

REGIONAL AND INTERNATIONAL STANDARDS GOVERNING THE ROLE OF PUBLIC PROSECUTORS

The UN guidelines on the role of Prosecutors 1990

The IAP Standards of professional responsibility and statement of the essential duties and rights of prosecutors 1999

As we enter the 21st century and the ‘rule of law’ spreads throughout the world, most criminal justice systems are governed by legal rules, policies, codes and conventions which give proper consideration to human rights.

No longer is the use of torture or oppression to extract confessions regarded as acceptable as used to be the position in many countries even in the so called ‘civilised’ world up until the 19th century & even beyond.

What is the ‘rule of law’?

Is it a sort of institutional morality, a concept of justice which importantly must apply to all parts of Society including the Government? To put it another way; all power must be exercised in accordance with the law and the law itself must be based upon respect for human values.

The way that Prosecutors conduct themselves in accordance with the ‘rule of law’, is guided by standards set by

- International and Regional Bodies
- Domestic law
- Rules, guidance & codes prescribed by professional bodies

One of the difficulties of talking about Prosecutors in an International context is on account of the wide variety of criminal justice systems and administrations which exist. Some are very well developed and steeped in history and tradition. For example the Procurator Fiscal office in Scotland which has existed for centuries. By contrast there are some very new Public Prosecuting authorities. The Crown Prosecution Service in England and Wales is only 21 years old, since Prosecutions were brought by private individuals until 19th century. The Northern Ireland Prosecution office only dates from

1972 and the Chilean Prosecution Office is a mere 8 years old [previously prosecutions were controlled by the Judges].

Even in Europe whilst most countries have public prosecution offices, their function, relationship with the state, police and judiciary can be wildly different.

Consequently it is quite a challenge to create standards that can apply generally even in Europe let alone the rest of the world.

Nonetheless it is possible to identify some core tasks (adapted from the Recommendation of the Council of Europe Committee of Ministers to member states on the role of public prosecution in the Criminal Justice system 2000)

- deciding whether to initiate or continue a prosecution [in England and Wales it was only recently that prosecutions were initiated by prosecutors]
- conducting prosecutions before the court
- appealing or conducting appeals concerning all or some court decisions

Other tasks can be added

- implementing national crime policy and adapting to local, regional circumstances
 - conducting, directing, advising or supervising investigations
 - victim care
 - diversion from prosecution
 - supervising the execution of court decisions
 - recommending sentences
 - community engagement with the public, in order to improve awareness and promote public confidence in the prosecution service and the criminal justice system, which on the whole is poor. In England and Wales this is seen as increasingly important where less than 50% of the public are satisfied with the administration of the criminal justice system. Such engagement is achieved by increasing involvement with the media, public events such as open days often including other elements of the criminal justice system, targeting minority groups such as ethnic/racial groups.

Given the variety of systems, it is not easy to develop a set of norms or standards which are generally applicable. There are a plethora of international instruments and conventions in existence primarily directed to ensuring proper regard for human rights, but I do not intend to enumerate them all. Notably *the UN Charter of 1945* affirms the determination of the people of the world to establish conditions under which justice can be maintained and *the Universal Declaration of Human Rights 1948* enshrines the principles of equality before the law, the presumption of innocence and the right to a fair and public hearing by an independent and impartial tribunal. These instruments underpinned all that which followed, for example the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1987* and the *Convention on the Rights of the Child 1990*.

These are binding conventions, but the UN also sought to issue guidelines and standards which whilst not binding would serve to influence states and operate as 'bench marks'.

In 1979 The General Assembly of the UN adopted the *Code of Conduct for Law Enforcement Officials* and in 1985 the *Basic Principles on the Independence of the Judiciary* were adopted and endorsed.

Finally the Eighth United Nations Congress on The Prevention of Crime and the Treatment of Offenders, held in Havana, Cuba in 1990 adopted *Guidelines on the Role of Prosecutors*. These UN guidelines were the first international attempt to define the role of the public prosecutor. They are addressed to states and are concerned with state action and do not address the issue of the relationship between the prosecutor and the executive or the legislature.

It was the publication of these guidelines which acted as a catalyst for the formation of the International Association of Prosecutors in 1995. One of its first tasks, in furtherance of its object to: “...*promote and enhance those standards and principles which are generally recognised internationally as necessary for the proper and independent prosecution of offences*” was to produce a set of standards for Prosecutors. The resulting document is entitled *Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors*. These are to be regarded as minimum standards, the starting point, not the finishing line and all organisational members [presently 128] are required to commit to adherence to these standards.

The IAP Standards are complementary to the UN guidelines and in many instances the wording is very similar, but it is important to note that the IAP standards have been drawn **by** practising prosecutors from every continent **for** practicing prosecutors from every continent. They are short, uncomplicated and realistic.

Historically many of the instruments and guidelines which preceded the IAP standards were primarily aimed at ensuring proper regard for human rights. However another reason exists for focusing on International standards for Prosecutors which may be just as important, given a Prosecutor’s professional responsibilities, and that is to advance cooperation between countries and states in order to more readily combat crime at both international and national levels. We know that criminals exploit the systemic differences between jurisdictions and have little regard for borders, for example, tracking organised crime gangs even through Europe using covert surveillance can be a nightmare, given the different authority requirements and regimes which exist. Extradition arrangements, or absence thereof is another example where fugitive criminals can win out whilst Prosecutors struggle with subtle variations between one country’s scheme and another’s. Accordingly it is vital to work towards some level of commonality. This is another of the objects of the IAP.

“to assist prosecutors internationally in the fight against organised or other serious crime...”

I do not intend to go through the UN guidelines and the IAP standards, comparing and contrasting, in any detail, they are available to be studied at leisure. I shall however just draw your attention to some of the fundamental principles which are shared by both.

- Article 1 IAP Standards sets out the standards for the *professional conduct* of Prosecutors with reference inter alia to ethics, integrity, care, the preservation of the right to a fair trial and human rights. This article broadly reflects paragraph 12 of the UN guidelines.

- Article 2 IAP Standards refers to *the Independence of Prosecutors* and is more specific than the UN guidelines at paragraph 4 which makes reference to prosecutors being able to “...*perform their professional functions without intimidation, hindrance, harassment, improper interference*”. {This wording is reproduced in Article 6 IAP standards.} Article 2 specifically refers to “*The use of prosecutorial discretion...*” being “...*exercised independently...*” and “...*free*

from political interference...” “*...when permitted...*”! It also states that if instructions are given to prosecutors they should be transparent. [This caveat was introduced as there are jurisdictions where Ministers can, in principle at least give instructions to Prosecutors }

- Articles 3 and 4 IAP Standards deal with *impartiality* within the performance of a prosecutors duties within criminal proceedings and otherwise. Emphasis is given to the application of *objectivity* to all decisions, the search for truth, the requirements for a fair trial, the disclosure of helpful material to the defence, the imperative not to proceed with a case if unsupported by evidence and the maintenance of confidentiality. These articles reflect paragraphs 13 and 14 UN guidelines.

- Article 5 IAP Standards exhorts prosecutors to *cooperate* with other parts of the Criminal justice system and with each other both locally and internationally, expanding upon paragraph 20 UN guidelines.

- Article 6 IAP Standards is entitled *empowerment* and sets out a number of separate expectations which prosecutors should be entitled to such as *physical protection, reasonable conditions of service and salaries, selection arrangements based on merit, appropriate complaints and disciplinary procedures and freedom to form and join associations etc*. These are lifted almost word for word from the UN Guidelines.

Currently the IAP are working on an addendum to the standards to include practical examples to illustrate each standard and there is a possibility that the IAP standards will be translated into a U.N. Convention in due course and so will have far greater force.

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