



Hierarchy and Autonomy in the Portuguese Public Prosecution Service

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The Portuguese Public Prosecution Service has in recent years become the target of recurrent criticism, often based upon misleading assumptions. Part of this critique attempts to attribute alleged systemic dysfunctions in the judiciary to the autonomy of the prosecution service. Such arguments serve political or legislative agendas and foster the portrayal of autonomy as a "scapegoat." The narrative promoted is that internal autonomy leads to disorder: prosecutors allegedly operate without oversight, superiors are said to lack powers, and the institution is thus described as proceeding "without rules." These arguments are not only inaccurate, but they also fail to consider the specific constitutional nature of the institution, where autonomy and hierarchy are complementary features of a judicial magistracy.

1. Autonomy: External and Internal Dimensions

The autonomy of the Public Prosecution Service has two inseparable dimensions.

External autonomy refers to independence from other state powers, ensuring prosecutorial action is free from political or governmental intrusion.

Internal autonomy guarantees that individual prosecutors, although subject to hierarchical oversight mechanisms, retain a protected sphere of independence in their decision-making. Without one, the other collapses: the absence of internal autonomy would transform the prosecution service into a bureaucratic corps of administrative officers merely executing superior orders, rendering it incompatible with the constitutional notion of judicial authority.

As Rui Cardoso, Public Prosecutor and former President of SMMP (The Association of Portuguese Prosecutors) once observed, "the absence of either dimension, not only in legal terms but above all in practical effect, would irrevocably compromise the existence of the Public Prosecution Service as a magistracy and its ability to discharge its constitutional mission."



The principle is also upheld at the supranational level: European institutions, including the Council of Europe and the European Union, consistently emphasize that prosecutorial independence is a prerequisite for judicial independence and the rule of law. The Consultative Council of European Prosecutors (Opinion no. 18) has stated that prosecutors “must perform their functions free from external pressure or interference, with due regard to the separation of powers and accountability.”

2. Misconceptions about Hierarchy

A recurring misunderstanding arises from analogies between prosecutorial hierarchy and military command. Critics often assume that, as in an army, orders are absolute and unconditional. This is erroneous. The hierarchy of the Public Prosecution Service is neither rigid nor permanent; it is functional and temporary. A magistrate only holds hierarchical authority while occupying a specific role. Furthermore, intervention by superiors must strictly adhere to statutory and procedural rules. Article 100(2) of the Statute of the Public Prosecution Service (EMP) clarifies that hierarchical intervention in procedural matters must respect the law.

3. Hierarchical Structure and Powers

The hierarchical framework is explicitly provided by law, particularly article 14 of the EMP. Key figures empowered with hierarchical, directive, and procedural functions in criminal matters include: Prosecutor General of the Republic (PGR); Vice-Prosecutor General of the Republic; Regional General Prosecutors; Director of the Central Department of Criminal Investigation and Prosecution; Coordinating Prosecutors within the 23 judicial districts; Directors of Regional Departments of Criminal Investigation and Prosecution; and Prosecutors heading divisions of the DIAP (departments of criminal investigation and prosecution).

The PGR holds central powers through directives, instructions, and orders. These are essential instruments to ensure uniform application of criminal law across the country, harmonize diverging prosecutorial practices, and guarantee equal treatment of citizens before the law. Directives often serve to establish common investigative approaches in sensitive areas (for example, in cases of domestic violence). Instructions provide more specific orientations of a binding nature, while orders impose concrete obligations in given proceedings. The PGR also has the authority to assign specific prosecutors to assist or replace colleagues in complex investigations of high social relevance, including financial or economic crime “megaprocesses.” This selective allocation of expertise



prevents fragmentation and ensures institutional credibility. Importantly, all hierarchical interventions must comply with the Code of Criminal Procedure, precluding arbitrary impositions.

The four Regional General Prosecutors constitute what has been called the “hierarchy in the field”. They supervise prosecutorial activity within their territorial jurisdiction, coordinate offices, resolve conflicts, and may intervene procedurally in accordance with the law. They are also legally entitled to reassign cases among prosecutors when justified by exceptional complexity or public interest.

District Coordinators: At the district level (comarcas), coordinating prosecutors manage local prosecutorial offices, intervene in investigations under the strict conditions of the Code of Criminal Procedure, and assume representation in particularly sensitive or complex cases. Article 83(2) of the EMP specifically entrusts these duties to the heads of local offices, reinforcing their capacity both as leaders and as active procedural agents.

4. Leadership and Management in the Hierarchy

As António Ventinhas, Public Prosecutor and former President of SMMP, has argued, the role of hierarchical leaders is not reductionist; it extends far beyond issuing instructions. They must lead, coordinate, resolve disputes, act as institutional intermediaries with external bodies, manage organizational tasks, and alleviate the administrative burdens placed on rank-and-file prosecutors. The service cannot operate effectively if leadership degenerates into purely bureaucratic duties. The ultimate mission of the Public Prosecution Service is not the production of reports or statistical charts but the defence of citizens and the protection of the democratic community.

The exercise of hierarchical functions should privilege dialogue and the pursuit of consensus, in order to adequately respond to the daily challenges faced by magistrates. A relationship of reciprocal institutional loyalty is essential, and the tendency of some hierarchical leaders to downplay dialogue and consensus-building is cause for concern. A hierarchical superior in the Public Prosecution Service, mindful of the specificity of the functional relationship and the magistracy’s inherent autonomy, cannot be someone distant, who fails to listen to the magistrates under their responsibility, limiting themselves to issuing orders without seeking to understand the concrete reality and foster the adherence of those addressed.

5. Hierarchy, Autonomy, and External Pressure



The balanced coexistence of autonomy and hierarchy reflects the hybrid nature of the Portuguese Public Prosecution Service: it is both a magistracy endowed with judicial authority and a coordinated institution with national responsibilities. Its autonomy—both external and internal—serves as a shield against undue political influence while ensuring consistency in prosecutorial practice. Hierarchy, in turn, functions not as a mechanism of domination but as a framework for coordination, legal certainty, and accountability. Nevertheless, this model remains vulnerable to external pressures. Political attempts to weaken internal autonomy, portraying it as inefficiency or anarchy, risk transforming the prosecution service into a body of administrative agents, undermining its constitutional role and eroding the independence of justice as a whole. European recommendations make clear that such a trajectory would be incompatible with the very notion of the rule of law.

6. The General Prosecutors Directive n.º 4/2000 and the risks to internal autonomy

The internal autonomy of prosecutors—that is, each magistrate’s independent decision-making within criminal proceedings—remains seriously threatened by Directive n.º 4/2020, enacted by the former Prosecutor General. This Directive contradicts the statutory framework for public prosecutors and does not align with the model of prosecutors as judicial authorities, nor with the standards set by the Court of Justice of the European Union.

Article 97(4) of the statute of prosecutors stipulates that hierarchical intervention in criminal cases is governed strictly by criminal procedural law—a statute that draws a clear line between hierarchical intervention in criminal and non-criminal matters.

Directive No. 4/2020, binding on all prosecutors, grants hierarchical superiors the authority to issue concrete instructions to subordinates in criminal cases, allowing direct interference with how investigations are conducted and finalized. This contradicts the Code of Criminal Procedure, which expressly prohibits such direct orders.

Although directives from the Prosecutor General constitute mandatory administrative instructions for all prosecutors, these administrative regulations cannot override or amend statutory provisions, including the prosecutorial statute or the criminal procedure code. Therefore, prosecutor autonomy—fundamental to judicial impartiality and integrity—is placed at severe risk by this directive.



This threat to autonomy is heightened when viewed against European legal standards for prosecutorial independence. The concept of prosecutors as a judicial authority, central to the standards established by the Court of Justice of the European Union, is incompatible with this directive.

Regarding judicial review, the Supreme Administrative Court (STA), in case number 47/21.3BALS—an action brought by the SMMP seeking a declaration of general illegality for Directive No. 4/2020 on hierarchical powers in criminal proceedings—has issued a decision on the merits. This decision was unfavourable to the SMMP, the claimant; however, an appeal has been filed and is currently pending resolution.

For over forty years, no previous Prosecutor General has issued a directive permitting intrusive hierarchical intervention in specific cases, except where allowed by procedural law—even under the previous statute, which did not explicitly restrict such actions. The recent statutory reform, in fact, explicitly rejected the approach found in Directive n.º 4/2020, reaffirming that hierarchical intervention may only occur under the provisions of the Code of Criminal Procedure.

Declarations from MEDEL, issued in Naples and Florence, emphasize that true independence and autonomy for prosecutors are essential to the independence of judicial systems and a cornerstone of the rule of law. Prosecutors must be guaranteed protections equivalent to those of judges, free from external interference, to safeguard independent decision-making. However, this independence is now jeopardized by the current directive.

Additionally, the directive requires that orders from hierarchical superiors not be entered into the criminal case file, but into a parallel “administrative” file. In this separate file, superiors may issue orders in specific criminal cases, interfering with investigations conducted by subordinate magistrates or teams. Such supervision takes place outside the official procedural record and does not follow the legal rules governing criminal cases, which is not permissible. Furthermore, the person deciding whether parties may access the administrative file is the same party who issued the contentious orders, undermining transparency and accountability.

7. The High Council of the Public Prosecution Service

The management of magistrates’ careers, promotions, transfers, and discipline falls within the competence of the High Council of the Public Prosecution Service (CSMP), a plural



and independent body designed precisely to prevent hierarchical authority from becoming an instrument of discretionary power. The CSMP ensures that magistrates' transfers and postings follow objective and transparent criteria and not personal or political interests.

The balance of power within the Public Prosecution Service is ensured, as a whole, by the existence of a politically independent counterweight to the Prosecutor General – namely the CSMP – structured in terms broadly akin to the so-called self-government bodies of the judiciary.

In Cunha Rodrigues' (former General Prosecutor) well-known formulation, the aforesaid dichotomy of powers, in permanent balance, can be summarized by the maxim: he who leads (the Prosecutor General), does not appoint, assess, or discipline, and he who appoints, assesses, and disciplines (the CSMP), does not lead.

The CSMP thus embodies the autonomy of the Public Prosecution Service vis-à-vis political power. According to Article 164 of the Statute of the Judicial System (LOSJ), it is “the supreme body of management and discipline of the magistracy of the Public Prosecution Service.”

The powers of appointment, posting, transfer, and promotion of Public Prosecutors, as well as disciplinary authority, do not belong to political bodies, nor to the Prosecutor General, who is appointed by political authorities.

8. Conclusion

The Portuguese Public Prosecution Service embodies a constitutionally enshrined magistracy that combines autonomy and hierarchy in a distinctive equilibrium. Far from being irreconcilable, these principles sustain each other: autonomy safeguards prosecutorial independence, while hierarchy ensures unity, coherence, and accountability. Misconceptions equating prosecutorial hierarchy with absolute command obscure the specific legal framework that shapes and limits hierarchical power. Attempts to dismantle internal autonomy not only compromise the institutional balance but also threaten the independence of justice in Portugal. In the broader European context, preserving both dimensions of autonomy is essential to sustaining the legitimacy and authority of the prosecution service in a democratic state governed by the rule of law.

