

Selection, Professional Training and Status of Public Prosecutors in Greece

The new Greek Criminal Procedure Code which has been in force since 1951 deals with the powers, the duties and the jurisdiction of the Public Prosecutor.

But before turning to consider the serious and important role of the Public Prosecutor who is called "watchman of the law", I think that it would be helpful to consider some details about his legal position in the machinery of the independent judicial power.

Legal position of the Public Prosecutor

According to the Greek Constitution, the Public Prosecutor is a judicial functionary and is appointed by Presidential decree for life. He has equal rights, privileges, status and salary with the judges and both sit on the same level.

The only way of becoming a Public Prosecutor is to succeed in a competitive examination in oral and written law subjects.

The candidate must possess a law degree of the University and be between 25–40 years old. The entry examination is conducted by a board composed of the President and the Public Prosecutor of the Supreme Court, two law Professors and a member of the Supreme Court.

A successful candidate, before entering office, takes an oath and is subjected to a training and trial period of up to three years prior to his appointment as a Deputy Public Prosecutor at the Court of Misdemeanors.

Promotions, appointments, transfers, detachments and reassignments of Public Prosecutors are effected by Presidential decree after prior decision by the Supreme Judicial Council.

Retirement from the service is compulsory upon attainment of the age of sixtyfive years up to and including the rank of the Deputy Prosecutor of the Court of Appeal, and in the case of those who hold a rank higher than that stated, retirement is compulsory upon attainment of the age of sixtyseven years.

An office of the prosecution exists at every court. The ranks in the hierarchical structure of the prosecutorial corp are therefore:

1. Deputy Public Prosecutor at the Court of Misdemeanors.
2. Public Prosecutor at the above Court.
3. Deputy Public Prosecutor at the Court of Appeal.
4. Public Prosecutor at the above Court.
5. Deputy Public Prosecutor at the Supreme Court, and
6. Public Prosecutor at the above Court.

Each year the Public Prosecutor is assessed by Supreme Court judges and the Public Prosecutor at the Court of Appeal, and also by the Deputy Public Prosecutor at the Supreme Court.

The assessment relates to specific items such as knowledge of the law, moral character etc. and a copy of the assessment is given to him and the other is kept in his personal "dossier".

The general power of supervision and direction is vested in the Minister of Justice, but he can not compel the Public Prosecutor to prosecute or to refrain from prosecuting a particular individual, nor can he remove from office a prosecutor refusing to obey such an order.

The office of the prosecution is a judicial agency and just like the courts themselves has to serve truth and justice and must direct all its activity towards this aim. The prosecutor is therefore not a party opposing the defendant.

His task is not to hunt down the defendant by one-sided gathering of evidence and to give it to the defendant or his counsel to submit to the court evidence exonerating him.

On the contrary the prosecutor must also investigate all circumstances favorable to the defendant.

Prosecutor and defendant do not just oppose each other as parties and they do not just engage in battle before the court and they do not necessarily even represent opposing interests. The prosecutor is obliged to take during the trial all the exonerating circumstances and in appropriate cases must move for the acquittal of the accused, something that happens fairly often. The Public Prosecutor in Greece represents the charge during the trial, but not in the sense that he is bound to it by all means, or that he would have to do his best to obtain a judgement against the defendant.

The charge for the prosecutor constitutes only the object of the inquiry what his attitude towards it will be, is determined only at the end of the trial by the result of the investigation.

The Public Prosecutor is obliged by the laws to be entirely dedicated to the search for truth and justice. Public Prosecutors maintain strict standards of behaviour in their private life.

This being so, persons whose conduct in private life gives rise to a suspicion that they might not maintain the strict standards expected from them, are not promoted and are subject in disciplinary prosecution. But the independence of the Public Prosecutors depends not only upon statutes, but also upon the "accumulated tradition of the country". The status of independence and prestige which our Public Prosecutors enjoy in their position have rested far more upon the tradition and long usage with which they have always been surrounded than upon any statute.

The high standards of the Greek Public Prosecutor is largely due to high standards of professional etiquette maintained by the office of the prosecution.

There is no written Code of judicial ethics in Greece, but the Public Prosecutors are guided by conventions, traditions, practices and understandings which have been established over the years by custom and precedents.

Also the Public Prosecutor in Greece, is guided in his behaviour by his individual sense of caution and his anxiety to avoid putting himself into positions which might give rise to professional embarrassment or attract adverse comments.

Although the Public Prosecutors are completely independent from the Executive, the Minister of Justice exercises a measure of disciplinary control over them and has right to institute disciplinary proceedings.

The Public Prosecutor in Court is free to say what he wants and may express his own views orally regardless of what he has formally requested the court to do in writing.

In this way no Public Prosecutor in court is compelled to speak against his personal conviction (*La plume est serve mais la parole est libre*). A Prosecutor can not be sued by any person whom he is prosecuting, nor can he be found liable for damages or legal expenses.

Powers and duties for the Public Prosecutor

According to the new Criminal Procedure Code, the prosecution for the imposition of punishments is initiated and conducted by the Public Prosecutor at the Court of Misdemeanors.

The above person undertakes or causes to be undertaken all acts necessary to discover and prosecute breaches of the penal law.

For this reason he directs the activities of the police within the district of his court.

Criminal procedure is inquisitorial and is based on the principles of compulsory prosecution and investigation.

The Public Prosecutor does not have any discretion and the rule of compulsory prosecution was designed to protect him from any political pressure which might lead him to abuse the power to prosecute or not to prosecute. The limitation of the power of the prosecutor is also fundamental protection for him and the basis of the judicial character of his office, the source of his freedom and his independence from the executive power.

As an exception to the above rule, criminal prosecutions for certain offences can not be initiated without prior complaint by the victim. Only after the presentation of such a complaint does the power of criminal prosecution vest in the Public Prosecutor.

This power is then exercised in the same manner as in the case of offences prosecuted *ex officio*. Thus, the presentation of a complaint from the persons who suffered directly from the offence is simply a procedural requirement of prosecution.

For those offences prosecuted upon complaint, a waiver eliminates punishability.

The Public Prosecutor as a judicial functionary, just like the courts, has to serve truth and justice and must direct all his activity towards this aim. The Public Prosecutor is therefore not a party opposing the defendant.

The Public Prosecutor at the Court of Misdemeanors receives complaints and denunciations and decides what to do with them.

Officers of the police are bound without delay to inform the above person of felonies, misdemeanors and violations which they know of.

The same obligation lies upon every constituted authority, every public officer or civil servant who, in the performance of his duties, acquires knowledge of a felony or misdemeanor or violation.

When the Public Prosecutor at the Court of Misdemeanor receives the complaint or the denunciation he has the discretion:

1) To order a judge of the Police Court or a police officer or his deputy to collect evidence and specially investigate whether a punishable act has been committed.

The Public Prosecutor has the duty to determine in this preliminary investigation if the facts constitute a punishable act or if there is sufficient suspicion against the person who is named in the complaint or in the denunciation.

If the investigation does not establish such a suspicion the Public Prosecutor discontinues the proceedings. The Prosecutor's decision not to take criminal proceedings is not necessarily the end of a case.

The victim, if he has reported the crime, can file a formal complaint within 15 days and the whole case is examined by the Public Prosecutor at the Court of Appeal who can order the inferior Prosecutor to reopen the investigation and file charges.

In any event, to close the case, the Public Prosecutor at the Court of Misdemeanors must obtain the approval of the Public Prosecutor at the Court of Appeal to whom he transmits the whole file, explaining the grounds of his judgement.

2) Or, to file charges against the person who is named in the complaint or in the denunciation and so to open the investigation and give an order to the above mentioned to examine the case. This is applied only if non-serious misdemeanors have been committed and in any cases of violations.

3) Or, to file charges and present his motion to the examining magistrate who is a judge at the Court of Misdemeanors. This procedure is obligatory when a felony has been committed, and at the discretion of the Public Prosecutor, when a serious misdemeanor has been committed.

In the three cases above mentioned, the investigation proceedings are not open to the public and are in writing.

The fact that a public charge has been preferred does not necessarily mean that there will be a public trial and a court decision.

Once the public charge has been preferred against an accused, the judicial council which is composed of three judges of the Court of Misdemeanors, has to determine in private in a so-called "intermediate proceeding", whether or not the trial shall be opened by admitting the public charge.

The proceeding before the judicial council is as follows:

After the investigation appears as terminated to the above mentioned persons (in the second and third cases), they are obliged to communicate the dossier to the Public Prosecutor who has filed the charges.

Then, if he determines that the facts do not constitute a punishable act or if there are not sufficient charges against the accused, he declares that it is not appropriate to open the main proceeding.

But if the Public Prosecutor determines that the facts constitute a punishable offence, then he declares that the accused be remanded to the competent court. This happens only when the investigation has been conducted by an examining magistrate. The members of the judicial council deliberate upon his application without the presence of the Public Prosecutor and they decide whether it must be accepted or not.

The application of the Public Prosecutor and the decision of the judicial council, must be specifically and thoroughly reasoned, according to the Constitution. The Public Prosecutor is entitled to initiate an appeal against the decision of the Judicial Council.

When the investigation has been conducted by the persons mentioned in the second case, they, if the Public Prosecutor determines that the main proceeding shall open, draft the charge sheet which must indicate the person charged, time and place of its commission, the legal elements of the prohibited act and the applicable penal provisions.

The accused in this case, after the charge sheet has been served on him can make objections before the Public Prosecutor and the Court of Appeal only if he is remanded to three-judge Court of Misdemeanors. The above Prosecutor, if he decides to accept the objections, gives an order to his inferior to transmit the dossier with his application to the judicial council which decides whether or not the main proceeding shall be open by admitting the public charge.

According to the Greek Constitution, no person shall be arrested or imprisoned without a reasoned judicial warrant which must be served at the moment of arrest or detention pending trial except when caught while committing a criminal act.

In this case the arrested person shall be brought before the Public Prosecutor at the Court of Misdemeanors within twenty-four hours of his arrest at the latest, should the arrest be made outside the seat of the prosecutor, within the shortest time required to transfer him there to.

The Public Prosecutor then decides as has already been mentioned (1st, 2nd, 3rd cases) or can remand the accused to the court if the act committed is a misdemeanor or violation.

But if the act committed is a felony, he orders the arrested person to be brought before the examining magistrate, who must within three days from the day the person was brought to him either release the detainee or issue a warrant of imprisonment, after having heard the opinion of the Public Prosecutor who filed the charges.

All decisions of the Court are announced in his presence and after he has made his petitions. Also no warrant of arrest or a warrant for preliminary detention can be issued without the previous opinion of the Public Prosecutor. The Public Prosecutor, if the accused is convicted, has the responsibility of enforcing the sentence and after the trial he has a discretion as to whether or not to appeal. The most important is also that the Public Prosecutor in Greece has a general power which can only loosely be described as ensuring that law and order is maintained in his district.

In order to succeed to this end, he must keep himself informed of what is happening, usually by means of regular reports from police. In

particular he receives reports of crimes committed in his area and all events likely to give rise to future trouble. He also has numerous duties not connected with criminal law. He protects the public against any overzealous activity of the police and supervises the police work closely, including the right to instigate disciplinary proceedings.

In Savigny's famous phrase, the prosecutor is to be the "watchman of the law" and in my country, three "watchmen of the law" have been murdered the last five years and another was seriously wounded, because they carry out their functions impartially and avoided political, social, racial, cultural or any other kind of discrimination in prosecutorial decision-making.

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