

GENERAL PROSECUTOR'S OFFICE

# The Prosecution Service. Organic Statute



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**1. ACT 24/2007, OF OCTOBER 9 th, TO AMEND THE ACT  
50/1981, OF DECEMBER 30 th, ON THE ORGANIC STATUTE  
OF THE PROSECUTION SERVICE.**

**JUAN CARLOS I  
KING OF SPAIN**

Those who can read and understand this document:  
Know that the Spanish Parliament has passed the following.  
Act and I execute it.

**PREAMBLE**

**I**

According to Article 124 of the Spanish Constitution, the mission of the Prosecution Service is to further the action of justice in defence of the law, citizens' rights and the public interest as laid down by law. The former Organic Statute, enacted under Act 50/1981 of 30 December, required substantial amendment to enhance the Service's effectiveness and efficiency in the fulfilment of a such a solemn mission. While that Act constituted a sound basis for regulating the Prosecution Service for twenty-five years, it was in need of a thorough overhaul to adapt it to new social demands.

The Service's specialised and geographical structures had to be reorganised to accommodate, on the one hand, social, economic and technological development and the consolidation of the State of Autonomous Communities; and on the other, the evolution of procedural

law, criminal procedural law in particular, toward formulas calling for a wider scope of action and a more active role on the part of Public Prosecution. The aim was to attain the necessary unity of action that would guarantee all citizens anywhere in Spain equal accessibility to a public prosecutor and to the Service's specialised expertise.

The reform sought, firstly, to reinforce the independence of the Prosecution Service as a body of constitutional significance and improve its functional capacity, focusing particular attention on the General Prosecutor's Office. It also sought to modernise the Service's structure, pursuing higher performance via specialisation and geographic rearrangement. Lastly, it introduced technical improvements that affect the regulation of prosecuting authorities' external and internal operating procedures, while attempting to establish a clearer definition of the Corps of Public Prosecutors, rationalising its hierarchical pyramid.

## II

One of the objectives pursued in the reformed Statute was to afford the Service greater independence in the performance of its duties. That in turn would reinforce the public's perception of the principle of impartiality that governs this public service, pursuant to the provisions of Article 124.1 of the Constitution.

To this end, the 2007 reform modified the system for appointing and dismissing the General Prosecutor by including additional guarantees in the respective regulations that conform fully to the system laid down in Article 124 of the Constitution. Under the new provisions, the Administration's nominee for General Prosecutor, designated after statutory consultation with the General Council of the Judiciary, is summoned to a Chamber of Deputies commission hearing prior to appointment by the King. The requirement to base dismissal on objective grounds and the disappearance of the executive's prerogative to separate the General Prosecutor from service at its discretion constitute further guarantees of the independence afforded the position.

Greater independence for public prosecution is ensured in yet another manner in the new wording. The participation of the Board of High Prosecutors<sup>1</sup>, the General Prosecutor's senior-most advisory body, is now mandatory whenever he/she issues instructions to subordinates in connection with any matter involving members of the government, whether as plaintiffs or defendants in the action.

Likewise in the pursuit of greater independence, the procedures for

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<sup>1</sup> T.N.: In Spain, High Prosecutors are the chief prosecutors in Sections (=Divisions) of the Supreme Court and the Special Prosecutor's Offices or hold other positions of similar responsibility within the Prosecution Service.

recusal of prosecutors were amended. The new arrangements stipulate that the decision whether or not to disqualify the General Prosecutor in such cases is incumbent upon the Prosecution Service itself, and specifically upon the Board of High Prosecutors, in keeping with its status as a collegiate, and essentially judiciary, body.

Finally, the present text reconfirms the neutral and operational nature of the technical bodies subordinate to the General Prosecutor's Office by explicitly prohibiting the members of the Technical Secretariat, the Support Unit and the Inspection Bureau from running for seats on the Prosecution Council.

### III

Structural modernisation and rationalisation of the Prosecution Service constituted another of the chief objectives of the reform. To this end, the position of Deputy Chief Prosecutor of the Supreme Court was reinforced by explicitly redefining the position's routine management functions in the Prosecutor's Office at the Supreme Court and reasserting his/her role as substitute for the General Prosecutor. This enhancement of institutional significance is reflected in the qualifications for the position, which require candidates to have served for at least three years as a category one public prosecutor.

With the Support Unit, the reform introduced a body whose membership includes prosecutors and other government officials. Its task is to assist the General Prosecutor's Office in connection with: institutional representation and relations with public authorities; communication and media relations; management of citizen support services; and analysis of and decision-making on the Prosecution Service's organisational and operational needs in the areas of statistics, information technology, staffing, material resources, information and documentation.

The creation of the Armed Forces Prosecutor's Office as an institution subordinate to the Service is an innovation fully compatible with the provisions of Constitutional Act 4/1987 of 15 July on Jurisdiction and Organisation of the Military Judiciary. Hence the suitability of its systematic inclusion in the Statute, in keeping with the principle of institutional unity, despite the fact that, with the sole exception of one High Prosecutor, this Prosecutor's Office is not staffed by members of the Corps of Public Prosecutors.

To further rationalise departmental operation, provision was made to regulate the position of High Prosecutor Delegate, thereby institutionalising the General Prosecutor's standard practice of delegating tasks. On the one hand, this arrangement lightens the burden on the General Prosecutor. On the other, it facilitates the

assumption of responsibility by the High Prosecutors Delegate for coordinating and issuing criteria and submitting proposals to the General Prosecutor on any necessary circulars or instructions. The specialised expertise and experience of these Prosecutors Delegate in the performance of such tasks contributes effectively to the attainment of unity of action.

#### IV

With a view to achieving more efficient performance, the reform called for greater specialisation in the Prosecution Service, to better respond to the recent appearance of new forms of crime. This approach is most visible in the provisions on the Special Prosecutor's Offices. This general term now covers two such offices that were already in place nation-wide and whose respective regulations have now been consolidated to unify their nature, organisational structure and operation, as far as possible. The first change introduced affected the names of these two Special Prosecutor's Offices, now designated the Special Prosecutor's Office against Illegal Drug Trafficking and the Special Prosecutor's Office against Corruption and Organised Crime.

In its definition of the areas of competence reserved to Illegal Drug Trafficking the new Statute seeks, firstly, to simplify the former, overly casuistic and largely redundant enumeration of duties. Secondly, it aims to extend the Office's scope of action to all cases and procedures referring to events whose subject matter falls within its jurisdiction. At the same time, illegal drug traffic-related money laundering is explicitly included in its area of competence.

The Special Prosecutor's Office against Corruption and Organised Crime was reformed more extensively, modernising the list of target offences from a clearly forward-looking perspective. Provision has been made for the future inclusion of private sector corruption in the Penal Code, further to Spain's European commitments in the area of legislative harmonisation. At the same time, references to the numerical scheme for locating types of offences in the Penal Code have been replaced by generic reference, *nomen juris*, to the offences themselves, which is much less changeable. The most significant reform in respect of this Special Prosecutor's Office, however, is the expansion of its scope of action to all manner of activities, presumed to constitute offences, that hitherto lay outside its competence, namely all activities associated with the general concept of organised crime.

To further enhance its efficiency, the Office is now allowed more time, up to twelve months, to conduct enquiries into the matters in which it is competent. Where warranted, moreover, this period may be extended by a duly substantiated order from the General Prosecutor.



## V

The reform re-regulated the Prosecution Service to achieve a dual objective: on the one hand, to adapt it to the country's political geography (the State of Autonomous Communities) and on the other to establish a more efficient areal structure, better equipped to fulfil the duties attributed to the Service.

The prosecutor's role was reinforced in all respects to adapt the Prosecution Service's geographical organisation to the State of Autonomous Communities model laid down in the Constitution. A new position created to this end, Chief Regional Prosecutor, replaces the former Chief Prosecutor of the Superior Courts of Justice. These new Chief Prosecutors represent the Service within their autonomous communities, in addition to assuming management of its duties on the regional scale. The position has yet another institutional dimension in the interaction with regional authorities: Chief Regional Prosecutors are required to submit and, as appropriate, present the yearly review of their activities to the regional legislature.

The necessary adaptation of the Service's geographic structure to the State of Autonomous Communities was furthered by the creation of the Board of Chief Regional Prosecutors. This measure purports to organise the areal dimension of public prosecution around a collegiate vertex whose embodiment prior to the reform was exclusively radial, with no institutional mechanisms for horizontal coordination. And yet such mechanisms have proven to be indispensable for adequate and effective implementation of the principle of unity of action throughout the country.

## VI

Another organisational change entailed the modification of the relationship between the Service's provincial and regional structures, and the explicit establishment of a hierarchy between the Chief Regional and Chief Provincial Prosecutors. The former presides over the provincial officials in the Regional Board and is vested with all the functions inherent in hierarchical superiority pursuant to the rules emanating from the Statute.

Consequently, in the present Statute the former Prosecutor of the Superior Court of Justice is designated Chief Prosecutor of the Regional Prosecutor's Office, which is a body separate from the Prosecutor's Offices at the Provincial Courts. The result of this division is the establishment of a new position, Chief Provincial Prosecutor, where the former structure had only one Prosecutor of the Superior Court of Justice. Accordingly, provision is made for the appropriations needed to maintain a regional prosecution staff whose members conduct Superior

Court cases, in light of the foreseeable increase in the volume of activity as a result of the procedural reforms presently underway. Nonetheless, in regions with a single province where the workload does not justify such duplication, these duties may be concentrated in a single Prosecutor's Office, as under the former arrangements. The difference lies in the fact the new Offices are regional in scope and headed by a Chief Regional Prosecutor.

## VII

In pursuit of more efficient geographical coverage in the performance of Prosecution Service tasks, changes were introduced in its provincial organisation as well as in the areal structure of its specialised services by establishing new sections.

At the provincial level, what was traditionally known as the Prosecutor's Office at the Provincial Court has been renamed the Provincial Prosecutor's Office, for in fact it handles not only cases attributed to the provincial Court, but renders services to all courts within the province.

The chief innovation in this regard is the creation of a sub-provincial structure, which revolves around two new institutions: the Area<sup>2</sup> Prosecutor's Offices and the Territorial Sections of the Provincial Prosecutor's Office. The provision in the Statute for sub-provincial organisational arrangements is fully justified by two considerations. One is the intention to improve substantially on the system of detachments (now known as out-reach facilities). The other is the need for a local structure within the Prosecution Service's provincial organisation able not only to bring judicial services closer to citizens living outside the capital city, but also to accommodate the possible future role of prosecutors as directors of criminal investigations.

To this end, the reform provided for the institution of Area Prosecutor's Offices in places which, while not provincial capitals, have a sizeable population and a significant concentration of judicial bodies. The existence of stable Divisions of Provincial Courts is explicitly mentioned as a circumstance in which the creation of these bodies is mandatory. The new Offices, independent of and separate from the Provincial Prosecutor's Offices, are headed by a Chief Prosecutor subordinate to the Chief Provincial Prosecutor. Chief Area Prosecutor positions are filled via competitive processes. These Area officials, together with all the Senior Prosecutors in the province, sit on the Coordination Board, which is presided by the Chief Provincial Prosecutor.

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2 T.N.: Approximately equivalent to district prosecutor's offices.

The final component in the system consists in the Territorial Sections of the Provincial Prosecutor's Offices, which are merely small out-reach facilities, to use the present terminology. This provision is designed to ensure prosecution services in places which, while not meeting the requirements for the establishment of an Area Prosecutor's Office, need a prosecutor in situ for reasons of distance from the provincial headquarters or whatsoever other. While these sections form part of the Provincial Prosecutor's Office from the hierarchical standpoint and are headed by a Senior Prosecutor, the positions assigned thereto are nonetheless separate from the parent Office. This arrangement, as in the case of the former detachments, is intended to ensure the prosecutors occupying such positions due legal certainty in respect of their employment situation.

Another objective in the attainment of areal efficiency in the Prosecution Service was the consolidation of the principle of specialisation as a substantial part of the Service's organisational structure. To this end, the present Statute clarifies the organisational and operational guidelines for both the Prosecutors Delegate working out of the Special Prosecutor's Offices and the Specialised Sections in the Service's regional, provincial, and area bodies.

As regards the Special Prosecutor's Offices, the new Statute endorses the de-clustered organisational model and unifies its implementation with the clarification of the rules governing the designation of Prosecutors Delegate in the regional and provincial offices. More specifically, their functional bond to and hierarchical relationships with the national body's Chief Prosecutor are defined. These provisions are designed to avoid as far as possible – and especially to simply and speedily settle – any disputes that may arise as a result of Delegates' "dual subordination" to the Special and Regional Prosecutor's Offices. One element essential to achieving this aim is the specific determination of the time to be devoted (full or part) by the Prosecutor Delegate to the duties in question, which must be specified in the General Prosecutor's instructions and especially the decree of appointment. Equally important is the stipulation that Delegates must be fully incorporated into the regional Specialised Section, if any, handling the types of crimes concerned, to enhance coordination and prevent duplication of effort on the part of the Special and Regional Prosecutor's Offices.

The Statute also provides for the creation of sections specialising in specific matters in the regional, provincial or area offices. While this organisational solution was already in place in many prosecutor's offices, prior to the reform explicit legal backing for these arrangements existed for cases involving minors and gender violence only. The aim is to clarify and ensure homogeneity of the organisational model in accordance with the each office's workload and staff size. The name adopted for these subdivisions in all Prosecution Service bodies is

“Sections”. The existence of single person sections is not regarded to be anomalous, but rather the solution to the problem of accommodating an organisation comprising subdivisions with very different dimensions to a uniform scheme. This enables specialised prosecutors either to dedicate all of their time to their speciality or reserve part of it for other duties, depending on the characteristics of the office in question; and in smaller places, it enables them to readily assume several specialities. Consequently, the respective Prosecutor's Office can offer local communities specific and accessible service with the same familiar characteristics nation-wide. These arrangements also serve as an internal reference, for they create genuine specialist networks in the organisational skeleton able to ensure vertical coordination and unified criteria, from the respective High Prosecutor Delegate down. At the same time, the Chief Prosecutors of regional, provincial and area bodies maintain their organisational powers and position in the hierarchical chart. The establishment of sections need not, however, be limited to the handling of specific subjects, but may also be a way, in larger Prosecutor's Offices, to rationalise and distribute casework in general, as has in fact been standard practice in major cities in recent years.

Depending on their dimensions and workload, these sections may be created wherever local staffing permits. They are headed by the Senior Prosecutor nominated by the Chief Prosecutor and designated by the General Prosecutor pursuant to the model introduced by Act 14/2003. The name used in that legislation (Prosecutor Delegate) has been changed, however, to avoid possible confusion with the Prosecutors Delegate working out of the Special Prosecutor's Offices, wherever such positions exist. Both functions may, naturally, converge on a single person, through the respective appointment mechanisms.

## VIII

The Statute also introduces a series of organisational changes in the Corps of Public Prosecutors to provide for mobility and temporary assignment to positions, as well as to modernise the infringement and penalisation scheme.

Firstly, it adjusts the system of inter-category promotions, specifically as regards the role assigned to the Prosecution Council with respect to the proposals that must be formulated by the General Prosecutor. In this regard, the wording of Article 13.1 is adapted to the Supreme Court's interpretation of former Article 13.1.b), which has gone unchallenged since the ruling was delivered nine years ago now.

The provisions on term in office were the object of specific revision to bring the principle closer into line with its ultimate purpose, namely to ensure periodic renewal in the exercise of public responsibility. The present scheme, indeed, is more consistent than life-long tenure with

the operational rules of a democratic society. A second aim is to establish a reasonable degree of rotation among designees that may serve as a professional incentive for prosecutors. To this end, the Statute confirms the temporary nature of all executive or self-coordinating positions: i.e., tasks above and beyond the mere fulfilment of delegated functions, which are obviously subject as well to the general rules on revocability and extinction upon separation of the delegator. This measure aims to dispel the doubts that regulatory insufficiency or lack of coordination had generated around the position of Prosecutor Delegate, specifically in the Gender Violence Section and the Support Unit. Under a very literal reading of the former Statute, these single person bodies with no Prosecutor's Office might have been thought to be excluded from the provisions of its Article 41, which provided for periodic renewal only for the High Prosecutors in the Prosecutor's Offices at the Supreme Court. The present wording clearly stipulates that Chief Prosecutors and all other persons holding a position of specific personal responsibility, defined by law or explicitly included as such in the organisational chart, are appointed for five-year terms.

The principle of fixed-term appointment is explicitly applied as well to the Chief Prosecutors with the Technical Secretariat and the Support Unit. Since the officials holding these positions are freely designated, the length of their term is naturally dependent upon that of the General Prosecutor who appointed them. These bodies, however, not only assist the General Prosecutor, but also fulfil functional duties of cardinal importance for the operation of his/her Office and the Prosecution Service as a whole. Consequently, their head officers are expected to remain in service after separation until replaced or confirmed by the incoming General Prosecutor, to ensure that indispensable activities are not neglected due to a change in Service directorship.

Another innovative provision in respect of terms in office is the introduction of a maximum total term, namely ten years, for the position of Prosecutor Inspector. The need to limit this term is justified by the requirement to guarantee a certain degree of renewability in a body that plays such an essential role in disciplinary matters. The establishment of life-long positions would directly challenge its effectiveness and efficiency. Moreover, life-long tenure would entail a departure from practice in other technical bodies of a similar nature, such as the General Council of the Judiciary's Inspection Bureau.

The new Statute not only establishes the principle of fixed terms, but defines the effects of the system of periodic renewal. It therefore makes outgoing High Prosecutors assigned to positions outside the Supreme Court eligible for assignment to the Prosecutor's Office at the Supreme Court, just as they were under the former arrangements, or to any other Office with a category one Chief Prosecutor. The aim is to draw from these professionals' experience and expertise. In the case of Regional, Provincial and Area Prosecutor's Offices, outgoing Chief Prosecutors

are given the option of remaining in the body they had headed or returning to the Prosecutor's Office in which they served prior to their appointment.

This approach, i.e., the application of constitutional and democratic principles such as fixed-termed appointment to positions entailing special responsibility in institutional operation, was introduced by Act 14/2003 of 26 May. For reasons of consistency, the same criterion must be applied to the Deputy Chief Prosecutors in Prosecutor's Offices with a category one Chief Prosecutor, as well as to the former Deputy Chief Prosecutors at the Superior Courts of Justice. With regard to the former, this is an acknowledgement of the contrast between the enormous importance of the duties performed by such bodies and the relatively small size of their staffs. Such circumstances frequently oblige the Deputy Chief Prosecutor not only to replace the Chief prosecutor where the law so requires, but also to assume duties of great responsibility and consequence that the latter is unable to embrace. Given the nature of the position and the category of the official replaced, such stand-in functions determine a very high level of responsibility. The measure is also justified in the case of Deputy Chief Prosecutors at Superior Courts of Justice because under the new organisational scheme, with the creation of the Regional Prosecutor's Offices, they hold the very same position. Therefore, they assume functions which, in their capacity as substitutes for or deputies to the Chief Prosecutor, may entail new responsibilities of a higher order than formerly conferred on them. Moreover, for reasons of internal consistency, if life-long terms were honoured, the system would inevitably be faced with a paradox: the placement of such Deputy Chief Prosecutors in a position, albeit by delegation or temporarily, of hierarchical superiority with respect to Chief Provincial and Area Prosecutors, but not subject to the five-year review that is implicit in the latter two positions.

The disciplinary system, in turn, is adapted so that, in the event of offences committed with malevolent intent, prosecutors are given the same option as is in place for judges: namely, in the event of less serious misconduct, they may apply to the General Prosecutor for flexibilised enforcement of sanctions involving separation from the Corps of Public Prosecutors. Another amendment introduced in the present wording of the Statute is geared to attaining the general objective of greater independence for the Prosecution Service. This involves penalising conduct that may jeopardise prosecutors' impartiality, such as invoking their professional position when participating in political events or praising or censuring public authorities, officials or corporations. Lastly, greater consistency is introduced in the system for evaluating the knowledge and use of vernacular languages in the autonomous communities concerned. In the new Statute, a prosecutor's unjustified refusal to use a language after being credited for having a proven command thereof is defined to constitute a minor infringement.

## **2. ORGANIC STATUTE OF THE PUBLIC PROSECUTION SERVICE.**

### **TITLE I**

#### **The Prosecution Service and its duties**

##### **Chapter I** *The Prosecution Service*

###### *Article 1*

The mission of the Prosecution Service is to further justice in the defence of law and order, citizens' rights and the public interest protected under law, ex officio or at the request of the parties concerned, and safeguard the independence of the courts and advocate the social interest.

###### *Article 2*

One. The Prosecution Service is a body of constitutional significance with legal personality, integrated in the Judiciary but operating autonomously therefrom. It pursues its mission with its own resources in keeping with the principles of unity of action and hierarchical order and subject at all times to those of legality and impartiality.

Two. The name Prosecution Service is exclusively reserved to this body.

## **Chapter II** *Duties of the Prosecution Service*

### *Article 3*

To fulfil its missions as laid down in Article 1, the Prosecution Service:

One. Seeks to ensure that jurisdictional functions are performed effectively and in keeping with the law and within the time limits and terms stipulated thereunder, instituting all pertinent actions, appeals and proceedings.

Two. Fulfils all duties attributed thereto by law in defence of the independence of judges and courts.

Three. Guarantees respect for constitutional institutions and fundamental public rights and freedoms through whatsoever actions are required for their defence.

Four. Institutes criminal and civil action for offences and misdemeanours or challenges action brought by others, as appropriate.

Five. Brings proceedings, urging the judicial authority to adopt any interim measures as may be in order and to conduct enquiries geared to clarifying the facts. It may also undertake such investigations directly in the scope of the Constitutional Act on the Criminal Liability of Minors, in which it may order the Judicial Police to conduct any enquiries deemed appropriate.

Six. Participates, in the defence of the law and the public or social interest, in proceedings relating to civil society and any others laid down by law.

Seven. Participates in civil proceedings as provided by law when the public interest is compromised or when minors or disabled persons are involved, until such time as ordinary proxy mechanisms can be implemented.

Eight. Maintains judges' and courts' integrity of jurisdiction and competence, initiating proceedings on conflicts of jurisdiction and questions of competence as appropriate, and participates in similar actions brought by others.

Nine. Oversees the enforcement of court decisions affecting the public or social interest.



Ten. Secures procedural protection for victims and protection for witnesses and experts, instituting the existing mechanisms to provide such witnesses and experts effective aid and assistance.

Eleven. Takes part in appeals for protection of rights as well as in questions of unconstitutionality in the instances and form provided in the Constitutional Court's Statute.

Twelve. Lodges applications for protection of constitutional rights, and takes part in processes heard by the Constitutional Court in defence of the law, in the manner laid down by the legislation in force.

Thirteen. Fulfils its duties respecting the criminal liability of minors as laid down in specific legislation, aiming at all times to secure the minor's greater interest.

Fourteen. Participates in the circumstances and the manner provided by law in proceedings brought before the Court of Auditors. It likewise defends the law in any administrative or labour law proceedings in which its participation is in order.

Fifteen. Institutes or, as appropriate, provides the international judicial assistance stipulated by law or in treaties or international conventions.

Sixteen. Fulfils any other duties attributed thereto by the national body of law.

As a general rule, prosecutors may participate in proceedings in writing or in person. They may also use technological media for this purpose, providing the due fulfilment of their duties is ensured and the validity of the proceedings in question guaranteed. Except where otherwise stipulated by law or where they act as plaintiffs, prosecutors will be the last to address the court in non-criminal proceedings.

#### *Article 4*

To perform its duties, the Prosecution Service may:

One. Inquire about judicial resolutions or information on the status of proceedings, asking to see the records regardless of the status thereof; receive a copy of any proceedings to secure strict enforcement of the law within legal time limits and terms; and bring appeals for revisions as appropriate. It may likewise request information on the facts occasioning proceedings of whatsoever

nature when there is sound reason to believe that competence to hear or conduct such cases may lie with a body other than the body so doing. It may also secure direct access to information in official registries not subject to judicial control.

Two. Visit detention, penitentiary or correction centres of whatsoever nature within the respective geographical competence, examine inmates' files and compile any information deemed necessary.

Three. Call for assistance from authorities of whatsoever nature and from their agents.

Four. Issue orders and instructions to the Judicial Police as appropriate depending on the case.

Five. Inform public opinion of any events taking place within the scope of its competence, honouring the sub judice rule and more generally, the duties of discretion and cautionary silence inherent in the position and the rights of those concerned.

Authorities, officials, bodies or individuals subpoenaed by the Prosecution Service in the exercise of the powers enumerated in this and the following article must inexcusably comply therewith, within legal limits. They must also appear before the prosecutor when summoned, likewise within legal limits.

Six. Establish relationship centres for victims and injured parties in criminal offences committed in its jurisdiction, when criminal proceedings are underway therein. Such centres, which are to be located at the Provincial Prosecutor's Office headquarters and wherever else deemed necessary, will collect information on the harm inflicted and enable the parties concerned to submit documents and any other evidence at hand to substantiate the nature and scope thereof.

### *Article 5*

One. Reports of wrongdoing may be addressed to prosecutors and referred thereby to the judicial authority or dismissed when the prosecutor finds no grounds for action, in which case the party concerned must be notified accordingly.

Two. Similarly, to clarify events occasioning charges or that appear in the reports of the cases assigned thereto, prosecutors may conduct or order any enquiries for which they are empowered

under the Code of Criminal Procedure, none of which entail the adoption of interim measures or the curtailment of rights. Prosecutors may, however, order preventive detention.

All the enquiries conducted by the Prosecution Service or under its supervision will be granted the benefit of authenticity.

Such enquiries will be informed by the principles of contradiction, proportionality and defence.

To this end, prosecutors will take the suspect's statement. Suspects must have legal counsel and may demand to be fully informed of the content of the proceedings conducted. The duration of such proceedings must be in proportion to the nature of the event investigated and may not exceed six months, barring an extension approved by a duly justified order issued by the General Prosecutor. Enquiries to investigate offences referred to in Article nineteen, item four of the present Statute may be conducted for a maximum of twelve months, barring an extension approved by a duly justified order issued by the General Prosecutor.

Three. Regardless of the status of the enquiry at the end of the time limit, if the investigation finds evidence of events with criminal significance, prosecutors will proceed to bring the case to trial, lodging the respective charge or complaint, unless dismissal is in order.

Prosecutors may also conduct pre-trial enquiries intended to facilitate fulfilment with other duties attributed thereto by law.

### **Chapter III** *The principles of legality and impartiality*

#### *Article 6*

Pursuant to the principle of legality, the Prosecution Service will act in accordance with the Constitution, the laws and other regulations comprising the body of law. It will call for, inform and, as appropriate, institute actions accordingly or challenge any actions wrongfully brought, to the extent and in the manner provided by law.

If prosecutors deem that the actions or proceedings entrusted thereto are not in order, they will exercise the powers stipulated in Article 27 of this Statute.

*Article 7*

Pursuant to the principle of impartiality, the Prosecution Service will act objectively and independently in defence of the interests entrusted thereto.

**Chapter IV** *The relations of the Prosecution Service's relations with public authorities*

*Article 8*

One. The government may ask the General Prosecutor to institute legal action in the defence of the public interest.

Two. The Government will communicate with the Prosecution Service via the General Prosecutor through the Ministry of Justice. Where deemed necessary, the President of the Government may address the Prosecutor directly.

The General Prosecutor, after consulting the Board of High Prosecutors, will rule on the feasibility or suitability of the action requested and substantiate the resolution submitted to the government. Notice of the decision adopted must be served upon the body lodging the request.

*Article 9*

One. The General Prosecutor will submit a yearly review of Service activities to the government, addressing trends in crime and crime prevention and recommending reforms for the more effective administration of justice. This review will include the observations made by subordinate prosecutors in their own reviews, submitted in the manner and in accordance with the timetable established. A copy of this review will be forwarded to Parliament and the General Council of the Judiciary. It must be presented to Parliament by the General Prosecutor during the session closest to the date of its public release.

Two. When the government requests information on any of the matters handled by the Prosecution Service or the administration of justice as a whole, the General Prosecutor will comply with such request, barring legal obstacles to the contrary. Under exceptional circumstances the General Prosecutor may be asked to report to the Council of Ministers.

*Article 10*

The Prosecution Service will cooperate with Parliament at its

request, barring legal obstacles to the contrary, without prejudice to its obligation to report thereto on matters about which it is specifically summoned. Parliament will communicate with the Service through the Presidents of its two chambers.

### *Article 11*

One. When regional governments ask the Prosecution Service to institute action in defence of the public interest within their scope of competence, they will address their request to the Chief Regional Prosecutor, notifying the Ministry of Justice thereof. The Regional Prosecutor will in turn advise the General Prosecutor who, after consulting the Board of High Prosecutors, will resolve accordingly, honouring the principle of legality at all times. Irrespective of the decision adopted, notice thereof will be served upon the body lodging the request.

Two. The Chief Regional Prosecutors will draft and submit to the General Prosecutor a review of the activity of the Prosecutor's Offices in their region. Copies of such reviews will likewise be submitted to the government, the Council of Justice and the Regional Parliament and the reviews themselves must be presented in the Regional Parliament within six months of the day they were publicly released. Chief Regional Prosecutors will cooperate with the Regional Parliament under the same terms and conditions as laid down in the preceding article with respect to the General Prosecutor's cooperation with the national Parliament.

Three. In the regions competent to organise the administration of justice, the members of the Prosecution Service will cooperate with the regional authorities for the effective fulfilment of the duties of such authorities respecting the material and human resources available for the administration of justice. They will likewise participate in any cooperative bodies formed by the agents and authorities concerned in such regions to analyse, discuss and conduct studies on questions related to the administration of justice. Agreements may be concluded with the regions, subject to General Prosecutor authorisation.

## TITLE II

### Prosecution Service bodies and principles informing its action

#### Chapter I *Organisation, powers and staffing*

##### *Article 12*

1. The Prosecution Service comprises:

- a) The General Prosecutor.
- b) The Prosecution Council.
- c) The Board of High Prosecutors.
- d) The Board of Chief Regional Prosecutors.
- e) The Prosecutor's Office at the Supreme Court.
- f) The Prosecutor's Office before the Constitutional Court.
- g) The Prosecutor's Office at the National Court.
- h) The Special Prosecutor's Offices.
- i) The Prosecutor's Office at the Court of Auditors, which will be governed by that court's constitutional act
- j) The Armed Forces Prosecutor's Office.
- k) The Regional Prosecutor's Offices.
- l) The Provincial Prosecutor's Offices.
- m) The Area Prosecutor's Offices.

##### *Article 13*

The General Prosecutor heads the General Prosecutor's Office, comprising the Prosecution Inspection Bureau, the Technical Secretariat, the Support Unit and the specified number of staff High Prosecutors.

In addition to other powers conferred on the General Prosecutor in other provisions of this Statute, this officer will submit proposals on promotions and appointments for Service positions to the government for approval, after consulting the Prosecution Council and the Chief Regional Prosecutors when positions in their respective regions are involved.

Two. The Prosecution Inspection Bureau will be headed by a Chief Prosecutor Inspector, and will be staffed by a Deputy Chief

Prosecutor Inspector and the specified number of staff Prosecutor Inspectors. It will conduct its activities under permanent delegation from the General Prosecutor in accordance with the respective regulations, without prejudice to the control incumbent upon all other Chief Prosecutors with respect to the officials subordinate thereto. Such control will entail routine inspections by each Chief Regional Prosecutor in the Prosecutor's Offices within his/her jurisdiction.

A Standing Evaluations Subunit will be created within the Prosecution Inspection Bureau to centralise all information on prosecutors' merits and qualifications, for use in support of the Prosecution Council in its reports on nominees for the discretionary promotion of public prosecutors.

Three. The Prosecution Service's Technical Secretariat will be headed by a Chief Prosecutor and staffed by a Deputy Chief Prosecutor and the specified number of staff prosecutors. These officials will perform the preparatory work assigned thereto in areas in which the Board of High Prosecutors is called upon to assist the General Prosecutor, and conduct any other studies, surveys or reports requested thereby.

The Secretariat will also cooperate in planning any public prosecutor training to be delivered by the Centre for Legal Studies.

Without prejudice to the competencies conferred on other bodies, the Secretariat will assume the duties attributed by law to the Service in connection with international judicial cooperation in the framework of the government's foreign policy guidelines.

Four. The Support Unit will be headed by a Chief Prosecutor and staffed by the specified number of prosecutors. To fulfil its duties, the Support Unit will be assigned the specified number of public officials from the central administration and the judiciary, all of whom will remain in active service with the corps of origin. The unit's duties will include providing the Service with assistance for:

- a) Institutional representation and relations with public authorities.
- b) Communication, relations with the media and citizen support services.
- c) Analysis and evaluation of proposals relating to the Service's organisational and operational needs in the areas of statistics, information technology, personnel, material resources, information and documentation.

d) In general, any assistance or support for the General Prosecutor's Office, the High Prosecutors assigned to that Office, the Prosecution Council and the Board of High Prosecutors not incumbent upon the Inspection Bureau or the Secretariat.

Five. The High Prosecutors forming part of the General Prosecutor's Office will have the specified number of subordinate staff prosecutors.

The system for appointment and separation of such High Prosecutors will be as set out in Article thirty-six, item one and Article forty-one, item one of this Statute.

The system for appointment and separation of the prosecutors assigned to High Prosecutors will be as laid down in Article thirty-six, paragraph three.

#### *Article 14*

One. The Prosecution Council will be presided by the General Prosecutor. Its other members will be the Deputy Chief Prosecutor of the Supreme Court, the Chief Prosecutor Inspector and nine prosecutors of whatsoever category. All members of the Prosecution Council except the General Prosecutor, the Deputy Chief Prosecutor of the Supreme Court and the Chief Prosecutor Inspector will be elected for four-year terms by the members of the Prosecution Service in active service, constituting a single electoral body as stipulated in the respective regulations.

Two. Prosecutors serving in the Inspection Bureau, the Support Unit or the Technical Secretariat may not be elected to sit on the Prosecution Council.

Three. The Prosecution Council may operate in plenary session or as a Standing Commission and its decisions will be adopted by simple majority. In the event of a tie, the President will have the casting vote.

Four. The Prosecution Council will:

- a) Establish general criteria to ensure structural and operational unity of action in the Prosecution Service.
- b) Advise the General Prosecutor wherever requested to do so.
- c) Report on nominations for appointment to Service positions.



- d) Draft reports on promotions for public prosecutors.
- e) Rule on disciplinary proceedings and merits where competent to do so, and identify the possible conflicts of interest referred to in this Statute.
- f) Rule on appeals challenging disciplinary resolutions authored by any of the Service's Chief Prosecutors.
- g) Recommend suitable reforms in professional prosecution and practice thereof.
- h) Be informed of the Prosecution Inspection Bureau's yearly plans.
- i) Be informed of and report on the plans for prosecutor training and selection.
- j) Report on bills or draft regulations affecting the Service's structure, organisation or duties. The Prosecution Council must issue such reports within thirty business days or, when the referral order specifies that the report is urgent, within fifteen business days.
- k) Submit any pertinent requests relating to its competence to the General Prosecutor.

The Prosecution Council will have an Equality Commission, whose membership will be determined in the legislation governing Council constitution and operation, to study improvements in the equality parameters among public prosecutors.

#### *Article 15*

The Board of High Prosecutors will be chaired by the General Prosecutor. Its membership will be the Deputy Chief Prosecutor of the Supreme Court and the High Prosecutors. The Chief Prosecutor of the Technical Secretariat will act as Secretary.

The Board assists the General Prosecutor in both doctrinal and technical matters to establish uniform criteria on legal interpretation and proceedings, query resolution, drafting of reports and circulars and preparation of drafts and reports to be submitted to the government. It will also address any other matters of a similar nature that the General Prosecutor may refer to it for review and study, and intervene as required pursuant to Article twenty-five of this Statute.

#### *Article 16*

The General Prosecutor will chair the Board of Chief Regional

Prosecutors, whose other members will be the Deputy Chief Prosecutor of the Supreme Court, the aforementioned Chief Prosecutors and the Chief Prosecutor of the Technical Secretariat, who will act as Secretary. Its duty will be to ensure the coordinated operation of the Prosecutor's Offices in accordance with uniform criteria nation-wide, without prejudice to the competencies attributed to the Prosecution Council hereunder.

Depending on the matters to be discussed, any member of the Service may be summoned to Board meetings.

#### *Article 17*

The Prosecutor's Office at the Supreme Court, under the leadership of the General Prosecutor, will be staffed by a Deputy Chief Prosecutor, the High Prosecutors and the specified number of staff prosecutors at the Supreme Court, who must have category two status.

The Deputy Chief Prosecutor of the Supreme Court will perform the following tasks, without prejudice to others attributed thereto by this Statute or supplementary regulations, or delegated thereto by the General Prosecutor:

Stand in for the General Prosecutor in the event of absence, incapacity or vacancy.

Under General Prosecutor delegation, manage and coordinate the routine activities of the Prosecutor's Office at the Supreme Court.

Prosecutors at the Supreme Court will perform their duties within the scope of such Court and will be afforded a status and remuneration in keeping with the importance of their mission and the rank and nature of that body.

#### *Article 18*

The Prosecutor's Offices will be constituted and organised in accordance with the following rules:

One. The Prosecutor's Offices before the Constitutional Court, Court of Auditors and National Court and the Special Prosecutor's Offices will be staffed by a High Prosecutor, a Deputy Chief Prosecutor and the specified number of category two staff prosecutors.

The Prosecutor's Office at the Court of Auditors will be governed by that court's organic statute.

Two. The Armed Forces Prosecutor's Office will comprise the Office of Military Prosecutions and the Prosecutor's Offices to the Central and Regional Courts-Martial. The Office of Military Prosecutions will be headed by the Chief Military Prosecutor and comprise at least one Auditor General and one High Prosecutor who must be a public prosecutor appointed in accordance with Article thirteen of this Statute. The Prosecutor's Offices at the Central and Regional Courts-Martial will be formed and organised in accordance with the provisions of the Constitutional Act on Jurisdiction and Organisation of the Military Judiciary.

Three. The Regional and Provincial Prosecutor's Offices will be headed by their respective Chief Prosecutors and comprise a Deputy Chief Prosecutor, the Senior Prosecutors required for effective operation in keeping with office size and workload and the specified number of staff prosecutors. In autonomous communities competent to organise the administration of justice, support units may be created to assist the Chief Regional Prosecutor. Such units, which may be staffed by a specified number of regional public officials, will provide support and assistance in areas such as statistics, information technology, translation of foreign languages, personnel management or other tasks not assigned to prosecutors hereunder. Chief Regional Prosecutors will inform their regional governments of the organisational and operational needs, in respect of information or new technologies or other material resources, arising in the Prosecutor's Offices under their regional authority.

These Prosecutor's Offices may have Specialised Sections in the areas stipulated in the legislation or which, in light of their particularity or the volume of proceedings generated, call for a structure specifically designed to meet their needs. Such sections may be constituted where deemed necessary for efficient Office operation, depending on size. They will be headed by a Senior Prosecutor and staffed by one or more Office staff prosecutors. Preference will be given in this regard to prosecutors with specific expertise in the respective area by virtue of previous duties, training delivered or received or any other similar circumstance. Nonetheless, when service needs so warrant, they may also handle cases involving other types of issues.

Sections will perform the duties attributed thereto by the Chief Prosecutor in the respective area of law in accordance with the

provisions of this Statute, supplementary regulations and the General Prosecutor's instructions. Moreover, membership in these sections will include the Prosecutors Delegate of Special Prosecutor's Offices, as appropriate, pursuant to the provisions of Article nineteen of this Statute. When the instructions given to Prosecutor's Office' Specialised Sections concern a given regional, provincial or area facility, the respective Chief Regional Prosecutor must be notified accordingly.

The Prosecutor's Offices at the National and Provincial Courts must have a Minors Section, which will be responsible for the tasks and vested with the powers attributed to the Prosecution Service under the Constitutional Act on the Criminal Liability of Minors. These sections may be created in the Regional Prosecutor's Offices where warranted by their area of competence, workload, or improvements in their organisation or quality of the services provided. The Provincial Prosecutor's Offices will have a Section for Violence against Women, which will coordinate or, as appropriate, directly conduct the Service's participation in criminal and civil proceedings whose jurisdiction is attributed to the Courts for Violence against Women. The Section on Violence against Women must keep a record of the proceedings handled thereby and related to this type of events for review by prosecutors conducting cases of their own competence, for all appropriate intents and purposes. These sections may be created in the Regional Prosecutor's Offices where warranted by their area of competence, workload, or improvements in their organisation or quality of the services provided.

When the volume of proceedings generated around traffic of workplace safety calls for specialised structures in the Provincial Prosecutor's Offices, sections may also be constituted to handle these matters.

Environment Sections will also be created, specialising in offences in the areas of forest fires, land use, and the protection of the historic heritage, natural resources and the environment, and flora, fauna and domestic animals. These sections may be created in the Regional Prosecutor's Offices where warranted by their area of competence, workload, or improvements in their organisation or quality of the services provided.

Four. When warranted by the volume of cases, number of judicial bodies in a province or the creation of a division in the Provincial Court at a headquarters outside the provincial capital, the General Prosecutor, after consulting the Prosecution Council

and the respective Chief Regional Prosecutor, may submit a proposal to the Minister of Justice to create Area Prosecutor's Offices, which will be headed by a Chief Prosecutor and comprise the specified number of staff prosecutors. Area Prosecutor's Offices will be created in all towns or cities where the Provincial Court has a Section and will bear the same name as the headquarters town or city. The Area Offices will handle cases located in the regional scope defined in the regulations whereby they are established, which may cover one or several judicial precincts.

In the absence of the circumstances listed in the preceding paragraph but where warranted by the geographic dispersal of judicial bodies or better provision of service, the General Prosecutor, after consulting the Prosecution Council and the respective Chief Regional Prosecutor, may submit a proposal to the Minister of Justice to create Territorial Sections within the Provincial Prosecutor's Office, to serve the judicial bodies of one or more precincts in the same province. Such sections, if any, will comprise the specified number of staff prosecutors and will be headed by a Senior Prosecutor, who will be appointed and perform his/her duties under the terms laid down in this Statute.

For the reasons set out in the two preceding paragraphs, Chief Regional Prosecutors, after consulting the respective Chief Provincial Prosecutors, may submit proposals to the General Prosecutor to create Area Prosecutor's Offices and Territorial Sections in the Offices in their respective regions.

Five. The number of Prosecutor's Offices, Territorial Sections as appropriate, and their respective staffs will be established, pursuant to the criteria laid down in the preceding items, by Royal Decree further to a proposal submitted by the Minister of Justice, subject to a report drafted by the General Prosecutor after consulting the Prosecution Council. The said permanent staff will be subject to the limitations deriving from the respective budgetary provisions and will be reviewed at least once every five years to adapt staffing to new needs.

Six. Any decision on the matters addressed in items three, four and five of this article must be endorsed by a report issued by the regional body responsible for questions of human and material resources assigned to the administration of justice.

#### *Article 19*

One. The Prosecutor's Office at the National Court is competent to

conduct cases to be heard by that judicial body, except where they involve matters attributed to the Special Prosecutor's Office pursuant to the provisions of this Statute.

Two. The Prosecutor's Offices against Illegal Drug Trafficking and against Corruption and Organised Crime are Special Prosecutor's Offices.

Three. The duties of the Special Prosecutor's Office against Illegal Drug Trafficking will be as follows:

a) To participate directly in all proceedings relating to drug, narcotics and psychotropic substance trafficking or money laundering related thereto within the jurisdiction of the National Court and the Central Investigative Judges<sup>3</sup>, pursuant to Articles 65 and 88 of the Constitutional Act on the Judiciary.

b) Under the terms of Article five of this Statute, to investigate events suspected to constitute any of the offences listed in the preceding item.

c) To coordinate the activities undertaken by other Prosecutor's Offices to prevent and repress illegal drug traffic and money laundering relating thereto. Prosecutor's Offices at the Courts-Martial will cooperate with the Special Prosecutor's Office against Illegal Drug Trafficking in connection with events occurring in centres, establishments or units pertaining to the armed forces.

d) To cooperate with the judicial authority in the control of treatment for drug addicts benefiting from conditional remission and to receive all necessary information from certified centres participating in such treatment.

Four. The Special Prosecutor's Office against Corruption and Organised Crime will conduct the enquiries specified in Article five of this Statute and participate directly in criminal proceedings, where the events involved are deemed by the General Prosecutor to be of particular significance, with respect to:

a) Tax and social security fraud, contraband.

b) Perversion of justice.

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3 T.N.: Device "peculiar to systems deriving from Roman law...(with) no equivalent in English or American legal practice... (in which) the judge ... has absolute power and discretion to interview, examine, detain and indict persons for whom there are reasonable grounds for proceeding against, as well as to examine witnesses and make other relevant orders." Alcaraz Varó, E. and Hughes, B. Diccionario de Términos Jurídicos, Editorial Ariel, S.A., Barcelona, 1994, p.468.

- c) Abuse or undue use of insider information.
- d) Embezzlement of public funds.
- e) Fraud and extortion.
- f) Influence peddling.
- g) Bribery.
- h) Negotiation forbidden to public officials.
- i) Defrauding.
- j) Bankruptcy involving criminal negligence or malpractice.
- k) Alteration of prices in public tendering and auctions.
- l) Offences against intellectual or industrial property, the market or consumers.
- m) Corporate offences.
- n) Money laundering and behaviour involving dealing in stolen goods, except where involving illegal drug trafficking or terrorism, in which case the proceedings must be conducted by other Special Prosecutor's Offices.
- ñ) Corruption in international trade transactions.
- o) Private sector corruption.
- p) Offences related to the preceding.
- q) The investigation of all manner of legal business, transactions or movement of goods, securities or capital, financial flows or assets that appear to be related to activities conducted by organised criminal rings or financed with earnings from criminal activities, and offences that are related to or determine such activities. Where such business or transactions involve illegal drug trafficking or terrorism, however, the respective proceedings must be conducted by the Prosecutor's Offices against Illegal Drug Trafficking or at the National Court, as appropriate.

Five. Where warranted by the number of proceedings, the General Prosecutor may appoint one or several Prosecutors Delegate to the Special Prosecutor's Offices. Such delegates will be appointed after consulting the Prosecution Council and based on a report drafted by the respective Chief Special and Regional Prosecutors. The appointees will be selected from among the staff prosecutors attached to the latter and applying for the position who substantiate their expertise in the respective area as established in the applicable regulations. When the Regional Prosecutor's Office concerned has a Specialised Section, created in accordance with the provisions of the preceding article, whose scope concurs wholly or partly with the area over which the Special Prosecutor's

Office has jurisdiction, the Prosecutor Delegate will form part of that section.

Chief Special Prosecutors, in the specific area of their competence, will be vested with the same powers and be responsible for the same duties in respect of the prosecutors appointed to their Office as specified in the foregoing, as other Chief Prosecutors in other Prosecution Service bodies (with respect to their subordinate prosecutors). Without prejudice to the instructions issued by the General Prosecutor, the decree of appointment will specify the duties and scope of action of these Prosecutors Delegate, including the proportion of their time to be devoted to the matters incumbent upon the Special Prosecutor's Office. Prosecutors Delegate must report on all cases conducted in their capacity as such to the Chief Prosecutor of the body to which they are attached.

Six. Judicial Police units and any other professionals or experts who may be needed to permanently or occasionally assist the Special Prosecutor's Offices may be assigned thereto.

#### *Article 20*

One. The General Prosecutor's Office will have a Prosecutor for Violence against Women with High Prosecutor status, whose duties will be:

a) To conduct the enquiries referred to in Article five of the Prosecution Service's Organic Statute and participate directly in criminal cases deemed to be of particular significance by the General Prosecutor, and that involve the gender violence offences laid down in Article 87 ter.1 of the Constitutional Act on the Judiciary.

b) Under General Prosecutor delegation, to participate in any of the civil proceedings laid down in Article 87 ter.2 of the Constitutional Act on the Judiciary.

c) To supervise and coordinate the activities undertaken by the Sections for Violence against Women and collect reports therefrom, duly informing the Chief Prosecutor of the respective Prosecutor's Office.

d) To coordinate the criteria for the measures taken by the Prosecutor's Offices in the area of gender violence, submitting proposals to the General Prosecutor for the issue of the respective instructions, as appropriate.

e) To draft a bi-quarterly report on the cases conducted and



action taken by the Prosecution Service in the area of gender violence, for submission to the General Prosecutor and referral to both the Supreme Court's Board of High Prosecutors and the Prosecution Council.

Any professionals or experts required to permanently or occasionally assist this prosecutor will be assigned thereto.

Two. The General Prosecutor's Office will have a Prosecutor for Land Use, Historic Heritage, Environmental and Forest Fire Offences with High Prosecutor status who will:

a) Conduct the enquiries stipulated in Article five and participate, directly or via instructions to Prosecutors Delegate, in criminal proceedings deemed to be of particular significance by the General Prosecutor and involving offences in the areas of land use, historic heritage, natural resources and the environment, protection of flora, fauna and domestic animals, and forest fires.

b) Exercise public action in any type of proceedings, directly or via instructions to Prosecutors Delegate, where called for by the legislation on the environment, and claim any damages that may be in order.

c) Supervise and coordinate the activities of sections specialising in the environment and compile the respective reports and, under General Prosecutor delegation, head the network of Environmental Prosecutors.

d) Coordinate the Environmental Prosecutor's Offices, unifying criteria for action, submitting proposals to the General Prosecutor on the issue of the respective instructions and convening meetings of the prosecutors forming the Specialised Sections when appropriate.

e) Draft a yearly report on the cases conducted and action taken by the Prosecution Service in the area of the environment for submission to the General Prosecutor and inclusion in the respective yearly review.

A Unit of the rural police force's ("Guardia Civil") Nature Protection Service and, as appropriate, other officers of the law with environmental jurisdiction pursuant to Constitutional Act 2/1986 of 13 March on Law Enforcement Agencies and Corps, will be assigned to assist this prosecutor in the performance of his/her duties. Similarly, any professionals or experts required to

permanently or occasionally assist this prosecutor will be assigned thereto. The Prosecutor's Office may request the assistance of forestry or environmental agents under the aegis of the respective public authorities, within the duties legally attributed thereto.

Three. The General Prosecutor's Office will also have Specialised High Prosecutors responsible for coordinating and supervising Prosecution Service activities in the area of protection for and rehabilitation of minors. Similar positions will also be created in any other areas where the need arises, as perceived by the government, further to a proposal submitted by the Minister of Justice after consulting the General Prosecutor's Office and subject to a reported drafted by Prosecution Council. These High Prosecutors will be vested with powers and functions similar to those envisaged in the preceding items of this article, within the scope of their respective specialities. They will also have any powers delegated thereto by the General Prosecutor, without prejudice to the powers vested in the respective Chief Regional, Provincial and Area Prosecutors.

#### *Article 21*

One. The Prosecutor's Offices at the Supreme Court, the Constitutional Court, the Court of Auditors and the National Court, the Military Prosecutor's Office and the Special Prosecutor's Offices are headquartered at Madrid, with nation-wide jurisdiction in their respective areas of competence. The Prosecutor's Office at the Central Court-Martial will also be headquartered at Spain's capital city and will perform its duties in that court and the Central Courts of the Armed Forces. The Prosecutor's Offices at the Regional Courts-Martial will be headquartered in the same place as the Regional Courts-Martial and perform their duties within the jurisdiction thereof.

Two. The Regional Prosecutor's Offices will be headquartered in the same place as the respective Superior Court and perform their duties within the jurisdiction thereof.

Where Divisions of a Superior Court with jurisdiction over one or several but not all the provinces in an autonomous community are in place or created in that region, the General Prosecutor, further to a proposal or a report submitted by the Chief Regional Prosecutor and after consulting the Prosecution Council, may raise a proposal to the Minister of Justice to create Territorial Sections subordinate to the Regional Prosecutor's Office and located at the division headquarters. Notice of the proposal will be served upon the autonomous community concerned if vested with competence

to administer justice, for due exercise thereof.

Three. The Provincial Prosecutor's Offices will be headquartered in the same place as the Provincial Court and will serve all the judicial bodies in the province except where, pursuant to the provisions of this Statute, competence is reserved to some other body of the Prosecution Service. They will also conduct cases for which competence is reserved to single person bodies of higher than provincial rank under instructions to that effect issued by the General Prosecutor, after consulting the Prosecution Council and the Chief Regional Prosecutor.

In single province autonomous communities, depending on the volume of activity, the Regional Prosecutor's Office may also assume the duties of the Provincial Office. These arrangements must be the object of a government decision further to a proposal submitted by the General Prosecutor, drafted after consulting the Prosecution Council and the Chief Regional Prosecutor concerned.

Four. The Area Prosecutor's Offices will perform their duties in the sub-provincial scope for which they are created on the grounds of case volume, number of judicial bodies or existence of a Provincial Court division in a town/city other than the provincial capital. Such Offices may cover one or more judicial precincts in the province and will be headquartered as stipulated in the legislation creating them.

Five. Members of the Prosecution Service may work out of and locate in any part of the region covered by their Prosecutor's Office.

Nonetheless, when required by case volume or complexity, the General Prosecutor may, ex officio or further to a proposal submitted by the Chief Regional Prosecutor, after consulting the Prosecution Council and the Chief Prosecutors of the bodies concerned, second one or several prosecutors to a given Prosecutor's Office. Likewise subject to General Prosecutor authorisation, any prosecutor may perform his/her duties anywhere on Spanish soil.

Six. The provisions of this article notwithstanding, when courts are constituted in a place outside their legal headquarters, or when the duties of the members of the Prosecution Service so require, prosecutors may serve judicial bodies established in a place other than the headquarters of the respective Prosecutor's Office.

## **Chapter II** *Prosecution Service. Unity and hierarchical order*

### *Article 22*

One. There is a single Prosecution Service for the entire country.

Two. The General Prosecutor heads the Prosecution Service and is vested with nation-wide powers of representation. He/she is responsible for issuing any appropriate orders or instructions regarding the service provided by the institution, its internal operation, general management and inspection of the Prosecution Service.

Three. The General Prosecutor may delegate duties related to the matters under his/her jurisdiction to the High Prosecutors. High Prosecutors Delegate will assume such duties under the terms and with the limitations established in the instrument of delegation, which will be revocable and understood to expire when the General Prosecutor leaves office. Within these limitations, the High Prosecutors may submit proposals to the General Prosecutor on any circulars or instructions they deem necessary, participate in determining the criteria for Specialist Prosecutor training and coordinate the action of Prosecutor's Offices on the national scale, without prejudice to the powers conferred on the respective Chief Regional, Provincial and Area Prosecutors.

Four. In addition to managing their Prosecutor's Offices, Chief Regional Prosecutors will act throughout their respective Autonomous Community, representing the Prosecution Service therein, without prejudice to the powers of the General Prosecutor. As a result, they will preside the Board of Chief Prosecutors in their region and within that region will perform the duties stipulated in Articles eleven, twenty-one, twenty-five and twenty-six of this Statute, any delegated thereto by the General Prosecutor and any disciplinary duties for which they are responsible pursuant to this Statute or supplementary regulations. In single province autonomous communities, as mentioned in Article twenty-one, item three, the Chief Regional Prosecutor will also assume the duties incumbent upon the Chief Provincial Prosecutor, in accordance with this Statute or supplementary regulations.

Five. Chief Prosecutors will manage the bodies under their supervision and act at all times on behalf of the Prosecution Service in subordination to their hierarchical superiors and the General Prosecutor.

The Chief Prosecutors of each body will:

- a) Organise services, distribute work among the staff prosecutors and assign officials to the Minors Section, after consulting the respective Board of Prosecutors.
- b) Grant leaves of absence where competent to do so.
- c) Exercise disciplinary powers under the terms established in this Statute and supplementary regulations.
- d) Propose any appropriate rewards, merits or honourable mentions.
- e) Exercise any other powers conferred upon them by this Statute or other regulations.

The provisions of this item are understood to be without prejudice to the powers vested in the Minister of Defence by Article 92 of Constitutional Act 4/1987 of 15 July 1987 on Jurisdiction and Organisation of the Military Judiciary.

Six. Deputy Chief Prosecutors, in Prosecutor's Offices where the position exists, will assume any management or coordination duties delegated thereto by Chief Prosecutors, whom they will replace in the event of absence, incapacity or vacancy.

Seven. Chief Provincial Prosecutors will be hierarchically subordinate to Chief Regional Prosecutors and will form part of the Regional Boards of Chief Prosecutors chaired by the latter.

Eight. Chief Area Prosecutors will be hierarchically subordinate to Chief Provincial Prosecutors. In the event of absence or incapacity of any of the Chief Area Prosecutors, or vacancy in their position, they will be replaced by the senior-most prosecutor in the Area Prosecutor's Offices, the Chief Provincial Prosecutor him/herself or the person designated thereby for the duration of the absence, incapacity or vacancy.

Nine. Senior Prosecutors will manage and coordinate Prosecutor's Offices Sections under delegation from and in accordance with the instructions issued by the Chief Provincial Prosecutor or the Chief Regional Prosecutor, where appropriate.

Ten. The Deputy Chief Provincial Prosecutor, Chief Area Prosecutors and Senior Prosecutors comprise the Coordination Board of the Provincial Prosecutor's Office. Board meetings will be

periodically convened and chaired by the Chief Provincial Prosecutor to coordinate Prosecution Service operations within the respective province.

### *Article 23*

For all intents and purposes, members of the Prosecution Service are authorities. They will always act on behalf of the Service. In the course of whatsoever activity performed by prosecutors in fulfilment of their duties, or before they initiate assignments received through ordinary case distribution channels, their immediate superiors may, at any time and by means of a duly substantiated resolution, assume any given case personally or appoint another prosecutor thereto. Disagreements in this respect, if any, will be settled by their common hierarchical superior. Notice of such changes must be served upon the Prosecution Council, which may express its opinion thereon.

### *Article 24*

One. To standardize criteria, study matters of special importance or complexity or establish positions on prosecutions service-related subjects, Prosecutor's Offices will hold periodic meetings of all of their members. Prosecutors Delegate may be called upon to attend the meetings of the respective Boards of Special Prosecutors.

Decisions reached by a majority will be raised to position status. The Chief Prosecutor's opinion will prevail after matters are freely discussed. If this opinion is contrary to the majority opinion, however, the Chief Prosecutor must submit both to his/her hierarchical superior. The Chief Prosecutor's opinion will be enforceable as strictly necessary where the issue so requires until the hierarchical superior's decision is forthcoming.

Two. Prosecutors assigned to the Divisions comprising the Prosecutor's Office at the Supreme Court will hold Division meetings, chaired by the respective High Prosecutor, for the purposes set out in the preceding item. Where the High Prosecutor's opinion is contrary to the opinion of the majority of the participants in the meeting, the difference will be settled by the General Prosecutor, after consulting the Prosecution Council or the Board of High Prosecutors, depending on the scope of the duties of the High Prosecutor in question.

Divisions of the Prosecutor's Office at the Supreme Court that are headed by more than one High Prosecutor may hold meetings attended by the prosecutors serving in the organizational subdivisions comprising the section in question. Matters of special

importance or complexity, however, or any affecting unity of criteria, must be discussed at Division meetings, which will be chaired by the senior-most High Prosecutor. The disagreement with the majority opinion by only one of the High Prosecutors comprising the Division will suffice for the intents and purposes of item one of this article.

Meetings of the Board of High Prosecutors will be convened to report on Division statistics and to deal with issues that may affect the organisation of any of the general services. Such Board meetings will be presided by the General Prosecutor, and in his/her absence by the Deputy Chief Prosecutor of the Supreme Court.

Three. Without prejudice to the meetings of prosecutors provided for in item one of this article, Chief Provincial Prosecutors may convene the coordination meetings provided for in Article twenty-two, item ten to deal with issues relating to service management and coordination. Under no circumstances may these meetings take the place of the Board's General Meeting.

Furthermore, to maintain unified criteria or establish positions on subjects relating to their duties, Chief Regional Prosecutors may, as hierarchical superiors, convene meetings of the Regional Board of Prosecutors, whose membership includes all the Chief Provincial Prosecutors in the autonomous community.

Four. Boards of Prosecutors may hold regular or special meetings. Regular meetings will be held at least once every six months. The Chief Prosecutor will establish the agenda, which must also include any matters or subjects proposed prior to the meeting, in writing, by at least one-fifth of the prosecutors assigned to the Prosecutor's Office. Any matters not included on the agenda and proposed by a participant in the Board meeting may also be addressed, at the Chief Prosecutor's discretion.

Special meetings will be convened to discuss issues that are deemed too urgent or complex to relegate to a regular meeting of the Board. Calls to special meetings will include the agenda and will be circulated by the Chief Prosecutor, either on his/her own initiative or by virtue of a motion signed by one-third of the prosecutors assigned to the Prosecutor's Office.

Attendance at Board meetings is mandatory for all members, except for absences deemed justified by the Chief Prosecutor. When convened by the Chief Prosecutor, substitute prosecutors will attend the meetings and may participate in the discussion but may not vote.

### *Article 25*

The General Prosecutor may issue general or specific orders and instructions to subordinates relating to the service and the performance of their duties. When these instructions concern matters that directly affect any member of the government, the General Prosecutor must first consult the Board of High Prosecutors.

Members of the Prosecution Service will report any important matters relevant to their work to the General Prosecutor. The orders, instructions and communications mentioned in this and the preceding paragraphs will be conveyed through each individual's hierarchical superior, unless the urgency of the matter calls for more direct arrangements, in which case the immediate superior will be notified after the fact.

Chief Regional Prosecutors will be vested with comparable powers in respect of Chief Prosecutors in their region, and both will be vested with comparable powers in respect of members of the Service that are subordinate thereto. Prosecutors who receive an order or instruction regarding the performance of their duties with respect to specific matters must abide thereby in their written opinions, but in oral proceedings will be free to address the court as they believe best serves the cause of justice.

### *Article 26*

The General Prosecutor may, at his/her discretion, summon any member of the Prosecution Service into his presence to directly receive reports therefrom or issue instructions, in which case the respective Chief Prosecutor will also be duly notified. The General Prosecutor may designate any of the members of the Prosecution Service to conduct a specific case in any of the courts where the Service is legally authorised to intervene, after consulting the Prosecution Council.

### *Article 27*

One. Prosecutors receiving an order or instruction that they believe to be unlawful or inappropriate for any other reason will inform their Chief Prosecutor accordingly in a substantiated report. When the order or instruction was issued by the Chief Prosecutor in question, who deems the reasons given to be unsatisfactory, he/she will submit the question to the Prosecutions Board and, based on its ruling, either reconsider or reconfirm the initial order. If the order was issued by a superior, the report will be submitted thereto; if the reasons given are found to be unacceptable, he/she will consult the respective Board of Prosecutors and proceed as described above. If the order was issued



by the General Prosecutor, he/she will act after consulting the Board of High Prosecutors.

Two. If superiors confirm their instructions, they will do so in the form of a substantiated brief expressly holding the prosecutor harmless of any liability that may result from complying therewith, or will assign the case in question to another prosecutor.

### *Article 28*

Members of the Prosecution Service may not be recused. They will refrain from involvement in lawsuits or actions when they are affected by any of the reasons for abstention established for judges and justices in the Constitutional Act on the Judiciary, where applicable thereto. Parties involved in such lawsuits or actions may apply to the hierarchical superiors of the prosecutors in question in such cases to seek an order to prevent them from participating in the proceedings.

Where the General Prosecutor is involved, the final decision will be made by the Board of High Prosecutors, presided by the Deputy Chief Prosecutor of the Supreme Court.

No remedy may be lodged against the aforementioned decisions.

## TITLE III

### **The General Prosecutor, Chief Regional Prosecutors and public prosecutors**

#### **Chapter I** *The General Prosecutor*

### *Article 29*

One. The General Prosecutor will be nominated by the government, after consulting the General Council of the Judiciary, and appointed by the King. The General Prosecutor will be chosen from among Spanish attorneys of prestige who have been practising for over fifteen years.

Two. Upon receipt of the General Council of the Judiciary's position, the government will notify the Chamber of Deputies of

the name of its nominee. Pursuant to Chamber regulations, the person chosen will be summoned to a hearing before the respective parliamentary committee, which will assess his/her qualifications and suitability for the position.

Three. Once appointed, the General Prosecutor will take the oath or pledge provided for by law before the King, and will take office before the Supreme Court sitting in plenary session.

### *Article 30*

The General Prosecutor will have nation-wide authority status, and must be afforded the respect and considerations inherent in such a senior position. At official events, he/she will be ranked immediately after the Chief Justice of the Supreme Court.

### *Article 31*

One. The General Prosecutor's term of office will be four years. In the interim, separation is only in order:

- a) at his/her own request;
- b) for involvement in conflicts of interest or prohibitions established in this Statute;
- c) due to incapacity or illness that disqualifies him/her for the office;
- d) for gross or repeated dereliction of duties;
- e) when the government that nominated him/her leaves power.

Two. The term of the General Prosecutor may not be renewed, except where the incumbent has been in office for less than two years.

Three. The existence of the causes for separation mentioned in paragraphs a), b), c) and d) of the previous item will be determined by the Council of Ministers.

Four. The conflicts of interest established for the other members of the Prosecution Service will also be applicable to the General Prosecutor, without prejudice to any powers or duties conferred thereon by other provisions of equal rank.

Five. The General Prosecutor's remuneration will be identical to that of the Chief Justice of the Supreme Court.

Six. If the General Prosecutor is appointed from among the members of the Corps of Public Prosecutors, the appointment will entail a special service leave of absence for the duration.

## **Chapter II** *Public prosecutors, categories and posting*

### *Article 32*

The Corps of Public Prosecutors comprises a number of categories of prosecutors who form a single, hierarchically organised body.

### *Article 33*

One. Public prosecutors are afforded the same status, honours, categories and remuneration as members of the Judiciary.

Two. At official events, representatives of the Prosecution Service will be ranked immediately after members of the Judiciary.

When they must attend Court and Tribunal governing council meetings, they will be comparably ranked in respect of the chair.

### *Article 34*

Public prosecutor categories will be as follows:

One: High Prosecutors of the Supreme Court, having the same rank as Supreme Court Justices. The Deputy Chief Prosecutor of the Supreme Court will be afforded Chief Justice of Division status.

Two: prosecutors, having the same rank as magistrates.

Three. prosecuting attorneys, having the same rank as judges.

### *Article 35*

One. Only category one members may hold the following positions:

a) Deputy Chief Prosecutor of the Supreme Court, subject as well to three years' service in this category.

b) Chief Prosecutor Inspector.

c) Chief Prosecutor of the Technical Secretariat.

d) Chief Prosecutor of the Support Unit.

e) Chief Prosecutor of the National Court.

f) Chief Prosecutors of Special Prosecutor's Offices.

- g) Chief Prosecutor of the Prosecutor's Office before the Constitutional Court.
- h) Chief Prosecutor of the Court of Auditors.
- i) High Prosecutor of the Supreme Court.
- j) High Prosecutor in the Office of Military Prosecutions.
- k) Any other High Prosecutors, pursuant to the provisions of this Statute.

Two. Chief Regional and Chief Provincial Prosecutors will be in a category comparable to the category of Chief Justice of Superior or Provincial Courts, respectively.

Three. Only category two prosecutors may hold the remaining positions in the Prosecutor's Offices at the Supreme, Constitutional and National Courts and the Court of Auditors; and in the Special Prosecutor's Offices, Prosecution Inspection Bureau, Support Unit and Technical Secretariat. The positions of Chief Prosecutor and Deputy Chief Prosecutor are also restricted to category two prosecutors.

Four. The organisational chart will establish the category necessary for the remaining category two and three positions.

### *Article 36*

One. Without prejudice to the provisions of item three of this article, the category one positions, i.e., Prosecutor of the Supreme Court, Chief Regional Prosecutors and Chief Prosecutors, will be filled by the government further to nominations submitted by the General Prosecutor, in accordance with the stipulations of Article thirteen of this Statute. Deputy Chief Regional Prosecutors and prosecutors on the staff of all bodies headed by a category one prosecutor will be appointed in the same manner. Where an autonomous community's ordinance makes provision for a regional Council of Justice, such Council must necessarily be consulted prior to the appointment of the Chief Regional Prosecutor.

Upon receipt of the regional Council of Justice's report, the respective regional Parliament will be notified of the nomination so that, pursuant to its regulations, the nominee can be summoned to a hearing before the respective parliamentary committee to assess his/her qualifications and suitability for the position.

Only public prosecutors with at least 15 years of service and at least category two status will be eligible for the positions of

Prosecutor of the Supreme Court, Chief Regional Prosecutor, Prosecutor of the Constitutional Court, Prosecutor of the Court of Auditors or Prosecutor Inspectors.

Only public prosecutors with at least 10 years of service and category two status will be eligible for the positions of Prosecutor of the National Court and Chief Provincial Prosecutor. The same qualifications will be required of prosecutors in Special Prosecutor's Offices and the Deputy Chief Prosecutor of the Technical Secretariat.

Prosecutors assigned to High Prosecutors forming part of the General Prosecutor's Office must have been public prosecutors for at least 10 years, have category two status and proven expertise in the area to which they are assigned.

Only category two prosecutors will be eligible for the position of Chief Area Prosecutor.

Two. The Deputy Chief Prosecutor Inspector and all other Prosecutor Inspectors will be appointed for a maximum of ten years. Upon separation, they may choose between assignment to the Prosecutor's Office where they were posted before holding the Inspection Bureau position or to the Madrid Regional or Provincial Prosecutor's Office, until they receive a permanent appointment.

Three. Chief Prosecutors, Deputy Chief Prosecutors and Prosecutors of the Technical Secretariat, Prosecutors of the Support Unit and Prosecutors assigned to High Prosecutors forming part of the General Prosecutor's Office will be appointed and removed from office directly by the General Prosecutor. They will, moreover, be separated therewith, although they will continue to perform their duties until they are replaced or their positions are confirmed by the incoming General Prosecutor. The General Prosecutor will notify the Prosecution Council of the appointments referred to in this item, and of the promotion to category one, as applicable, of the nominee for Chief Prosecutor of the Technical Secretariat, before submitting the respective proposal to the government. The provisions of Article thirteen and item one of this article will not apply in this case.

After separation from office, the Deputy Chief Prosecutor of the Technical Secretariat and the Prosecutors mentioned in the preceding paragraph will be assigned, at their choice and until they are appointed to a permanent position, to any of the following: Madrid Regional or Provincial Prosecutor's Office, or the

Prosecutor's Office where they were posted before holding a position in the Secretariat or the Support Unit, or before having been assigned to High Prosecutors forming part of the General Prosecutor's Office.

Four. Senior prosecutors assigned to Sections in Prosecutor's Offices where such positions exist will be appointed and, as appropriate, removed from office by order of the General Prosecutor, further to substantiated nomination submitted by the respective Chief Prosecutor.

The organisational chart will determine the maximum number of Senior Prosecutors that may be assigned to each Prosecutor's Office, based on its organisational needs. The Chief Prosecutor's nomination for such positions must be preceded by a call for candidates, circulated among all staff prosecutors. The nomination will be submitted with the list of all the prosecutors applying for the position, and their respective qualifications.

Five. All other positions will be filled by public officials in the respective category selected in competitive processes, based on rank. Before applying for a new position, prosecutors must accumulate at least two years' seniority in their present post if transferred thereto from another Service position at their own request. Public prosecutors on their first assignment after selection may apply for a transfer after one year.

Vacancies will be filled by prosecutors promoted to the necessary category, as appropriate.

Six. In competitive processes to fill positions in Prosecutor's Offices located in autonomous communities having a vernacular language, candidates will be credited for having a proven knowledge of that language pursuant to the criteria established in the regulations. Candidates will likewise be credited for possessing a knowledge of the autonomous community's regional law, pursuant to the criteria established in the regulations.

Seven. Positions in the Armed Forces Prosecutor's Office will be filled in accordance with the provisions of the Constitutional Act on the Jurisdiction and Organisation of the Military Judiciary.

### *Article 37*

One. Vacancies in category one positions will be filled by

promotion from among category two public prosecutors with at least 20 years of service.

Two. Vacancies in category two positions will be filled by order of seniority from among category three officials.

#### *Article 38*

One. Category one and two prosecutors will be appointed by Royal Decree. All other appointments will be the object of an order issued by the Minister of Justice.

Two. The administrative status of prosecutors, whatever their category, will be established by orders issued by the Minister of Justice.

#### *Article 39*

Members of the Prosecution Service may be transferred:

One. At their own request, in accordance with the provisions of this Statute.

Two. To accept a position in a category to which they have been promoted.

Three. Due to involvement in any of the conflicts of interest for reasons of kinship established in this Statute.

#### *Article 40*

They may also be transferred:

One. Due to serious dissent with the respective Chief Prosecutor for reasons attributable to the subordinate prosecutor.

Two. Due to serious confrontations with the Court, also for reasons attributable to the prosecutor.

Forced transfers will be mandated by the body initially appointing the prosecutor, after reviewing the defence submitted thereby and subject to a favourable opinion from the Prosecution Council.

#### *Article 41*

One. The Deputy Chief Prosecutor of the Supreme Court, the High Prosecutors mentioned in Articles twenty and thirty-five, item one k)

of this Statute and all other category one Chief Prosecutors will be appointed for a period of five years, after which time they will be separated from office, unless they are reappointed for successive five-year terms. When the legal term expires, they will be assigned to the Prosecutor's Office at the Supreme Court or to any other Prosecutor's Office with a category one Chief Prosecutor, unless they are reconfirmed or appointed to head another Office. Their category will remain unchanged in either case.

The High Prosecutors of the Supreme Court will be regarded to be Chief Prosecutors for the intents and purposes of the preceding paragraph.

Two. Chief Prosecutors assigned to the Technical Secretariat will be appointed and dismissed in accordance with Article thirty-six. Upon separation, their situation will be as described in the preceding item.

Three. Category two Chief Prosecutors, Deputy Chief Prosecutors of Prosecutor's Offices with a category one Chief Prosecutor and Deputy Chief Regional Prosecutors will be appointed for five-year terms, after which time they will be separated from their position unless re-appointed for successive terms of the same duration.

Four. After removal or separation from office, or after having their resignation accepted by the General Prosecutor and until they have a new permanent position, Chief Regional Prosecutors, category two Chief Prosecutors and the Deputy Chief Prosecutors mentioned in item three of this article may choose to be assigned to the Prosecutor's Office where they served as chief or deputy chief, or to the Prosecutor's Office where they rendered their services prior to appointment to that position.

Five. The foregoing notwithstanding, Chief Prosecutors of the respective bodies and the Deputy Chief Prosecutors mentioned in item three of this article may be dismissed by the government further to a proposal submitted by the General Prosecutor after consulting the Prosecution Council and the party concerned, and as appropriate, the Chief Regional Prosecutor. Chief Regional Prosecutors may also submit proposals to the General Prosecutor to have the government remove Chief Prosecutors from the bodies within their regional authority.



### **Chapter III** *Attainment and forfeiture of prosecutor status*

#### *Article 42*

To join the Corps of Public Prosecutors, duly qualified candidates as stipulated hereunder must pass an open competitive examination, which will be held together with the examinations for the Judiciary, under the terms laid down in the Constitutional Act on the Judiciary.

#### *Article 43*

To be appointed a member of the Prosecution Service, candidates must be Spanish nationals over the age of eighteen, have an undergraduate degree or Ph.D. in law and not be otherwise disqualified pursuant to this Statute.

#### *Article 44*

The following are disqualified from the office of prosecutor:

One. Persons lacking the necessary physical or intellectual ability.

Two. Persons who have been convicted of an offence involving mens rea, until rehabilitated. If the sentence was for no more than six months, the General Prosecutor may replace forfeiture of prosecutor status with suspension for up to three years, depending on the gravity of the offence, and explaining the reasons for such clemency.

Three. Undischarged bankrupts.

Four. Persons who lose their Spanish nationality.

#### *Article 45*

One. After valid appointment, membership in the Prosecution Service is formalised by taking the oath or pledge and assuming the responsibilities of the office.

Two. Before assuming their first assignment, members of the Prosecution Service will take an oath or pledge to obey and enforce the Constitution and the laws and faithfully perform their prosecution duties, professing their loyalty to the King. The oath or pledge will be taken before the Governing Body of the Superior Court of Justice in the region where the appointees are posted, at which session the Chief Regional Prosecutor will be seated beside the Chief Justice.

High Prosecutors will also take an oath or pledge of office upon attaining public prosecutor category one status. This ceremony will take place before the Governing Body of the Supreme Court, at which session the General Prosecutor will be seated beside the Chief Justice.

Three. Chief Regional Prosecutors will take office in the city where the headquarters of their Prosecutor's Office is located, in a ceremony presided by the General Prosecutor.

Chief Provincial and Area Prosecutors will take office in the place where the headquarters of their Prosecutor's Office is located, in a ceremony presided by the Chief Regional Prosecutor. If, however, the General Prosecutor is in attendance, he/she will preside.

All other prosecutors will take office in the presence of the Chief Prosecutor of the Prosecutor's Office to which they have been assigned. If, however, the General Prosecutor or another higher-ranking member in the hierarchical structure of the Prosecution Service is in attendance, they will preside.

In all the ceremonies provided for in this item, the Chief Justice of the Superior Court and, if applicable, the Chief Justice of the respective Provincial Court, will occupy a preferential place during the ceremony, in keeping with their rank.

Four. Appointees will take office within twenty calendar days of publication of their appointment to the position in question, or in a longer period of time when warranted by circumstances and established by the Chief or acting Chief Prosecutor.

#### *Article 46*

One. Prosecutor status is forfeited for any of the following reasons:

- a) Resignation.
- b) Loss of Spanish nationality.
- c) Penalisation consisting in separation from service.
- d) Primary or secondary penalisation of disqualification for public office.
- e) Advent of a disqualifying condition.

Two. Active membership in the Prosecution Service also ceases through mandatory or voluntary retirement, which will be

established by the government under the same terms and conditions as stipulated for judges and justices in the Constitutional Act on the Judiciary.

#### **Chapter IV** *Public prosecutor status*

##### *Article 47*

The administrative status of public prosecutors will be as laid down for judges and justices in the Constitutional Act on the Judiciary and any supplementary regulations.

#### **Chapter V** *Rights and duties of members of the Prosecution Service*

##### *Article 48*

The primary mission of members of the Prosecution Service will be to perform the tasks intrinsic to their position in good faith, promptly and efficiently fulfilling their duties in accordance with the principles of unity of action and hierarchical order, and subject at all times to the principles of legality and impartiality.

##### *Article 49*

Members of the Prosecution Service must live in the city where they are officially posted and may only re-locate with the permission of their hierarchical superiors.

Furthermore, they be present in the office in that city and the Courts to which they are assigned for as long as necessary, as instructed by the Chief Prosecutor.

##### *Article 50*

Members of the Prosecution Service will honour the secrecy of confidential matters coming to their knowledge by virtue of their position.

##### *Article 51*

Members of the Prosecution Service will be entitled to their position and to promotion within the Corps of Public Prosecutors under the conditions established by law. Attendant upon positions with the Prosecution Service will be any honorary consideration established by the regulations.

### *Article 52*

Members of the Prosecution Service will be entitled to leaves of absence and to the rewards and compensation system established by the regulations, both based on the provisions laid down for judges and justices in the Constitutional Act on the Judiciary.

### *Article 53*

The remuneration scheme for members of the Prosecution Service will be governed by law and comparable to the scheme in place for members of the Judiciary. They will also be entitled to suitable healthcare and Social Security, in accordance with the law.

### *Article 54*

The provisions of Article 127 of the Constitution acknowledge prosecutors' right to form professional associations. This right will be exercised freely in the context of Article 22 of the Constitution, and will comply with the following rules:

One. Prosecutors' associations will have legal personality and full legal capacity to achieve their purposes.

Legitimate purposes may include defending the professional interests of their members in all respects and conducting studies and activities aimed at serving justice in general.

Two. Only persons having prosecutor status may join these associations, whose membership will be closed to other corps or professions.

Three. Prosecutors are free to join professional associations or otherwise. These associations must be open to any member of the Corps of Public Prosecutors.

Four. Professional associations will be legally constituted from the moment they are entered in the Registry kept for this purpose by the Ministry of Justice. Associations will be registered upon application by any of the founding members, who must attach the by-laws and a list of members thereto.

Five. The by-laws must contain at least the following items.

1) Name of the association, which may have no political connotations.

2) Specific purposes.

3) The association's organisational and representational structure. Its internal structure and operating procedures must be democratic.

4) Membership rules.

5) Financial resources and membership dues.

6) A description of how the association's officers are elected.

Six. When professional associations engage in activities that are against the law or beyond the scope of their by-laws, the General Prosecutor may seek their dissolution through ordinary declaratory action. This action will be lodged in Division 1 of the Supreme Court, which may rule to suspend the association as a precautionary measure.

#### *Article 55*

No members of the Prosecution Service may be required to personally appear before the administrative authorities by virtue of their office or duties, without prejudice to the obligations of aid or assistance among authorities.

Furthermore, no members of the Prosecution Service may receive orders or instructions on how to perform their duties from anyone other than their hierarchical superiors.

The provisions of Article 8 et sequentes will be applicable to the General Prosecutor in this regard.

#### *Article 56*

Public prosecutors in active service may not be arrested without the authorisation of their hierarchical superior, except by order of the competent judicial authority or if involved in flagrante delicto. In the latter event, the detainee will be brought immediately before the nearest judicial authority, and his/her hierarchical superior will be notified without delay in both cases.

### **Chapter VI** *Conflicts of interest and prohibitions*

#### *Article 57*

Prosecutors incur a conflict of interest when they:

One. Hold the office of judge or justice or employment of any type in courts or tribunals in any jurisdiction.

Two. Hold office in any other jurisdiction or participate in arbitration activities or bodies.

Three. Hold any other elected or politically appointed national, regional, provincial or local office, or positions with institutions subordinate to any of the above.

Four. Are employed or hold positions funded or paid by the Central Government, Parliament, the Royal Household, autonomous communities, provinces, municipalities or any organisation, body or company subordinate thereto.

Five. Have other paid employment, hold another position or practise a profession. Teaching law or engaging in legal research or literary, artistic, scientific or technical production or creation, or authoring publications deriving therefrom, when duly reported to the prosecutor's hierarchical superior, will be excepted from this rule, pursuant to the provisions of the legislation on conflicts of interest for government employees.

Six. Practise the legal profession, except when the purpose is the prosecutor's personal affairs or those of his spouse or stable partner, children under his parental authority or persons under his guardianship; practise as a barrister, or provide any type of legal advice, remunerated or otherwise.

Conflict of interest with legal practice will exist without exception respecting affairs in which the prosecutor may have been involved in such capacity. This limitation will apply to all possible cases, whether handled directly or through an intermediary, even when the prosecutor is on a subsequent leave of absence. Disciplinary liability as laid down in the General By-laws of the Legal Profession for persons practising law while involved in a conflict of interest will be applied in such cases.

Seven. Engage in any type of commercial activity, either directly or through an intermediary. Exceptions are the processing and sale of products obtained from the individual's own property, which may be sold, but not from an establishment open to the public.

Eight. Hold the position of director, manager, administrator, board member, general or full partner or any other role that involves direct administrative or financial participation in public or private companies or commercial enterprises of any kind.

### *Article 58*

Members of the Prosecution Service may not hold positions:

One. In Prosecutor's Offices whose regional jurisdiction encompasses a town in which their spouse or stable partner is involved in industrial or commercial activity that would prevent the impartial performance of their duties, in the opinion of the Prosecution Council.

Two. In the same Prosecutor's Office or Section where relatives to the second degree by kinship or marriage, or a spouse or stable partner, are practising public prosecutors, if one is directly subordinate to the other.

For the intents and purposes of this item, direct subordination will be considered to mean the relationship between the Chief Prosecutor and the Deputy Chief Prosecutor or the Senior Prosecutor for each Section, and between a Senior Prosecutor and the prosecutors in the respective Section.

For these same intents and purposes, the relationship between the Chief Regional Prosecutor and the Chief Provincial Prosecutors in the same autonomous community and between the Chief Provincial Prosecutor and the Chief Area Prosecutors in the same province, will be regarded to constitute direct subordination.

Three. When the Constitutional Act on the Judiciary establishes conflicts of interest between members of the Judiciary and members of the Prosecution Service.

Four. As Chief Prosecutors in Prosecutor's Offices where their spouse or stable partner or a relative to the second degree by kinship or marriage normally practises as a lawyer or barrister, except in the case of judicial districts with populations of over five hundred thousand, without prejudice to the obligation of abstention when applicable.

Five. In a Prosecutor's Office in whose jurisdiction they practised as a lawyer or barrister in the two years prior to their appointment.

### *Article 59*

Members of the Prosecution Service may not belong to political parties or trade unions or be employed thereby, or praise or censure the behaviour of public authorities, civil servants or public

corporations, or attend any public ceremony or meeting in an official capacity or with attributes of office unless warranted by the performance of their duties. They may take part in legislative, regional or local elections only to cast their personal vote.

## **Chapter VII** *Liability of members of the Prosecution Service*

### *Article 60*

Civil and criminal liability proceedings against members of the Prosecution Service and actions for recovery brought against them by the Central Government, as appropriate, will be governed by any applicable provisions laid down for judges and justices in the Constitutional Act on the Judiciary.

### *Article 61*

Members of the Prosecution Service will be liable for disciplinary action in the event of any of the instances of misconduct defined in this Statute.

Misconduct committed by members of the Prosecution Service may be minor, serious or very serious.

### *Article 62*

Very serious misconduct includes:

One. Deliberate breach of the obligation of loyalty to the Constitution established in article forty-five of this Statute, further to a final judgement.

Two. Failure to observe specific orders or personal summonses served upon the prosecutor in writing in the manner laid down in this Statute, when such non-observance jeopardises the proceedings or significantly alters the internal operation of the Prosecutor's Office.

Three. Membership in political parties or trade unions, or the holding of employment or office in their service.

Four. Repeatedly provoking serious confrontations with the authorities in the jurisdiction in which the prosecutor holds office, for reasons unrelated to the performance of his/her duties.

Five. Any actions or omissions that give rise to a final,



unappealable judgement of civil liability in the performance of duties involving mens rea or gross negligence, pursuant to Article sixty of this Statute.

Six. Engagement in any of the activities constituting a conflict of interest with the office of prosecutor established in Article fifty-seven of this Statute, except any involving serious misconduct further to the provisions of Article sixty-three.

Seven. Self-promotion for appointment to a Prosecutor's Office when the appointee is involved in a conflict of interest or prohibition established in Article fifty-eight of this Statute. Similarly, failure to notify the General Prosecutor's Office of the existence of circumstances requiring forced transfer from the present position for the reasons laid down in Article thirty-nine, item three.

Eight. Failure to abstain in a proceedings, while fully aware of the existence of one of the legally established causes therefor.

Nine. Neglect of or unwarranted and repeated delays in completing tasks or in performing any other assigned duties.

Ten. Breach of duty or unjustified and continued absence during seven calendar days or more from the Prosecutor's Office where the Prosecutor is posted.

Eleven. Falsehood in applications for leave, authorisations, statements of absence of conflict of interest, daily expense allowances and financial aid.

Twelve. Disclosure by the Prosecutor of facts or information learnt during the performance or as a result of his/her duties, when this jeopardises proceedings or is detrimental to anyone concerned.

Thirteen. Abuse of prosecutor status to obtain unwarranted favourable treatment from authorities, civil servants or professionals.

Fourteen. Commission of serious misconduct if the prosecutor had previously been penalised on two occasions for serious misconduct under final, unappealable decisions, and the respective records had neither been expunged nor was expunction warranted, in accordance with the provisions of Article sixty-nine of this Statute.

Fifteen. Inexcusable ignorance on the part of the prosecutor in carrying out his/her duties.

Sixteen. The blatant failure to include grounds that substantiate the prosecutor's opinions where required, pursuant to the instructions of the General Prosecutor's Office.

*Article 63*

Serious misconduct includes:

One. Lack of respect for superiors in the hierarchical structure, in their presence, in written communications directed to them or in public.

Two. Failure to observe orders or summonses received in the manner laid down in this Statute.

Three. Acting in excess or abuse of authority, or with a serious lack of regard for citizens, institutions, judges, justices, prosecutors, secretaries, forensic pathologists, civil servants from the administrative, processing or legal assistance units, lawyers, barristers, social workers, Judicial Police officers, or any other administration of justice or Prosecutor's Office employees.

Four. Failure to institute a claim for disciplinary liability against secretaries or subordinate auxiliary personnel, when the prosecutor is or should be aware of the existence of serious breach of duties on their part.

Five. Disclosure of facts or information learnt by the prosecutor during the performance of his/her duties or as a result thereof, when this does not constitute very serious misconduct as described in Article sixty-two, item twelve of this Statute.

Six. Unjustified and continued absence during more than three but fewer than seven calendar days from the Prosecutor's Office where the Prosecutor is posted.

Seven. Unjustified non-attendance at public hearings to which the prosecutor is summoned as provided by law, when such non-attendance does not constitute very serious misconduct.

Eight. Unwarranted delays in dealing with matters in which the prosecutor is involved in the performance of his/her duties, when this does not constitute very serious misconduct.

Nine. Performance of any activity subject to a statement of absence of conflict of interest without having obtained the

necessary authorisation, or having obtained it under false pretences.

Ten. Commission of minor misconduct after being previously penalised under a final, unappealable decision for two other instances of minor misconduct, when the respective records had neither been expunged nor was expunction warranted, in accordance with the provisions of this Statute.

Eleven. Any other violations regarding the duties inherent in the office of prosecutor, as established in this Statute, when they merit the classification of serious misconduct, bearing in mind the intentionality of the act, its impact on the Judiciary and the damage incurred to the dignity of the prosecutorial role.

Twelve. Praising or censuring the behaviour of public authorities, public officials or public corporations, invoking his/her prosecutor status or taking advantage thereof. When such deeds are done by a Board of Prosecutors, anyone voting and not dissenting from the majority opinion will be regarded to be liable.

#### *Article 64*

Minor misconduct includes:

One. Lack of respect for hierarchical superiors, in the absence of circumstances that would constitute serious misconduct.

Two. Discourtesy or a lack of regard for peers or lower-ranking officials in the hierarchical structure, citizens, institutions, judges, justices, prosecutors, secretaries, forensic pathologists, public officials from the administrative, processing or legal assistance units, lawyers, barristers, social workers, Judicial Police officers, or any other judicial or Prosecutor's Office employees, when such behaviour does not warrant classification as serious misconduct.

Three. Unjustified or unexplained non-compliance with legally established deadlines for the completion of assigned duties.

Four. Unjustified and continued absence during one to three calendar days from the Prosecutor's Office or assignment where the prosecutor is posted.

Five. A mere recommendation relating to any case that may be heard by a court or tribunal.

Six. Inattention to orders, summonses or verbal remarks by the prosecutor's supervisors, unless this constitutes a more serious violation, in accordance with the provisions of the preceding two articles.

Seven. Discourtesy or a lack of regard for citizens, institutions, judges or justices in response to a request to use a vernacular language, if an adequate and sufficient command of that language had been proven and duly credited.

### *Article 65*

One. The limitation prescribed for acting on very serious misconduct is two years; for serious misconduct, one year; and for minor misconduct, the period stipulated in the Penal Code for misdemeanours.

The limitation period will be counted from the time the misconduct is committed. Nevertheless, in the instance described in Article 62.5 of this Statute, the limitation period will begin when a final, unappealable ruling has been delivered, declaring the prosecutor liable.

Two. The limitation period will be suspended upon notification of the decision to initiate disciplinary proceedings, or, as appropriate, on the date of the enquiry into the prosecutor's conduct.

The limitation period will begin to run again if the enquiry or disciplinary proceedings remain at a standstill for six months for reasons not attributable to the prosecutor subject thereto.

### *Article 66*

One. Penalties that may be imposed on prosecutors for misconduct committed in performing their duties are:

- a) Warning.
- b) Fine of up to three thousand euros.
- c) Forced transfer to a Prosecutor's Office whose headquarters is at least one hundred kilometres from the Office where the Prosecutor was posted.
- d) Suspension of up to three years.
- e) Separation from service.

Prosecutors penalised with a forced transfer may not compete for other positions for one to three years. The duration of the prohibition from competing must be stipulated in the ruling on the disciplinary action.

Chief Prosecutors penalised for serious or very serious misconduct may be removed from their position further to a decision by the General Prosecutor, after consulting the Prosecution Council.

Two. Minor misconduct may only be penalised with a warning or a fine of up to three hundred euros, or both; serious misconduct with a fine of three hundred to three thousand euros; and very serious misconduct with suspension, forced transfer or separation from service.

Three. In imposing any penalty, the principles of degree and proportionality will be taken into consideration in the ruling on penalisation, which will be aggravated or extenuated depending on the circumstances of the act and of the presumed offender.

Four. The limitation period for penalties imposed for very serious misconduct will be two years; for serious misconduct, one year; and for minor misconduct, the period stipulated in the Penal Code for misdemeanours. These periods will be counted from the day after the decision imposing the penalties becomes final and unappealable.

#### *Article 67*

The following will be empowered to impose penalties:

1. For warnings, the respective Chief Prosecutor.
2. For penalisations up to suspension, the General Prosecutor.
3. For separation from service, the Minister of Justice, further to a proposal submitted by the General Prosecutor, subject to a favourable position by the Prosecution Council.

The Chief Prosecutor's decisions may be appealed to the Prosecution Council.

The General Prosecutor's decisions may be appealed to the Minister of Justice.

Any Prosecution Council or Minister of Justice decisions that exhaust administrative procedures will be subject to judicial review by the respective Division of the National Court.

#### *Article 68*

The penalty consisting of a warning may be imposed forthwith, after a hearing with the party concerned. For all other penalisations, examination of a bill of defence, including a hearing with the party concerned, will be mandatory.

#### *Article 69*

Final, unappealable disciplinary penalisations will be recorded in the personal file of the party concerned, under the responsibility of the Authority imposing the penalty.

Such records will be expunged by decision of the General Prosecutor after the penalty has been enforced, and after six months, two years or four years have elapsed since it was imposed, depending on whether the misconduct was minor, serious or very serious, respectively, providing the public official did not commit any punishable acts in the interim.

Penalisations for minor misconduct will be expunged automatically. All others will be expunged under proceedings initiated at the request of the party concerned, subject to the opinion of the Prosecution Council.

Expunction will delete the record for all intents and purposes, including determination of whether misconduct was recurring or repeated.

#### *Article 70*

The rehabilitation of prosecutors who have been separated from service for disciplinary reasons will be governed by all applicable provisions laid down for judges and justices in the Constitutional Act on the Judiciary.

## TITLE IV

### Human and material resources

#### Sole Chapter

##### *Article 71*

All bodies involved in prosecution will have the expert and auxiliary personnel needed to meet operational needs. This personnel will be subordinate to the respective Chief Prosecutor, without prejudice to the competence attributable to other bodies in their respective domains.

##### *Article 72*

One. Prosecutor's Offices will always have sufficient facilities on the premises of the respective Courts and Tribunals and may also have their own off-premise facilities when advisable to improve service.

Two. The facilities of the Prosecution Service will be provided with the necessary resources, further to public budgetary appropriations.

Three. The National Budget and the Regional Budgets of the autonomous communities competent to organise the administration of justice will include, in the respective chapter, the individually identified budget items required to meet the functional needs of the Prosecution Service. Such items will be provisioned after consideration of proposals submitted by the General Prosecutor, based on information provided by the autonomous communities with jurisdiction in these matters, as appropriate.

One such item will be administered by the General Prosecutor's Support Unit and will be earmarked for the General Prosecutor's Office's administrative/operational expenses.

##### *Additional provision one*

The provisions laid down for judges and justices in the Constitutional Act on the Judiciary will supplement the provisions in the present Statute with respect to the attainment and forfeiture of membership in the Corps of Public Prosecutors, disqualifying

circumstances, administrative status, rights and duties, conflicts of interest, prohibitions and responsibilities of public prosecutors.

*Additional provision two*

One. The Prosecution Service will have a fully integrated information system and electronic communications network to ensure efficiency and unity of action, in accordance with the stipulations of Article 124 of the Constitution.

Two. The Prosecution Service's needs in connection with its information system and integrated electronic communications network will be defined and both will be managed by the competent authorities in the General Prosecutor's Office. Administrative and technical support will be provided by the Ministry of Justice to these ends.

Autonomous communities with powers to provide material resources for the Judiciary will participate with the Ministry of Justice in providing the Prosecution Service with information technology hardware, subject to the provisions in this Organic Statute and to the agreements and resolutions adopted by the Prosecution Service's National Information Technology and Electronic Communications Committee.

Three. The Prosecution Service's integrated communications network will ensure:

a) The existence of a single identification and coding system for the proceedings and actions in which the Prosecution Service is involved.

b) The immediate retrieval of up-to-date and accurate statistical information. To this end, the proceedings in which the Prosecution Service is involved will be entered in a centralised database.

c) On-line access for all Prosecutor's Offices, nation-wide, to the Ministry of Justice's records, databases, information systems and computer applications.

d) A permanent on-line connection linking the General Prosecutor and the other central bodies of the Prosecution Service to all Prosecutor's Offices and members of the Corps of Public Prosecutors, and all Offices and members with one another. A single electronic identification and communications system will be implemented to these ends.

Four. The Prosecution Service's National Information Technology and Electronic Communications Committee, chaired by



the General Prosecutor, will issue instructions and define mandatory criteria for all Prosecutor's Offices regarding the implementation, use, management and operation of all computer and electronic communications systems. The structure, composition and duties of this National Committee, as well as the organisation, operation and technical characteristics of the Prosecution Service's integrated electronic communications network, will be established by regulations enacted under Royal Decree.

*Additional provision three Prosecutors Emeritus to the Supreme Court*

When High Prosecutors at the Supreme Court retire, if they so request, they will be appointed High Prosecutors Emeritus of the Supreme Court by the government on a yearly basis. The government's decision will be issued further to a proposal submitted by the General Prosecutor after consulting the Prosecution Council, providing the prosecutors concerned meet the requirements stipulated in Constitutional Act 6/1985 of 1 July 1985 on the Judiciary, and depending on the need for additional support in the Prosecutor's Office at the Supreme Court.

*Transitional provision seven*

For prosecutors currently assigned to the Prosecution Inspection Bureau, the maximum period of ten years for postings to this Bureau, as stipulated in Article thirty-six, item two, will begin to run on the date this Statute enters into force.

*Transitional provision eight*

Regional Prosecutor's Offices will be established in accordance with the provisions of Article twenty-one within one year of the date that this Statute enters into force. When such Offices are created, the denomination of the current Chief Prosecutors of Superior Courts of Justice will be automatically changed to Chief Regional Prosecutors. These officials will retain their position until the five-year term for which they were originally appointed expires, without prejudice to subsequent reappointment, pursuant to the provisions of Article forty-one, item three. Similarly, the denomination Deputy Chief Prosecutors of Superior Courts of Justice will be changed to Deputy Chief Regional Prosecutors for the remainder of their term. This period will run as stipulated in Article forty-one, item three and in this Transitional Provision, likewise without prejudice to subsequent reappointment.

Once the staff structures of the Regional Prosecutor's Offices have been established, the respective competition processes will be

announced within the period stipulated, pursuant to the provisions of Article thirty-six, item five, of this Organic Statute. Prosecutors assigned to Prosecutor's Offices at Superior Courts of Justice at the time the competitive process is concluded who are not awarded a post in the new Regional Prosecutor's Offices will be automatically assigned to the respective Provincial Prosecutor's Offices.

Area Prosecutor's Offices will be constituted in the same one-year period. To this end the government, further to the opinion submitted by the General Prosecutor, formed after consulting the Prosecution Council and the Chief Prosecutors of the regions concerned, will adopt any necessary provisions, especially to fill the Chief Prosecutor positions in these Offices. Detachments not converted into Area Prosecutor's Offices through the procedure stipulated in this provision will automatically be assigned to Provincial Prosecutor's Offices as Territorial Sections, under the terms provided for in item four, paragraph two and item five of Article eighteen of this Statute.

When this Statute enters into force, the term of the Deputy Chief Prosecutors referred to in Article forty-one, item three who have been in office for over five years will expire. The resulting positions will be filled through competitive processes, as provided in this Statute, in which all prosecutors affected by this provision may participate. Such prosecutors will continue to perform their duties until the new appointments are forthcoming. The terms of prosecutors appointed prior to the entry into force of this Statute who have not been in office for over five years will end when that term expires, counting from the date of their appointment.

#### *Transitional provision nine*

The person acting as General Prosecutor when this Act enters into force will hold the position through to separation therefrom, which may only be forthcoming under the circumstances described in items a), b), c), d) or e) of Article thirty-one, item one of the Prosecution Service's Organic Statute.

Persons having held the position of General Prosecutor prior to the entry into force of this Statute will not be disqualified for government nomination to this position, as stipulated in Article twenty-nine of the Prosecution Service's Organic Statute.

#### *Repealing provision one*

Transitional provisions one to six of Act 50/1981 of 30 December, regulating the Prosecution Service's Organic Statute, are hereby repealed.

*Repealing provision two*

Any provisions of an equal or lesser rank that are contrary to the provisions in this Act are hereby repealed.

*Sole final provision. Entry into force*

This Statute will enter into force on the day after its publication in the Official State Journal.

