



Portuguese Public Prosecution Services' (PPS) **external autonomy** is laid down in the Portuguese Constitution and regarded as a “guarantor of the Courts’ independence”.

However, this external autonomy still faces several challenges:

- Presently, the nomination and exoneration of the Portuguese Prosecutor General fall within the powers of the President of the Republic, following a government proposal. To prevent political interference or the appearance of such interference, the power to propose names of candidates for Prosecutor General to the President could, however, be incumbent upon the Parliament, maybe by a two thirds majority, thus promoting transparency and public scrutiny to the process, now characterized by some opacity. Since its revision in 1997, the Constitution states that the Prosecutor General’s term of office is 6 years, but it does not clarify whether it is renewable or not. Regardless of the opinion on this particular juridical question, open to debate, while the doubt persists, the option whether or not to renew the term of office of the Prosecutor General has a political reading that would be better to avoid. A possible solution might be to establish a longer term, maybe somewhere between 7 or 9 years, but not renewable.

- PPS, with the exception to its central services, do not have budgetary autonomy. In first instance courts, the management of human and material resources, which are provided by the Ministry of Justice, falls within the responsibility of a Management Council of the county, composed by the Judge President, the Public Prosecutor Coordinator and a Judicial Administrator, a clerk in whose appointment and exoneration the Judge President has a significant role to play. Decisions are taken by a majority vote, so one can easily find out who the weakest link in this equation is. It is often noted, in this regard, that PPS, in first instance courts, are frequently disregarded in the allocation of resources. Regarding the Appeal Courts, the respective budget is managed by the Judge President, who can take substantial decisions about human resources’ needs and, in consequence, about the Prosecutors that work in the Appeal Court. PPS should thus be able to have and run their own budget, to be negotiated with Parliament, having in mind the constitutional mission of the Public Prosecution and namely the priorities set down in the Crime Policy Act passed by the Parliament on a triennial basis, thus allowing for the effective accountability of PPS before the people’s representatives.

- Related to this issue is the one regarding the absence of control, by the Public Prosecution, over the IT involved in the management of criminal cases, which is under the authority of a department pertaining to the Ministry of Justice. Not only the system was not designed to answer to the specific needs of criminal investigations, as it allows for possible interference of the government in ongoing criminal investigations.



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- The direction of criminal investigations is a prerogative of the PPS. However, in fact, it's our Polícia Judiciária (PJ) (Criminal Investigation Police) that leads and executes most relevant investigation procedures, namely when it comes to more serious and complex crimes, having at their disposal all the necessary, though insufficient, technical and forensic means. As this police body has mainly investigative competences, to maximize its efficacy and promote external control, PJ should work under the direct authority of the PPS, thus avoiding its dependence from the executive.

Regarding **internal autonomy**, that is, the independence level each prosecutor enjoys to direct and decide the cases she/he has in her/his hands, keeping in mind what was written above, one can say that Portuguese prosecutors have a wide range of independence from their hierarchical superiors. The main problem that still remains, since 2014 and the judicial reform then undertaken, is the lack of coherence between the new organization of the judicial system and the Statute of the Public Prosecution Services, especially in what relates to the different hierarchical degrees and their respective powers, namely those conferred upon the Prosecutor Coordinator of the County. Such powers now allow him/her to reassign files from a prosecutor to another, or to transfer – within the new, but large, counties – a prosecutor from one place to another. Even when one takes into account this is only possible for service reasons (or to distribute more equally the workload) and with the consent of the High Council for the Prosecution Services, we cannot help to stress how the lines used to draw the prosecutors internal autonomy have become more blurred since 2014, making it urgent for the approval of the new Statute of the Public Prosecution Services, currently under preparation.

The deepening of the PPS' independence requires, on the other hand, the effectiveness of its **accountability**. Being more autonomous, having the power to make real decisions about the establishment of priorities and the allocation of means, PPS will still have to redesign its articulation with other democratic institutions, mainly the Parliament, by negotiating its budget and presenting before this body the results of its performance, thus reinforcing transparency.

Regarding individual accountability of prosecutors, in case of intent or serious fault, prosecutors may be held responsible for damages unduly suffered in consequence of her/his decisions, but never directly by the interested person, only through a complaint against the state.



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Ethical principles concerning prosecutors are set in the Statute of the Public Prosecution and in the general law regarding public workers, as well as the respective sanctions when in case of breach of duties.

Some have underlined the importance of clearly defining the rules to which prosecutors should abide, not only when performing their mission, but also in their private lives, in opposition to the more general provisions that exist today.

Some others are of the opinion that prosecutors should declare their assets and interests to the Constitutional Court and not be authorized to perform their activity outside prosecution services.

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