

THE NETHERLANDS

CODE OF CONDUCT

PUBLIC PROSECUTIONS SERVICE

As set down by the Board of Procurators General on July 11, 2000

CODE OF CONDUCT

1 GENERAL RULES

*An employee of the Public Prosecutions Service carries out his/her duties:*

- 1 within the limits of the law;
- 2 with special attention to the fundamental human rights;
- 3 with respect for the inherent human dignity, irrespective of person or status, and without discriminating as to religion, sex, sexuality, national origin, ethnicity, color, age or on any other ground;
- 4 Fairly, impartially, objectively and without fear;
- 5 in a way that can be monitored, also in retrospect, and so that an accounting can always be given of the choices made in the process of carrying out duties;
- 6 with due observance of the rules of proportionality and subsidiary;
- 7 in a way that is both conscientious and dynamic.

*Whether on or off duty, he/she conducts himself/herself:*

- 8 with due observance of the instructions in relation to the provision of information to third parties and observance of secrecy in respect of confidential information;
- 9 in accordance with the public character of the responsibility of the Public Prosecutions Service, where the work involves enforcing standards, which may mean that the employee's acts and omissions become the subject of public debate and thus can affect the prestige of the Public Prosecutions Service as a whole;
- 10 with the necessary integrity, which in any case shall be construed to mean that an employee does not perform any acts or hold any secondary jobs or carry out other activities that might influence his/her professional attitude of open-mindedness, or that might arouse such an impression.

2 RULES IN RELATION TO COLLABORATION

*1 Colleagues*

**A** Employees of the Public Prosecutions Service treat one another with respect.

**B** Employees of the Public Prosecutions Service are result-oriented in the way they work together, and they communicate in openness.

**C** Employees of the Public Prosecutions Service have mutual and reciprocal consideration for each other's duties and responsibilities, and do not ask one another to perform services that would complicate these duties and responsibilities.

## **2** *Employees*

**A** Employees of the Public Prosecutions Service account for their work and the way in which they have done it to their superior.

**B** Employees inform their superior in a timely fashion, without necessarily being asked to do so, in respect of matters which, in reasonableness, are important for their superior to know.

## **3** *Superiors*

**A** A superior adopts an attitude of openness and receptiveness in respect of his/her employees.

**B** A superior deals fairly with his/her employees and sets a good example.

**C** A superior informs the employees in respect of matters which are necessary for them to know if they are to perform their duties properly and well.

## **4** *The public prosecutor's office*

The various public prosecutor's offices work together in a manner that is result-oriented and they communicate in openness.

## **5** *Consultation with the head of a public prosecutor's office*

In case of doubt as to whether a proposed action is justifiable, an employee of the Public Prosecutions Service shall consult with his/her superiors and/or with the head of the public prosecutor's office in question.

# **3 SPECIFIC RULES IN RESPECT OF THE WORKING ENVIRONMENT**

## **1** *The court*

**A** An employee of the Public Prosecutions Service gives a full accounting to the court of all cases that have been put before it.

**B** With the exception of that which takes place at the court hearing, an employee of the Public Prosecutions Service shall not furnish to the court any information about matters in which this court must judge, or may have to judge in the future, unless it is immediately substantiated by a written document which constitutes part of the case file.

**C** For purposes of development of law, with the consent of the head of the public prosecutor's office, a public prosecutor may put before the court a standpoint

that purposely deviates from existing case law or legal views. He/she shall do so explicitly, stating reasons.

**D** In his/her dealings with the court, a public prosecutor shall refrain from conduct that might call the impartiality of the court into question.

## **2** *The suspect and his/her counsel*

**A** Except in special circumstances, a public prosecutor shall not decide to prosecute in a criminal case if he/she is not convinced in all conscience that there is sufficient legal evidence available to allow the court to declare that the charges have been proved.

**B** If evidence has been obtained in a manner that constitutes a gross violation of the fundamental rights of the suspect, a public prosecutor will not make use of that evidence, except to initiate legal proceedings against the persons responsible for this violation.

**C** In his/her investigation, a public prosecutor addresses his/her actions at finding the objective truth. He/She is open-minded and honest, and includes in his/her considerations all circumstances, both those that are incriminating and those that are disculpatory.

**D** If a public prosecutor should have factual information that disculpates a suspect or that is to the advantage of the suspect in the case, or that is essential for the court to arrive at its decision, then he/she shall provide this information at his/her own initiative.

**E** A public prosecutor shall ensure that the defense can take cognizance of the case documents in a timely fashion.

## **3** *The victim*

An employee of the Public Prosecutions Service must show special concern in respect of victims of offences and their next-of-kin. He/she shall make efforts to ensure their interests properly. He/she shall actively furnish information about their rights, about the outcome of the case.

## **4** *Witnesses*

An employee of the Public Prosecution Service shall make every effort to ensure that witnesses are not burdened by the giving of evidence any more than is necessary in the interests of a good administration of justice. If necessary, he/she shall take measures to protect the physical and mental integrity of witnesses, as well as their property and that of their next-of-kin.

## **5** *The Minister of Justice*

**A** An employee of the Public Prosecutions Service shall act in accordance with instructions given. At the court session, a public prosecutor will loyally defend any instructions he/she has been given. He/she is free, however, to call attention to considerations in respect of the law that the court, from a point of view of objectivity, ought to include in its opinion on the case at hand.

**B** An employee of the Public Prosecutions Service shall have an eye for the consequences that his/her actions or omissions may have for the political responsibility of the Minister of Justice

## **6** *Public administration*

**A** In his/her dealings with the public administration, an employee of the Public Prosecutions Service always aims to work in purposeful collaboration. In doing so, he/she furthers and promotes maintenance of law and order with a particular view to a well-considered and fair use of the possibilities offered by criminal law.

**B** As a representative of the Public Prosecutions Service, an employee of the Public Prosecutions Service shows himself/herself to be a reliable discussion partner.

**C** With a view to the incorruptible operation of public administration, a public prosecutor shall particularly ensure for a due and proper prosecution of offences committed by public servants and other offences which might be disparaging for the integrity of the public administration.

## **7** *The police force \**

**A** A public prosecutor shall adopt an attitude of openness and receptiveness vis-à-vis the police force, shall take unambiguous decisions and shall take his/her responsibility.

**B** A public prosecutor shall see to it that the police act lawfully and properly.

**C** A public prosecutor shall ensure that the police submit reports that are truthful and complete.

**D** A public prosecutor shall ensure that he/she is informed of investigative actions undertaken by the police in a criminal investigation and that he/she can justify these actions to the court during the hearing session.

## **8** *Society*

In the exercise of his/her job, an employee of the Public Prosecutions Service shall conduct himself/herself courteously and conscientiously toward all those with whom he/she comes in contact.

## **9** *The media*

In individual criminal cases, a public prosecutor only expresses himself about that case in public in the courtroom, during the public hearing. This does not detract from the fact that an employee of the Public Prosecutions Service who is in charge of

maintaining contacts with the press shall give to the press as much objective information as is justified at that time -- taking into consideration all circumstances which are at issue.

#### **10**      *Other countries*

In handling requests for mutual legal assistance, an employee of the Public Prosecutions Service shall provide the required help and in doing so, shall exercise the same care and caution as he/she would in his/her own cases.

\* The police force is deemed to include all special investigating officers.

### **4**      **OTHER ASPECTS**

#### **1**      *Compliance*

The code of conduct in this guide will have to come alive in everyday practice. The code of conduct aims to promote that a climate is achieved within the constituent parts of the organization in which problems (whether moral or otherwise) are recognized and are open to discussion.

The code of conduct does not give independent disciplinary or public service rules other than those that arise from existing legislation and regulations. Nor was it decided to introduce a specific complaints procedure: internal corrective procedures and incentives are already in place. In this way, it is hoped to do justice to the intended nature of the document: a living instrument that serves as an incentive in further shaping ethical awareness within the Public Prosecutions Service.

The form of the code of conduct (that of a guideline) limits the invocation by third parties of compliance with the code of conduct. Its external influence goes no further than the consequences that arise from existing legislation and regulations comprising obligations of the Public Prosecutions Service or its individual employees.

#### **2**      *Evaluation and amendment*

Because rules in the code of conduct may lose their validity, or other rules may develop that are deserving of a place in the code of conduct, it is in the interests of the organization that the code of conduct remains up to date. The code of conduct will therefore be evaluated periodically for this purpose.

### **BACKGROUND**

As the Public Prosecutions Service, we are responsible for maintaining law and order. Together with public administrative bodies, the police force, the courts and other organizations, we promote compliance with the law and we take action against people who violate those rules. We feel that society may therefore expect us as a law enforcement agency to act fairly and respectably in doing our work. This guide, as a derivative of that vision, sets down in writing for all employees of the Public

Prosecutions Service the standards of conduct that they observe in carrying out their responsibilities. The great majority of these standards have been brought together from international treaties, statute law, case law and other sources that have long served as an inspiration to the Public Prosecutions Service and that are simply taken for granted by many. Some of the behavioral standards will need to be given a more concrete definition in terms of daily practice so that they can also start to function as genuine guidelines in our professional practice.

This guide is expected to grow and expand over the years into a document in which the people in the organization recognize themselves, and about which they will say that it definitely offers grip as they carry out their responsibilities in their daily jobs.

This code of conduct is not so much intended as a legally conclusive system of rules, but more as a set of general principles that are leading for the conduct of employees of the Public Prosecutions Service: the code of conduct serves as a reference point for our own actions, but also as a guideline. It goes without saying that responsibilities arising from other regulations and, ultimately, a person's own responsibility, continue to remain in full force.

The code of conduct applies for all employees of the Public Prosecutions Service, and not merely for public prosecutors and advocates-general. In fact that speaks for itself in an organization in which much of the work is teamwork, in which powers are sometimes given in the form of mandates and in which many members of the team maintain contacts with third parties. This does not detract from the fact that some rules of conduct primarily revolve around powers that are exercised by public prosecutors and advocates-general. Wherever that is the case, for the sake of conciseness, these rules are addressed to public prosecutors. When it is a matter of mandated powers as referred to in article 126 of the Judiciary (Organization) Act, then the rule also applies to the employees of the public prosecutions office who make use of the mandated power.

Most rules, including all general rules in the code of conduct, apply to every single employee of the Public Prosecution Service.

In formulating the code of conduct, it has been attempted to relate it to the oath (article 5 of the Judiciary (Organization) Act) which is taken by all judicial officials upon their acceptance of office. The oath which is taken by members of the judiciary dates from 1827 and reads as follows:

*“All the members of the judiciary named in this present act, each of them in the manner of his religious affinity or philosophy of life, before taking office, shall take the oath (make the promise) that they will be loyal to the King, and will maintain and comply with the Constitution; that they have not given or promised anything, nor will they give or promise anything, in order to obtain their appointment, either directly or indirectly, under any designation or pretence, to any person whomsoever; that they*

*will never accept or receive any gifts or donations whatsoever from any person of whom they know or suspect that he is involved in legal proceedings or in a lawsuit, or will become thus involved, in which they might be required to act in an official capacity; that they, furthermore, will fulfil their posts with honesty, accuracy and impartiality, without discrimination of persons, and will conduct themselves in the exercise of their duties as behaves brave and honest judicial officials.”*

The object was to focus on specific qualities or aspects of the Public Prosecutions Service and on a contemporary interpretation of the more than 170-year-old oath. Other employees of the Public Prosecutions Service take a different oath or make a different promise upon accepting office: because it is briefer, it offers fewer points of departure for elaboration into a code of conduct. For this reason, the judiciary oath with its broader scope was taken as a basis.

Transitional law

This guide applies as from the date of its entry into force.