

CHAPTER FIVE

ETHICS OF THE PUBLIC PROSECUTOR

Introduction

- As a principle by prosecution we mean the process of or the act of a criminal proceeding in which an accused person is tried. And
- The public prosecutor is a public official and of course a lawyer that represents the government (public) against an accused (suspect) in a criminal proceeding before a court of law.
- In exceptional instances the public prosecutor may involve in civil matters on behalf of the government.
- For getting public confidence, prosecutors are appointed by the competent organ that administers.
- Most common PP eligibility criteria's are:
 - ✓ Age;
 - ✓ Nationality/citizenship/;
 - ✓ Loyalty and acceptance of national laws of the concerned state ;especially the constitution;
 - ✓ Being a lawyer ;

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- ✓ Ethical requirements, mainly **honesty, integrity, loyalty, impartiality, legality, diligence and having good public image**;
 - ✓ Having no criminal record except petty offences and offences punishable upon complaint or convicted but reinstated; and
 - ✓ Some require experience
- In a similar fashion, the Federal Prosecutor Administration Council of Ministers Regulation No 44/1998 Article 4 provides requirements for the appointment of public prosecutor which are:
 - ✓ Ethiopian citizen;
 - ✓ loyal to the FDRE Constitution;
 - ✓ a graduate in law with degree or diploma from a recognized University;
 - ✓ distinguished himself by his diligence, loyalty and good character; and

❑ Objective of Public Prosecution

- **public prosecutor's office:**

- (1) shall be an integral institution of judicial power **that shall carry out supervision of law abeyance independently, within the limits of authority established by this law.**
- (2) shall be to react in the event of any violation of law and to ensure review of such violation in accordance with procedures set by the law.
- (3) shall be such official of the Public Prosecutor's Office who hold any position provided by pertinent laws.

❑ Basic Functions

- The Public Prosecutor's Office shall:

- 1) supervise activities of inquiry institutions and operative activities of other institutions;
- 2) organize, conduct and perform pre-trial investigation;
- 3) initiate and carry out criminal prosecution;
- 4) prosecute on behalf of the State;
- 5) supervise implementation of penalties;
- 6) protect rights and lawful interests of persons and the State in accordance with procedures established by law;
- 7) submit claims and applications to courts in cases stipulated by law;
- 8) take part in court review of cases when required by law.

Legal Basis and Basic Ethical Principles for the Functions of Public Prosecutor

❑ Legal Basis

- Subject to preemptory norms; the legal basis of activities of the public prosecutor shall be the national laws of the country concerned especially the Constitution.

❑ Principle

1. Independence of Public Prosecutor

- In their activities, public prosecutors shall be independent from any influence by any other institution or official of either legislative or executive branch and **shall obey to laws only.**
- **The government also shall pave conducive conditions to be independent.**
- For attempts to influence public prosecutors by unlawful methods or to interfere in activities of the Public Prosecutor's Office, persons shall be liable according to law.

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- The public prosecutor shall also be free in the performance of his/her professional duties, dissociating himself/herself from any private interests.

Eg. the Anti-Corruption Commission Regulation No. 4/2002 under its Article 5(1) provided that *any public prosecutor shall defend the independence of the prosecution, be honest and maintain the reputation and respect of his profession.*

- In order to discharge his function freely with in the scope of his power the law should guarantee some sort of privilege or exemption from responsibility.

2. Confidentiality

- The public prosecutor should respect the principle of confidentiality of information he/she has acquired during the performance of his/her official duties except for legal reason:
 - ✓ The information is of minor importance or
 - ✓ is a public knowledge.
- The public prosecutor shall not use the acquired information for his/her private interests nor allow the use of such information in the interest of other private individuals. *(Article 6 of Council of Ministers Regulation No 44/1998 and Article 5(5) of the Anti-corruption Regulation No. 4.2002).*

3. Competence and Diligence

- Competency connotes the ability of the public prosecutor to discharge his responsibility in reasonably well manner.
- S/he should upgrade his/her knowledge and skill by strictly attending the day today changes in the content of the law whether through education or training.
- PP has big and considerable responsibility he/she assumes.
- PP should give decisions timely and promptly taking in to account public money, public reliance and confidence upon the undertaking and still respecting the right to speedy trial of a person accused as is stated under Article 19(4) of the FDRE Constitution.
- Article 15 of Regulation 44/1998 required the public prosecutor to respect government working hours.

4. Loyalty and Avoidance of Conflict of Interest

- In all his activities, the public prosecutor is expected to be loyal.
- the public provide always represents the interests of the government and the public.
- Conflict of interest refers to a certain affair that immediately contradicts with one's responsibility disabling the same to decide fairly and without any form of bias.
- The public prosecutor may encounter a case which he/she cannot give independent and impartial decision due to the existence of direct or indirect self interest in the issue or the interest of a family, partner and the like.
- Article 68(1) of the Council of Ministers Regulation No. 44/1998 states that the PP shall to inform forthwith about the existence of conflict of interest with the case to higher officials.
- under Article 6(9) of Anti-corruption Commission Regulation No 4/2002 specifying that any public prosecutor should refrain from indirectly a private or family case being handled by other prosecutors.

In relation to the Accused, the Court and Other Institutions

- ***Achievement of justice is the effect of the cumulative effort of all branches of government.***
- The public prosecution office is a hierarchical institution, which is accountable to the Ministry of Justice (at the Federal level) or to Justice Bureau (at the Regional level)
- ***The public prosecution forms one division of the executive organ.***

Accused/Suspect/

1. Ethics in the Pre-trial Stage

- When PP prosecutor carries out investigation, s/he has to disclose some rights to the accused.

For instance, the PP has to tell the accused about the right he has like the right to keep silent and whatever he tells will be used as evidence against him in the court.

- It is also not proper if the public prosecutor encroaches in the legally recognized rights of the person prosecuted.
- it is not ethically proper to do acts contrary to the truth and justice.

2. During Trial

- The activities of the public prosecutor also continue in the process of trial of the case.
- Where the public prosecutor has instituted a charge against a certain person suspected of committing crime, **he should always be present in the court.**
- If the public prosecutor is unable to be present for a reason beyond his scope (force majeure) **he has to notify to the office of prosecution as early as practically possible.**
- Apart from presence in the court, the public prosecutor should respect the principles of public and adversarial debate. Like public hearing.
- it is unethical if the public prosecutor claims to intervene in civil proceedings except in few civil matters.

3. The Court

- The public prosecutor's activity is highly related to the court.
- In his day-to-day relations with the judges in the court, the public prosecutor should respect the independence of the judges.
- *Basically, the public prosecutor is expected to accept and comply with the orders and decisions of the judges.*

4. Other Institutions

- Splendid isolation is becoming old-fashioned and ineffective because justice is the cumulative effect of different organs of the government. Hence, pp should work in corporation with other institutions preserving his independence.
- ***The public prosecutor respects the orders of the Ministry of Justices or the Bureau, as the case may be.***

4.1. In relation to the Police

- The public prosecutor as superior should treat ethically.
- The public prosecutor can discharge this duty by frequently paying visits to police stations.
- Apart from paying frequent visits, the public prosecutor is expected to go in person to the scene of any reported serious offence.

4.2. In relation to the Public

- The PP in relation with others, it should be limited and must be inline with the ethical principles of public prosecutor.
- He has to make Endeavour not to affect the human and democratic rights of persons in general.
- The following are some sensitive activities of PP in his social interactions:

A. Borrowing Money and Gifts

B. Involvement in income generating business; and

C. Any shameful action

- The Regulation under Article 66 connotes that persistent borrowing is prohibited.
- *Money, gifts in kind or any other form of consideration* solicited or otherwise should not be taken by the public persecutor from any person or organization with respect to the official duties he has discharged or is expected to discharge.

Engaging in Activities outside Official Duties

- Article 71 of the Regulation of the Council of Ministers directed that any prosecutor ***shall during normal working hours devote his full energy and attention to his official duty for which he is paid (sub (1)).***
- *Article 71/1/b, the public prosecutor can take part in other activities than the prosecution undertaking.*
Example, the public prosecutor may teach, train and give lecture with regarding to the law and still can write about the law without eroding the office responsibility.
- In doing so, the PP should first secure the permission of the Minister of the Ministry of Justice (Art. 71/2).

Other Ethical Considerations

- Even if such issue is not specifically addressed under the code of conduct of PP, they should not be involved in any partisan activities including political parties or other political organizations.
- The public prosecutor has to dress socially acceptable clothes, recreate in dignified places outside his office.
- Any public prosecutor shall not carry out his duty intoxicated with alcohol or drug and shall keep oneself from being addicted by virtue of Article 10 of Anti-corruption Commission Regulation 4/2002.

Liability for Violation of Codes of Conduct for Prosecutors

- 1. Administrative (Disciplinary) Liabilities**
- 2. Criminal Liability**
- 3. Civil Liability**

Thanks!

I had good time with you!