Collaborating Personnel. Unit 15.
THE PUBLIC PROSECUTION SERVICE

Functions (performance)

Objective Function: defence of legality principle.

The Prosecution Service is governed by the principle of legality and that means that
Public Prosecutors will act in accordance with the Constitution, the law and other
regulations in force, putting the appropriate actions into practice where applicable, or
objecting to those incorrectly put into practice to the extent and in the manner stipulated
by law.

The function of the Public Prosecutor is bound by the legality principle so that he must
control the real application of that principle. His/her duty is to watch over the
accomplishment and defence of legality, so he necessarily must be impartial. Therefore,
the principles for Public Prosecutors are those of independence and impartiality.

In defending the legality principle, public prosecutors must protect citizen’s rights and
public interests protected by the law. By virtue of its office or at the request of
interested parties, the public prosecutor safeguards the independence of the courts and
strives for the satisfaction of social interest in the courts.

As Constitutional legality defender:

As defender of constitutional legality, Public Prosecutors must safeguard the due
respect to constitutional institutions and fundamental rights and freedoms. He/she must
take part (is a party), or even bring (lodge) an action and start a judicial process in
relation to “recursos de amparo” before the TC, and also take part in those judicial
processes before the TC in relation to legality defence.

Thus the prosecutor’s specific duties are:

1. To see that the jurisdictional function is carried out effectively, in accordance
   with the laws and in the periods and terms set out in them, where applicable,
   take the appropriate actions, remedies and steps;

2. To carry out all the functions attributed to him by law in defence of the
   independence of judges and courts;
3. To enforce respect of constitutional institutions and fundamental rights and public freedoms by whatever means required to defend them.

As defender of ordinary legality

Among the Public Prosecutor’s duties is to defend and protect the public interest
* To put into practice criminal and civil actions arising from crimes and misdemeanours, or object to those put into practice by others, where applicable.
* to intervene in the criminal process, urging the judge to implement the appropriate cautionary measures, and take necessary steps to clear up the facts;
* to take part in procedures relating to marital status and other conditions provided by law in defence of legality and public or social interest;

He must also prosecute all criminal offences bringing charges against the accused, and also bring a civil action on behalf of the victim, for damages occasioned by the crime; to prosecute misdemeanours (misdeminors) and, to apply for cautionary measures such as an order to remand in prison awaiting trial (prisión preventiva), and apply for further investigation to clarify criminal facts.

Subjective functions (performance)

As defender of public interest:

- in the field of juvenile crimes or criminal liability of juveniles, Public Prosecutors are in charge of the investigation of crimes in which a juvenile is involved;
- to intervene in civil process where the social order is compromised
- or where rights of minors, disabled, or handicapped people are affected,
- and to apply for habeas corpus.

To carry out the functions entrusted to them by law, articles 4 and 5 EOMF (Statute of Public Prosecutors) give them a series of powers such as:
* the ability to obtain information in relation to all judicial procedures.
- to issue appropriate orders and instructions to police such as the detention of a suspect among others.
- To receive accusations, forwarding them to the judge or ordering the judge file the accusation,
- or in “abbreviated proceedings”, the public prosecutor can order the procedures to be finished when the acts do not constitute a crime.
- To control the notification of any judicial decision and information about the state of proceedings, and
- they may request to see the proceeding whatever their state.

Organizational Principles:


There is only one Prosecution Service for the whole of Spain, although there are more than 1,700 Public Prosecutors in Spain.

The Prosecution Service falls under the Ministry of Justice and it is run by the Fiscal General del Estado (Attorney General). The Chief prosecutor of each department acts in representation and the other members by delegation of their respective Chief.

The prosecution service has a hierarchical organization, and the Attorney General may give orders and instructions to his subordinates, thus issuing orders to the Chief Prosecutor of each prosecution office whilst he in turn may issue orders to his immediate subordinates. In this sense, Sec. 2 Prosecution Service Act stipulates that the prosecution service exercises its function by virtue of the principles of unity of acts and hierarchical dependence.
In section 12 of Prosecution Service Act there is a list of the offices which are:

1. Attorney General.
2. Prosecution Board (Consejo Fiscal), whose tasks are included in article 14.1. This section grants the board power to issue general criteria to guarantee uniform acts of the prosecution service, to advise the Attorney General on those subjects he may consider, to advise in the nomination of public prosecutors and to propose reforms considered necessary. The board is composed of:
   a) The Attorney General (acting as chairman).
   b) The Vice Prosecutor of the Supreme Court of Justice (Teniente Fiscal del Tribunal Supremo).
   c) The Chief Prosecutor of Inspection (Fiscal inspector Jefe).
   d) Nine Prosecutors of different levels.
3. Committee of Court Sections Prosecutors (Junta de Fiscales de Sala). The task of the Committee is to assist the Attorney General in order to state uniform criteria of interpretation and legal acts, answer legal questions, prepare the annual reports and opinions and to prepare projects to be sent to the Government. The Committee is composed of:
   a) The Vice-Prosecutor of the Supreme Court (acting as a Chairman),
   b) The Court Sections Prosecutors (Fiscales de Sala),
   c) The Chief prosecutor of inspection, and
   d) The Assistance Secretariat (Fiscal Jefe de la Secretaría Técnica).
4. Prosecutors of the Supreme Court of Justice (Fiscalía del Tribunal Supremo).
5. Prosecutors of the Constitutional Court (Fiscalía del Tribunal Constitucional).
6. Prosecutors of the National High Court (Fiscalía de la Audiencia Nacional).
7. Special Prosecutor for the prevention and repression of illegal drug dealing (Fiscalía especial para la prevención y repression del tráfico ilegal de drogas).
8. Special Prosecutor for the repression of corruption-linked economic offences (Fiscalía para la repression de los delitos económicos relacionados con la corrupción).
9. Prosecutors of High Courts of Justice in the Autonomous Communities (Fiscalías de los Tribunales Superiores de Justicia).
10. Prosecutors of Provincial High Courts (Fiscalías de las Audiciencias Provinciales)

The Attorney General is appointed by the King on the Government’s proposal, on advice of the CGPJ, from among attorneys of recognised prestige with over 25 years of professional practice. The attorney General can propose the promotion of any public prosecutor and to propose to the Government the separation of the service of any public prosecutor.

The appointment as Court Sections Prosecutors (Fiscales de Sala) and Chief prosecutor is for a period of five years.

Legality:
The principle of legality is established in article 100 of Criminal Procedure Code. This article states the duty for the public prosecutor to prosecute any criminal offence committed and the offender. There is no room for another option, that is, not to prosecute a criminal offence irrespective of their seriousness. However, even with that legal framework, it appears not contrary to the principle of legality if the legislator decides in the future to establish the opportunity principle. The rationale of the opportunity principle is the need to conciliate the legality and the protection of public interest and the citizen’s rights, along with other aims of the criminal process such as the reparation to the victim or the rehabilitation of the offender. Under the principle of opportunity the Public prosecutor can be empowered to take the case out of the judicial process if some conditional cautions apply. He can do this by way of alternative formulas such as the so called restorative justice or alternative formulas of justice that currently apply in the majority of European criminal systems of Justice, and in the States. This process is thought to be an alternative way to the conventional system of justice in cases such as the commission of petty offences and where the rehabilitation of the offender is better achieved through taking part in courses like drug rehabilitation, and some others where the reparation has been made to the victim, for example, where the offender has paid for the damage done to the property, instead of being sanctioned to pay to the State or being sent to prison.

Currently this is not possible in our system of Justice as the legality principle is the one that governs the function of the public prosecution service with no exceptions. In that sense, and of course within the criminal process, once our Criminal Code has typified a
criminal act as an offence, the public prosecutor is under an obligation to start a prosecution against the accused.

Impartiality.

Public prosecutors, as judges, are bounded by the principle of impartiality in their prosecutorial function. It could sound weird if we say that the Public Prosecutor is an impartial party in the process, but that is what he is. However, in contrast to judges, he cannot be recused by the other procedural party; but can, and shall abstain himself from the process when any of the legal causes established in article 219 LOPJ applies. In short, public prosecutors are impartial because they represent our society in prosecuting the crime and the accused. In other words, he must prosecute the one who committed the crime, not the one who is being investigated and accused; because if at some point in the investigation it is clear that the accused did not commit the crime, the public prosecutor shall drop the charges and the file will be closed for that person (sobreseimiento). When the accusation has been formally filed and the trial begins, the public prosecutor can drop the charge, if as a result of the proof produced during the trial there is no evidence against the accused. In that case the accused will be acquitted (absuelto) by the court with no criminal record. So public prosecutors must be impartial in his/her prosecutorial function.

Public Prosecution Service Statute

The main characteristic of the Statute that regulates the functioning of the Prosecution Service is the similarity to the Judicial Power. The reason for that is that Public Prosecutors act with autonomy when carry in out a specific prosecution, and they are governed by the impartiality principle so, formally, in the Constitution they are located in the Chapter of Judicial Power.

As you know, the way to be appointed as Public Prosecutor is the same as Judges: same competitive exam and at the end they must choose between becoming a judge or a public prosecutor (article 42 EOMF), and the salary is the same as judges.