



COUNCIL    CONSEIL  
OF EUROPE    DE L'EUROPE

Economic Crime Division  
Directorate of Co-operation  
Directorate General of Human Rights and Legal Affairs  
April 2008

## **Support to the Anti-Corruption Strategy of Georgia (GEPAC)**

**CoE Project No. 2007/DGI/VC/779**

### **Presentation on International Standards on Ethics for Prosecutors**

*Prepared by:*

Shamshuddin Makkan, United Kingdom  
Council of Europe Expert

## Table of Content

1	International and Regional Standards .....	4
2	The background - the Standards of the International Association of Prosecutors.....	6
3	The Standards.....	7
4	Conclusion .....	8

---

For any additional information please contact:

Corruption and Fraud Unit  
Economic Crime Division  
Directorate of Co-operation – DG-HL  
Council of Europe  
F-67075 Strasbourg Cedex  
Tel +33 3 8841 2354/Fax +33 3 8841 3955  
Email: [tanya.peshovska@coe.int](mailto:tanya.peshovska@coe.int)  
Web: [www.coe.int/economiccrime](http://www.coe.int/economiccrime) ([www.coe.int/gepac](http://www.coe.int/gepac))

## **Introduction**

Most criminal jurisdictions in the world aspire to have at the core of their systems international norms and standards based on the principles of the rule of law, respect for human rights, good governance and the attainment of a fair trial. Giving proper consideration to these values is an essential feature of any prosecutor in any country. Prosecutors are not alone in this aspiration. All those who are interested in seeing justice being done will want to espouse these standards and values. These values and standards are derived from:

- International and regional bodies;
- Domestic law; and
- Rules and guidelines prescribed by the various relevant professional agencies.

As criminal justice systems evolve and develop, we are likely to see greater attention paid to the implementation of these standards.

# 1 International and Regional Standards

A starting point to explain the international standards may well be the ***Universal Declaration of Human Rights*** (1948). From it flow many of the international instruments and conventions, codes of practice rules, principles, guidelines and standards.

The ***International Covenant on Civil and Political Rights*** (1966) contains guarantees of, inter alia, freedom from arbitrary arrest and detention, the right to a fair and public trial and appeal, and the presumption of innocence. These are the day-to-day issues that we as prosecutors and/or investigators around the globe have to deal with. These become second nature to us, but to those that still do not enjoy these international standards and protection, these values take on a significant and substantial meaning.

Most of the international instruments concern regulating the conduct of those in the judicial system. Arguably, there is no other institution that a citizen can turn to when faced by the power and the might of the state being used against him or her. Who else can the citizen turn to other than an independent and fair judicial system and the presumption of innocence? International standards that exist relate to investigators, prosecutors, public servants, the lawyers, the judiciary and the penal institutions (prisons).

This is so because it is the law enforcement agencies and the judicial process which possess the capacity to violate a citizen's human rights. Public authorities, generally, have this capacity to violate human rights. It is with that in mind, perhaps, that there is much scrutiny of the law enforcement agencies within the criminal justice systems around the world.

At the centre of the many international and regional instruments lie the value and the aspiration for the rule of law, protection of human rights, right to a fair trial, etc. Whilst it is true that the capacity for law enforcement agencies to violate human rights is great, so, too is the capacity through them that human rights, rule of law, fair trial can be achieved and protected. This is so because the lawyers, prosecutors, investigators, the judiciary and the prisons are in such a position –and free from the external pressures and other undue influences.

In 1994, the UN General Assembly prepared a plan of action for the UN Decade for Human Rights Education (1995-2004), in which it called for governments to give special attention to "*the training of police, prison officials, lawyers, judges ... and other groups which are in a particular position to effect the realisation of human rights.*"

To illustrate what I am saying let me point out, briefly, some of the international instruments. The independence of the judiciary and the legal profession are addressed in:

- *The Basic Principles on the Independence of the Judiciary* (1985),
- *Basic Principles on the Role of Lawyers* (1990),
- *Guidelines on the Role of Prosecutors [Havana Guidelines]* (1990),
- *The International Bar Association's Standards for the Independence of the Legal Profession* (1990)
- *Beijing Statement of Principles of the Independence of the Judiciary* (1995) – a regional document

Human rights provisions relevant to the activities of law enforcement officials are found in

- *The Standard Minimum Rules for the Treatment of Prisoners* (1977),
- *Code of Conduct for Law Enforcement Officials* (1979),
- *Principles of Medical Ethics Relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment* (1982),

- Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984),
- UN Standard Minimum Rules for the Administration of Juvenile Justice [Beijing Rules] (1985),
- Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (1988),
- Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (1990),
- UN Standard Minimum Rules for Non-Custodial Measures [Tokyo Rules] (1990) and Guidelines for the Prevention of Juvenile Delinquency [Riyadh Guidelines] (1990).

Provisions concerning human rights and the administration of justice which relate to particular sectors of the community (including juveniles, women, indigenous peoples, people with disabilities, immigrants and asylum seekers) are found in:

- *The Convention on the Elimination of All Forms of Racial Discrimination* (1965), *Declaration on the Rights of Disabled Persons* (1975),
- *Convention on the Elimination of All Forms of Discrimination Against Women* (1982),
- *Declaration on the Human Rights of Individuals who are not Nationals of the Countries in which they Live* (1985),
- *ILO Convention No 169 on Indigenous and Tribal Peoples* (1989), *Convention on the Rights of the Child* (1989),
- *UN Rules for the Protection of Juveniles Deprived of their Liberty* (1990)

Many ethical codes around the world are based on the **Bangalore Principles** (1988).

The *Vienna Declaration and Programme of Action* of 1993 noted that:

*"The administration of justice, including law enforcement and prosecutorial agencies and, specially an independent judiciary and legal profession in full conformity with applicable standards contained in international human rights instruments, are essential to the full and non-discriminatory realisation of human rights and indispensable to the processes of democracy and sustainable development."*

Criminal justice should attract the best lawyers in the country. The prosecution service should attract the best lawyers in the country because criminal law is such an important branch of the law. It is where citizens have an expectation of a fair trial when faced with the might of the state against them, where the rule of law becomes alive and free from the day-to-day politics. It is where even where alleged wrong doers can expect to be treated with fairness and free from arbitrary treatment.

Recently (reported in *The Times* of 15<sup>th</sup> April 2008) the British Court of Appeal ruled that it would be against international obligations and a violation of someone's human rights to send them to a country where they would not receive a fair trial under article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), even in circumstances where the government had said they wanted to send the person out of the jurisdiction. The case involved the man Abu Qatadar, a Jordanian who had been convicted in Jordan in his absence for serious offences, and who would have faced the Jordanian system, which would not, or could not, have given him the protection of the fair trial provisions in article 6. This case is an example of how the independence of the lawyers and the judiciary stand between an individual and the power of the state.

Therefore, all the international standards are designed to mirror the just rule of law, protection of human rights etc. Domestic laws applying the just rule of law are consistent with these standards. The Codes of Professional Conduct or Code s of Ethics and other guidelines given to prosecutors by prosecuting agencies also mirror the basic values expressed in such instruments – consistently with the just rule of law as we understand it.

The reasons for our modern directions are complex. In large part, however, they are motivated by a general acceptance of the inherent dignity of the human person and the rights that are attached to preserve that dignity. There may also be pragmatic considerations: we often hear that the best evidence in a prosecution is a confession; but we should qualify that to mean only a voluntary confession – because an involuntary confession, one resulting from torture or other pressure to confess, will be inherently unreliable. (People make false confessions simply to escape from torture.)

Evidence that is otherwise unlawfully obtained may also be unreliable and broader public interest considerations also make it desirable that its use be discouraged.

## **2 The background - the Standards of the International Association of Prosecutors**

The International Association of Prosecutors (IAP) was born in 1995 and has grown ever since. It is based in The Hague. They have many individual and organisational members from many different countries. They hold annual conferences and produce publications and research papers relevant to prosecutors.

The IAP has adopted ***Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors*** (“the Standards”). This is a combination of principles based in the values we have discussed already and practical considerations. They are directed towards ensuring conduct that will more effectively maintain the rule of law (more appropriately, the just rule of law) in all societies. In addition to the philosophical and jurisprudential arguments supporting the rule of law, there is a very practical basis for enforcing it. Without the rule of law various forms of oppression or anarchy may be allowed to prevail with unfortunate consequences for us all. The threat exists to various degrees, but to some degree in all societies.

A significant early development for the Association was the promulgation of the Standards. They have been formulated by practising prosecutors from every continent. It is intended that eventually, all prosecution services in the world will buy into them and observe the Standards – which will be the benchmarks to aspire for and be assessed according to the extent to which they implement them in practice. There is therefore a practical aspect to this exercise.

The Standards compliment the **UN Guidelines on the Role of Prosecutors of 1990 – the Havana Guidelines**. It is important to note that Standards are the minimum standards to be achieved by all prosecutors. They are not the ceiling but the floor. They should be seen as the starting point rather than the finishing line.

The Standards are promulgated in accordance with the Object of the IAP to:

*“... promote and enhance those standards and principles which are generally recognised internationally as necessary for the proper and independent prosecution of offences.”*

It is also important to note that the Standards are short. This feature in the structure and drafting of the Standards illustrate that they are a distillation of the principles considered important by the prosecutors of the world. They are free from detailed rules and guidelines. They paint a simple outline and leave you to responsibly fill in the detail. I have read the Georgian Prosecutorial Code of Ethics. I recognise many of the international minimum standards – with other details filled in to meet the particular needs of the Georgian system. That is exactly what the international standards are designed to do – they allow national systems to adopt and import into domestic practice the international principles, values and standards.

### **3 The Standards**

I propose to refer to only some of the issues included in the Standards. You may read and consider them in full in your own time. They are a useful reminder of how we should go about our business.

#### **Professional conduct - Article 1**

Article 1 sets out a number of forms of conduct for prosecutors. Importantly, you will note that paragraph (f) refers expressly to the prosecutor's protection of an accused person's right to a fair trial. Also, importantly, you will note that paragraph (g) requires the prosecutor to uphold the concept of human dignity and human rights. That is in many ways our day-to-day business – it is why we do what we do and lies at the heart of all our work. The Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights both require that trials be fair – to both sides. Indeed, Chapter 1, article 1 (2) (c) (d) of the Georgian Prosecutorial Code of Ethics recognises the values of human rights and a fair trial (human rights repeated in Chapter 2 article 5). I am aware that prosecutor colleagues in Georgia will be familiar with the substantive provisions of the ECHR and in particular with the fair trial provisions contained in article 6. You have all been trained in the Convention rights.

Fairness in many situations will be a matter of judgment, but this Article obliges us to pursue it. We must do so with due regard to the human rights of those involved. We must do so always in a way that is in the public interest.

#### **Independence - Article 2**

Article 2 establishes the independence of the prosecutor, but it is qualified. The degree of independence of prosecutorial decision making, from government and other influences, varies considerably across the globe – therefore, the article recognises this. In some jurisdictions the prosecuting authority is completely independent of government in its decision-making and a separate Code guides the decision-making. In others, it is bound up in the political functioning of government; and there are all shades in between. In Australia and the UK there is a very high degree of practical independence, particularly in prosecutorial decision-making. This article is capable of dealing with all shades of independence. (Where it is qualified, however, there is an obligation to ensure that any interference with that independence is open and accountable.) Your independence is recognised in Chapter 2 article 7 of the Georgian Prosecutorial Code of Ethics. Article 7 is an example of how international standards can be adopted and adapted to suit the needs and interests of the Georgian practice and circumstances.

#### **Impartiality - Article 3**

Article 3 requires impartiality in the way in which prosecutors carry out their functions. A combination of provisions in this article requires [paragraph (e), together with Articles 1 (f) and 4.3 (d)] the prosecution to disclose to the accused in a timely manner all material within its knowledge that may be relevant to the issues to be tried, whether that material favours an outcome for the prosecution or for the defence. This is a vitally important requirement especially in common law systems – and an important feature of article 6 of the ECHR and the principle of equality of arms. Some jurisdictions now put pressure on the defence to make some measure of disclosure by way of legal provisions (UK for example). This depends very much on the prosecution making full disclosure in the first place. The requirement to be independent and impartial is reflected in Chapter 1 article 1 (2) (d) and Chapter 3 article 9 of the Georgian Prosecutorial Code of Ethics.

#### **Role in criminal proceedings - Article 4**

This is a more specific provision affecting the conduct of proceedings by prosecutors and requires us to do certain things. It recognises the divergent

practices that exist in different legal systems. For example, some are involved in the investigation of crime while some have no investigatory role at all. In all circumstances the Article imposes upon us obligations to act objectively, impartially and professionally.

**Article 4.2 (d)** requires us to know when we have a viable case. That, in turn, requires us to have procedures in place for the continual screening of cases – continually assessing the strength of the evidence and the probability of conviction in due course. In other words, the discretionary prosecutions – which some of you will remember from the training that I delivered some time ago now.

Victims and witnesses are increasingly having a much greater say (quite rightly so) in the cases that involve them. **Article 4.3 (b)** refers to victims of crime. Further guidance may be had from the **UN Declaration of Basic Principles of Justice for Victims of Crime** (1985). Their needs and interests have been marginalised for too long in some systems.

**Article 4.3 (h)** addresses the decision to prosecute, itself, and the alternatives that may be available. Diversionary schemes are becoming more popular as the costs and delays inherent in criminal trial proceedings increase and ideas of restorative justice take hold. Again, you will recall that in the training that I provided to you I was leading you to accept that there may be alternative ways of dealing with a criminal case – one way is to diversion, particularly for youth offenders.

#### **Co-operation - Article 5**

IAP itself counsels its members to co-operate with other colleagues as appropriate in the international sphere. Cooperation is a major aim. An inter-agency approach can yield major benefits in the attainment of effective and efficient delivery of justice.

#### **Empowerment - Article 6**

(rather evocatively entitled “Empowerment”) This is reference to what we as prosecutors get out of prosecuting and in part to what the state should do for us in terms of creating the conditions for us to fulfil our obligations under the Code of ethics, protection for us and our families when appropriate. The issue of resourcing is implied in this article.

## **4 Conclusion**

The IAP Standards are for all of us. Prosecutors around the globe have detailed guidelines and policy documents assisting the decision making in the prosecution process. We must all ensure that such documents as you have in Georgia reflect the standards, duties and rights contained in the IAP Standards. You must ensure that the Code of ethics that you have is a real and meaningful Code. It is right that the Code you have is reflective of the international Standards of conduct that we have been discussing - but it is also important that we train our people and widely publicise the Code. Then we should ask the relevant authorities to create the right conditions to facilitate the enforcement of the standards. We might also want to think about helping other agencies that do not presently embrace the standards to do so and find ways of making the Code and the standards a reality in Georgia. We should use these standards and the Code of Ethics to ensure that we have an even better prosecution service for the future in Georgia.