

# New quality standards for the public prosecutors: is there a need for a framework for prosecution excellence?

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*6 March 2016 (annual conference of prosecutors, Vilamoura Portugal)*

## Introduction

When I think of high quality standards, good design of products, simplicity and user friendly solutions one of the first brands that comes to my mind is Apple. When they started the company there were no iPhones, iPads and iMacs yet on the market. It was IBM that was leading the global market for computers. To compete with this multinational Apple decided to invest on a new graphical user interface, which would be much easier to use by computer users with no or limited technical background. This would be – compared with the current leading operating system MS-DOS – a true revolution in the computer industry. What followed after these steps in the development of Apple company can be seen everywhere in the world. Many people are buying their products, because it's fancy, innovative in design and very easy to use.

Now, as a public prosecutor you might think that there are no similarities between Apple and an office of the prosecutor. But, the reality is different. Why? The success of Apple is that it appeals to many people. Everybody wants to have an Apple product, because it's a symbol for high quality products. Also, due to the fact that the company spends much time and effort in listening to their clients and is always looking for innovative solutions that haven't been tried before. Apple has a strong and visionary leadership. Steve Jobs was the personification of Apple where every employee of the company admired him for his strong personality and good leadership.

When comparing a number of key words I have listed for Apple with the work of the office of the public prosecutor, there are features that Apple and a high performing office of the public prosecution has in common: strong leadership, user orientation, innovation and the production/delivery of high quality (judicial) services/products.

Of course, when you are listening to this introduction you still might be skeptical and critical. You may ask yourself. Why should we invest in quality, we have already a good performing office of the public prosecutor and my profession is very well organized, because we apply international and European standards. Partly this is true, but this does not automatically mean that there is no room for improvement in your work as a prosecutor.

This is also underlined in Europe by the Consultative Council of European prosecutors of the Council of Europe. This group was created in 2005 to ensure the follow up of Recommendation (2000)19 on the role of the public prosecutor in the criminal justice system. In this

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recommendation it is evident clear that the profession of the public prosecutor requires high professional standards where – similar to judges – prosecutors must be recruited in fair and transparent manner and that for the promotion of prosecutors objective criteria are being used. Also the training of public prosecutors is not only a right, but a duty too. States should therefore take effective measures to ensure that public prosecutors have appropriate education and training, before and after their appointment.

What is interesting to note when analyzing this Recommendation, is that the public prosecutor is not working into isolation, but is strongly dependent from the police and other justice authorities.

In addition to this Recommendation (2000)<sup>19</sup> indicates that States should take appropriate measures to ensure that public prosecutors are able to perform their professional duties and responsibilities without unjustified interference or unjustified exposure to civil, penal or other liability. Where the public prosecution is part of or subordinate to the government, states should take effective measures to guarantee that the nature and the scope of the powers of the government with respect to the public prosecution are established by law.

With regards the relationship with the judges the same Recommendation describes the need for respecting the independent position of a prosecutor in a (criminal) trial and the necessity for public prosecutors to handle objectively and fairly in court proceedings.

Concerning the role of the public prosecutor in police investigations the same Recommendation outlined that public prosecutors should scrutinize the lawfulness of police investigations, must monitor the observance of human rights by the police.

In situations where the police is placed under the authority of the public prosecutor it is also important that the public prosecutor provides guidance which criminal cases should be dealt first and which criminal policy should be applied.

What makes this Recommendation still very interesting though is the fact that it pays attention to the “clients”/users of the public prosecutor in criminal proceedings too. According to Recommendation (2000)<sup>19</sup> public prosecutors must respect and protect human rights – as laid down in the European Convention of Human Rights and Fundamental Freedoms, should abstain from discrimination, ensure equality before the law, should safeguard equality of arms and should take proper account of the interests of witnesses and victims.

Of course, this Recommendation is limited to the work of the public prosecutor in criminal proceedings. In several European countries, including Portugal, prosecutors play a vital role in civil (and administrative) law proceedings as well. In your country the public prosecutor is important for safeguarding the children’s welfare (parental responsibilities, in situations of a divorce guarantee that the parents are properly taking care of the children, etc.) and in protecting the rights of employees. For the last category the public prosecutors provides legal assistance and legal advice to employees in situations of a conflict with an employer. Moreover the prosecutor can try to settle a dispute between an employee and an employer

or in situations where this is not possible to initiate a court proceeding where the public prosecutor is representing the employee<sup>2</sup>.

Since the public prosecutor must be well connected with the police and other justice institutions and must respect the rights of citizens, it is evident that the quality of the work of the public prosecutor is strongly dependent from these actors. This is also true for the courts.

In this part of the judiciary there is a growing awareness that there is a need to invest on quality and to develop dedicated court quality policies. Lessons learned from the court systems can be useful for the work of the public prosecutors too, since the judge and prosecutor are both magistrates and have often followed a similar path of training and education.

### Lessons learned from the courts

What can the public prosecutor learn from the judge when it comes to the introduction of quality measures in the office of the public prosecutor? Well, one of the lessons learned from the past is that (court) quality is not the same as and should not be limited to judicial quality.

For several years there was a strong notion in the courts that there was no need to invest in court quality, because there is already a quality system in place, namely judicial quality represented by the existence of a system of appeal and a strong focus on investing in the quality of court decisions. The reality though is different. Courts must be seen as professional organizations serving clients and the society. Therefore only focusing on the judicial quality is a too limited approach. Will a client of the court be very satisfied with a high quality drafted court decision, when it took months or even years for a judge to make a decision? The answer is no. Courts have to change their main orientation point, from an internal orientation towards a strong external focus and a client friendly approach.

The first countries that understood that there is a need to invest in court quality policies were the United States and Singapore. In the early nineties in the United States there was a growing criticism from the society on the performance of the courts. It was too slow and there was also a relative low level of public trust in the judiciary. This was one of the reasons to develop the US Trial Court Performance Standards (TCPS)<sup>3</sup>. Important elements of TCPS are related to timeliness of the proceedings, promoting access to justice, a high level of public trust and confidence and the support of important values of a judge/court (i.e. independence, impartiality, fairness, expertise, etc.).

When looking at this court quality model one of the good points is that it covers every quality aspect that is related to the work of a judge and a court. The weak point though is that it is so comprehensive that at the end of the nineties there was only one court in the United States that was capable of implementing the model, namely the Municipal Court of California. Learned from these lessons a more simplified approach was introduced in 1999 when the US Courtools saw the light. This method is composed of ten practical instruments (varying from the conduct of a court user survey till the measurement of the duration of proceedings,

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<sup>2</sup> <http://ministerio-publico.pt/?lang=en>

<sup>3</sup> <https://www.ncjrs.gov/pdffiles1/161570.pdf>

pending cases and the on time scheduling of court hearings). The courts are free to select whatever quality instrument they want to apply to enhance court performance and quality of judicial service delivery.

A similar development took place at another part of the world in Singapore. Inspired by the principles of the Balanced Scorecard of Nolan and Kaplan (community, learning and growth, internal processes and finance), the Singapore State Courts developed in 2003 the *eJustice Scorecard*. One of the main focal points of this system was a strong user orientation. Therefore it is not surprisingly to see that in one of the mission statements of the Singaporean courts the text “serving the society” is included. This to underline that the judiciary is not serving itself, but serving the general public and its users.

### The international Framework of Court Excellence

At a later stage other countries were following the path of the US and Singapore (e.g. the Netherlands and Finland) by developing their own court quality systems. In 2006 another stage in the development of court quality policies took place with the introduction of the International Framework of Court Excellence. Based on the ideas and experiences from the United States, Singapore, the Netherlands, Finland and Australia a new global tool was developed for all courts in the world aiming at improving their performance and quality of judicial service delivery and becoming “the excellent court”.

The International Framework of Court Excellence<sup>4</sup> is composed of seven areas of excellence. The whole idea of the model is that a good performing court must invest in its leadership, pay attention to policies and proceedings, manage the court in terms of human, material and financial resources properly, support accessibility and promote a high level of user satisfaction and public trust. In more detail it includes the following areas of excellence:

#### *Management and leadership*

In an excellent court the management of the court is proactive, innovative and has a strong focus on stimulating a good cooperation with relevant justice authorities. It also means that the management of the court does not work in isolation but tries to build external partnerships and is willing to invest in a good working climate and culture of the organization.

#### *Court policies*

Excellent courts systematically collect information about their performance, changes in society, the needs and wishes of the court users and its external partners. Moreover the excellent court applies a system of policies and (strategic and operational) plans to realize the objectives that have been formulated in terms of performance and quality.

#### *Court proceedings*

A good performing court pays much attention to efficient court proceedings, where a proper balance is achieved between in one hand the need for expedition and in the other hand the protection of a minimum level of judicial quality. This is especially important because a too strong focus on short court proceedings can result in a situation of “justice hurried is justice

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<sup>4</sup> <http://www.courtexcellence.com>

buried". However, it must also be avoided that court proceedings will last too long and the volume of pending cases (waiting on a shelf for preparation by a judge) will increase over time. Therefore time standards are required in efficient and effective courts.

#### *Management of resources (human resources, material resources and finance)*

According to the principles of the international framework of court excellence, excellent courts manage all available resources properly, effectively and proactively. Objective workload models will be applied to determine the amount of work that a judge can handle in a given time period, knowledge sharing and continuous training and education is promoted. In addition to this there will be proper office facilities available for judges and court staff as well as state of the art information technology to support the work of judges and staff. Lastly, there are sufficient financial resources available for a proper functioning of the courts and the spending of the budget is done in an efficient manner.

#### *Accessibility and affordability*

Excellent courts promote affordable solutions for solving legal disputes and stimulates an easy access to the court. This means a high level of access to information in various ways from the provision of leaflets describing the main principles of the work of the court till the use of online registration forms and downloadable information leaflets. Besides a high level of access to information, the excellent court has also a good level of comfort and easy access of the court house. Visitors can easy find their way in the court house, there are proper waiting facilities available, it is accessible for disabled persons, safe and secure.

#### *User satisfaction*

An excellent court has a high level of user satisfaction, based on information collected from court user surveys, client panels and other feedback information. The feedback information is systematically used to improve the performance and quality of judicial service delivery by developing court activity plans for improvement.

#### *Public trust and confidence*

When all the previous conditions are being fulfilled this will lead to a high level of public trust and confidence in the court systems. By promoting a high level of transparency and accountability e.g. through the publication of annual court reports, court performance statistics and additional functions of judges on the court website, the public trust and confidence will increase over time.

To support the courts in their journey towards excellence the International Framework of Court Excellence has included a self-assessment survey that courts can use to identify their strong points and areas for improvement. Especially the last point is important because these are the points that should form the basis for the development of a court activity plan for improvement.

When this method is applied on a regular basis, the courts will become a learning organization with a strong focus on quality and performance.

How to transpose the ideas of the framework of court excellence in the prosecution services

Now, after the explanation of the international framework of court excellence and my introduction about Apple, there is a need to make the step towards applying these principles and lessons learned to the work of the public prosecutor.

I am of opinion that there is a need to develop a similar approach/model for the offices of the public prosecution. Let’s start with the topic of public trust and confidence in the judiciary. This is not limited to the courts only, but it includes the public prosecutor too. When the European statistics on trust and confidence in the judiciary are being compared (Euro barometer studies 2014 results) it is evident that the trust in the judiciary in Portugal is relative low. 61 percent of the Portuguese inhabitants tends not to trust the judiciary and only 35 percent do trust the judiciary in Portugal. These results are comparable with countries like Italy, Serbia and Croatia and differs strongly from the countries where there is a high level of public trust in the judiciary (Denmark, Sweden and Austria).

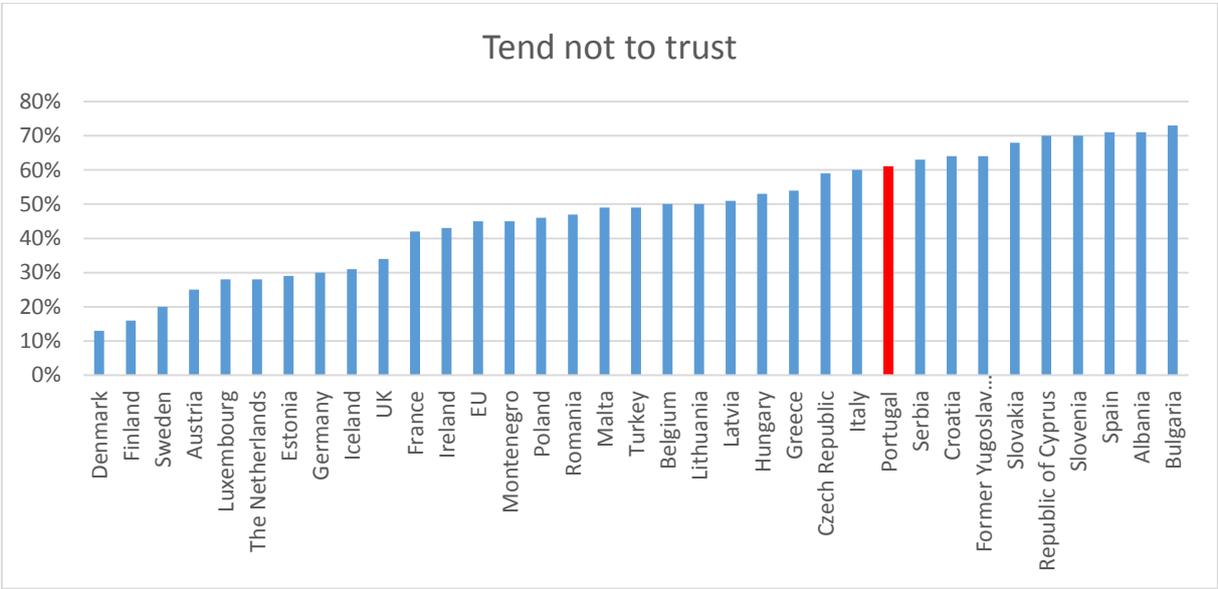


Figure 1 trust in the judiciary (Eurobarometer 2014)

So, when looking at one of the principles of the international framework of court excellence (public trust and confidence) there is a need for *restoring the public trust and confidence* in the judiciary, including the public prosecution in Portugal.

One of the ways for restoring this trust concerns the need for introducing quality measures in the offices of the public prosecutor, similar to those that has been outlined in the international framework of court excellence. To my viewpoint this is also an excellent opportunity for the public prosecutors in Portugal to introduce measures aiming at a high level of performance and quality of judicial service delivery. This to become one of the leading countries where the public prosecution is willing to introduce solutions for becoming the *excellent office of the public prosecution*, with similar high standards that are being used not only in certain court systems but in companies – like Apple – too. Therefore there is a need to introduce an (international) framework for the public prosecution too.

What should be the main elements of this framework for the public prosecutor?

Similar to the international framework of court excellence, the **framework for prosecution excellence** should contain the following key elements: (1) management (including management of resources) and leadership, (2) prosecution policies and plans, (3) efficient prosecution procedures (in civil and criminal law), (4) effective cooperation with relevant justice and police authorities, (5) a high quality of prosecution case files (indictments), (6) a high level of user satisfaction and public trust and (7) a high level of accessibility.

Let me start with the last point: **accessibility**. In the work of the public prosecutor in Portugal there are two main fields: the criminal proceedings and the civil proceedings (protecting the right of children and employees). With regards the civil proceedings it is important that *excellent offices of the public prosecutor* are easy accessible for citizens/employees with a labor dispute and are child friendly. Not only in physical terms (the premise of the office of the public prosecutor) should be easy accessible, but also with regards access to information all relevant information about the legal rights (and the role of the public prosecutor) should be made available in plain and easy to understand language on the website of the office of the public prosecutor and/or in the form of leaflets. Concerning the criminal proceedings accessibility is also an important aspect, especially when it comes to informing the legal rights to the suspect of a crime and defending the European human rights.

The second element of the *framework for prosecution excellence* is related to the **effective cooperation with the police and other justice authorities**. When the public prosecution is leading a police investigation it is important that there is mutual trust between the police and the office of the public prosecutor and that the information exchange between the police and the office of the public prosecutor is optimal organized<sup>5</sup>. The same principles are important for the relationship between the courts/judges and the office of the public prosecution. In some countries – I am not sure if this is in Portugal the case – public prosecutors can regulate the flow of cases by exercising a discretionary power to decide which cases will be brought before the court and which cases can be dealt without court proceedings. This can have a (positive or negative) impact on the workload of the courts. For this reason it is important that good performing offices of the public prosecution cooperate effectively with the courts, especially when it comes to the expected caseload for the courts<sup>6</sup>. With regards the civil law role of the public prosecutor an excellent office of the public prosecution must develop and stimulate contacts and cooperation with external institutions, such as the ombudsman, civil society organizations<sup>7</sup>, as well as organizations that represents the interest of children and employees.

The third element of the *framework for prosecution excellence* **concerns the development and use of (criminal) policies and (strategic and operational plans)**. Same as is the case for courts it is important that the offices of the public prosecutor (and at the highest level the office of the attorney general) will formulate on a regular basis their short-term, mid-term and long-

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<sup>5</sup> This is also true for the prison administration. See CCPE opinion No. 6 (2011).

<sup>6</sup> See: CCPE opinion No. 12 (2009) on the relations between the public prosecutor and the judges in a democratic society.

<sup>7</sup> See: CCPE opinion No. 3 (2008) on the role of the prosecution services outside the criminal law field.

term plans including defining their priorities with regards to law enforcement and the fight against certain types of crimes (e.g. terrorism, financial crimes, environmental crimes, drugs related crimes, international and trans-border crimes, small criminal offences, etc.). On the basis of a strategic plan of the office of the public prosecutor (and/or the office of the attorney general) yearly operational plans must be defined, containing clear performance targets, human, material and financial resources required.

The fourth element of the *framework for prosecution excellence* concerns a strong focus on *efficient work processes and procedures*. It is recommended that offices of the public prosecutor will analyze their work processes for criminal procedures and civil procedures (on the basis of business redesign models), detect potential causes for delays and stimulate the introduction of measures for improving the speed of working of the public prosecutor. In line with this approach it is of vital importance that there is a system of performance monitoring in place, where the quantitative performance (caseload of the public prosecutor, productivity, duration, success rates, etc.), can be monitored on a regular basis.

The *management (of resources) and leadership* of the office of the public prosecutor is the fifth element of the framework. To introduce reforms and innovations in the offices of the public prosecutor there is a strong leadership required at the top of the organization. However, also in other parts of the offices of the public prosecutor there are places where leadership should be stimulated. This to optimize a proper working culture in the prosecution services and also to provide employees at the lower level of the organization the opportunity to contribute to the improvement of the performance and quality of the work of the office of the public prosecution. In this sense, good leadership should be promoted at all levels.

Since the office of the public prosecutor is a human resources driven organization where the majority of staff are highly skilled professionals, it is important that the management of human resources is properly organized. Facilitating a system of continuous training and education, promoting international standards regarding the public prosecutor and applying code of conducts<sup>8</sup> is a minimum requirement.

Same is relevant for the management of financial and material resources. An excellent office of the public prosecution requires that the management of financial resources is properly organized and where the offices of the public prosecution have the budgetary freedom to allocate the budgetary resources according to the local needs. Most ideally, excellent offices of the public prosecution have a system of performance based budgeting in place, where there is a close connection between the budgetary needs required and the expected performance. In addition to this the offices of the public prosecution will be encourage to use IT solutions in their daily work, electronic case management information systems and an electronic exchange of documents and data between relevant justice and police authorities. Also excellence offices of the public prosecutor requires adequate premises where the public can be received, in order to maintain a proper level of transparency, public awareness and to facilitate access to justice<sup>9</sup>.

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<sup>8</sup> See: CCPE opinion No. 9 (2014) on European norms and principles concerning the public prosecutors.

<sup>9</sup> See: CCPE opinion No. 7 (2012) on the management of the means of the prosecution services.

The sixth element of the framework for prosecution excellence concerns the *high level of user satisfaction and public trust*. This can be achieved by collecting on a regular basis feedback information from the users of the services of the office of the public prosecution. Similar to the court user satisfaction survey in excellent prosecution services the application of a prosecution user survey is stimulated, as well as the use of other forms of feedback mechanisms such as client panels and a proper procedure for the handling of complaints.

For a high level of public trust in the prosecution not only all the previous elements must be included in a plan for improving the work of prosecutors, but also a high level of transparency and accountability of the public prosecution must be stimulated. This can be achieved through the use of websites, but also with the publication of (annual) reports and statistics, as well as the use of special spokespersons (this to enhance the relationship with the mass media)<sup>10</sup>.

The last – and not the least important - element of the framework for prosecution excellence touches the heart of the work of the public prosecutor, namely *the quality of the prosecution case files (indictments in criminal cases)*. Especially in preparing the indictments in criminal cases it is important that no technical-legal mistakes are being made. In certain countries small technical mistakes in an indictment may result in a dismissal of a criminal case ruining months of investigation and preparatory work of the police and the office of the public prosecutor. For this reason it is important that excellent offices of the public prosecutor maintain high quality standards concerning the drafting of indictments and preparing a case file for a court hearing. As a part of this technical process special attention must be paid on the personal data of the suspect(s), the criminal charges against the suspect(s), the evidence that is used to motivate the indictment and the criminal sanctions suggested by the prosecutor, the relevant articles that are being used for motivating the sanction proposed as well as jurisprudence. Besides the legal-technical requirements of the case file of the public prosecutor it is important to verify and control the level of completeness of prosecution case files (are all relevant documents included in the file and ready to be submitted to the court?) and the stimulation of the use of electronic files where all relevant material (documents, audio taps, video evidence, pictures and other relevant sources of evidence) is available for the public prosecutor, the defense lawyers and the courts.

#### *Where to start with the implementation of these ideas?*

When the public prosecution in Portugal is willing to improve the quality of judicial service delivery and its performance it is highly recommended to introduce the ideas for a framework for prosecution excellence in the offices of the public prosecutor. One of the first steps that can be taken is to identify a number of pilot offices of the public prosecutor that are willing to implement the framework for prosecution excellence. In these pilot offices of the public prosecution a survey among the police, justice authorities and the users of the public prosecutor (e.g. employees, children/adolescents) can be conducted to provide a first impression of the user satisfaction regarding the services provided by the public prosecutor.

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<sup>10</sup> See: CCPE opinion No. 8 (2013) on the relationship between prosecutors and the media.

This step can be followed by organizing a number of meetings with the prosecutors and the staff of the office of the prosecution to identify strong and weak points (a SWOT analysis<sup>11</sup>) when looking at the areas of excellence described in the framework for the prosecution excellence.

The results of the user surveys, a self-assessment of the office of the public prosecutor combined with performance statistics, must be used for the development of a plan for improving the performance and quality of service delivery of the office of the public prosecution. At the end of this cycle the process of implementing the framework for prosecution excellence must be evaluated and the results in terms of improving the performance and quality analyzed.

When this idea is followed and a number of offices of the public prosecution in Portugal will embrace this proposal, I hope that I can come back next time to this conference where the pilot offices of the public prosecution will show their good results and efforts to become *the excellent office of the public prosecution*. And maybe - but that is a dream - the offices of the public prosecution in Portugal will become *the leading prosecution agencies in Europe* with a similar kind a quality brand such as Apple and will inspire other European public prosecution agencies to follow the same path.

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<sup>11</sup> [http://en.wikipedia.org/wiki/SWOT\\_analysis](http://en.wikipedia.org/wiki/SWOT_analysis)