosecutor in accordance with paragraphs 23 and 24 should be entitled to make representations and challenge such action before a court.

F. National and international co-operation

26. In fulfilling their mission, public prosecution services should establish and, where appropriate, develop co-operation or contacts with ombudspersons or similar institutions, other national, regional and local authorities, and with representatives of civil society, including non-governmental organisations.

27. There should be support for international co-operation among public prosecution services with similar responsibilities outside the criminal justice system and mutual practical assistance both within and beyond the framework of relevant international treaties.