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## **A code of conduct for the Public Prosecutor The Dutch experience**

### **Introduction**

Anyone wishing for popularity in the field of law is well advised against becoming a public prosecutor. At least, that's the situation in the Netherlands and I have a strong sense that it also applies to other countries. Public prosecutors don't come off heroically in legal thrillers, police or detective series and other stories where crime is the key theme. The role of hero is reserved for the wayward, brave policeman (preferably obstructed by his superiors or the public prosecutor), whose marriage is in tatters or the dedicated lawyer who, although secretly infatuated with the female suspect, is nevertheless sharp-witted. And, in rare instances, it is the judge who proves to be the just figure from the very beginning.

Popularity is of course not a public prosecutor's main goal. He stands for the law, which may not suit everyone. He also needs the courage to take up standpoints that may not be directly in line with the (political) trends of the day. It will be very rare that, once a trial is over, all those involved – suspect, victims, witnesses – will be equally enthusiastic about how the public prosecutor dealt with it. He will always need to weigh up and reconcile conflicting interests if he can. Job satisfaction would be greatly improved if the public prosecutor received even the slightest public appreciation. And this calls for confidence and authority.

### **What does it take for a public prosecutor to acquire authority?**

Authority minimally demands that a public prosecutor upholds the national law and the previous court decisions rendered under the law. I also take this to mean that he acts within the boundaries of stipulations laid down by international conventions on human rights, to which his country is signatory, and the judgements rendered by the ECHR. A public prosecutor would seem highly implausible if it transpired that, as a professional upholder of the law, he didn't comply with it himself. And if a public prosecutor breaches the law, it reverberates throughout the State as a whole in as much as the State lets such behaviour go unpunished.

But a public prosecutor need to more than simply uphold the law. Both the organisation of which he is a part, and he as an individual, will need to exude integrity. This boils down to:

- a realisation of values and norms
- respect and awareness of the interests of others
- being unimpeachable
- acting consistently and transparently in word and deed: doing what he says and saying what he does. This renders actions controllable, not only for the independent court but society as a whole.

Moreover, he must do what he says he is going to, well and decently.

**International norms: convention texts and soft international law**

Just how much value is placed internationally on a public prosecutor's correctly, proper behaviour is clear from the texts written over the last twenty years, world-wide, specifically on the behaviour of public prosecutors. According to the enforceable minimum norms laid down in international conventions relating to human rights, texts have also been drafted that on the one hand detail the minimum norms and international standard jurisprudence rendered, or that focus on the specific professional body, and state norms to which the profession should adhere in practice. Such formulations can be found in declarations, recommendations and guidelines. In as much as they contain more norms than those already laid down in international conventions, these are not legally binding upon states in practice. Rather, they encompass those principles, policies and expressions of intent that may well govern the conduct of states in certain situations, albeit that no legal obligation exists. Nevertheless, 'soft' law principles do reflect the intention of states in a given matter. They can be regarded as obligations of cooperation and good faith. These concepts are 'soft' because they lack the imperative quality of the law, although they may acquire that status through their transformation by the formal sources of law.

*a. United Nations*

In addition to general texts - such as the United Nations Charter (1945), the Universal Declaration of Human Rights (1948) and the general conventions based on these documents (International Covenant on Civil and Political Rights, that entered into force in 1976) and special conventions (including the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment - that entered into force in 1987), that are of immediate relevance to the work of a public prosecutor - a specific 'soft' text has been adopted at UN level formulating further general principles and behavioural rules tailored to the work of a public prosecutor. I refer here to the 'Guidelines on the role of prosecutors', adopted during the eighth UN Congress on the Prevention of Crime and the Treatment of Offenders (Havana, Cuba, 1990).

*b. Council of Europe*

A development parallel to that taking place within the United Nations can also be seen at the Council of Europe. Besides general texts such as the Charter of the Council of Europe (1949), general convention texts (European Convention on Human Rights, that entered into force in 1954 and related protocols) and special conventions (including the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, that entered into force in 1989), a Recommendation 'On the Role of Public Prosecution in the Criminal Justice System' (Rec. (2000) 19) has recently been adopted by the Committee of Ministers at the Council of Europe. This is another instance of 'soft international law'.

### **International Association of Prosecutors**

Furthermore, the professional body of public prosecutors has itself since formulated general standards such as the ‘Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors’ adopted in 1999. Where the latter was realised without governmental intervention, it is clear that the standards in question are not enforceable simply by an appeal to the Standards.

### **The desirability of a national code of conduct**

In the Council of Europe Recommendation ‘On the Role of Public Prosecution in the Criminal Justice System’ (hereafter referred to as the Recommendation), the following is stated, among other things:

*“(..) 35. States should ensure that in carrying out their duties, public prosecutors are bound by ‘codes of conduct’. Breaches of such codes may lead to appropriate sanctions in accordance with paragraph 5 above. The performance of public prosecutors should be subject to regular internal review.”*

The following is also observed in the Explanatory Memorandum:

“Public Prosecutors should in particular demonstrate high standards of decision-making and professional conduct. As public prosecutors become increasingly independent or autonomous, and thus of necessity assume a greater burden of responsibility, existing statutory and procedural regulations may require further elaboration if there are to serve as an ethical and behavioural guide for the profession. However, those who drafted it do not envisage the proposed “*code of conduct*” as a formal code, but rather as a flexible set of prescriptions concerning the approach to be adopted by public prosecutors, clearly aimed at delineating what is and is not acceptable professional conduct. Regular monitoring is an appropriate way to ensure that such rules are observed.”

Various members of the Council of Europe had, or now have, introduced national codes of conduct.

### **A national code of conduct: the Dutch experience**

Below, I would like to make a number of comments on experiences in the Netherlands with drawing up a national code of conduct. I will also touch on the implementation process.

#### **The compilers**

At the end of 1997, the Board of Procurators General set up a working group to complete the task of :

- formulating a number of general starting points to which the actions of the Public Prosecution Service and its members should adhere from a professional, ethical and state of law perspective
- translating these starting points into instructions to be followed by the (general) policy of the Public Prosecution Service, and into a code of conduct governing the behaviour of individual members of the Department.

The working group was multi-disciplinary in nature. In addition to four members of the Public Prosecution Service, it included a Professor of Constitutional Law (also a member of the European Commission of Human Rights), a Professor of Ethics, a lawyer (specialised in codes of conduct for the legal profession from an academic perspective) and a top official of the Ministry of Justice, charged with designing new legislation on the Public Prosecution Service. I chaired the working group.

### **Inventory**

The working group began by making an inventory of the requirements to be met by a member of the Public Prosecution Service (according to currently valid international and national benchmarks) when performing their duties involved in upholding legal order in the context of criminal law. The ‘soft’ rules laid down in the UN guidelines and the IAP standards were also included. The working group also drew upon the draft text of the abovementioned Council of Europe Recommendation.

### **Formulating starting points**

The working groups then began formulating a number of starting points.

- First starting point: one code of conduct for all members of the Public Prosecution Service

As things progressed, the working group realised that the task did not involve formulating a code of conduct that applied only to public prosecutors, the advocates general and the members of the Board of Procurators General. It needed to apply to an organisation where work is often carried out by teams, powers are sometimes mandated and in which many staff members maintain contacts with third parties; the starting points could not be restricted solely to a relatively small group of members of the judiciary. The code of conduct – a guideline and reference point for each individual’s behaviour – had to apply to all personnel. This does not alter the fact that some rules refer to activities or powers that can only be exercised by a public prosecutor or advocate general.

- *Second starting point: alignment with the oath sworn by the public prosecutor*

It was also clear to the working group that the acceptance of, and subsequent adherence to, a code of conduct would be enhanced when it could be made clear that (the majority of) the rules contained were mandatory in one way or another. With this in mind, each rule could be followed by a reference to a convention text, legal stipulation or judgement of relevance to that particular rule. In the end, the working group did not elect to follow the detailed approach.

Gradually, it transpired that the rules largely flesh out the content of every oath sworn by a functionary of the Ministry of Justice as laid down (at the time) in article 5 of the Dutch Judicial Organisation Act. All aspects of the oath are given a contemporary elaboration and interpretation in the code of conduct, where the vague norms of ‘*honesty, accuracy and impartiality, regardless of individuals*’ and ‘*behaving as befits a*

*decent and honest servant of the law*' are written mindful of topical insights that should be understood in the context of the Public Prosecution Service. The oath, which originated in 1827 ('modernised' in certain places as of 1 January 2002), reads:

*"All the members of the judiciary referred to in this act will swear the oath (pledge) prior to the date on which they are installed in office, each in the manner befitting their religious, political or philosophical convictions,*

*'that they will be loyal to the King, will uphold and comply with the Constitution; that, in order to obtain the appointment they have neither given nor promised anything, nor shall give or promise anything, directly or indirectly, under any name or pretext, to any person whatsoever;*

*that they shall never give gifts nor accept gifts from any person they know or have reason to suspect is or will become embroiled in a legal case in which they could be involved in a professional capacity;*

*that they will furthermore perform their duties with honesty, accuracy and impartiality, regardless of individuals and in so doing behave as befits a decent and honest servant of the law."*

Other members of the Public Prosecution Service swear a different oath/pledge when being installed. This is in part more limited, thus offers fewer points of contact for elaboration in a code of conduct.

- *Third starting point: general rules, rules relating to members of staff working together, specific rules regarding the environment and other aspects*

The working group expressly chose not to make a compilation of all manner of open norms. This would be of little benefit to the intended clarity of existing state of law criteria pertaining to the Public Prosecution Service. With this, the Public Prosecution Service code of conduct differs from a number of other codes of conduct that have been realised within (and outside) the government in recent years.

The approach chosen includes:

- *general rules.* These are laid down in ten commandments, three of which also relate to behaviour outside the context of work. The rules in this paragraph are relatively vague although this does nothing to hamper clarity. Basically, members of staff should not breach confidentiality outside of work. In addition, they should be aware that any odd behaviour in their personal life might damage the Public Prosecution Service as a whole. They will need to be alert to the fact that some subsidiary activities may be inadmissible.
- *Rules with regard to staff collaboration*
- *Specific rules with regard to the environment.* These are geared to the 'client and suppliers' groups. These rules in particular contain a sometimes highly detailed reflection or elaboration of rules laid down in national and international jurisprudence and thus form an easily accessible guideline.
- *Other aspects of the code of conduct, including management and compliance*

- *Fourth starting point: internal manual*

The code of conduct is deliberately presented as an internal manual. As stated under the heading ‘compliance’, “(..) *attempts to justify the intended character of the code of conduct: a living tool that promotes the further formation of ethical awareness within the Public Prosecution Service.*” This renders it a document that primarily has an *internal effect*. At first sight this could seem a little disappointing. If the Public Prosecution Service really claims to support these roles, then they should also apply externally. And then one shouldn’t want to hide behind the solely internal effect, would be the logical conclusion. This similarly ignores the fact that a large number of the rules contained also apply externally even though because they reflect international or national (jurisprudence) norms. This is also expressly postulated where the code of conduct says, with regard to ‘compliance’: *‘The form of the code of conduct (manual) restricts invocation by third parties on compliance with the code of conduct. This extends no further than the external effect that already arises from existing legislation in which obligations relating to the Public Prosecution Service or its individual staff members, are set down.’* Moreover, they comprise, as outlined above, a modern result specifically tailored to the Public Prosecution Service of the oath that is also sworn by members of the Public Prosecution Service. No manual could alter this status. The other, more specific (interrelated) conduct and decency norms initially work to make Public Prosecution Service staff extra alert to the norms to be considered from an official perspective, and thus primarily serve as a reference point for identifying and resolving dilemmas that may arise in the execution of their duties.

### **Conferences to test out the code of conduct, and consultations**

When the working group had prepared the first draft texts, two conferences were organised to put the code to the test. Each public prosecutor’s office was allowed two representatives. For the conferences, an organisation with considerable experience with implementing codes of conduct at government and commercial level, was called in to provide professional support. The conferences concentrated on dilemmas that could occur in the working day of a member of the Public Prosecution Service, ways of optimally resolving the dilemmas and whether the solutions could be included in the formulations of the code of conduct. It was striking that the formulations arrived at like this almost always entirely corresponded with the first draft texts of the code of conduct presented at the time. In both conferences it emerged that the participants were very pleased to be able to talk about these kinds of dilemmas at last.

A number of consultation rounds were also held. Heads of public prosecutor’s offices, co-determination committees and ‘outsiders’ like the Dutch Bar gave comments. The conferences and consultation rounds resulted in adjusting the draft texts on a number of (subsidiary) points. This was followed by presenting the new text to the Board of Procurators General, where it was also discussed. The definitive text (see appendix) was adopted on 11 July 2000.

### **The importance of good implementation and periodical evaluation**

In the first instance, the text of the code of conduct was only presented on paper to the staff of the Public Prosecution Service. Looking back, this wasn’t the best decision. If a

document of this sort is to be accepted by the organisation as a whole as a general benchmark against which the Public Prosecution Service can be measured, it is crucial for the code of conduct to become fully absorbed into the consciousness of the Public Prosecution Service's staff. For which an announcement on paper is utterly inadequate. Conferences to test the code and consultation rounds may have been held, but only a small group had taken part. Behavioural scientists have an iron law in such instances:— professional ethics won't flourish if imposed top-down. They have to be experienced by the professional body and mirror aspects that they also perceive as relating to their professional integrity.

A number of measures have since been taken to assure this acceptance:

- incumbent staff

Implementation meetings have currently been held at a large number of public prosecutor's offices. Please see the appendix for details. The first meetings were similar to the conferences to test out the code. The staff was generally enthusiastic that a structural space had finally been created for stimulating awareness of dilemmas occurring in their working practice, and for discussing them. Here again, the most common ethical questions can be categorised under three points: confidentiality, setting an example (in their personal lives as well), and relationships with colleagues. If staff have doubts, it is imperative that they consult their superior rather than believing that they can resolve the problem alone. This method seems to work well: participants come up with dilemmas they have experienced themselves in their professional lives, and the solution they came up with, followed by discussing whether a general rule can be formulated based on this experience. This rule almost always seems to correspond to something already formulated in the code of conduct.

- new staff

For new public prosecutors and legal staff, there is a new module on ethical issues in the central basic training course, corresponding to situations that could be encountered in everyday working life. There is considerable attention here for the code of conduct. However there is at present no comparable programme for other new (administrative) staff. In general, when the head of the public prosecutor's office swears in new members of staff, the code of conduct is referred to, and a copy is presented to the individual concerned.

### **Never ending story**

Overall, it should be realised that ensuring the integrity of the Public Prosecution Service will be a 'never ending story'. The existence of a code of conduct doesn't automatically mean that staff will comply with it. Constant efforts will need to be made to make sure that members of staff not merely skimmed over and forgot the norms laid down in the code of conduct, but actually digested them. In which regard, the example set by the person with first-line responsibility is of inestimable significance. In addition, it is important, from time to time – and within the bounds of the fundamental rights it contains – to test the code against new insights, and for practicability and efficacy. The



code of conduct itself states: “*The code of conduct will be subject to periodical reviews in this regard*”.

### **Final words**

The first remarks on the code of conduct were in the tenor of – *very ‘open door’ and ‘what at first sight seems a primarily politically-correct document’*. If various dilemmas are dealt with during the implementation meetings, practice proves to be more unruly than theory. In the end, the biggest sceptics agree that such a reference point is very useful. Talking about dilemmas makes matters that seem self-evident suddenly less so. A breath of fresh air, even when doors may be open. Although, as someone working for the Public Prosecution Service, this too will not make you very popular either.

**CODE OF CONDUCT  
PUBLIC PROSECUTIONS SERVICE (The Netherlands)**

As set down by the Board of Procurators General on July 11, 2000

**CODE OF CONDUCT**

**1 GENERAL RULES**

*An employee of the Public Prosecutions Service carries out his/her duties:*

- 1 within the limits of the law;
- 2 with special attention to the fundamental human rights;
- 3 with respect for the inherent human dignity, irrespective of person or status, and without discriminating as to religion, sex, sexuality, national origin, ethnicity, color, age or on any other ground;
- 4 Fairly, impartially, objectively and without fear;
- 5 in a way that can be monitored, also in retrospect, and so that an accounting can always be given of the choices made in the process of carrying out duties;
- 6 with due observance of the rules of proportionality and subsidiary;
- 7 in a way that is both conscientious and dynamic.

*Whether on or off duty, he/she conducts himself/herself:*

- 8 with due observance of the instructions in relation to the provision of information to third parties and observance of secrecy in respect of confidential information;
- 9 in accordance with the public character of the responsibility of the Public Prosecutions Service, where the work involves enforcing standards, which may mean that the employee's acts and omissions become the subject of public debate and thus can affect the prestige of the Public Prosecutions Service as a whole;
- 10 with the necessary integrity, which in any case shall be construed to mean that an employee does not perform any acts or hold any secondary jobs or carry out other activities that might influence his/her professional attitude of open-mindedness, or that might arouse such an impression.

**2 RULES IN RELATION TO COLLABORATION**

*1 Colleagues*

- A Employees of the Public Prosecutions Service treat one another with respect.
- B Employees of the Public Prosecutions Service are result-oriented in the way they work together, and they communicate in openness.
- C Employees of the Public Prosecutions Service have mutual and reciprocal consideration for each other's duties and responsibilities, and do not ask one another to perform services that would complicate these duties and responsibilities.

## **2**     ***Employees***

- A**     Employees of the Public Prosecutions Service account for their work and the way in which they have done it to their superior.
- B**     Employees inform their superior in a timely fashion, without necessarily being asked to do so, in respect of matters which, in reasonableness, are important for their superior to know.

## **3**     ***Superiors***

- A**     A superior adopts an attitude of openness and receptiveness in respect of his/her employees.
- B**     A superior deals fairly with his/her employees and sets a good example.
- C**     A superior informs the employees in respect of matters which are necessary for them to know if they are to perform their duties properly and well.

## **4**     ***The public prosecutor's office***

The various public prosecutor's offices work together in a manner that is result-oriented and they communicate in openness.

## **5**     ***Consultation with the head of a public prosecutor's office***

In case of doubt as to whether a proposed action is justifiable, an employee of the Public Prosecutions Service shall consult with his/her superiors and/or with the head of the public prosecutor's office in question.

## **3**     **SPECIFIC RULES IN RESPECT OF THE WORKING ENVIRONMENT**

### **1**     ***The court***

- A**     An employee of the Public Prosecutions Service gives a full accounting to the court of all cases that have been put before it.
- B**     With the exception of that which takes place at the court hearing, an employee of the Public Prosecutions Service shall not furnish to the court any information about matters in which this court must judge, or may have to judge in the future, unless it is immediately substantiated by a written document which constitutes part of the case file.
- C**     For purposes of development of law, with the consent of the head of the public prosecutor's office, a public prosecutor may put before the court a standpoint that purposely deviates from existing case law or legal views. He/she shall do so explicitly, stating reasons.
- D**     In his/her dealings with the court, a public prosecutor shall refrain from conduct that might call the impartiality of the court into question.

## **2     *The suspect and his/her counsel***

- A**     Except in special circumstances, a public prosecutor shall not decide to prosecute in a criminal case if he/she is not convinced in all conscience that there is sufficient legal evidence available to allow the court to declare that the charges have been proved.
- B**     If evidence has been obtained in a manner that constitutes a gross violation of the fundamental rights of the suspect, a public prosecutor will not make use of that evidence, except to initiate legal proceedings against the persons responsible for this violation.
- C**     In his/her investigation, a public prosecutor addresses his/her actions at finding the objective truth. He/She is open-minded and honest, and includes in his/her considerations all circumstances, both those that are incriminating and those that are disculpatory.
- D**     If a public prosecutor should have factual information that disculpates a suspect or that is to the advantage of the suspect in the case, or that is essential for the court to arrive at its decision, then he/she shall provide this information at his/her own initiative.
- E**     A public prosecutor shall ensure that the defense can take cognizance of the case documents in a timely fashion.

## **3     *The victim***

An employee of the Public Prosecutions Service must show special concern in respect of victims of offences and their next-of-kin. He/she shall make efforts to ensure their interests properly. He/she shall actively furnish information about their rights, about the outcome of the case.

## **4     *Witnesses***

An employee of the Public Prosecution Service shall make every effort to ensure that witnesses are not burdened by the giving of evidence any more than is necessary in the interests of a good administration of justice. If necessary, he/she shall take measures to protect the physical and mental integrity of witnesses, as well as their property and that of their next-of-kin.

## **5     *The Minister of Justice***

- A**     An employee of the Public Prosecutions Service shall act in accordance with instructions given. At the court session, a public prosecutor will loyally defend any instructions he/she has been given. He/she is free, however, to call attention to considerations in respect of the law that the court, from a point of view of objectivity, ought to include in its opinion on the case at hand.
- B**     An employee of the Public Prosecutions Service shall have an eye for the consequences that his/her actions or omissions may have for the political responsibility of the Minister of Justice

## **6     *Public administration***

- A**     In his/her dealings with the public administration, an employee of the Public Prosecutions Service always aims to work in purposeful collaboration. In doing so, he/she furthers and promotes maintenance of law and order with a particular view to a well-considered and fair use of the possibilities offered by criminal law.
- B**     As a representative of the Public Prosecutions Service, an employee of the Public Prosecutions Service shows himself/herself to be a reliable discussion partner.
- C**     With a view to the incorruptible operation of public administration, a public prosecutor shall particularly ensure for a due and proper prosecution of offences committed by public servants and other offences which might be disparaging for the integrity of the public administration.

## **7     *The police force \****

- A**     A public prosecutor shall adopt an attitude of openness and receptiveness vis-à-vis the police force, shall take unambiguous decisions and shall take his/her responsibility.
- B**     A public prosecutor shall see to it that the police act lawfully and properly.
- C**     A public prosecutor shall ensure that the police submit reports that are truthful and complete.
- D**     A public prosecutor shall ensure that he/she is informed of investigative actions undertaken by the police in a criminal investigation and that he/she can justify these actions to the court during the hearing session.

## **8     *Society***

In the exercise of his/her job, an employee of the Public Prosecutions Service shall conduct himself/herself courteously and conscientiously toward all those with whom he/she comes in contact.

## **9     *The media***

In individual criminal cases, a public prosecutor only expresses himself about that case in public in the courtroom, during the public hearing. This does not detract from the fact that an employee of the Public Prosecutions Service who is in charge of maintaining contacts with the press shall give to the press as much objective information as is justified at that time -- taking into consideration all circumstances which are at issue.

## **10    *Other countries***

In handling requests for mutual legal assistance, an employee of the Public Prosecutions Service shall provide the required help and in doing so, shall exercise the same care and caution as he/she would in his/her own cases.

\* The police force is deemed to include all special investigating officers.

## **4 OTHER ASPECTS**

### ***1 Compliance***

The code of conduct in this guide will have to come alive in everyday practice. The code of conduct aims to promote that a climate is achieved within the constituent parts of the organization in which problems (whether moral or otherwise) are recognized and are open to discussion.

The code of conduct does not give independent disciplinary or public service rules other than those that arise from existing legislation and regulations. Nor was it decided to introduce a specific complaints procedure: internal corrective procedures and incentives are already in place. In this way, it is hoped to do justice to the intended nature of the document: a living instrument that serves as an incentive in further shaping ethical awareness within the Public Prosecutions Service.

The form of the code of conduct (that of a guideline) limits the invocation by third parties of compliance with the code of conduct. Its external influence goes no further than the consequences that arise from existing legislation and regulations comprising obligations of the Public Prosecutions Service or its individual employees.

### ***2 Evaluation and amendment***

Because rules in the code of conduct may lose their validity, or other rules may develop that are deserving of a place in the code of conduct, it is in the interests of the organization that the code of conduct remains up to date. The code of conduct will therefore be evaluated periodically for this purpose.

## **BACKGROUND**

As the Public Prosecutions Service, we are responsible for maintaining law and order. Together with public administrative bodies, the police force, the courts and other organizations, we promote compliance with the law and we take action against people who violate those rules. We feel that society may therefore expect us as a law enforcement agency to act fairly and respectably in doing our work. This guide, as a derivative of that vision, sets down in writing for all employees of the Public Prosecutions Service the standards of conduct that they observe in carrying out their responsibilities. The great majority of these standards have been brought together from international treaties, statute law, case law and other sources that have long served as an inspiration to the Public Prosecutions Service and that are simply taken for granted by many. Some of the behavioral standards will need to be given a more concrete definition in terms of daily practice so that they can also start to function as genuine guidelines in our professional practice.

This guide is expected to grow and expand over the years into a document in which the people in the organization recognize themselves, and about which they will say that it definitely offers grip as they carry out their responsibilities in their daily jobs.

This code of conduct is not so much intended as a legally conclusive system of rules, but more as a set of general principles that are leading for the conduct of employees of the Public

Prosecutions Service: the code of conduct serves as a reference point for our own actions, but also as a guideline. It goes without saying that responsibilities arising from other regulations and, ultimately, a person's own responsibility, continue to remain in full force.

The code of conduct applies for all employees of the Public Prosecutions Service, and not merely for public prosecutors and advocates-general. In fact that speaks for itself in an organization in which much of the work is teamwork, in which powers are sometimes given in the form of mandates and in which many members of the team maintain contacts with third parties. This does not detract from the fact that some rules of conduct primarily revolve around powers that are exercised by public prosecutors and advocates-general. Wherever that is the case, for the sake of conciseness, these rules are addressed to public prosecutors. When it is a matter of mandated powers as referred to in article 126 of the Judiciary (Organization) Act, then the rule also applies to the employees of the public prosecutions office who make use of the mandated power.

Most rules, including all general rules in the code of conduct, apply to every single employee of the Public Prosecution Service.

In formulating the code of conduct, it has been attempted to relate it to the oath (article 5 of the Judiciary (Organization) Act) which is taken by all judicial officials upon their acceptance of office. The oath which is taken by members of the judiciary dates from 1827 and reads as follows:

*“All the members of the judiciary named in this present act, each of them in the manner of his religious affinity or philosophy of life, before taking office, shall take the oath (make the promise) that they will be loyal to the King, and will maintain and comply with the Constitution; that they have not given or promised anything, nor will they give or promise anything, in order to obtain their appointment, either directly or indirectly, under any designation or pretence, to any person whomsoever; that they will never accept or receive any gifts or donations whatsoever from any person of whom they know or suspect that he is involved in legal proceedings or in a lawsuit, or will become thus involved, in which they might be required to act in an official capacity; that they, furthermore, will fulfil their posts with honesty, accuracy and impartiality, without discrimination of persons, and will conduct themselves in the exercise of their duties as behaves brave and honest judicial officials.”*

The object was to focus on specific qualities or aspects of the Public Prosecutions Service and on a contemporary interpretation of the more than 170-year-old oath. Other employees of the Public Prosecutions Service take a different oath or make a different promise upon accepting office: because it is briefer, it offers fewer points of departure for elaboration into a code of conduct. For this reason, the judiciary oath with its broader scope was taken as a basis.

Transitional law

This guide applies as from the date of its entry into force.

## ***Implementation of the Public Prosecution Service Code of Conduct***

Tips for applying it in your public prosecutor's office

By Egbert Myjer,  
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### **General comments**

#### *Why implementation is required*

It is vital to understand that a Code of Conduct is only effective if it is absorbed into the 'consciousness' of the office personnel. There is little point in circulating the text of the Code of Conduct without an implementation programme.

#### *Management sets an example*

It goes without saying that the director and senior staff of a public prosecutor's office should set an example in following the Code of Conduct. Promoting compliance with the Code of Conduct is implausible if the management itself fails to live up to it.

#### *New employees*

New employees should be familiarised with the Code of Conduct in some form of introductory programme. These days, it is an integral part of public prosecutors' training although doesn't yet seem to be a standard part of administrative workers' induction. Personally, when swearing in new staff, I always refer to the Code of Conduct, presenting the new staff member with a copy.

#### *Implementation programme for existing staff*

For existing staff to whom the Code of Conduct is new, it is a good idea to organise a special introductory meeting to discuss the code. Based on experiences exchanged during the meeting, you can then decide how often such meetings should be held.

### **Implementation programme for existing staff**

#### *No set parameters*

You are of course free to decide the form your introductory meetings should take. Experiences gained at different public prosecutor's offices have taught me the value of organising a group of a maximum of twenty persons, drawn from all levels of the public prosecutor's office. This gives the best chance of the actual participation of as many people as possible.

If you decide to focus only on public prosecutors, you can adapt examples to reflect typical dilemmas that occur in public prosecutors' everyday working life.

#### *Leading the meeting*

For an open atmosphere, I recommend that someone who is not part of the management should lead the meeting. However, it can be useful if a chief or senior public prosecutor attends the meeting, even if only to demonstrate the management's support of meetings of this kind. This need not mean that a behavioural expert should be hired to lead the meeting. Someone who works in the organisation could prove extremely skilled. When selecting a member of staff, I strongly advise choosing an individual who is trusted within the organisation, with excellent social skills, creativity, imagination and a sense of humour.



The leader doesn't only ensure that as many people as possible actually participate in the discussions, but also creates an atmosphere of openness and trust and can temper the situation if responses become too heated. He or she should also try to keep the meeting from becoming too 'heavy'.

Before the meeting, the leader should discuss any specific issues relating to conduct that may have surfaced in the workplace, in order to subtly steer the meeting to addressing these situations.

*What can be discussed during the meeting?*

Much depends on the history of the public particular prosecutor's office, the way in which people are accustomed to treating each other and so on. But experience shows that (in the first instance) staff highly appreciate discussing daily problems that can arise at work. Once these difficulties can be brought out into the open, the typical professional dilemmas can be dealt with.

Solutions to the dilemmas put forward by staff can then be compared to the answers listed in the Code of Conduct. If the two seem to correspond, the first step towards recognition and consequently dealing with the situation has been taken.

The top three 'standard' dilemmas within the Dutch Public Prosecution Service seem to involve questions relating to:

1. confidentiality
2. how the personal lives of the Public Prosecution Service are affected by their job at the Public Prosecution Service, and
3. relationships with colleagues

It is very important to make people recognise the fact that certain issues encountered during their everyday working lives are in fact dilemmas. Next, one of the fundamental rules regarding dilemmas is that employees shouldn't be too ready to find solutions themselves. If in doubt, employees should consult their colleagues and their immediate superior. Another key point to be aware of is that, in some cases, there is not just one "right" answer.

Here again, if only points of this sort are mentioned by the participants, participants may not fully digest them. Staff will first need to experience issues as dilemmas, and finding solutions, before really being able to grasp them.

*Atmosphere of openness and trust*

During the meeting, it is crucial to create an atmosphere of openness and trust. People should be able to express their views without fear, and not be held to account for their responses afterwards. The only way to encourage an open exchange of thoughts is by ensuring that meetings are open and free from value judgements. This is the only way of securing an open exchange of ideas. These basic rules of the game must be made clear beforehand. However, this doesn't mean that congenial responses to each other's remarks should be discouraged. The leader plays an important role here; the management of the public prosecutor's office can make a considerable contribution here by, in the beginning, presenting a suitable dilemma for which there are no straightforward answers.

### *Structure of the meeting*

There are no blueprints for structuring the meeting. I usually start with a short general introduction about how the Code of Conduct came about, and the importance of the implementation meeting, before showing my own vulnerability by referring to a simple dilemma I encountered and for which – too stubborn to ask anyone’s advice – I eventually found a not particularly adequate solution. Then, I open the floor to the group.

A good method is to give every participant three minutes to come up with a dilemma they faced (preferably at work). Then wait and see whether someone responds to the issue or choose a member of the group – preferably someone able to take a few knocks – to do so. A person’s own response to a dilemma can lead to an initial group discussion. Here it is important to frame the questions to reflect the experiences of (other members of) the group (‘do you recognise this and how did you deal with such situations?’) This technique helps prevent group members from giving socially desired answers. If there’s no other option, the group can also be asked something along the lines of ‘would you have taken similar action in that situation?’ If people agree, it can be useful to see whether the chosen option is also contained in the Code of Conduct.

If the dilemma is a complex one, the leader can simplify it by placing less emphasis on certain facts; if the reverse is true, complicating factors can be added. Even if the discussion becomes too theoretical rather than being based on personal experience, this won't be too bad in the context of the discussion. The stage of giving socially desirable answers – which is a danger when introducing an example oneself, is minimised. Depending on the type of examples tabled, it may be useful if the leader varies the cases by introducing a slight variant each time (‘would it have made a difference to you if...’). Again, the best way of dealing with a situation is to adapt your behaviour to each one rather than always taking the same line. It is also constructive to relate the dilemmas and solutions found to other sections of the Public Prosecution Service (‘your dilemma ranks among the top three’).

If the meeting leader decides not to have participants present dilemmas themselves, he or she can opt to ask an open question about one of the top three dilemmas: (‘Which of you experienced...?’) Use a recognisable example such as (dealing with colleagues: a colleague has a bad odour,.. another tells sexist jokes;... one colleague seemed to look at a female colleague’s blouse for a split second too long) followed by the questions – what did you do in that situation?

The confidentiality examples are particularly useful for such questions as (‘Did you ever come across the name of a friend or acquaintance in a criminal case file? Did you tell anyone? Your colleagues, your wife, the people you know?’).

Then there are the examples encountered at home (‘Have you ever noticed that if the plumber, decorator, mechanic etc., doesn’t give you a bill, you get a huge discount? How did you respond?’) In every instance, choose easily recognisable situations.

Finally, the leader can also present complete examples. I’ve listed a couple below.

At the end of the meeting, you can return to the Code of Conduct. If the group is enthusiastic, then say that similar meetings can be arranged in the future. Experience has shown that it’s always a good idea to let the group discuss the issues that have been raised, in a relaxed setting. So I recommend closing the meeting with drinks and light refreshments.

*Examples of cases*

N.B.: the following examples regularly contain questions such as ‘what can I do?’ The leader of the meeting should draw a distinction between ‘how did you react/ how would you react’ and the question of whether this was the correct way to respond.

- I’m a secretary, and now and then organise a dinner or business lunch for the chief public prosecutor. There’s a good restaurant round the corner, and the public prosecutor always enjoys eating there. My boyfriend and I decided to eat out at that restaurant and when the bill arrives, see that they have charged hardly anything ‘Because you’re such loyal customers’. What should I do?
- I work at the Public Prosecution Service. After an inauguration when he’d drunk several beers, I happened to see my team leader get into his car, drive off, and collide with a stationary car. He didn’t know I’d seen him. He got out to make a quick assessment of the damage, looked around to see if anyone had witnessed the accident, and quickly drove off. The problem is – next week, I’m up for a promotion. What should I do?
- I work as an administrator at the Public Prosecution Service. One of the public prosecutors I work closely with regularly makes fairly major mistakes. I know from experience that he can’t deal with criticism. No one else seems aware of his uneven performance and he’s on the verge of making another error. What should I do?
- As a trainee public prosecutor, I sat in on a victim interview between my trainer and a rape victim. He had to tell her that the case won’t be brought to court, but the way he did so was pretty crude. He was clearly having a bad day. The victim was very upset and filed a complaint several days later. The chief public prosecutor has asked me to draft an official report of what happened. What should I do?
- As public prosecutor after a prolonged sitting, I return to my office at 6pm to find a message to the effect that, that same afternoon, a suspect has filed a notice of appeal. This happened to be the last day on which, according to the law, appeal could be lodged. Although the case was also viewed by the Public Prosecution Service as suitable for a notice of appeal, I had indicated I wanted to check on what the suspect would do. If he instigated an appeal, I would follow. The criminal court registry closed at 5pm. When I walk past the criminal court registry, I see a member of staff with whom I have a good relationship, still working. I wonder to ask her to draft my notice of appeal anyway. What should I do?
- From experience, I know that the reputation of a quoted company I am investigating in the context of a preliminary investigation into insider dealing will suffer a huge blow when the case collapses. This is sure to affect share prices. My neighbour and good friend is considering investing a 70,000 Euro inheritance. He tells me that the bank has advised him to invest some of the inheritance in the company in question. What should I do?
- I’ve just returned from an emergency meeting of the Board of Procurators General with the heads of the public prosecutors’ offices. During the discussion, it was agreed that the content of the meeting would not be made public. A journalist working for a reputable evening paper phones me. He seems to be well informed of the points we discussed, but wrongly interprets one of the matters agreed upon. When this gets into the papers, it could mean considerable personal injury for one of the chief public prosecutors. What should I do?
- I’m a public prosecutor and I’m on holiday overseas. I see high quality fake products being sold on the street there at extremely low prices. Apparently, this is not punishable in that country although it is in mine. I’ve even prosecuted cases of this kind myself. Is it permissible for me to purchase these goods anyway?

- I work for the Public Prosecution Service and am a member of the staff football team's managing board. A large sports retailer has offered our members a sizeable discount on sports goods. No other sales outlet can match the discount. What should I do? Does the fact that the sports outlet has never dealt with the judiciary make a difference to my response?
- I work for the Public Prosecution Service. I was shocked to see that the father of one of my daughter's friends is suspected of incest. Should I tell my wife and stop my daughter from playing with the child? Should I tell my sister, whose kids play with the man's children as well? Should I tell the neighbours?
- As public prosecutor, I've been given the use of a company car. My wife tells me that our own car needs to go in for a service. She asks whether she can borrow the company car. What should I do?
- I'm a public prosecutor. My daughter was recently assaulted by a group of immigrant youths. I've just been presented with a similar case, which makes my blood boil. What should I do?
- I'm a public prosecutor. My son has told me that his class is doing a roaring trade in illegal CD copies of chart music. This is how my son has got hold of all his favourite music at a price far below that in the shops. He spent all his pocket money on it. I have the possibility of looking into the criminal records. What should I do?
- I'm a public prosecutor and on very friendly terms with a judge. One day, he tells me that he's worried about his son, who is studying in another town. He even wonders whether his son has had a run-in with the law. What should I do?
- As a public prosecutor I met the relatives of a murdered man, explaining the course of the criminal process. Afterwards, they sent me a huge bunch of flowers for my trouble. What should I do? Is a bouquet the same as a crate of wine or accepting a dinner invitation to an expensive restaurant?
- I work for the Public Prosecution Service and have just moved to a new area. The houses are ready, but the gardens haven't been laid yet. While getting to know my new neighbours, I hear that they've found a company to prepare the soil of the entire row of houses for laying gardens. The price offered is very low because it'll be paid in cash, without an invoice. The offer is all or nothing. If one of the neighbours doesn't go along with it, the offer will be invalid. What should I do?
- I'm a public prosecutor and love football. One of my friends in a service club gives me tickets for the skybox during Europe Cup Match. When I go, I realise that a number of other guests in the skybox are businessmen, some of whom are currently the subject of a criminal investigation. What should I do? Does it make any difference that the men have since been sentenced and served their criminal term?
- I work for the Public Prosecution Service and spend much of my free time in activities on behalf of a political party. One of the party members I know is now a member of parliament and phones me to ask whether the Minister of Justice gave an honest report on a criminal case now being discussed in parliament. He promises me total anonymity. Because of my professional involvement, I know what really happened. What should I do? Does the fact that I know that the Minister only told half-truths make any difference?
- I'm a public prosecutor and am prosecuting a burglar who has committed twenty break-ins. In accordance with internal guidelines, I subpoena a burglar for no more than five instances, adding the rest for information. In my legal system, the victims of a case declared to have been proven are more easily awarded damages. One of the victims transpires to be an old acquaintance fallen on bad times. What should I do?
- I'm a public prosecutor. In a major drugs case I received information that an extremely dangerous criminal was behind a liquidation. I have promised my source absolute

anonymity. Additional information seems impossible to get hold of. If I successfully want to prosecute the criminal I have to withdraw my pledge of anonymity. My informer doesn't want to testify because it would endanger his life. I know I'd be able to place him in a witness protection programme, but that this would mean huge consequences for his personal life. What should I do?

- I'm a public prosecutor. I'm currently prosecuting a large-scale drug dealer who was arrested when the police made an official report during a routine traffic check, when cocaine and a firearm were discovered in his car. I happen to discover that the police set up the find. But the man had been under observation for some time, and an informant had told the police that the man would be delivering cocaine that day. The vehicle check was set up and the real course of events was left out of the official report. If the truth comes to light, the suspect will almost definitely go free and the police will be reprimanded. What should I do?
- I'm a public prosecutor and presently involved in a case against a company suspected of committing environmental offences. A key politician phones me with an informal request to give the case low-key treatment otherwise the company would probably transfer its activities to another country, which would have considerable impact on jobs in my area. What should I do?
- I'm a public prosecutor. A man suspected of a number of paedophile crimes tells me that his confession was extracted by police beatings. However, there is no trace of physical injury. When asked, the police say they conducted a stringent but fair interview and that it's sometimes better if I don't know the full story. What should I do?