

KOSOVO JUDICIAL AND PROSECUTORIAL COUNCIL

Code of Ethics and Professional Conduct for Prosecutors

Referring to UNMIK Regulation No. 2001/8 on the establishment of the Kosovo Judicial and Prosecutorial Council,

Recalling internationally recognized human rights standards and fundamental freedoms which in particular guarantee to everyone the principle of equality before the law, the presumption of innocence and the right to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law;

Having regard for the United Nations Basic Principles on the Independence of the Judiciary, endorsed by the United Nations General Assembly in November 1985 as well as the guidelines on the role of prosecutors adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders;

Referring to Recommendation No R (19) 00 of the Committee of Ministers of the Council of Europe to member states on the role of public prosecution in the criminal justice system;

Recognizing that public prosecutors play a crucial role and carry out important responsibilities in the administration of justice. They are, in particular, on behalf of society and in the public interest, in charge of ensuring the application of the law where the breach of the law carries a criminal sanction, taking into account both the rights of the individual and the necessary effectiveness of the criminal justice system; and

Conscious of the necessity, in particular due to the state of transition of Kosovo, that provisions calculated to promote the effectiveness, impartiality and fairness of public prosecutors be adopted.

The present code defines the following standard of ethics and professional conduct that should be observed by prosecutors, and whose breach constitutes grounds for sanction as provided for and in accordance with the provision of section 7 of Regulation No. 2000/8 and section 2 of the Administrative Direction No. 2000/4. As a necessary corollary, effective measures are taken in order to guarantee that public prosecutors are able to fulfill their professional duties and responsibilities under adequate legal and organizational conditions and, in particular, to ensure that the recruitment, the promotion and the transfer of public prosecutors are carried out according to fair and impartial procedures embodying safeguards against any approach which favors the interests of specific groups, and excluding discrimination on any ground.

The specific misconducts described in the present code are not exhaustive, any action undertaken by a prosecutor even though not expressly contemplated by the provisions herein contained but having a similar effect, may be considered a breach of the present code and consequently sanctioned.

This code applies to all persons exercising prosecutorial functions in Kosovo, at all level of proceedings.

I. GENERAL PRINCIPLES

1. A prosecutor shall act at all times in a manner that promotes public confidence in the dignity, integrity, effectiveness, and impartiality of prosecutors. This implies that a prosecutor shall observe high standards of professional and personal conduct, respect and comply with the law, perform the duties of office impartially and diligently and avoid any conduct and situation that could lead to a prosecutor's integrity or impartiality being questioned. This applies not only to the prosecutor's professional life but also to certain aspects of his/her private life, when they may impair the prosecutor's image in the public eyes, thus affect the institution of the prosecutors' service as a whole.
2. A prosecutor shall not engage in any activity, including political activity, which is incompatible with his or her functions.

II. SPECIFIC RULES OF CONDUCT

A. Prosecutorial activities

1. A prosecutor shall maintain and improve the highest standards of professionalism and legal expertise and for that purpose engage in continuing legal education and training in particular when available.
2. Particularly, a prosecutor shall respect and apply:
 - a) the principles and ethical duties of their office as set forth in the present code of conduct;
 - b) the legal protection of suspects, victims and witnesses;
 - c) human rights and freedoms as laid down by international instruments;
 - d) principles and practices of organization of work, management and human resources in a judicial context;

This, *inter alia*, means to be aware of:

1. the mechanisms and materials which contribute to consistency in their activities;
and
 2. the types and development of criminality, as well as requirements and modalities of international co-operation on criminal matters.
3. In the relationship with authorities entitled to supervise their work, prosecutors shall:
 - a) be able to perform their duties and responsibilities without unjustified interference or unjustified exposure to civil, penal or other liability;

- b) respect legal instructions given by hierarchical authorities to which they are subordinate¹;
 - c) enjoy the right to request that instructions addressed to them be put in writing;
 - d) account periodically and publicly for their activities as a whole and, in particular, the way in which their priorities were carried out.
4. In their relationship with judges, public prosecutors shall:
- a) strictly respect the independence and the impartiality of judges; in particular they shall neither cast doubt on judicial decisions nor hinder their execution, save where exercising their rights of appeal or invoking some other procedure in accordance with the law.;
 - b) be objective and fair during court proceedings.
5. In their relationship with the police, prosecutors shall:
- a) in cases where the applicable law requires prosecutors to guide preliminary criminal procedure or allows them to demand law enforcement agencies to undertake specific actions, give clear instructions as appropriate to the police with a view to an effective criminal prosecution²;
 - b) sanction or promote sanctioning, if appropriate, of criminal activity; and
 - c) in any case promote appropriate and functional co-operation with the police and the different law enforcement agencies.
6. In the performance of their duties towards individuals, prosecutors shall in particular:
- a) carry out their functions fairly, impartially and objectively;
 - b) respect and seek to protect human rights;
 - c) seek to ensure that the criminal justice system operates as efficiently and expeditiously as possible. This implies the fact of avoiding themselves any forms of absenteeism, inefficiency and negligence at work and also to make sure that proper co-ordination is made with law enforcement agencies as well as guidance of their work when prescribed by the applicable law;
 - d) abstain from discrimination on any ground, including gender, sexual orientation, race, color, other genetic features, language, religion, political or other opinion,

¹ According to Article 8 of the Law on Public Prosecutor Office (Official Gazette of the SAP of Kosovo, no. 32/76), the higher Public Prosecutor, according to the law, can give the lower Public Prosecutor obligatory instructions for his/her work, and can take over tasks from the competence of the lower Public Prosecutor. According to Article 49 of the same Law, the Ministry of Justice and General Administration can request from Public Prosecutors' Offices information and reports that are necessary for performing its work.

² According to Article 45 of the applicable Law on Criminal Procedure, prosecution of perpetrators of crime is the basic right and duty of the public prosecutor, who has concerning crimes which are automatically prosecuted, the power to *inter alia* take the necessary steps to discover crimes and find the perpetrators and to guide preliminary criminal proceedings. According to Article 153(2) of the same Law, if from the charge itself he/she is unable to decide whether the allegation contained in the charge is probable or if the data provided do not furnish sufficient basis for a decision as to whether the conduct of an inquiry is required, or if he/she has only heard a rumor that a crime has been committed, the public prosecutor, if he/she is unable to do so on his own or through other agencies, shall demand that law enforcement agencies gather the necessary information and take other steps to discover the crime and its perpetrator. The public prosecutor may ask law enforcement agencies to inform him at any time of the measures which they have taken.

- national or social origin, association with a national minority, property, birth, health, handicaps or other status;
- e) ensure equality before the law, take into account all relevant circumstances including those affecting the suspect, irrespective of whether they are to the latter's advantage or disadvantage.
7. Prosecutors shall not initiate or continue prosecution when they are obliged not to do so under the law or when the law provides no basis for doing so³.
 8. Prosecutors shall not present invalid evidence that could affect the validity of the proceeding itself⁴.
 9. Prosecutors shall seek to safeguard the principle of equality of arms, in particular by disclosing to the other parties – except when otherwise provided in the law – any information which they possess which may affect the justice of the proceedings.
 10. Prosecutors shall keep confidential information obtained from third parties, in particular where the presumption of innocence is at stake, unless disclosure is required in the interest of justice or by law.
 11. Prosecutors shall take proper account of the interests of the witnesses, especially take or promote measures to protect their life, safety and privacy, or see to it that such measures have been taken.
 12. Prosecutors shall take proper account of the views and concerns of victims when their personal interests are affected.
 13. Prosecutors shall not allow improper influences to obstruct the prosecution of public officials for offences committed by them, particularly corruption, unlawful use of power, grave violations of human rights and other crimes recognized by international law.
 14. Prosecutors and their families shall not, under any circumstance, accept gifts, favors, privileges or promises for material help from any person having a direct or indirect interest in a case they are in charge of.
 15. Subject to the provision of article 3 c) above, prosecutors shall remain free to submit to the court any legal arguments of their choice, even where they are under a duty to reflect in writing the instructions received.

B. Administrative responsibilities

1. A prosecutor shall discharge his/her administrative responsibilities with professionalism and diligence and shall cooperate with law enforcement agencies, judges and other Court officials in the administration of a prosecutor's office's activities.
2. In particular, a prosecutor shall:
 - a) respect the necessary obligations pertaining to his/her function in terms of supervision of the staff under his/her control or supervision;

³ Article 153 of the above Law states that the public prosecutor shall reject a charge if it is evident from the charge itself that the act committed is not a crime which is automatically prosecuted, if the statute of limitations has expired or if the act is covered by amnesty or pardon, or if there are any other circumstances which preclude prosecution.

⁴ Article 83 of the same Law defines evidence, such as the transcript of the statements given by the suspect or witnesses to the law enforcement agencies, on which a court decision may not be based and which shall be automatically removed from the record by the investigating judge or the trial panel, or at the request of the parties. Articles 84 and 333 strictly limit the conditions under which such evidence can be used during the trial as an exception to the above mentioned prohibition.

- b) organize his/her activity and respect the particular obligations of time and duty necessary to performing such activities;
 - c) comply with the administrative instructions from the Department of Justice to the extent such instructions are aimed to rationalize and improve a consistent managing of the prosecutors' offices operations and provided that no interference with the free determination of the prosecutor on a single case is thereby exercised.
3. The function of Public Prosecutor requires a particular diligence and a high degree of responsibility.
 4. With respect to the organization and the internal operation of the prosecutor's office, in particular in assigning and re-assigning of cases the Public Prosecutor shall avoid any undue influences and maximize the proper operation of the criminal justice system, in particular considering the level of legal qualification and specialization which are to be devoted to each matter.

Adopted on 31 July 2001

The Chairperson

Endorsed on November 2001

The Special Representative of the Secretary General