

LAW No. 14/2005
“THE STATUTE OF THE PUBLIC PROSECUTION SERVICE
OF 16 SEPTEMBER 2005

The magistracy of the Public Prosecution Service constitutes one of the pillars on which the administration of justice is predicated, and is entrusted with taking criminal action, while being the guarantor of democratic legality and promoter of law enforcement.

The Public Prosecution Service shall, even due to a constitutional imperative, have statutes of its own in which the structure, functions and competencies of the organs it comprises, namely the Prosecutor-General’s Office and the Superior Council for the Public Prosecution, are defined, and in which the career, duties, and the disciplinary liability of its magistrates are set out.

Pursuant to Sections 92, 95.1, 95.2(k), 132, 133, and 134 of the Constitution of the Republic, the National Parliament enacts the following that shall have the force of law:

CHAPTER I
STRUCTURE AND FUNCTIONS

Article 1
Definition

The Public Prosecution Service represents the State, takes criminal action, ensures the defence of minors, absentees and legally incompetent persons, upholds democratic legality and promotes law enforcement.

Article 2
Regime

1. The Public Prosecution Service constitutes a hierarchically organised magistracy under the Prosecutor-General.
2. Public Prosecutors agents shall, in the exercise of their functions, be subject to legality, objectivity and detachment criteria and owe obedience to the directives and orders provided for in this law.

Article 3
Competencies

1. It is especially incumbent upon the Public Prosecution Service:
 - (a) to represent and protect the interests of the State;

- (b) to ensure the defence of legally incompetent persons, minors and absentees;
 - (c) to take part in the execution of the criminal policy as defined by the organs of sovereignty;
 - (d) to take criminal action;
 - (e) to promote the execution of court decisions for which it has legitimacy;
 - (f) to lead criminal investigation, even when carried out by other entities;
 - (g) to promote and conduct crime prevention actions, under the terms of the law;
 - (h) to request the review of constitutionality of normative acts, under the terms of the law;
 - (i) to monitor proceedings by the criminal police organs in the course of enquiries;
 - (j) to lodge an appeal where a court decision is a result of collusion by the parties with the intent to defraud law or where a court decision has been handed down in contravention of an explicit law;
 - (k) to exercise such other functions as prescribed by law.
2. The competencies referred to in subarticle 3.1 above include the power to intervene and lodge an appeal in such cases as provided by law.
 3. In the exercise of its functions, the Public Prosecution Service shall be assisted by the criminal investigation police organs and by administrative staff and may have advisory and consultative services.

CHAPTER II THE INTERVENTION REGIME

Article 4 Representation of the Public Prosecution Service

1. The Public Prosecution Service is represented before the courts by its agents.
2. Public Prosecution Service agents shall be substituted under the terms of the law and, in the absence thereof, in accordance with orientations given by the Prosecutor-General.

Article 5
Intervention

1. The Public Prosecution Service shall intervene in proceedings when representing the State or minors, absentees and legally incompetent persons, and in all other cases where the law vests it with competency to intervene in that capacity.
2. In the case of representation of the State, its intervention ceases when a private agent is established or a public defender is appointed.
3. In the case of representation of legally incompetent persons, minors or absentees, its intervention ceases if the legal representatives of such persons oppose such intervention in the proceeding by filing a motion.
4. The cessation of representation by the Public Prosecution Service does not prejudice the duty to continue intervening in an accessory manner, so as to guarantee public interests and uphold legality under the terms of the Constitution.

TITLE III
ORGANS AND AGENTS OF THE PUBLIC PROSECUTION SERVICE

CHAPTER I
GENERAL PROVISIONS

Article 6
Organs

The organs of the Public Prosecution Service comprise:

- (a) the Prosecutor-General's Office;
- (b) The Offices of the District Prosecutors.

Article 7
Public Prosecution Service agents

1. Public Prosecution Service agents include:
 - (a) the Prosecutor-General;
 - (b) the Deputy Prosecutors-General;
 - (c) the Heads of the Offices of the District Prosecutors;
 - (d) the Public Prosecutors;
 - (e) the probational Public Prosecutors;
 - (f) the representatives of the Public Prosecution Service.
2. Public Prosecution Service agents may be assisted by advisers under the terms of the law.

CHAPTER IV
THE PROSECUTOR-GENERAL'S OFFICE

SECTION I
STRUCTURE AND COMPETENCIES

Article 8
Structure

1. The Prosecutor-General's Office is the superior organ of the Public Prosecution Service.
2. The Prosecutor-General's Office comprises the Prosecutor-General, the Deputy Prosecutors-General, the Superior Council for the Public Prosecution Service, and the technical and administrative support services.

Article 9
Competencies

It is incumbent upon the Prosecutor-General's Office:

- a) to promote the defence of democratic legality;
- b) to appoint, assign, reassign, promote, remove from office, assess professional merit, take disciplinary action and perform, in general, all acts of a similar nature in connection with Public Prosecution Service magistrates, with the exception of the Prosecutor-General;
- c) to direct, coordinate and monitor the activity of the Public Prosecution Service and issue directives, orders and instructions that will govern the action of the Public Prosecution Service magistrates in the exercise of their functions;
- d) to opine on the legality of contracts that might be of interest to the State, where its opinion is required by law or requested by the Government;
- e) to propose to the Government, through the Minister of Justice, legislative measures aimed at rendering the Public Prosecution Service more efficient or at improving the judicial institutions;
- f) to advise the National Parliament and , through the Minister of Justice, the Govern of any obscurities, deficiencies or contradictions of legal texts;
- g) to monitor, at a higher level, proceedings being handled by the criminal police organs;
- h) to exercise such other functions as prescribed by law.

Article 10
Presidency

The Prosecutor-General's Office is presided over by the Prosecutor-General.

SECTION II THE PROSECUTOR-GENERAL

Article 11 Competencies

1. It is incumbent upon the Prosecutor-General:
 - (a) to preside over the Prosecutor-General's Office;
 - (b) to represent the Public Prosecution Service in courts;
 - (c) to request the Constitutional Court to make a generally binding declaration of unconstitutionality or illegality of any law ruled unconstitutional in three specific cases;
 - (d) to be accountable to the Head of State and report to the National Parliament on an annual basis.

2. It is also incumbent upon the Prosecutor-General:
 - (a) to promote the defence of democratic legality;
 - (b) to coordinate and monitor the activity being carried out by the Public Prosecution Service and issue directives, orders and instructions that will govern the action of the magistrates thereof;
 - (c) to convene the Superior Council for the Public Prosecution and preside over the meetings thereof;
 - (d) to inform the Government, through the Minister of Justice, of the need for legislative measures aimed at rendering constitutional provisions feasible;
 - (e) to direct and monitor the activity being carried out by the criminal police organs in the course of enquiries;
 - (f) to inspect or have the services of the Public Prosecution Service inspected and order that enquires, investigations or criminal or disciplinary proceedings be initiated in connection with Public Prosecution Service magistrates;
 - (g) to propose to the Government, through the Minister of Justice, legislative measures aimed at rendering the Public Prosecution Service more efficient or at improving the judicial institutions or remedying divergent decisions issued by the courts or by the Public Administration agencies;
 - (h) to opine on contracts to which the State is a party, as and when required by law;
 - (i) to supervise the inspection services of the Public Prosecution Service;
 - (j) to install the Heads of the Offices of the District Prosecutors and public prosecutors;
 - (k) to exert on the staff of the technical and administrative support services of the Prosecutor-General's Office and of the services that fall under the purview thereof such competencies as vested in cabinet ministers;
 - (l) to exercise such other functions as prescribed by law.

3. In the exercise of his or her functions, the Prosecutor-General is assisted by an office the statutes and organisation of which shall be defined in a specific decree-law.

Article 12

Appointment and removal of the Prosecutor-General from office

1. The Prosecutor-General is appointed, from among Public Prosecution Service magistrates, tenured judges or lawyers of recognised merit, and removed from office by the President of the Republic, after consultations with the Government.
2. The term of office of the Prosecutor-General has a 4-year duration and is renewable, only once, for an equal period, after consultations with the Government as well.
3. The appointment of the Prosecutor-General implies suspension from his or her previous office where he or she was serving as a judicial or Public Prosecution Service magistrate or as a civil servant, but does not entail forfeiture of seniority and the right to promotion at the employment of origin.

Section 13

Assistance and substitution

1. The Prosecutor-General is assisted by the Deputy Prosecutors-General and substituted, in his or her absence, by the longest-serving Deputy Prosecutor-General.
2. The Prosecutor-General designates, every two years, the activities that are to be coordinated by each of the Deputy Prosecutors-General.

SECTION III

THE DEPUTY PROSECUTORS-GENERAL

Article 14

Appointment and removal of the Deputy Prosecutors-General from office

1. The Deputy Prosecutors-General are appointed, dismissed or removed from office by the President of the Republic, after consultation with the Superior Council for the Public Prosecution Service.
2. The Deputy Prosecutors-General are appointed on secondment, for a 3-year period, renewable once, from among public prosecutors or state judges holding at least a first-class level or lawyers of recognised merit with at least 10 years' work experience.

Article 15 Competencies

The Deputy Prosecutors-General are directly answerable to the Prosecutor-General and are supervised by the latter as regards the exercise of the competencies assigned thereto by instruction or by law.

SECTION IV THE SUPERIOR COUNCIL FOR THE PUBLIC PROSECUTION

Article 16 Composition

1. The Superior Council for the Public Prosecution is comprised of:
 - (a) the Prosecutor-General, who is the council president;
 - (b) a voting member as designated by the President of the Republic;
 - (c) a voting member as designated by the National Parliament;
 - (d) a voting member as designated by the Government;
 - (e) a voting member as elected by the Public Prosecution Service magistrates from among their peers.
2. Each of the entities mentioned in subarticle 16.1 above also designates or elects an alternate member, who shall substitute the regular member in his or her absences or inability to act.
3. Public Prosecution Service magistrates may not refuse the position of member of the Superior Council for the Public Prosecution Service.

Article 17 Competencies

It is incumbent upon the Superior Council for the Public Prosecution:

- (a) to appoint, assign, reassign, promote, remove from office, assess professional merit, take disciplinary action, impose disciplinary penalties and, in general, perform all acts of a similar nature concerning Public Prosecution Service magistrates, with the exception of the Prosecutor-General and the Deputy Prosecutors-General;
- (b) assess the professional merit of, and take disciplinary action on, staff members;
- (c) to approve the electoral regulation of the Council, with regard to the magistrate to be elected as a voting member, and the rules of procedure of the Prosecutor-General's Office;
- (d) to propose to the Government the draft budget of the Prosecutor-General's Office;

- (e) to deliberate and issue directives on matters of in-house organisation and staff management;
- (f) to propose to the Prosecutor-General the issuance of directives that will govern the action of Public Prosecution Service magistrates;
- (g) to propose to the Government, through the Minister of Justice via the Prosecutor-General, legislative measures aimed at rendering the Public Prosecution Service more efficient and at improving the judicial institutions;
- (h) to decide claims and hierarchical appeals provided for in the present law;
- (i) to approve the annual inspection plan and determine that inspections, investigations or inquiries be conducted;
- (j) to issue opinions on matters of judicial organisation and, in general, of justice administration;
- (k) to exercise such other functions as prescribed by law.

2. The Superior Council for the Public Prosecution Service also exercises managerial and disciplinary functions in connection with staff working in the Public Prosecution Service organs, without prejudice to the specific competencies of the Prosecutor-General.

Article 18 **Functioning**

1. The Superior Council for the Public Prosecution works in plenary sessions and by way of a disciplinary section.
2. The Superior Council for the Public Prosecution is called by its President or at the request of two-thirds of its members.
3. Ordinary meetings of the Superior Council for the Public Prosecution shall take place every three months and extraordinary meetings shall be held as and when called.
4. The Superior Council for the Public Prosecution works with two-thirds of its members in attendance and decisions are made by a majority vote of those in attendance.
5. Members of the Superior Council for the Public Prosecution who have two unjustified absences, consecutive or interspersed, forfeit their membership.
6. Members of the Superior Council for the Public Prosecution have the right to a participation allowance, to be jointly determined by the Minister of Planning and Finance and the Minister of Justice, for their attendance at meetings where they do not receive wages from the State.

Article 19
Contentious appeals

An appeal against a decision by the Superior Council for the Public Prosecution may be appealed against to the Supreme Court of Justice, with a devolutive effect.

Article 20
Inspection services

1. The Inspector's Office of the Superior Council for the Public Prosecution is under the Superior Council for the Public Prosecution and is composed of an inspector(s) appointed by the former from among first-class Public Prosecutors.
2. It is incumbent upon the Inspector's Office of the Superior Council for the Public Prosecution to carry out inspections, investigations and enquiries into the Public Prosecution Service organs, under the terms of the law, and to initiate disciplinary proceedings, in accordance with a decision by the Superior Council for the Public Prosecution or on the initiative of the Prosecutor-General.
3. Complementarily, the inspection services are meant to gather information regarding the performance and merit of Public Prosecution Service magistrates and other staff.
4. Inspections aimed at gathering information regarding the performance and merit of magistrates and enquiries and disciplinary proceedings may not be conducted by inspectors holding a level or seniority lower than that of the magistrate under inspection.

SECTION V
TECHNICAL AND ADMINISTRATIVE SUPPORT SERVICES
OF THE PROSECUTOR-GENERAL'S OFFICE

Article 21
Structure, staffing table and regime

The structure, and the staffing table and regime of the technical and administrative support services of the Prosecutor-General's Office are established by a separate legal instrument, after consultation with the Superior Council for the Public Prosecution.

CHAPTER IV
OFFICES OF THE DISTRICT PROSECUTORS

Article 22
Structure

1. There shall be an Office of the District Prosecutor at each district seat.

2. The Office of the District Prosecutor is led by a District Prosecutor who is responsible for managing, coordinating and monitoring the activity of the Public Prosecution Service within the judicial district.
3. The Head of the Office of the District Prosecutor is appointed for a 3-year period by the Superior Council for the Public Prosecution from among first-class Public Prosecutors and is, in his or her absences or inability to act, substituted by the longest-serving Public Prosecutor holding the highest level.

Article 23 **Competencies**

It is incumbent upon the Office of the District Prosecutor:

- (a) to promote the defence of democratic legality;
- (b) to manage, coordinate and monitor the activity of the Public Prosecution Service within the judicial district and issue orders and instructions that will govern the action of the magistrates in the exercise of their functions;
- (c) to propose to the Prosecutor-General directives aimed at standardising the action of the Public Prosecution Service;
- (d) to coordinate and monitor the activity of the criminal police organs in the course of an enquiry;
- (e) to monitor compliance with the law in executing sentences and security measures and in implementing compulsory internment or treatment, requesting the clarifications and proposing the inspections deemed necessary;
- (f) to conduct, in coordination with the criminal police organs, studies dealing with factors and trends in the evolution of crime;
- (g) to prepare the annual activity report and the progress reports deemed necessary or determined by a superior organ;
- (h) to perform any other function as may be assigned thereto by the Prosecutor-General within the scope of his or her competencies.
- (i) to exercise such other functions as prescribed by law.

Article 24 **Status and competencies**

1. In addition to the Head of the Office of the District Prosecutor, there may be at the seat of judicial districts public prosecutors, probational public prosecutors, and Public Prosecution Service representatives.
2. It is incumbent upon Public Prosecution Service agents in district courts:
 - (a) to represent the Public Prosecution Service;
 - (b) to exercise the functions of the Public Prosecution Service and keep the Head of the Office of the District Prosecutor informed;

- (c) to perform procedural acts within the scope of the competencies assigned thereto by law;
- (d) to define ways of articulation with criminal investigation police organs, prison services, and social reintegration bodies;
- (e) to exercise such other functions as prescribed by law.

Article 25

Representation in proceedings

1. Without prejudice to Article 24, the Prosecutor-General may appoint any Public Prosecution Service magistrate to assist or substitute the magistrate to whom a case has been assigned where substantiated reasons regarding the complexity of such a case so justify.
2. Where the substitution may not take place in the manner indicated in subarticle 25.1 due to urgency, the trial judge appoints a competent person to handle the case, preferably a law graduate.

Article 26

Special representation by the Public Prosecution Service

1. In case of conflict between entities, persons or interests that the Public Prosecution Service must represent, the Prosecutor-General asks the competent judge to appoint a public defender to represent each of the parties.
2. The submission of a request for the appointment of a defender interrupts the ongoing crediting of time in proceedings, which shall be resumed after the said appointment has been effected.

Article 27

Probational Public Prosecutors and Public Prosecution Service representatives

1. To exercise the functions of Public Prosecution Service agent, the Superior Council for the Public Prosecution may appoint, as probational Public Prosecutors, trainees undergoing a period of training for access to the prosecutorial career, who prove to be conveniently fit for that purpose.
2. Probational Public Prosecutors exercise the functions of Public Prosecution Service agent until the end of the period of training, unless otherwise decided by the Superior Council for the Public Prosecution.
3. In case of need, the Superior Council for the Public Prosecution may appoint, as Public Prosecution Service representatives, law graduates to exercise, on a temporary basis, the functions of Public Prosecution Service agent for a 6-month period, renewable for no more than 3 equal periods of time.

CHAPTER VI
THE PUBLIC PROSECUTION SERVICE MAGISTRACY

Article 28
Scope

Public Prosecution Service magistrates are subject to the provisions of this law, whatever the situation they find themselves in.

Article 29
Relationship between the Public Prosecution Service and the Judicial Magistracy

1. The magistracy of the Public Prosecution Service is independent of the judicial magistracy.
2. At hearings and official acts presided over by judicial magistrates, Public Prosecution Service magistrates serving in the same court take a seat on the right-hand side of the former.

Article 30
Hierarchy and liability

1. Public Prosecution Service magistrates are hierarchically subordinate and individually liable, under the terms of the law.
2. Liability consists of answering, under the terms of the law, for the fulfilment of their duties and for the compliance with the directives, orders and instructions they receive.
3. Hierarchy consists of subordination of magistrates to those of a higher rank, under the terms of the present law, and of the attendant obligation of the former to abide by the directives, orders and instructions received, without prejudice to the provisions of Article 33.

Article 31
Enforcing liability

Except in cases where a tort constitutes a crime, civil liability may only be enforced by means of an action of redress by the state.

Article 32
Security of tenure

Public Prosecution Service magistrates may not be reassigned, suspended, promoted, made to retire, removed from office or, otherwise, have their situation changed unless in cases provided for by law.

Article 33
Limits on managerial powers

1. A Public Prosecution Service magistrate may ask his or her immediate superior that an order or instruction be issued in writing, and this is the way it should be when such order or instruction is meant to take effect in a certain proceeding.
2. A Public Prosecution Service magistrate should refuse to comply with an unlawful directive, order or instruction and may refuse it on grounds of a serious violation of legal conscience.
3. The refusal shall be in writing, preceded by a representation of the reasons invoked.
4. In cases provided for in the foregoing subarticles, the magistrate who has issued the directive, order or instruction may take on the proceeding or assign it to another magistrate.
5. The following are not subject to refusal:
 - (a) decisions issued hierarchically under the terms of the procedure law;
 - (b) directives, orders and instructions issued by the Prosecutor-General, except on grounds of illegality.
6. The unjustified exercise of the power to refuse constitutes a disciplinary offence.

Article 34
Instructions by the Government to the Public Prosecution Service

It is incumbent upon the Government, through the Minister of Justice:

- (a) to transmit, through the Prosecutor-General, instructions of a specific character in civil cases and proceedings aimed at the extra-judicial settlement of conflicts in which the state is a party concerned;
- (b) to authorise the Public Prosecution Service, after consultation with the competent governmental department, to plead guilty, compromise or dismiss civil cases to which the State is a party;
- (c) to request the Prosecutor-General to submit any service reports or information regarding the Public Prosecution Service, of relevance to the formulation of the judicial policy;
- (d) to request the Superior Council for the Public Prosecution, through its representative, to provide any information or clarifications and make before it any presentation he or she deems convenient;

- (e) to request the Prosecutor-General to conduct any inspections or inquiries, namely into the criminal police organs.

CHAPTER VII INCOMPATIBILITIES, DUTIES AND RIGHTS OF THE MAGISTRATES

Article 35 Incompatibilities

1. Public Prosecution Service magistrates in office may not perform any other functions of a professional character, whether public or private, other than teaching and scientific research of a legal nature or managerial functions in representative organisations of the Public Prosecution Service magistracy.
2. The discharge of teaching or scientific research functions of a legal nature may be authorised, provided that they are not remunerated, and without prejudice to the exercise of their functions as magistrates.
3. Functions of the Public Prosecution Service shall be considered as those carried out by a magistrate who sits full-time on the Superior Council for the Public Prosecution as a voting member, is a member of the Prosecutor-General's Office, is a member of a governing board or lecturer of the Judicial Training Centre, or who is responsible for drafting and reviewing legal instruments under the purview of the Ministry of Justice.

Article 36 Political and party activities

1. A Public Prosecution Service magistrate in full exercise of his or her functions shall be banned from carrying out political and party activities of a public nature.
2. A Public Prosecution Service magistrate in full exercise of his or her functions who wishes to hold a political post, save the office of President of the Republic and that of a member of the Cabinet, must file in advance the leave request contemplated in article 55 of the Statute of the Civil Service, as approved by Law No. 8/2004, of 16 June.
3. The career of a Public Prosecution Service magistrate who suspends his or her functions in order to hold any of the offices covered by the exception made in subarticle 36.2 shall not be prejudiced, with full time being credited toward his or her seniority as if he or she were in full exercise of his or her functions.

Article 37 Impediments

1. A Public Prosecution Service magistrate shall not serve at a court or trial involving judicial magistrates, Public Prosecution Service magistrates or court

staff to whom he or she is related by marriage or a de-facto union, kinship or affinity of any degree in the direct line or up to the second degree in the collateral line.

2. A Public Prosecution Service magistrate shall not act in cases he or she has somehow been involved in as a lawyer.
3. The Prosecutor-General and other Public Prosecution Service magistrates sitting on the Superior Council for the Public Prosecution shall not take part in the decision-making process of this organ where the decision to be made is directly related to them.

Article 38 **Duty of discretion**

1. A Public Prosecution Service magistrate shall not make statements or comments on a case, except when authorized to do so by a superior to protect his or her honour or to realise any other legitimate interest.
2. The duty of discretion shall not apply to information aimed at exercising a legitimate right or interest, notably access to information, provided that such information deals with matters not covered by the sub judice rule or the attorney-client privilege.

Article 39 **Necessary residence**

1. A Public Prosecution Service magistrate shall not reside outside the seat of the judicial district where court to which he or she is posted is located, except in cases duly substantiated and authorised in advance by the Superior Council for the Public Prosecution, provided that such an area of residence is located within the same judicial district.
2. Excepted from subarticle 39.1 are official trips, holiday trips, trips made at the week-end or on a public holiday or urgent trips where the magistrate cannot get prior authorisation.
3. In the latter case contemplated in subarticle 39.2, the magistrate shall report to the Superior Council for the Public Prosecution justifying his or her absence as quickly as possible.
4. Absence at week-ends or on public holidays shall not affect the provision of urgent service.
5. Unlawful absence carries, in addition to disciplinary liability, forfeiture of salary during the period of absence.

6. In case of absence, the magistrate shall indicate the location where he or she can be contacted.

Article 40
Time away from work

Where there is no inconvenience to service, the Prosecutor-General or a Deputy Prosecutor-General, by delegation of the former, may grant a Public Prosecution Service magistrate time away from work to attend a congress, symposium, training course, workshop, meeting or any other event held in the country or overseas, and related to his or her professional activities.

Article 41
Liberty-depriving measures

1. A Public Prosecution Service magistrate shall not be arrested or detained prior to the issuance of a court order indicating the trial date in connection with an indictment presented against him or her, except in case of flagrante delicto for a crime carrying a term of imprisonment of more than two years.
2. In case of arrest or detention, a magistrate shall be immediately brought before the competent judge.
3. Pre-trial detention or deprivation of liberty shall be served by a Public Prosecution Service magistrate under a regime of separation from other detainees or prisoners.
4. Where there is a need of search at the private or business residence of a Public Prosecution Service magistrate, such search shall be presided over by the competent judge, otherwise it shall be considered illegal, and the judge shall in advance notify the Superior Council for the Public Prosecution so that a member designated by the Council may be present.

Article 42
Special forum

1. An enquiry aimed at ascertaining the criminal liability of a Public Prosecution Service agent is conducted by a judicial magistrate appointed by the President of the Superior Council for the Public Prosecution.
2. The enquiry, indictment and trial of a Public Prosecution Service agent in connection with a criminal offence shall be conducted by a judge(s) holding a rank higher than that of the former.
3. The enquiry, indictment and trial of the Prosecutor-General or the Deputy Prosecutors-General shall be conducted by a judge(s) from the Supreme Court of Justice.

4. The President of the Superior Council for the Public Prosecution, or a substitute thereof, shall request the President of the Superior Council for the Judiciary to designate the judge(s) required for the purpose of applying the foregoing subarticles.

Article 43
Legal practice

A Public Prosecution Service magistrate may serve as a lawyer in a legal case filed by him or herself, his or her spouse or partner with a similar relationship resulting from a de-facto union, a descendent or progenitor.

Article 44
Relationship among magistrates

Public Prosecution Service magistrates shall observe an order of precedence based on level, and in case of equal level seniority shall prevail.

Article 45
Remuneration

Subject to Article 47, the remuneration regime for Public Prosecution Service magistrates shall be determined by decree, taking into account the specificity of the judicial functions, the level, and the length of service provided by the magistrate.

Article 46
Assignments and re-assignments

1. The assignment and re-assignment of Public Prosecution Service magistrates shall be focussed on meeting service requirements and avoiding, to the extent possible, any inconvenience to the private and family life of the persons concerned.
2. Subject to subarticle 46.1, classification of service and seniority shall, in descending order of preference, be determining factors in the assignment of magistrates.
3. A Public Prosecution Service magistrate shall not be reassigned, without his or her consent, until he or she has spent two years serving at the court to which he or she is posted, except in case of promotion or for disciplinary reasons.
4. A Public Prosecution Service magistrate posted to a particular district court at his or her own request may not ask to be reassigned to another court until he or she has spent five years serving at that court.

Article 47
Per diems

Per diems shall be due whenever a magistrate travels on official business outside the district where the court or service to which he or she is assigned is based.

Article 48
Judicial recess and leave

1. A Public Prosecution Service magistrate shall take his or her leave during the period of judicial recess, without prejudice to any duty rosters on which he or she is included, or to any services that should be delivered during the period of leave, as provided for by law.
2. The Superior Council for the Public Prosecution may, on an exceptional basis, authorise that a Public Prosecution Service magistrate take his or her leave during a period other than the one provided for under subarticle 48.1.
3. The leave and the location where a magistrate is to take it shall at all times be transmitted to the Superior Council for the Public Prosecution.

Article 49
Leave schedules, urgent service, and substitutions

The Prosecutor-General shall, under the terms of the law, organize leave schedules to ensure the provision of urgent service during the period of judicial recess or whenever circumstances so justify.

Article 50
Entitlements of the Prosecutor-General

Apart from the entitlements contemplated in Article 51, the Prosecutor-General is entitled to:

- (a) be treated with deference as required by the position of Prosecutor-General;
- (b) diplomatic passport from him or her and his or her spouse;
- (c) use, carry and manifest free of charge a defence weapon and acquire ammunition therefor;
- (d) entertainment allowance, commensurate with the position of Prosecutor-General.

Article 51
Entitlements and benefits of Public Prosecution Service magistrates

1. A Public Prosecution Service magistrate in full exercise of his or her functions shall be entitled to the following benefits:

- (a) be treated with deference as required by the position of Public Prosecution Service magistrate;
 - (b) special forum in criminal proceedings in which he or she is a defendant and in civil liability lawsuits in connection with acts practised while exercising his or her functions or as a result therefrom;
 - (c) a special identity card, in a format to be approved by the Superior Council for the Public Prosecution;
 - (d) special protection for him or herself, spouse, descendants and property, whenever substantiated reasons of security so require;
 - (e) admission to and free movement at all public places by simply producing his or her identity card;
 - (f) any other entitlements contemplated in the law.
2. A Public Prosecution Service magistrate who is not in full exercise of his or her functions is entitled to the benefits contemplated in paragraphs (a), (b) and (c) of subarticle 51.1 above.

CHAPTER VIII EVALUATION

Article 52

Evaluation of Public Prosecution Service magistrates

Public Prosecution Service magistrates shall be evaluated by the Superior Council for the Public Prosecution in accordance with their merit by 'Very Good', 'Good', 'Passable', and 'Failed' markings.

Article 53

Criteria and effects of evaluation

1. Evaluation shall take into consideration the way a magistrate exercises his or her functions, workload and difficulties in dealing with his or her duties, performance, his or her technical knowledge, intellectual ability, published legal works and civic aptitude.
2. A 'Failed' marking shall lead to suspension from functions and initiation of an inquiry for unfitness for such functions.

3. Evaluation of Public Prosecution Service magistrates shall be made every three years at least.

CHAPTER IX RECRUITMENT AND ADMITTANCE

Article 54

Requirements to be admitted to the prosecutorial career

The requirements to be admitted to the prosecutorial career are as follows:

- a) to be in full exercise of one's civil and political rights;
- b) to have a university degree in law;
- c) to have successfully completed the training courses and the on-the-job training provided in this law;
- d) to write and speak both official languages of Timor-Leste;
- e) to comply with all other requirements as set out in the Statute of the Civil Service, as approved by Law No. 8/2004, of 16 June.

Article 55

Untenured Public Prosecution Service agents

Though probational Public Prosecutors and Public Prosecution Service representatives are untenured Public Prosecution Service agents, they are governed by the provisions of the present law, with the necessary adaptations.

Article 56

Admittance

1. Tenured Public Prosecution Service magistrates are subsumed into the following levels:

- (a) third-class Public Prosecutor;
- (b) second-class Public Prosecutor;
- (c) first-class Public Prosecutor.

2. A Public Prosecution Service agent initiates his or her career as a tenured magistrate with the level of third-class Public Prosecutor.

3. A third-class Public Prosecutor with at least 3 years of service and a marking not below that of 'Very Good' may be promoted to the level of second-class Public Prosecutor.

4. A second-class Public Prosecutor with at least 3 years of service and a marking not below that of 'Very Good' may be promoted to the level of first -class Public Prosecutor.

5. Promotion to an immediately higher level is at all times contingent upon the existence of a vacancy.

Article 57

First appointment

1. A Public Prosecution Service agent is first appointed as a tenured magistrate at the level of third-class Public Prosecutor.

2. When first appointed as a tenured magistrate, a Public Prosecution Service agent may not refuse to be deployed to the prosecutorial office to which he or she has been assigned in accordance with the order of markings obtained at the entry course and on-the-job-training.

Article 58

Swearing-in ceremony

Public Prosecution Service magistrates are sworn in as follows:

- (a) the Prosecutor-General is sworn in by the President of the Republic;
- (b) all other Public Prosecution Service magistrates are sworn in by the Prosecutor-General.

Article 59

Oath of office

Upon being sworn in, Public Prosecution Service magistrates shall take the following oath of office:

“I, (name), (alternatively: swear to God or swear on my honour) that I will respect and faithfully enforce the Constitution of the Republic and all other applicable laws, defend democratic legality and promote law enforcement in an independent and objective manner.”

Article 60

Absence from the swearing-in ceremony

1. Absence from the swearing-in ceremony not justified within prescribed deadlines in case of first appointment shall, without further formalities, cause the appointment to be cancelled and the absentee to be disqualified from being appointed to the same position for the following two years.
2. In other cases, unjustified absence shall be comparable to dereliction of duty.
3. Justification of absence shall be required within five days from the date of absence, along with proof of impediment to attend the aforementioned ceremony.

CHAPTER X

RETIREMENT, TERMINATION OR SUSPENSION OF FUNCTIONS

Article 61

Retirement

To the retirement of Public Prosecution Service magistrates are applied the principles and rules established by law for the civil service.

Article 62

Honourable retirement

1. A Public Prosecution Service magistrate is considered honourably retired when he or she retires for reasons other than discipline.
2. An honourably retired Public Prosecution Service magistrate enjoys the titles, honours and immunities attached to his or her level.

Article 63

Crediting length of service

1. The length of service provided to the state before appointment as a tenured Public Prosecution Service magistrate shall count for the purposes of retirement.
2. Seniority of a Public Prosecution Service magistrate on the staffing table and level shall, for the purposes of promotion, count from the date appointment is published in the *Official Gazette*.

Article 64

Voluntary retirement

1. Voluntary retirement of a Public Prosecution Service magistrate is authorised in duly substantiated cases, following a 60-day prior notice.
2. Voluntary retirement takes effect from the date of notification of a favourable decision thereon.

CHAPTER XI

DISCIPLINE

SECTION I

GENERAL PROVISIONS

Article 65

Disciplinary liability and offence

A disciplinary offence is an act that, even if merely negligent, is performed by a Public Prosecution Service magistrate in violation of professional duties, as well as acts or omissions of his or her public life, or with repercussions thereon, which are incompatible with the decorum and the dignity indispensable to the exercise of his or her functions.

Article 66

Subjection to disciplinary jurisdiction

1. Dismissal or change of status of a Public Prosecution Service magistrate shall not prevent his or her punishment for violations committed in the exercise of his or her functions.
2. A magistrate who has been dismissed shall serve a penalty if he or she is readmitted to prosecutorial practice.

Article 67

Autonomy of disciplinary jurisdiction

1. Disciplinary proceedings are independent of criminal proceedings.

2. Where a disciplinary case discloses the existence of a criminal offence, the case shall be notified to the Public Prosecution Service forthwith.

Article 68

Disciplinary proceedings, enquiries and investigations

The procedural steps in handling disciplinary proceedings, enquiries or investigations shall, with the necessary adaptations, be in compliance with the legal rules applicable to judicial magistrates.

SECTION II

PENALTIES

Article 69

Scale of penalties

1. Public Prosecution Service magistrates shall be subject to the following penalties:
 - a) warning;
 - b) recorded admonition;
 - c) fine;
 - d) compulsory re-assignment;
 - e) suspension from functions;
 - f) release from duties;
 - g) compulsory retirement;
 - h) dismissal.
2. With the exception of the penalty provided in paragraph 69.1(a), imposed penalties shall always be recorded.
3. Amnesties do not eliminate the effects produced by the imposition of penalties, but shall be recorded in the relevant personal file.
4. The penalty provided in paragraph 69.1(a) may be imposed irrespective of any proceeding, provided that the defendant has been heard and given the possibility of defending him or herself.

Article 70

Penalty of warning

1. A penalty of warning shall consist of a mere remark or admonition on the irregularity committed to warn a Public Prosecution Service magistrate that his or her act or omission may disrupt the exercise of his or her functions, or

have repercussions thereon, in a way incompatible with the dignity indispensable to the exercise of his or her functions.

2. A penalty of warning shall apply to minor disciplinary offences that should not go without a remark.

Article 71 **Penalty of recorded admonition**

1. A penalty of recorded admonition shall consist of a written censure to warn a Public Prosecution Service magistrate that his or her act or omission may disrupt the exercise of his or her functions, or have repercussions thereon, in a way incompatible with the dignity indispensable to the exercise of his or her functions.

2. A penalty of recorded admonition shall apply to minor disciplinary offences that might disrupt the exercise of the functions of a Public Prosecution Service magistrate, or have repercussions thereon, in a way incompatible with the dignity that is required of him or her.

Article 72 **Penalty of fine**

1. A penalty of fine is determined in days, ranging from 3 to 30.

2. A penalty of fine implies a deduction from the salary of the magistrate of the amount that corresponds to the number of days of fine imposed.

3. A penalty of fine shall apply to cases of neglect or lack of interest in the fulfilment of the duties attached to the position.

Article 73 **Penalty of compulsory re-assignment**

1. A penalty of re-assignment shall consist of assigning a Public Prosecution Service magistrate to a position of similar rank outside the area of jurisdiction or service in which he or she used to exercise his or her functions.

2. A penalty of compulsory re-assignment also implies forfeiture of 60 days of seniority.

3. A penalty of compulsory re-assignment shall be applicable to offences that involve disruption of the prestige required of the Public Prosecution Service magistrate to remain in the environment where he or she exercises his or her functions.

Article 74
Penalty of suspension from exercise of functions
and penalty of release from duties

1. A penalty of suspension from exercise of functions or a penalty of release from duties shall consist of the complete removal from service for the duration of the penalty.
2. A penalty of suspension from exercise of functions shall range from 10 to 90 days.
3. A penalty of release from duties shall range from six months to one year.
4. A penalty of suspension from exercise of functions or a penalty of release from duties shall apply to cases of serious neglect or serious lack of interest in the fulfilment of professional duties or when a Public Prosecution Service magistrate is handed out a prison sentence, except where the sentence imposes a penalty of dismissal.
5. The prison term served shall be deducted from the disciplinary penalty.
6. A penalty of suspension from exercise of functions implies forfeiture of the length of time that corresponds to its duration, for the purposes of remuneration, seniority and retirement or re-assignment to a position of similar rank in a prosecutorial office or service other than the one in which the magistrate used to exercise his or her functions on the date the offence was committed, where the punished magistrate cannot remain in the environment where he or she exercises his or her functions without disrupting the prestige that is required of him or her; and forfeiture of time shall be stated in the disciplinary decision.
7. A penalty of release from duties entails forfeiture of the length of time that corresponds to its duration, for the purposes of remuneration, seniority and retirement, including the impossibility of promotion or access to prosecutorial practice for one year, to be counted from the date the magistrate finishes serving the penalty.

Article 75
Penalty of compulsory retirement and penalty of dismissal

1. A penalty of compulsory retirement shall consist of forcing a magistrate to retire and entails his or her immediate separation from service.
2. A penalty of dismissal shall consist of the definitive removal of the magistrate from office, with the cessation of all his or her functions, and imply the forfeiture of the status of Public Prosecution Service magistrate bestowed by

this law, but does not imply the forfeiture of the right to retirement, under the terms of the law, nor does it prevent the magistrate from being appointed to a public or other office, provided that he or she meets the conditions of dignity and trust required by the position from which he or she was dismissed.

3. Penalties of compulsory retirement or dismissal shall be applicable where a Public Prosecution Service magistrate:
 - (a) reveals permanent incapacity to adapt him or herself to the requirements of his or her functions;
 - (b) reveals dishonesty, serious insubordination, or has an immoral or dishonourable conduct;
 - (c) reveals professional incompetence;
 - (d) has been sentenced for a crime involving a blatant and serious abuse of his or her functions or a clear and serious violation of the duties inherent therein.
4. Dereliction of duty shall always correspond to a penalty of dismissal.

Article 76

Promotion of defendant magistrates

1. Where a criminal or disciplinary case is pending, the Public Prosecution Service magistrate is graded for promotion or admittance, but the promotion or admittance shall be suspended, and the respective post shall remain vacant until a final decision is rendered.
2. Where the case is closed, or the convicting decision is repealed, or the penalty applied does not affect promotion or admittance, a Public Prosecution Service magistrate shall be promoted or appointed, shall occupy his or her place on the list of seniority, and shall be entitled to receive the balance of his or her remuneration, or, where he or she is to be pretermitted, the procedures pertaining to the post reserved for him or her shall be finalised.

Article 77

Degree of penalty

1. In determining the degree of penalty due consideration shall be given to the seriousness of the act, the culpability of the magistrate, his or her personality and the circumstances in favour of or against him or her.
2. A penalty may be considerably extenuated, in which case the penalty of the next lower echelon shall be imposed, where previous, subsequent or concurrent circumstances markedly diminish the seriousness of the act or the culpability of the offender.

Article 78
Recidivism

1. Recidivism occurs where the offence is committed before three years have elapsed from the date the offender committed the previous offence, for which he or she has been sentenced with a penalty heavier than that of warning, already served in whole or in part, provided that the circumstances surrounding the case reveal a lack of preventive effectiveness of the previous conviction.
2. Where the applicable penalty is any of those provided under paragraphs 69.1(c) and 69.1(f), in case of recidivism, its minimum limit shall be equal to one-third or one-fourth of the maximum limit, respectively.
3. In case of a penalty different from any of those referred to in subarticle 78.2, a penalty from the next higher echelon may be imposed.

Article 79
Accumulation of offences

1. Accumulation of offences occurs where the magistrate commits two or more offences while the conviction for any of such offences may still be challenged.
2. A single penalty shall be imposed in case of accumulation of offences and, where the offences carry different penalties, the heaviest penalty, aggravated in accordance with the accumulation, shall be imposed, if subject to variation.

Article 80
Limitation of power to impose penalties

1. Disciplinary penalties shall lapse after the following time limits, to be counted from the date on which the decision may no longer be challenged:
 - (a) six months, for the penalties of warning, of recorded admonition, and of fine;
 - (b) one year, for the penalty of compulsory re-assignment;
 - (c) three years, for the penalties of suspension from exercise of functions and of release from duties;
 - (d) five years, for the penalties of compulsory retirement and of dismissal.

CHAPTER XII
ANCILLARY BODIES

Article 81
Secretariats and staff

1. Without prejudice to support and assistance provided by judicial services and secretariats, the Public Prosecution Service shall have technical and administrative services of its own.
2. The technical and administrative services provided under subarticle 81.1 shall be regulated by a specific government decree.

CHAPTER XIII
FINAL AND TRANSITIONAL PROVISIONS

Article 82
Subsidiary regime

In all that is not contrary to the present law, the provisions of the Statute of the Civil Service, as approved by Law No. 8/2004, of 16 June, shall apply on a subsidiary basis.

Article 83
Prosecutor-General

Pending the availability of national citizens who meet the requirements set out in Article 12, the Prosecutor-General may be appointed from among Public Prosecution Service agents holding a rank lower than that of Public Prosecutor or probational judges or from among non-Timorese prosecutors, with at least 10 years' work experience, from a civil-law judicial system.

Article 84
Deputy Prosecutors-General
and Heads of the Offices of the District Prosecutors

1. Pending the availability of national citizens who meet the requirements set out in Article 14, the Deputy Prosecutors-General may be appointed from among the magistrates mentioned in that article with a rank and work experience lower than that provided in the aforementioned article.
2. Pending the availability of national citizens who meet the requirements set out in subarticle 22.3, the Heads of the Offices of the District Prosecutors may be appointed from among Public Prosecution Service agents with a rank lower than that indicated in that article or from among probational Public Prosecutors.
3. An appointment made under the terms of subarticle 84.1 or 84.2 shall not entail any change in the rank of the appointees.

Article 85
Evaluation of previous probational Public Prosecutors

1. The assessment of probational Public Prosecutors who assumed their functions before the entry into force of this law shall, for the purpose of admittance to the prosecutorial career, be regulated by a specific decree.
2. The probational Public Prosecutors referred to in subarticle 85.1 who, for not having 3 years of service, could not be assessed for the purpose of admittance to the prosecutorial career, under the terms of Decree No. 9/2004, of 3 November, shall undergo such an assessment when they complete that length of service.
3. The probational Public Prosecutors referred to in subarticle 85.1 who, for being serving on secondment, could not be assessed for the purpose of admittance to the judicial career, under the terms of paragraphs 25.1(e) and 25.1(f) of Law No. 8/2002, of 20 September, shall undergo such an assessment when their secondment has ended, and may be admitted to the subsequent training course for access to the judicial or public defender career, if, in that assessment, they fail to obtain marks giving them access to the prosecutorial career.

Article 86
Competencies of the Court of Appeal

Until such a time as the Supreme Court of Justice is established and becomes operational, the competencies assigned thereto under this law shall be exercised by the Court of Appeal.

Article 87
International magistrates

1. For the discharge of the functions of Public Prosecution Service agent and of Public Prosecution Service inspector, the Superior Council for the Public Prosecution may, through a competitive selection process based on CVs submitted, select non-Timorese Public Prosecution Service magistrates with at least 5 years' work experience, from a judicial civil-law system or with a specialisation in comparative law, to be temporarily part of the judicial organisation of Timor-Leste, whenever deemed necessary.
2. The provisions of this law shall, with the necessary adaptations, apply to international Public Prosecution Service magistrates exercising functions in the judicial organisation of Timor-Leste.

Article 88
Repeals

All legislation contrary to this law, namely UNTAET Regulations Nos. 16/2000, of 6 June, and 26/2001, of 14 September, is hereby repealed.”

Approved on 25 July 2005

The Speaker of the National Parliament

[Signed]

Francisco Guterres “Lu-Ólo’

Promulgated on 3 September 2005

To be published.

The President of the Republic

[Signed]

Kay Rala Xanana Gusmão