

ASSEMBLY OF THE REPUBLIC

(Law 60/98, of 27 August)

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Status of the Public Prosecution Department

The Assembly of the Republic declares that, as set out in c) of Article 161, p) of Article 165 and No. 3 of Article 166 of the Constitution, that the following shall be national law:

Article 1

Law 47/86, of 15 October, with the changes introduced by the Laws 2/90, of 20 January, 23/92, of 20 August, and 10/94, of 5 May, shall be altered in the following terms:

SECTION I

Public Prosecution Service

HEADING I

Structure, Functions and System of Intervention

CHAPTER I

Structure and Functions

Article 1

Definition

The Public Prosecution Service represents the State, defends the interests that the law determines, takes part in the execution of criminal policy as defined by the organs of sovereignty, carries out penal action according to the principle

of legality, and defends democratic legality, in the terms of the Constitution and of the current Statute and legislation.

Article 2

Status

1. (*Anterior paragraph 1 of Article 2*).
2. The autonomy of the Public Prosecution Service is characterised as being bound by criteria of legality and objectivity and by the fact that Public Prosecution Service magistrates are answerable only to the directives, orders and instructions set out in this law.

Article 3

Jurisdiction

1. The Public Prosecution Service has special responsibility for the following:
 - a) To represent the State, Autonomous Regions, local authorities, the incapacitated, the unidentifiable or those whose whereabouts are not known;
 - b) To take part in the execution of criminal policy as defined by the organs of sovereignty;
 - c) To carry out penal action according to the principle of legality;
 - d) [*Anterior subparagraph c*];
 - e) In cases provided for in law, to assume the defence of collective and diffuse interests;
 - f) [*Anterior subparagraph d*];
 - g) [*Anterior subparagraph e*];
 - h) [*Anterior subparagraph f*];
 - i) To promote and effect crime prevention initiatives;
 - j) [*Anterior subparagraph h*];
 - l) [*Anterior subparagraph i*];
 - m) [*Anterior subparagraph j*];
 - n) [*Anterior subparagraph l*];
 - o) [*Anterior subparagraph m*];
 - p) To carry out all other duties conferred by the law.

2. The jurisdiction referred to in sub-paragraph f) of the above paragraph includes a binding duty to appeal in cases, and under the terms, of the Law of Organisation, Operation and Proceedings of the Constitutional Court.

3. In the exercise of its duties, the Public Prosecution Service is aided by justice employees and by criminal police bodies and has access to advisory and consultation services.

CHAPTER II

System of intervention

Article 4

Representation of the Public Prosecution Service

1. The Public Prosecution Service is represented at the law courts:
 - a) In the Supreme Court, the Constitutional Court, the Supreme Administrative Court, the Supreme Military Court and in the Audit Court, by the Attorney General;
 - b) In the High Courts and in the Central Administrative Court, by assistant attorneys general;
 - c) In courts of 1st instance, by state prosecutors and by assistant state prosecutors.
2. (*Anterior paragraph 2*).
3. The magistrates of the Public Prosecution Service may appoint substitutes according to the provisions of this law.

Article 5

Main and complementary intervention

1. The Public Prosecution Service shall have a central role in proceedings:
 - a) [*Anterior subparagraph a*)];
 - b) [*Anterior subparagraph b*)];
 - c) [*Anterior subparagraph c*)];
 - d) [*Anterior subparagraph d*)];
 - e) Where it represents collective and diffuse interests;

- f) In inventories demanded by law;
 - g) [*Anterior subparagraph f*)].
2. (*Anterior paragraph 2*).
 3. (*Anterior paragraph 3*).
 4. (*Anterior paragraph 4*).
 - a) Where, in cases other than those set out in paragraph 1, Autonomous Regions, local authorities, other public bodies, public utilities, incapacitated or absent persons have an interest in the proceedings, or where the action is aimed at the realization of collective or diffuse interests;
 - b) [*Anterior subparagraph b*)].

Article 6
Complementary Intervention

(*Anterior Article 6*).

HEADING II

Bodies and agents of the Public Prosecution Service

CHAPTER I

General Disposals

Article 7
Bodies

The bodies of the Public Prosecution Service are:

- a) The Attorney General's office;
- b) The District Attorney General's offices;
- c) The State Prosecution Offices.

Article 8
Agents of the Public Prosecution Service

1. The agents of the Public Prosecution Service are:
 - a) The Attorney General;

- b) The Vice Attorney General;
- c) The assistant attorneys general;
- d) The state prosecutors;
- e) The assistant state prosecutors;

2. The agents of the Public Prosecution Service may be aided by advisors, in the terms of the law.

CHAPTER II

The Attorney General's Office

SECTION I

Structure and jurisdiction

Article 9

Structure

1. (*Anterior paragraph 1 of Article 7*).
2. The Attorney General's Office is composed of the Attorney General, The Governing Board of the Public Prosecution Service, the Consultative Board of the Attorney General's Office and the legal auditors and services of technical and administrative support.
3. The Central Department of Investigation and Penal Action, the Office of Documentation and Comparative Jurisprudence and the Nucleus of Technical Advice all operate within the bounds of the Attorney General's Office.
4. The organisation, personnel and staffing system of the Office of Documentation and Comparative Jurisprudence and the Nucleus of Technical Advice are defined in their own diplomas.

Article 10

Jurisdiction

The Attorney General's Office has jurisdiction:

- a) [*Anterior subparagraph a) of Article 8*];

- b) To appoint, place, transfer, promote, discharge, consider professional merit, take disciplinary action and carry out, in general, all acts of an identical nature with regard to the magistrates of the Public Prosecution Service, with the exception of the Attorney General;
- c) To direct, coordinate and supervise the activity of the Public Prosecution Service and issue directives, orders and instructions that are binding on the magistrates of the Public Prosecution Service while carrying out their functions;
- d) *[Anterior subparagraph d) of Article 8];*
- e) To give opinion in cases of consultation provided for in law and where requested by the President of the Assembly of the Republic or by the Government;
- f) *[Anterior subparagraph f) of Article 8];*
- g) *[Anterior subparagraph g) of Article 8];*
- h) *[Anterior subparagraph h) of Article 8];*
- i) *[Anterior subparagraph i) of Article 8].*

Article 11
Presidency

(Anterior Article 9).

SECTION II

The Attorney General

Article 12
Jurisdiction

1. The Attorney General has jurisdiction:
 - a) To preside over the Attorney General's Office;
 - b) To represent the Public Prosecution Service in the courts referred to in subparagraph a) of paragraph 1 of Article 4;
 - c) To apply to the Constitutional Court for a declaration, of general binding nature, of the unconstitutionality or illegality of any rule.

2. As president of the Attorney General's Office, the Attorney General has jurisdiction:

- a) [*Anterior paragraph 2, subparagraph a) of Article 10*];
- b) To direct, coordinate and supervise the activity of the Public Prosecution Service and issue directives, orders and instructions that are binding on the respective magistrates;
- c) [*Anterior paragraph 2, subparagraph d) of Article 10*];
- d) [*Anterior paragraph 2, subparagraph e) of Article 10*];
- e) [*Anterior paragraph 2, subparagraph f) of Article 10*];
- f) To inspect or order the inspection of the Public Prosecution services and to order the instigation of inquiries, investigations and criminal or disciplinary proceedings with regard to their magistrates;
- g) [*Anterior paragraph 2, subparagraph h) of Article 10*];
- h) To intervene, either in person or by representation, in contracts when the State is a party and where this is required by laws;
- i) [*Anterior paragraph 2, subparagraph l) of Article 10*];
- j) [*Anterior paragraph 2, subparagraph m) of Article 10*];
- l) To exercise over the employees of the services of technical and administrative support of the Attorney General's Office and over those of the services which operate within the bounds of this Office, the jurisdiction which ministers have, except with regard to appointment.
- m) [*Anterior paragraph 2, subparagraph o) of Article 10*].

3. The directives referred to in subparagraph b) of the previous paragraph which interpret legal provisions, are published in the Second Series of the *Diário da República* (Official Journal).

4. The Attorney General is supported by an office in the exercise of his duties.

5. The structure and composition of the office of the Attorney General are defined in their own diploma.

Article 13

Assistance and substitution

1. (*Anterior paragraph 1 of Article 11*).
2. In the courts referred to in subparagraph a) of paragraph 1 of Article 4, assistance and substitution are also ensured by assistant attorneys

general, the number of whom appear from the table set by ordinance from the Minister of Justice, upon the proposal of the Governing Board of the Public Prosecution Service.

3. The Attorney General shall appoint, every two years, an assistant attorney general to coordinate the activity of the Public Prosecution Service in each of the courts referred to in the previous paragraph.

Article 14
Substitution of the Vice Attorney General

(Anterior Article 13).

SECTION III
Governing Board of the Public Prosecution Service

SUBSECTION I
Organisation and operation

Article 15
Composition

1. *(Anterior paragraph 1 of Article 14).*
2. The Governing Board of the Public Prosecution Service is composed of the following:
 - a) *[Anterior paragraph 2, subparagraph a) of Article 14];*
 - b) The District Attorneys general;
 - c) An assistant attorney general elected from and by the assistant attorneys general;
 - d) *[Anterior paragraph 2, subparagraph d) of Article 14];*
 - e) Four assistant state prosecutors elected from and by the assistant state prosecutors, one for each judicial district;
 - f) *[Anterior paragraph 2, subparagraph f) of Article 14];*
 - g) *[Anterior paragraph 2, subparagraph g) of Article 14].*
3. *(Anterior paragraph 3 of Article 14).*

Article 16
Election principles

1. The election of magistrates referred to in paragraphs c), d) and e) of paragraph 2 of the previous article is by universal and secret ballot, with an electoral college corresponding to each of the categories and being formed by the respective magistrates in current service.

2. *(Anterior paragraph 3 of Article 15).*
3. *(Anterior paragraph 4 of Article 15).*

Article 17
Active and passive electoral capacity

(Anterior Article 16).

Article 18
Date of elections

(Anterior Article 17).

Article 19
Special form of election

1. The members of the Governing Board of the Public Prosecution Service referred to in subparagraphs d) and e) of paragraph 2 of article 15 shall be elected by means of lists that are signed by a minimum of 20 and 40 electors respectively.

2. The election of the magistrates referred to in the previous paragraph shall be according to the principle of proportional representation and the method of highest average, in compliance with the following rules:

- a) *[Anterior paragraph 2, subparagraph a) of Article 18];*
- b) *[Anterior paragraph 2, subparagraph b) of Article 18];*
- c) *[Anterior paragraph 2, subparagraph c) of Article 18];*
- d) *[Anterior paragraph 2, subparagraph d) of Article 18].*

3. *(Anterior paragraph 3 of Article 18).*
4. *(Anterior paragraph 4 of Article 18).*
5. *(Anterior paragraph 5 of Article 18).*

Article 20
Distribution of positions

1. *(Anterior paragraph 1 of Article 18-A).*
2. The distribution with regard to the assistant state prosecutors is carried out in the following way:

1st assistant state prosecutor mandate proposed for the judicial district of Lisbon;

2nd assistant state prosecutor mandate proposed for the judicial district of Oporto;

3rd assistant state prosecutor mandate proposed for the judicial district of Coimbra;

4th assistant state prosecutor mandate proposed for the judicial district of Évora.

Article 21
Election Committee

1. *(Anterior paragraph 1 of Article 19).*
2. The election committee is composed of the Attorney General and the members referred to in subparagraph b) of paragraph 2 of Article 15.
3. One representative from each list competing in the election has the right to join the election committee.
4. *(Anterior paragraph 3 of Article 19).*

Article 22
Responsibilities of the election committee

(Anterior Article 20).

Article 23
Electoral disputes

(Anterior Article 21).

Article 24
Regulatory provisions

(Anterior Article 22).

Article 25

Term of office

1. The members referred to in subparagraphs c), d) and e) of paragraph 2 of Article 15 shall hold their offices for a term of three years, which may be renewed once only, in the term immediately following.

2. (*Anterior paragraph 2 of Article 23*).

3. (*Anterior paragraph 3 of Article 23*).

4. The mandate of the members appointed by the Assembly of the Republic lapses at the time of the first meeting of a subsequently elected Assembly.

5. (*Anterior paragraph 4 of Article 23*).

6. (*Anterior paragraph 5 of Article 23*).

7. (*Anterior paragraph 6 of Article 23*).

8. The members of the Governing Board who carry out full time duties receive remuneration corresponding to the original position, if public, or a salary corresponding to that of a director-general.

9. (*Anterior paragraph 8 of Article 23*).

Article 26

Constitution

1. The Governing Board of the Public Prosecution Service shall operate in plenary session or in sections.

2. Plenary session is constituted by all the members of the Board.

Article 27

Jurisdiction

The Governing Board of the Public Prosecution Service has jurisdiction:

- a) To appoint, place, transfer, promote, discharge, consider professional merit, take disciplinary action and carry out, in general, all acts of an identical nature with regard to the magistrates of the Public Prosecution Service, with the exception of the Attorney General;

- b) To approve the electoral regulations of the Board, the internal regulations of the Attorney General's Office, the regulations provided for in Paragraph 4 of Article 134, and the budget proposal for the Attorney General's Office;
- c) To deliberate and issue directives regarding internal organisation and staff management. d) To propose to the Attorney General the issuing of directives that are binding on the magistrates of the Public Prosecution Service while carrying out their functions;
- d) *[Anterior subparagraph d) of Article 24];*
- e) *[Anterior subparagraph e) of Article 24];*
- f) To approve the annual plan of inspections and to order the carrying out of inspections, investigations and inquiries;
- g) To give opinion regarding the organisation of the judiciary and, in general, the administration of justice;
- h) *[Anterior subparagraph g) of Article 24].*

Article 28

Operation

1. The meetings of the Governing Board of the Public Prosecution Service shall ordinarily take place every two months and, extraordinarily, whenever called by the Attorney General, on his instigation or at the request of, at least, seven of its members.

2. *(Anterior paragraph 4 of Article 25).*

3. For decisions to be valid, there must be a minimum of 13 members of the Board present or, in the case of sections, a minimum of 7 members.

4. *(Anterior paragraph 6 of Article 25).*

Article 29

Sections

1. Regarding matters relating to the evaluation of professional merit, the Governing Board of the Public Prosecution Service may meet in sections, in terms defined by internal regulations in the Attorney General's Office.

2. Matters relating to the exercise of disciplinary action fall within the jurisdiction of the disciplinary section.

3. The disciplinary section is composed of the Attorney General and the following members of the Board:

- a) Five of the members referred to in subparagraphs b), d) and e) of paragraph 2 of Article 15, elected by their peers, in proportion to their respective representation;
- b) The assistant attorney-general, referred to in subparagraph c) of paragraph 2 of Article 15;
- c) Three of the persons referred to in subparagraph f) of paragraph 2 of Article 15, elected by and from themselves, for terms of 18 months;
- d) One of the persons referred to in subparagraph g) of Article 15, chosen by the drawing of lots, for rotational terms of 18 months.

4. (*Anterior paragraph 3 of Article 26*).

5. Objections to decisions of the sections should be made to the Board sitting in plenary session.

Article 30

Distribution of processes

1. (*Anterior paragraph 1 of Article 27*).

2. (*Anterior paragraph 2 of Article 27*).

3. In the case of a claim to the plenary session, the process shall be distributed to a different reporter.

4. The reporter may call for the requisition of such documents, processes and measures as he considers necessary. These processes are requisitioned for the necessary period of time, with exemption from the sub judice rule and in such a manner as not to cause harm to the parties.

5. (*Anterior paragraph 4 of Article 27*).

6. (*Anterior paragraph 5 of Article 27*).

7. A decision that adopts the grounds and proposals, or only the former, of the inspector or instructor of the process may be expressed by judgement in concordance, and dispensing with any report.

Article 31

Delegation of powers

(*Anterior Article 28*).

Article 32
Presence of the Minister of Justice

(Anterior Article 29).

Article 33
Appeals

(Anterior Article 30).

SUBSECTION II
Inspection services

Article 34
Composition

1. *(Anterior paragraph 1 of Article 31).*
2. *(Anterior paragraph 2 of Article 31).*
3. When inspection is for the purpose of collecting information on the service and merit of magistrates, the inquiries and disciplinary proceedings may not be carried out by inspectors of category or seniority below those of the magistrates being inspected.
4. *(Anterior paragraph 4 of Article 31).*
5. Inspection secretaries, when they are judicial or technical secretaries with the classification *Very Good*, are entitled to receive a salary corresponding to that of a secretary of a superior court.

Article 35
Jurisdiction

(Anterior Article 32).

SECTION IV
Consultative Board of the Attorney General's Office

Article 36
Composition

(Anterior Article 33).

Article 37
Jurisdiction

The Consultative Board of the Attorney General's Office has jurisdiction:

- a) To give opinion restricted to matters of lawfulness in cases of consultation provided for in law or where it is requested to by the President of the Assembly of the Republic or by the Government;
- b) [*Anterior paragraph 1, subparagraph b) of Article 34*];
- c) [*Anterior paragraph 1, subparagraph c) of Article 34*];
- d) [*Anterior paragraph 1, subparagraph d) of Article 34*];
- e) [*Anterior paragraph 1, subparagraph e) of Article 34*];
- f) To approve internal rules.
- g) To approve internal rules.

Article 38
Operation

(*Anterior Article 35*).

Article 39
Time period for drawing up opinions

1. Opinions shall be drawn up within a period of 60 days, except where, due to complexity, a longer period is necessary. In such a case the body requesting the opinion shall be given prior notice of the probable delay.
2. (*Anterior paragraph 2 of Article 36*).

Article 40
Meetings

1. (*Anterior paragraph 1 of Article 37*).
2. During the summer judicial holiday there shall be one meeting to consider urgent matters.
3. The secretary of the Attorney General's Office shall act as secretary for the Consultative Board.

Article 41
Voting

(*Anterior Article 38*).

Article 42

Binding force of opinions

1. The Attorney General may decide, under the powers conferred on him by subparagraph b) of paragraph 2 of Article 12, that the doctrine of Consultative Board opinions be followed and upheld by Public Prosecution Service magistrates.

2. The opinions referred to in the previous paragraph, shall be circulated to all Public Prosecution Service magistrates and published in the Second Series of the *Diário da República* with an indication of the dispatch which confers them with mandatory status.

3. On his own initiative, or upon a statement with grounds from any magistrate of the Public Prosecution Service, the Attorney General may submit questions to be reconsidered for possible review of the doctrine previously set out.

Article 43

Ratification and taking effect of opinions

1. After approval by the entities who have requested them or to whose sector the matter relates, Consultative Board opinions on general provisions shall be published in the Second Series of *Diário da República* to take effect as the official interpretation, within the respective services, of the matters that they are intended to clarify.

2. (*Anterior paragraph 2 of Article 40*).

SECTION V

Legal auditors

Article 44

Legal auditors

1. For the Assembly of the Republic, for each ministry and for the Ministers of the Republic for the Autonomous Regions, there may be one assistant attorney general with the category of legal auditor.

2. The legal auditors are appointed on secondment.

3. The legal auditors may combine their functions with those assigned to them by the Attorney General in the context of the powers of the Public Prosecution Service which, by law, do not belong to specific bodies.

4. (*Anterior paragraph 5 of Article 41*).

Article 45
Jurisdiction

1. The legal auditors carry out the functions of legal consultation and support at the request of the President of the Assembly of the Republic, members of the Government or Ministers of State for the Autonomous Regions in which they operate.

2. (*Anterior paragraph 2 of Article 42*).

3. (*Anterior paragraph 3 of Article 42*).

4. Where consultations are being discussed in relation to the Assembly of the Republic or to ministries in which they are carrying out functions, the legal auditors shall take part in the sessions of the Consultative Board of the Attorney General's Office with voting rights.

SECTION VI

Central Department of Investigation and Penal Action

Article 46
Definition and Composition

1. The Central Department of Investigation and Penal Action is a body which coordinates and directs the investigation and prevention of crime, which is violent, highly organized or particularly complex in its nature.

2. The Central Department of Investigation and Penal Action is composed of an assistant attorney general, who leads the department, and state prosecutors, the number of whom appears in a table approved by ordinance from the Minister of Justice, after consultation with the Governing Board of the Public Prosecution Service.

Article 47
Jurisdiction

1. The Central Department of Investigation and Penal Action has jurisdiction to coordinate the direction of the investigation of the following crimes:

- a) Crimes against peace and humanity;

- b) Terrorist organisation and terrorism;
- c) Crimes against national security, with the exception of electoral crimes;
- d) Traffic of narcotics, psychotropic and precursory substances, except in situations of direct distribution to the consumer, and criminal association for drug-trafficking;
- e) Money laundering;
- f) Corruption, embezzlement and economic subterfuge in business;
- g) Fraudulent insolvency;
- h) Prejudicial management in economic units of the public sector;
- i) Fraudulent receipt or embezzlement of subsidies, grants or credit;
- j) Economic or financial breaches committed as part of an organised crime, namely using information technology.
- l) Economic or financial breaches on an international or transnational scale.

2. The exercise of the functions of coordination of the Central Department of Investigation and Penal Action include:

- a) The examination and implementation of ways to work together with other departments and services, namely the criminal police, with a view to reinforcing the simplification, rationality and efficiency of the proceedings;
- b) Carrying out studies, in conjunction with the investigation and penal action departments in the seat of the judicial districts, concerning the nature, amount and tendency to develop of criminal activity, and concerning the results obtained through prevention, detection and control.

3. The Central Department of Investigation and Penal Action shall be responsible for directing inquiries and carrying out penal action:

- a) Concerning the crimes outlined in paragraph 1, when the criminal activity occurs in areas belonging to different judicial districts;
- b) Following an order of the Attorney General, when, concerning crimes that display severity, or a particular complexity or where the criminal activity is widespread throughout the territory, a concentrated direction to the investigation is justified.

4. The Central Department of Investigation and Penal Action is responsible for carrying out the actions of prevention provided for in law, concerning the following crimes:

- a) Money laundering;
- b) Corruption, embezzlement and economic subterfuge in business;
- c) Prejudicial management in economic units of the public sector;
- d) Fraudulent receipt or embezzlement of subsidies, grants or credit;
- e) Economic or financial breaches committed as part of an organised crime, namely using information technology.
- f) Economic or financial breaches on an international or transnational scale.

SECTION VII

Office of Documentation and Comparative Jurisprudence

Article 48

Jurisdiction

1. The Office of Documentation and Comparative Jurisprudence has jurisdiction:

- a) To supply legal assistance, collect, deal with and disperse legal information, especially in the areas of community, foreign and international law, and carry out studies and disperse information regarding comparative systems of law, notwithstanding the powers of other services of the Department of Justice;
- b) To cooperate in the organisation and treatment of documentation originating from international bodies;
- c) To support the Department of Justice in the area of international legal and judicial cooperation;
- d) To participate in international meetings, by means of magistrates or employees selected for that purpose, to support the experts selected to participate in them, and to collaborate with national representatives in international organisations;
- e) To prepare, publish and distribute publications organised or directed by the Attorney General's Office or by the Attorney General;
- f) To collaborate in the disclosure, abroad, of the Portuguese legal system, namely among the member states of the Community of Portuguese speaking countries;

- g) To develop projects of legal information and management, relating to the powers of the Attorney General's Office, according to the plans approved by the Department of Justice;
- h) To carry out other functions conferred on it in documentation and of legal information.

2. The organisation, personnel and staffing system of the Office of Documentation and Comparative Jurisprudence shall be defined in its own diploma.

SECTION VIII

Nucleus of Technical Advice

Article 49

Jurisdiction

1. The Nucleus of Technical Advice has jurisdiction to assure technical consultation and advice to the Attorney General's Office and, in general, to the Public Prosecution Service about economic, financial, banking, accounting matters and regarding the securities market.

2. Paragraph 2 of the previous article also applies.

SECTION IX

Technical and Administrative Support Services of the Attorney General's Office

Article 50

Structure, staff and system of provision

The structure, staff and system of appointment of the employees of the technical and administrative support services of the Attorney General's Office are fixed by Decree-Law, after consultation with the Attorney General's Office.

CHAPTER III

State contentious matters

Article 51

State legal departments

1. State legal departments may be created.

2. The State legal departments have jurisdiction in civil or administrative matters or in matters combining civil and administrative issues.

3. The State legal departments are created by ordinance of the Minister of Justice, upon proposal by the Governing Board of the Public Prosecution Service.

4. The ordinance of the Minister of Justice shall fix the territorial area of jurisdiction of the State legal departments, and establish the respective staff of magistrates and regulations of the support services, in the terms of Article 215.

5. The State legal departments will fall within the bounds of the Attorney General's Office or the District Attorney General's Offices, depending on whether their territorial area of jurisdiction falls within or exceeds the area of the judicial district.

Article 52

Composition

1. The State legal departments are directed by assistant attorneys general or by state prosecutors.

2. State prosecutors and assistant state prosecutors carry out functions in the State legal departments.

Article 53

Jurisdiction

The State legal departments have jurisdiction to:

- a) Represent the State in court, in the defence of its patrimonial interests;
- b) Prepare, examine and accompany forms of extrajudicial composition of litigation in conflicts where the state has an interest.

CHAPTER IV

Access to Information

Article 54

Information

1. Access, for the public and the mass media, to information related to the activity of the Public Prosecution Service, is assured in the terms of the law.

2. For the purposes provided for in the previous paragraph, press offices may be set up alongside the Attorney General's Office and the District Attorney General's Offices, these being under the supervision of the Attorney General or the District Attorneys General.

CHAPTER V

District Attorney General's Offices

SECTION I

District Attorney General's Office

Article 55

Structure

1. The seat of every judicial district shall have a District Attorney General.
2. Assistant attorneys general shall carry out functions in the District Attorney General's office.

Article 56

Jurisdiction

The District Attorney General's office has jurisdiction:

- a) To promote the defence of democratic legality;
- b) To direct, coordinate and supervise the activity of the Public Prosecution Service in the judicial district and to issue orders and instructions which are binding on magistrates when carrying out their duties;
- c) To propose directives to the Attorney General, which have as their aim the standardisation of the activity of the Public Prosecution Service;
- d) To coordinate the activity of the criminal police bodies;
- e) To supervise the procedural activity of the criminal police bodies;
- f) To supervise observance of the law in the execution of penalties and in the measures of security and fulfilment of any prison terms or coercive treatment, requesting clarification and proposing inspections whenever deemed necessary;

- g) To carry out studies regarding tendency related to doctrine and jurisprudence, with a view to uniting the law and defence of the principle of equal rights for all citizens before the law;
- h) To carry out, together with the criminal police bodies, studies concerning factors and tendencies about the future of criminality;
- i) To produce the annual activity report and progress reports that are deemed necessary or are determined necessary at a superior level;
- j) To carry out all other functions conferred by law.

SECTION II

District Attorneys General

Article 57

Status

1. The District Attorney General's Office is directed by an assistant attorney general who is named a District Attorney General.
2. The District Attorney General is substituted, when he is absent or there is an impediment to carrying out his duties, by an assistant attorney general indicated by him or, when there is no such indication, by the most senior.
3. The provisions of the present section apply, with the necessary changes, to the magistrates that carry out functions in the Central Administrative Court.
4. The District Attorney General may propose the appointment of an employee from the services of the Department of Justice to act as his secretary, on secondment.

Article 58

Jurisdiction

1. The District Attorney General has jurisdiction:
 - a) To direct and coordinate the activity of the Public Prosecution Service in the judicial district and to issue orders and instructions;
 - b) To represent the Public Prosecution Service in the High Court;

- c) To propose, to the Attorney General, the adoption of directives which promote the standardisation of Public Prosecution Service procedures;
- d) To coordinate the activity of the criminal police bodies;
- e) To supervise the operations of the Public Prosecution Service and the procedural activity of the criminal police bodies and to keep the Attorney General informed in this regard.
- f) To vigil the lawfulness of the execution of measures which restrict liberty, prison measures or coercive treatment, and to propose measures for the inspection of the establishments or services, as well as adopting criminal or disciplinary provisions when deemed necessary;
- g) To invest powers in the state prosecutors and assistant state prosecutors in the county (*comarca*) corresponding to the seat of the judicial district;
- h) To organise the distribution of service between the state prosecutors of the same county, department or judicial *círculo*, notwithstanding the provisions of the law of proceedings;
- i) To carry out all other functions conferred by law;

2. The District Attorney General may delegate, from among the remaining assistant attorneys general, functions of supervision and coordination of the judicial district, according to areas of material intervention of the Public Prosecution Service.

3. The District Attorney General and the assistant attorneys general may be aided by state prosecutors.

Article 59 Assistant attorneys general

The assistant attorneys general in the District Attorney General's Office are responsible for:

- a) Under the direction of the District Attorney General, representing the Public Prosecution Service in the High Court;
- b) Supervising and coordinating the areas of intervention that are delegated to them.

CHAPTER VI

State Prosecutors' Offices

SECTION I

State Prosecutors' Offices

Article 60

Structure

1. The seat of each judicial *círculo* has a state prosecutor.
2. In counties corresponding to the seat of the judicial district there may be one or more state prosecutors' offices.
3. The state prosecutors' office is composed of the state prosecutor or prosecutors and assistant state prosecutors.
4. The state prosecutors' offices are provided with their own administrative support.

Article 61

Jurisdiction

The state prosecutors' offices have the special responsibility of directing, coordinating, and supervising the activity of the Public Prosecution Service in the area of the respective judicial *círculo* or in the courts or departments in which they supervise.

Article 62

Direction

1. The state prosecutors' office is directed by one state prosecutor.
2. In the courts and departments where there is more than one state prosecutor, state prosecutors may be nominated as having specific functions of coordination.
3. The state prosecutor is substituted, when he is absent or there is an impediment to carrying out his duties, by the most senior magistrate in the same category or, if there is not one, by the assistant state prosecutor chosen by the state prosecutor.

SECTION II

State prosecutors

Article 63

Jurisdiction

1. The state prosecutors have jurisdiction:
 - a) To represent the Public Prosecution Service in courts of 1st instance; they must personally take on this representation where this is justified by the severity or complexity of the cases or by the particular relevance of the interest being maintained, namely in hearings in collective court or by jury;
 - b) To direct and supervise the carrying out of Public Prosecution Service duties and to keep the District Attorney General informed in this regard;
 - c) To give orders and instructions;
 - d) To invest powers in the assistant state prosecutors;
 - e) To give decisions provided for in the laws of process;
 - f) To define means of working together with the criminal police bodies, social reintegration bodies and establishments of support, treatment and cure.
 - g) To carry out all other functions conferred by the law.

2. The coordinating state prosecutor is responsible for:
 - a) Defining criteria for the management of services, after consultation with the other state prosecutors.
 - b) Establishing rules of procedure, with a view to the objectives of standardisation, correction, and rationalisation, after consultation with the other state prosecutors.
 - c) Guaranteeing the collection and treatment of procedural and statistical information related to the Public Prosecution Service and the transmitting of such to the District Attorney General;
 - d) Establishing mechanisms for working together with the structures of the Public Prosecution Service which mediate in other procedural phases, in order to obtain gains in terms of operation and efficiency;
 - e) Coordinating working together with criminal police bodies, social reintegration bodies and establishments of support, treatment and cure.

- f) Making decisions about the substitution of state prosecutors, in cases of absence or other factors preventing them from carrying out their duties and where is not feasible to inform the District Attorney General in reasonable time.
- g) Making decisions concerning internal conflicts of jurisdiction;
- h) Assuring the external representation of the state prosecutors' office.

3. The coordinating state prosecutor may join the functions referred to in the previous paragraph into the direction of one or more sections.

4. In the case of accumulation of service, vacancy of position or impediment of its holder, for a period greater than 15 days, the District Attorney Generals may, subject to previous communication with the Governing Board of the Public Prosecution Service, attribute the service of other counties, courts or departments to the state prosecutors.

5. The measure provided for in the previous paragraph lapses after a period of six months, and may not be renewed for the same state prosecutor, without the agreement of the same, before a period of three years has passed.

6. The state prosecutors who accumulate functions for a period longer than 30 days have the right to receive remuneration to be fixed by the Minister of Justice, after consultation with the Governing Board of the Public Prosecution Service, between the limits of one fifth of and the total salary.

SECTION III

Assistant state prosecutors

Article 64

Assistant state prosecutors

1. The assistant state prosecutors carry out functions in counties according to the table appearing in the legislation on judicial organisation.

2. It is the responsibility of assistant state prosecutors to represent the Public Prosecution Service in the courts of 1st instance, notwithstanding the provisions of sub-paragraph a) of paragraph 1 of the previous article.

3. Notwithstanding the guidance of the respective District Attorney General, the distribution of services to assistant state prosecutors in the same district is done by order of the competent state prosecutor.

4. The provisions of paragraphs 4 to 6 of the previous article also apply, with the necessary changes, to the assistant state prosecutors.

Article 65

Substitution of assistant state prosecutors

1. In the counties with two or more assistant state prosecutors, these will substitute each other according to the order established by the state prosecutor.

2. Where absence or impediment is no more than 15 days, the state prosecutor may indicate as a substitute another assistant state prosecutor from the same county.

3. The state prosecutor may also appoint as a substitute another competent person, preferably qualified and possessing a Law degree.

4. Notwithstanding the provisions of the previous paragraphs, assistant state prosecutors shall be substituted, where they are absent or otherwise impeded from acting, by the notary of the municipality where the court is based.

5. In counties with more than one notary, the substitute shall be appointed by the state prosecutor.

6. Substitutes that are not magistrates and that carry out duties for a period of more than 15 days are entitled to remuneration fixed by the Minister of Justice, after consultation with the Governing Board of the Public Prosecution Service, between the limits of one third of and the total salary.

Article 66

Substitution in urgent cases

Where there is a case of urgency and substitution cannot be made in the manner indicated in the preceding paragraphs, the judge shall nominate a competent person for each case, preferably qualified and possessing a Law degree.

Article 67

Representation of the state in civil actions

Notwithstanding the provisions of Article 51, in civil actions where the State is a party, the Attorney General, after consultation with the District Attorney General, may appoint any Public Prosecution Service magistrate to assist or substitute the magistrate who has the responsibility for this representation.

Article 68

Representation of the state in criminal actions

1. In criminal actions, and notwithstanding the provisions of Article 47, paragraph 3, subparagraph b), and Article 73, paragraph 1, subparagraph c),

the Attorney General may appoint any Public Prosecution Service magistrate to assist or substitute another magistrate to whom the process has been allocated, wherever this is justified by weighty reasons of procedural complexity or social consequences.

2. The District Attorney General may decide, based on procedural reasons, that the magistrate of the Public Prosecution Service who directed the inquiry may intervene in the subsequent phases of the proceedings.

Article 69

Special representation of the Public Prosecution Service

1. Where there is a conflict of interest between bodies, persons or interests that the Public Prosecution Service has a duty to represent, the state prosecutor shall request the Bar Association to appoint a lawyer to represent one of the parties.

2. Where the matter is urgent and while an appointment cannot be made under the terms of the previous paragraph, the judge shall appoint a lawyer to take part in the proceedings.

3. The fees due for the assistance referred to in the previous paragraphs shall be borne by the State.

CHAPTER VII

Departments of investigation and penal action

Article 70

Seat of the judicial district

In the county corresponding to the seat of each judicial district there will be a department of investigation and penal action.

Article 71

Counties

1. Departments of investigation and penal action may be created in counties where there is a high volume of cases.

2. For the purposes of the previous paragraph, counties considered to have a high volume of cases are those which have registered more than 5000 inquiries annually in at least three of the last five judicial years.

3. The departments of investigation and penal action of the counties are created by ordinance of the Minister of Justice, after consultation with the Governing Board of the Public Prosecution Service.

Article 72

Structure

1. The departments of investigation and penal action may be organised in sections, in response to the nature and frequency of crimes.

2. The departments of investigation and penal action in the county corresponding to the seat of the judicial district are directed by assistant attorney generals or by state prosecutors.

3. The departments of investigation and penal action in the region are directed by state prosecutors.

4. When the departments of investigation and penal action are organised in sections, these are directed by state prosecutors.

5. Notwithstanding the provisions in the previous paragraphs, state prosecutors and assistant state prosecutors carry out functions in the departments of investigation and penal action, the number of these being by ordinance of the Minister of Justice, upon a proposal from the Governing Board of the Public Prosecution Service.

Article 73

Jurisdiction

1. The departments of investigation and penal action in the county corresponding to the seat of the judicial district have jurisdiction:

- a) To direct inquiry and carry out penal action for crimes committed in the region.
- b) To direct inquiry and carry out penal action related to crimes indicated in paragraph 1 of Article 47, when the criminal activity occurs in counties belonging to different counties of the same judicial district.
- c) Following an order from the District Attorney General, to direct inquiry and carry out penal action when, concerning crimes that display severity, or a particular complexity or where the criminal activity is widespread throughout the territory, a concentrated direction to the investigation is justified.

2. The departments of investigation and penal action in counties referred to in Article 71 shall be responsible for directing inquiry and carrying out penal action in relation to crimes committed in the county.

PART II

On the magistrature of the Public Prosecution Service

SINGLE HEADING

Magistrature of the Public Prosecution Service

CHAPTER I

Organisation and statute

Article 74

Scope of legislation

(Anterior Article 53)

Article 75

Parallelism in relation to the judicial magistrature

(Anterior Article 54)

Article 76

Status

1. *(Anterior paragraph 1 of Article 55).*
2. *(Anterior paragraph 2 of Article 55).*
3. The hierarchy consists of the subordination of magistrates of a lower rank to those of a higher rank, under the terms of this legislation, and of their consequent obligation to observe the directives, orders and instructions that they receive, notwithstanding the provisions of Articles 79 and 80.

Article 77
Rendering accountable

(Anterior Article 56)

Article 78
Stability

(Anterior Article 57)

Article 79
Limit of directive powers

1. The magistrates of the Public Prosecution Service may request to the hierarchical superior that orders or instructions be sent in writing, and they must always be in this form when they are to produce effects in a given process.

2. *(Anterior paragraph 1 of Article 58).*

3. Such refusal is made in writing, following representation of the reasons invoked.

4. In cases where the previous paragraphs apply, the magistrate who has issued the directive, order or instruction may carry it out himself or allocate it to another magistrate.

5. *(Anterior paragraph 4 of Article 58).*

6. *(Anterior paragraph 5 of Article 58).*

Article 80
Powers of the Minister of Justice

The Minister of Justice has jurisdiction over the following matters:

- a) To transmit, by means of the Attorney General, specific instructions in civil actions and proceedings with a composition of an extrajudicial nature in conflicts in which the State has an interest;
- b) *[Anterior subparagraph b) of Article 59];*
- c) *[Anterior subparagraph c) of Article 59];*
- d) *[Anterior subparagraph d) of Article 59];*
- e) *[Anterior subparagraph e) of Article 59].*

CHAPTER II

Incompatibilities, duties and rights of magistrates

Article 81

Incompatibilities

1. The carrying out of any other public or private function of a professional nature, other than teaching duties or scientific research of a legal nature or managerial functions in representative organisations of the Public Prosecution Service magistrature, is incompatible with the performance of the office of Public Prosecution Service magistrate.

2. (*Anterior paragraph 2 of Article 60*).

3. The functions of full-time magistrate member of the Governing Board of the Public Prosecution Service, magistrate member of the office of the Attorney General, management or teaching in the Centre for Judicial Studies, and being in charge of preparation and review of legal statutes within the context of the Department of Justice, are all deemed to be functions of the Public Prosecution Service.

Article 82

Political activities

(*Anterior Article 61*)

Article 83

Impediments

1. Public Prosecution Service magistrates may not serve in a tribunal or court in which duties are being carried out by judicial or Public Prosecution Service magistrates or justice employees who are linked by marriage, cohabitation, blood or affinity of any degree in direct descent or up to the 2nd degree of collateral relationship.

2. Public Prosecution Service magistrates may not serve in a court or department belonging to a judicial *círculo* in which they have had a lawyer's office in the last five years.

Article 84

Duty of secrecy

1. Public Prosecution Service magistrates may not make declarations or comments regarding proceedings, except, when given superior authorisation,

when this is for the defence of honour or for the fulfilment of another legitimate interest.

2. Information which is directed at the fulfilment of rights and legitimate interests, namely that of access to information, and which is not a matter covered by the secrecy of justice or by professional secrecy, is not covered by the duty of secrecy.

Article 85 **Necessary residence**

1. Public Prosecution Service magistrates have necessary residence where the court or position where they are carrying out duties is located, although they may reside in any part of the district provided that this is not inconvenient for the performance of their duties.

2. Where circumstances so justify, and where there is no prejudice to the performance of their duties, Public Prosecution Service magistrates may be authorised to live in a location other than that set out in paragraph 1.

Article 86 **Absence**

1. Public Prosecution Service magistrates may absent themselves from their district when this is during exercise of their duties, in leave of absence or during judicial holidays, Saturdays, Sundays and public holidays.

2. Absence during holidays, Saturdays, Sundays and public holidays must not prejudice the performance of urgent service, a rota system being organised for this purpose.

3. (*Anterior paragraph 3 of Article 65*).

Article 87 **Justified Absences**

1. Where there are pressing grounds, Public Prosecution Service magistrates may absent themselves from their confines for a number of days not exceeding three every month and ten every year, after receiving prior permission from their hierarchical superior or, where it is not possible to obtain this, communicating and justifying the absence immediately after their return.

2. (*Anterior paragraph 2 of Article 66*).
3. Absences that occur as a result of the performance of managerial duties in representative organisations of the Public Prosecution Service magistrature are considered as equal to those referred to in the previous paragraph, up to a limit of four per month.
4. (*Anterior paragraph 4 of Article 66*).

Article 88

Leave of absence

1. If it is not inconvenient for the service, the Governing Board of the Public Prosecution Service or the District Attorney General, acting as its delegate, may permit leave of absence for magistrates to attend congresses, symposiums, courses, seminars, meetings, or other events taking place either in the country or abroad, connected with their professional activity.

2. The provisions of Decree-Law 272/88, of 3 August, apply to magistrates of the Public Prosecution Service, with the necessary changes, when they propose to undertake work or study programmes, or participate in courses or training of recognised public interest.

3. Intentions referred to in the previous paragraph are subject to order of the Minister of Justice, upon proposal of the Governing Board of the Public Prosecution Service, in which they should indicate the duration, conditions and terms of the programmes and training.

Article 89

Magistrates on long term unpaid leave

Public Prosecution Service magistrates on long term unpaid leave may not make reference to that attribute in any form of identification relating to the profession that they carry out.

Article 90

Treatment, honours and professional dress

1. The Attorney General has the same rank, treatment and honours as the President of the Supreme Court and uses the same professional dress.
2. (*Anterior paragraph 2 of Article 68*).
3. (*Anterior paragraph 3 of Article 68*).

4. State prosecutors and assistant state prosecutors have the same rank, treatment and honours as judges in the courts where they carry out duties and use the professional dress appropriate to them.

Article 91

Remand in custody

1. Public Prosecution Service magistrates may not be arrested or held without being given an order designating the date of the trial for the crime of which they are being accused, except where they are caught in flagrant committing a crime punishable with imprisonment of more than three years.

2. In the case of detention or imprisonment, the magistrate shall be immediately brought before the competent judicial authority.

3. Remand in custody terms or deprivation of liberty sentences for magistrates of the Public Prosecution Service shall be served in a common prison establishment, but in isolation from the other inmates.

4. In the case of the need for a search of the professional or personal premises of a magistrate of the Public Prosecution service, this shall be presided over, under penalty of invalidity, by a competent judge, who will give prior notification to the Governing Board of the Public Prosecution Service, in order for a member selected by this Board to be present.

Article 92

Forum

The competent court for the inquiry, investigation and trial of magistrates of the Public Prosecution Service for criminal offence, as well as for appeal in matters against the national order, is the category immediately above the one in which the magistrate is placed. In the case of the Attorney General, Vice Attorney General and assistant attorneys general the competent court is the Supreme Court of Justice.

Article 93

Exercise of advocacy

(Anterior Article 71)

Article 94

Relations between magistrates

(Anterior Article 72)

Article 95

Components of the payment system

1. *(Anterior paragraph 1 of Article 73).*
2. Allocation of any other type of payment, not covered by the remuneration components referred to in the above paragraph, is not permitted, notwithstanding the provisions of Article 98.

Article 96

Base remuneration and supplements

1. *(Anterior paragraph 1 of Article 74).*
2. *(Anterior paragraph 2 of Article 74).*
3. *(Anterior paragraph 3 of Article 74).*
4. Under the heading of supplements, allowances shall be maintained as set out in Articles 97 to 100 and 102 of this law.

Article 97

Settlement allowance

After consultation with the Governing Board of the Public Prosecution Service and the representative organisations of the magistrature, the Minister of Justice may decide that a settlement allowance should be paid to Public Prosecution Service magistrates who carry out duties in the Autonomous Regions.

Article 98

Representation expenses allowance

1. The Attorney General is entitled to a subsidy corresponding to 20 % of salary, under the heading of representation expenses.
2. The Vice Attorney General and the District Attorneys General are entitled to a subsidy corresponding to 10% of salary, under the heading of representation expenses.

Article 99
Relocation expenses

1. Public Prosecution Service magistrates are entitled to be reimbursed, if they do not opt for advance payment, for expenses resulting from relocation of themselves and their families, and, within the limits established by order of the Ministers of Finance and Justice, for the transport of personal belongings, whatever form of transport is used, when they are promoted, transferred or placed for reasons of a non-disciplinary nature.

2. Reimbursement is not due where the change of situation takes place at the request of the magistrate, except in the following situations:

- a) Where there is relocation between the mainland and the Autonomous Regions;
- b) Where, in the case of transfer upon request, the situation set out in paragraph 1 of Article 137 applies or the transfer occurs after two years of effective service in the previous location.

Article 100
Expenses

(Anterior Article 78)

Article 101
Distribution of official publications

1. *(Anterior paragraph 1 of Article 79).*
2. State prosecutors and assistant state prosecutors are entitled to free distribution of the 1st series of the *Diário da República* in either its print or electronic version, the *Boletim do Ministério da Justiça* and, where they request it, to all other publications referred to in the previous paragraph.

Article 102
Lodging house

1. *(Anterior paragraph 1 of Article 80).*
2. Magistrates that do not avail of a lodging house under the terms of the previous paragraph, or do not reside in one in accordance with the provisions of

the final part of paragraph 2 of Article 85, are entitled to a compensatory subsidy fixed by the Minister of Justice, after consultation with the Governing Board of the Public Prosecution Service and the representative organisations of the magistrature, with consideration given to current prices in the local housing market.

Article 103

Responsibility for payment of consideration

(Anterior Article 81)

Article 104

Responsibility for furniture

(Anterior Article 82)

Article 105

Holidays and leave

1. *(Anterior paragraph 1 of Article 83).*
2. *(Anterior paragraph 2 of Article 83).*
3. *(Anterior paragraph 3 of Article 83).*
4. The magistrate's immediate hierarchical superior may require him to return to duties, for reasons based on the urgent nature of the service, without prejudice to his entitlement to annual holidays, in the terms legally fixed for public office.
5. *(Anterior paragraph 5 of Article 83).*
6. When, whilst taking holidays as provided for in the previous paragraph, magistrates have to return to the Autonomous Region to fulfil a duty according to rota, the travelling expenses shall be borne by the state.

Article 106

Holiday rotas

1. The Attorney General shall organise a rota service to assure urgent service during the judicial holidays or when the service so requires, in which assistant attorneys general take part.

2. Public Prosecution Service magistrates assure urgent service in the terms provided for in law.

Article 107
Special rights

1. Public Prosecution Service magistrates have special entitlement to the following:

- a) *[Anterior subparagraph a) of paragraph 1 of Article 85];*
- b) *[Anterior subparagraph b) of paragraph 1 of Article 85];*
- c) *[Anterior subparagraph c) of paragraph 1 of Article 85];*
- d) *[Anterior subparagraph d) of paragraph 1 of Article 85];*
- e) The free use of public land and water transport, as set out by the Department of Justice, within the confines of the district within which they are carrying out duties or while on duty, in the circumstances set out in the final part of paragraph 2 of Article 85, between that area and the place of residence;
- f) To make telephone calls using a confidential system, if this is accepted favourably by the Governing Board of the Public Prosecution Service;
- g) Free access, in constitutional and legal terms, to public libraries and databases, namely those of the higher courts, the Constitutional court and the Attorney General's Office;
- h) Special security for their person, family and goods, requested by the Governing Board of the Public Prosecution Service or by the District Attorney General, or by a delegate of the same, or, in urgent cases, by the magistrate, from the command of the police force in the area of residence, where pressing security grounds so require.
- i) The exemption from payment of costs in any action in which he is a principal or accessory in the course of carrying out his duties;

2. *(Anterior paragraph 2 of Article 85).*

3. The Attorney General and the Vice Attorney General are entitled to a diplomatic passport and the assistant attorneys general to a special passport. Special passports may also be issued to state prosecutors and assistant state prosecutors when travelling to other countries in the course of their duties.

4. The rights set out in paragraph 1, subparagraphs e) and g), in paragraph 2 and in paragraph 3 in relation to the special passport, are extended to all members of the Governing Board of the Public Prosecution Service.

Article 108
Subsidiary provisions

(Anterior Article 86)

CHAPTER III
Classifications

Article 109
Classification of Public Prosecution Service magistrates

The state prosecutors and assistant state prosecutors are classified by the Governing Board of the Public Prosecution Service as *Very Good, Good with Distinction, Good, Sufficient* and *Mediocre*, according to their merit.

Article 110
Criteria and effects of classification

(Anterior Article 88)

Article 111
Classification of magistrates on secondment

(Anterior Article 89)

Article 112
Frequency of classifications

1. State prosecutors and assistant state prosecutors are classified at least every four years.
2. Classification shall be considered out-of-date after four years unless the magistrate is not responsible for the out-of-datedness or he is covered by the provisions in Article 111.

3. *(Anterior paragraph 3 of Article 90).*
4. *(Anterior paragraph 4 of Article 90).*

Article 113
Information to be considered

(Anterior Article 91)

CHAPTER IV
Appointments

SECTION I
Recruitment and Promotion

SUBSECTION I
General provisions

Article 114
Applications for entry to the Public Prosecution Service Magistrature

The requirements for entry into the Public Prosecution Service Magistrature are as follows:

- a) *[Anterior subparagraph a) of Article 92];*
- b) *[Anterior subparagraph b) of Article 92];*
- c) Possession of a law degree either obtained in a Portuguese university or recognised in Portugal;
- d) Having gainfully attended the training courses or placements, notwithstanding the provisions of Article 128;
- e) *[Anterior subparagraph e) of Article 92].*

Article 115
Training courses and placements

(Anterior Article 93)

Article 116

Promotion

(Anterior Article 94)

Article 117

General conditions for promotion

1. *(Anterior paragraph 1 of Article 95)*
2. *(Anterior paragraph 2 of Article 95)*
3. *(Anterior paragraph 3 of Article 95)*

Article 118

Renunciation

1. Public Prosecution Service magistrates to whom promotion falls on a specific occasion, may present a renunciatory declaration.
2. A renunciatory declaration shall render the magistrate ineligible for promotion on the basis of seniority for the following two years.
3. Renunciatory declarations shall be presented to the Governing Board of the Public Prosecution Service within the time period set out in paragraph 3 of Article 134.
4. *(Anterior paragraph 4 of Article 96).*

SUBSECTION II

Special provisions

Article 119

Assistant State prosecutors

1. Notwithstanding the provisions of Article 128, the first appointment to the magistrature of the Public Prosecution Service is made to the rank of assistant state prosecutor for entry counties or positions.
2. *(Anterior paragraph 2 of Article 97).*

Article 120

Assistant state prosecutor in the Departments of Investigation and Penal Action

The filling of assistant state prosecutor vacancies in the Departments of Investigation and Penal Action in the county corresponding to the seat of the

judicial district shall be made from among assistant state prosecutors who have at least seven years of service, the following being the criteria for determining preference:

- a) Classification of merit;
- b) Experience in the criminal area, especially in respect to study or direction of investigations into violent or highly organised crimes;
- c) Specific training or the performance of investigative tasks in the area of criminal science.

Article 121

State prosecutors

1. The filling of state prosecutor vacancies shall be made by means of transfer or by promotion from among assistant state prosecutors.
2. Vacancies not filled by transfer shall be filled by promotion.
3. Promotion shall be by means of competition or according to a list of seniority.
4. Only assistant state prosecutors with a minimum of 10 years service may be promoted by means of competition.
5. Vacancies are filled by order of vacancy, successively in the proportion of three by means of competition and two according to a list of seniority.
6. Magistrate candidates who are not appointed by means of competition may be appointed according to the list of seniority, where they have not presented a renunciatory declaration.
7. In promotion by means of competition, the magistrate appointed is the one with the highest classification and, in the case of equality, the most senior.
8. Vacancies should be filled by means of competition and in the case of no competitors the promotion is effected by means of the list of seniority.
9. When vacancies are to be filled according to the list of seniority, the vacancies are filled successively, in the proportion of three on merit and one by seniority.

Article 122

State prosecutor in the departments of investigation and penal action in the county corresponding to the seat of the judicial district

1. The filling of positions of state prosecutor in the departments of investigation and penal action in the counties corresponding to the seat of the judicial district is from among state prosecutors with a classification of merit.

2. The magistrate with the highest classification is appointed, and among several with the same highest classification, the most senior is appointed.

Article 123

State prosecutor in the Central Department of Investigation and Penal Action and Coordinating State prosecutor

1. The filling of positions of state prosecutor in the Central Department of Investigation and Penal Action is from among state prosecutors with a classification of merit, with preference being given to those with:

- a) Experience in the criminal area, especially in respect to study or direction of investigations into violent or highly organised crimes;
- b) Specific training or experience of investigation applicable in the area of criminal science.

2. The filling of the position of coordinating state prosecutor is made, upon proposal from the District Attorney General, from among state prosecutors with the classification *Very Good* and with a length of service of not less than five years.

3. The offices referred to in the previous paragraphs are carried out on secondment.

Article 124

Legal Auditors

Legal auditors are appointed from among assistant attorneys general or, through promotion, from among state prosecutors.

Article 125

Assistant attorneys general in the supreme courts

1. The positions of assistant attorney general in the Supreme Court of Justice, the Constitutional Court, the Supreme Administrative Court, the Audit Court and the Supreme Military Court are filled from among assistant attorneys general or, through promotion, from among state prosecutors with the classification *Very good*.

2. The appointment is made upon a proposal from the Attorney General, and the Governing Board of the Public Prosecution Service may not veto more than two names for each vacancy.

3. The offices referred to in paragraph 1 are carried out on secondment.

Article 126

District Attorneys General and equivalents

1. The positions of District Attorney General or of assistant attorney general in the Central Administrative Court are filled from among assistant attorney generals or, through promotion, from among state prosecutors with the classification *Very good*.

2. The Governing Board of the Public Prosecution Service appoints one of the names proposed for each vacancy from a minimum of three.

3. The provisions of paragraph 3 of the previous article also apply.

Article 127

Assistant attorney general in the Central Department of Investigation and Penal Action, in the State legal departments and in the departments of investigation and penal action

The positions of assistant attorney general in the Central Department of Investigation and Penal Action, in the State legal departments and in the departments of investigation and penal action in the counties corresponding to the seat of the judicial district are filled from among assistant attorneys general or, through promotion, from among state prosecutors with the classification *Very Good*, upon proposal of the Attorney General. These offices are carried out on secondment.

Article 128

Voting Members of the Governing Board

(Anterior Article 102)

Article 129

Appointment and relief of office of the Vice Attorney General

1. *(Anterior paragraph 1 of Article 103).*

2. The provisions of paragraph 2 of Article 125 apply to the appointment.

3. The appointment of the Vice Attorney General as a judge of the Supreme Court of Justice does not imply termination of the secondment nor does it impede its renewal.

4. (*Anterior paragraph 3 of Article 103*).

Article 130

Appointment to the office of judge

Magistrates of the Public Prosecution Service may be appointed as judges under the provisions of the particular statute for each division of courts.

Article 131

Appointment and termination of office of the Attorney-General

1. (*Anterior paragraph 1 of Article 105*).

2. The Attorney General's mandate lasts six years, notwithstanding the provisions of subparagraph m) of article 133 of the Constitution.

3. (*Anterior paragraph 2 of Article 105*).

4. After termination of his duties, an Attorney General appointed under the terms of the previous paragraph is entitled to return to the previous position held, without loss of seniority or the right to promotion. The provisions of articles 24 to 31 of Law 4/85 of 9 April apply to Attorneys General who are neither judicial or Public Prosecution Service magistrates nor employees of the State.

5. Where the Attorney General is a magistrate, the length of service performed in that office will count in its entirety, as if the service had been performed in the magistrature, so that he may return to the position which would be incumbent on him if he had not interrupted the performance of his duties, namely without prejudice to promotions or access to which he would have been entitled in the meantime.

6. Where magistrates with seniority inferior to that of the Attorney General have been nominated for the Supreme Court of Justice, the Governing Board of the Magistrature shall reopen the contest in which, in the terms of the previous paragraph, the Attorney General would have participated and he shall take up the position which is due to him.

7. Whenever magistrates with seniority inferior to that of the Attorney General have been nominated for the Supreme Court of Justice, the Attorney General maintains the right to the remuneration given up to the date when his duties cease, with the exception of the subsidy referred to in article 98.

SECTION II

Inspectors

Article 132
Recruitment

(Anterior Article 106)

SECTION III

Moves

Article 133
Moves

1. Moves shall take place in the months of May and December.
2. *(Anterior paragraph 2 of Article 107).*

Article 134

Preparation for moves

1. *(Anterior paragraph 1 of Article 108).*
2. Applications are registered in the secretariat and lapse when the move takes place.
3. *(Anterior paragraph 3 of Article 108).*
4. In relation to the counties corresponding to the seat of the judicial district, the magistrates may apply for specific courts or departments, in the terms of the regulations approved by the Governing Board of the Public Prosecution Service.

Article 135

Transfers and Exchanges

1. Except where there is a disciplinary reason, Public Prosecution Service magistrates may not be transferred within one year of the start of the duties which they are performing
2. *(Anterior paragraph 1 of Article 109).*

3. (*Anterior paragraph 2 of Article 109*).
4. (*Anterior paragraph 3 of Article 109*).
5. Where the transfer on request is made from a first promotion county or position to a final promotion county or position, the period referred to in paragraph 3 is eight years from the date of the first appointment.
6. (*Anterior paragraph 5 of Article 109*).

Article 136

Rules of placement and preference

1. The placement of Public Prosecution Service magistrates must be made with prevalence being given to the needs of the service and the way in which the interested parties may combine their private and family life with their professional life.
2. When filling positions in courts of specialised jurisdiction, the specialised training of the candidates shall be taken into consideration.
3. When the specialised training occurs in the course of service in a specialised court, two years of performance of duties shall be required.
4. (*Anterior paragraph 3 of Article 110*).

Article 137

Placements

1. Assistant state prosecutors may not refuse first placement after duties have been performed in an entry or first promotion county or position.
2. Assistant state prosecutors with more than 5 years effective service may not request placement in entry counties or positions where they have already been placed in first promotion counties or positions, and may not request placement in either of these if they have been placed in final promotion counties or positions.
3. Assistant state prosecutors may not be placed in final promotion counties or positions unless they have performed duties in first promotion counties or positions, and may not be placed in either of these unless they have performed duties in entry counties or positions.

Article 138

Auxiliary Magistrates

(*Anterior Article 112*)

SECTION IV

Secondment

Article 139 **Secondment**

1. (*Anterior paragraph 1 of Article 113*).
2. (*Anterior paragraph 2 of Article 113*).
3. Service in international institutions and organisations of which Portugal is a member, and which implies residence abroad, is also conditional upon authorisation by the Governing Board of the Public Prosecution Service. Such magistrates are considered to be on secondment for the time that this activity lasts.

Article 140

Time periods for secondments

1. (*Anterior paragraph 1 of Article 114*).
2. Occasional secondments may be authorised for periods up to one year, and are renewable.
3. (*Anterior paragraph 3 of Article 114*).
4. Secondments set out in paragraph 3 of Article 81 and paragraph 3 of the previous article, and those which have regard to the performance of duties in areas of international cooperation, namely with the member States of the Community of Portuguese Speaking Countries, also do not give rise to a vacancy.
5. The period of secondment is considered, for all purposes, as that of effective service in the position.

SECTION V

Taking up office

Article 141 **Requirements and time period for entering office**

(*Anterior Article 116*)

Article 142
Official granting office

1. Public Prosecution Service magistrates take up office as follows:
 - a) [*Anterior subparagraph a) of paragraph 1 of Article 117*];
 - b) [*Anterior subparagraph b) of paragraph 1 of Article 117*];
 - c) State prosecutors, before the District Attorney General for the respective judicial district;
 - d) Assistant state prosecutors, before the respective state prosecutor or before the District Attorney General, in the counties corresponding to the seat of judicial districts that have more than one state prosecutor.
 - e) (*Anterior paragraph 2 of Article 117*).

Article 143
Failure to take up office

(*Anterior Article 118*)

Article 144
Taking up office by magistrates on secondment

(*Anterior Article 119*)

CHAPTER V
Retirement, termination and suspension of duties

SECTION I
Retirement

Article 145
Retirement upon request

Requests for voluntary retirement are sent to the Attorney General's Office, which sends them to the administration of the *Caixa Geral de Aposentações* (Retirement Office).

Article 146
Retirement on the grounds of incapacity

(Anterior Article 121)

Article 147
Effects of retirement on grounds of incapacity

(Anterior Article 122)

Article 148
Retirement with full honours

1. *(Anterior paragraph 1 of Article 123).*
2. *(Anterior paragraph 2 of Article 123).*
3. Magistrates who fall within the provisions of paragraph 1 may make a declaration renouncing retired with full honours status or may request temporary suspension of that status. In such cases they become subject, either definitively or temporarily, to the general system of public retirement.

Article 149
Rights and Duties

1. The provisions of paragraphs 1 and 2 of Article 95, and of paragraph 1, subparagraphs a), b), c), e), g) and h) and paragraph 2 of Article 107 apply to magistrates retired with full honours.
2. *(Anterior paragraph 2 of Article 124).*
3. *(Anterior paragraph 3 of Article 124).*
4. *(Anterior paragraph 4 of Article 124).*
5. *(Anterior paragraph 5 of Article 124).*

Article 150
Supplementary and subsidiary system

(Anterior Article 125)

SECTION II

Termination and suspension of duties

Article 151

Termination of duties

(Anterior Article 126)

Article 152

Suspension of duties

Public Prosecution Service magistrates suspend their respective duties as follows:

- a) On the day they are given notice of the order which sets the day of trial regarding accusations against them concerning felonious crimes;
- b) *[Anterior subparagraph b) of Article 127];*
- c) On the day they are given notice of suspension as set out in paragraph 3 of Article 146.

CHAPTER VI

Seniority

Article 153

Seniority among staff and within the category

(Anterior Article 128)

Article 154

Service time counted for seniority

1. For the purposes of seniority, the following shall not be discounted:

- a) *[Anterior subparagraph a) of paragraph 1 of Article 129];*

- b) *[Anterior subparagraph b) of paragraph 1 of Article 129];*
- c) Time spent during suspension of duties ordered under the provisions of paragraph 3 of Article 146;
- d) *[Anterior subparagraph d) of paragraph 1 of Article 129];*
- e) *[Anterior subparagraph e) of paragraph 1 of Article 129];*
- f) *[Anterior subparagraph f) of paragraph 1 of Article 129];*
- g) Absences referred to in Article 87.

2. *(Anterior paragraph 2 of Article 129).*

Article 155

Service time not counted for purposes of seniority

The following does not count for purposes of seniority:

- a) Time spent in inactive status or while on long term unpaid leave;
- b) Time which, in accordance with the provisions concerning disciplinary procedure, is considered to be lost;
- c) Time of illegitimate absence from service.

Article 156

Calculation of seniority

(Anterior Article 131)

Article 157

Seniority List

(Anterior Article 132)

Article 158

Complaints

1. Magistrates who believe that they have been prejudiced by the rank order appearing in the seniority list may make a claim, within a period of 60 days, to be counted from the date referred to in paragraph 4 of the

previous article. This is done by way of an application directed to the Governing Board of the Public Prosecution Service, accompanied by as many duplicates as the number of magistrates that may be prejudiced by the complaint.

2. (*Anterior paragraph 2 of Article 133*).
3. (*Anterior paragraph 3 of Article 133*).

Article 159

Effect of complaint on moves already carried out

(*Anterior Article 134*)

Article 160

Ex officio correction of material errors

1. (*Anterior paragraph 1 of Article 135*).
2. The corrections referred to in the previous paragraph, as soon as they are published in the seniority list, shall be subject to the system in Articles 157 and 158.

CHAPTER VII

Availability

Article 161

Availability

(*Anterior Article 136*)

CHAPTER VIII

Disciplinary procedure

SECTION I

General provisions

Article 162

Liability to disciplinary measures

(*Anterior Article 137*)

Article 163
Disciplinary offence

(Anterior Article 138)

Article 164
Liability to disciplinary jurisdiction

(Anterior Article 139)

Article 165
Autonomy of disciplinary jurisdiction

(Anterior Article 140)

SECTION II

Penalties

SUBSECTION I

Types of penalty

Article 166
Scale of penalties

(Anterior Article 141)

Article 167
Warning penalty

(Anterior Article 142)

Article 168
Fine penalty

(Anterior Article 143)

Article 169

Penalty of transfer

(Anterior Article 144)

Article 170

**Penalties of suspension from duties and removal
from the active list**

(Anterior Article 145)

Article 171

Penalties of compulsory retirement and dismissal

(Anterior Article 146)

SUBSECTION II

Effects of penalties

Article 172

Effects of penalties

(Anterior Article 147)

Article 173

Fine penalty

(Anterior Article 148)

Article 174

Penalty of transfer

(Anterior Article 149)

Article 175

Penalty of suspension from duties

(Anterior Article 150)

Article 176
Penalty of removal from the active list

(Anterior Article 151)

Article 177
Penalty of compulsory retirement

(Anterior Article 152)

Article 178
Penalty of dismissal

(Anterior Article 153)

Article 179
Promotion of Defendant magistrates

(Anterior Article 154)

SUBSECTION III

Application of penalties

Article 180
Warning penalty

(Anterior Article 155)

Article 181
Fine penalty

(Anterior Article 156)

Article 182
Penalty of transfer

(Anterior Article 157)

Article 183

Penalties of suspension and removal from the active list

(Anterior Article 158)

Article 184

Penalties of compulsory retirement and dismissal

(Anterior Article 159)

Article 185

Length of penalty

(Anterior Article 160)

Article 186

Special mitigation of penalty

(Anterior Article 161)

Article 187

Relapse

1. *(Anterior paragraph 1 of Article 162).*
2. Where the penalty imposed is any of those set out in sub-paragraphs b), d) and e) of paragraph 1 of Article 166, in the case of relapse the minimum limit shall be equal to one third, one quarter or two thirds of the maximum limit, respectively.
3. *(Anterior paragraph 3 of Article 162).*

Article 188

Concurrent offences

(Anterior Article 163)

Article 189

Substitution of penalties imposed on retired magistrates

(Anterior Article 164)

SUBSECTION IV

Limitation of penalties

Article 190

Limitation periods

(Anterior Article 165)

SECTION III

Disciplinary proceedings

SUBSECTION I

Procedural standards

Article 191

Disciplinary proceedings

1. *(Anterior paragraph 1 of Article 166).*
2. Disciplinary proceedings are written but do not require special formalities, provided that there is a hearing and an opportunity for the Defendant to put forward a defence.
3. *(Anterior paragraph 3 of Article 166).*

Article 192

Impediments and suspicions

The system of impediments and refusals for criminal proceedings shall apply, with the necessary adjustments, to disciplinary proceedings.

Article 193

Confidential nature of disciplinary proceedings

(Anterior Article 168)

Article 194

Time period for investigation

1. The investigation of the disciplinary proceedings must be completed within a period of 90 days.
2. (*Anterior paragraph 2 of Article 169*).
3. (*Anterior paragraph 3 of Article 169*).

Article 195

Number of witnesses in the investigation phase

1. (*Anterior paragraph 1 of Article 170*).
2. The investigator may refuse to hear witnesses where he considers the evidence produced to be sufficient.

Article 196

Preventive suspension of the Defendant

1. (*Anterior paragraph 1 of Article 171*).
2. (*Anterior paragraph 2 of Article 171*).
3. Preventive suspension may not be for more than 180 days, extendable for a further 60 days where justification is given, and does not have the effects set out in Article 175.

Article 197

Charge

(*Anterior Article 172*)

Article 198

Notice to the Defendant

1. A copy of the charge shall be delivered to the Defendant, or sent by recorded delivery, setting a period of between ten and thirty days for delivery of the defence.
2. (*Anterior paragraph 2 of Article 173*).

Article 199

Appointment of defence counsel

(*Anterior Article 174*)

Article 200
Examination of proceedings

(Anterior Article 175)

Article 201
Defendants defence

(Anterior Article 176)

Article 202
Report

(Anterior Article 177)

Article 203
Notice of decision

The Defendant shall be given notice of the final decision, accompanied by a copy of the report referred to in the previous paragraph, in accordance with the provisions of Article 198.

Article 204
Nullities and irregularities

(Anterior Article 179)

SUBSECTION II
Abandonment of position

Article 205
Action for abandonment

(Anterior Article 180)

Article 206
Presumption of intention to abandon

(Anterior Article 181)

SECTION IV

Review of disciplinary decisions

Article 207

Review

(Anterior Article 182)

Article 208

Proceedings

1. An application for review is made by the interested party to the Governing Board of the Public Prosecution Service.

2. The application, processed by annexation to the disciplinary proceedings, must contain the grounds for the application and indicate the evidence to be adduced and must be prepared with the documents that the interested party has been able to obtain.

Article 209

Sequence of review proceedings

1. *(Anterior substance of Article 184).*

2. If decided by the review, a new investigator is nominated for the proceedings.

Article 210

Favourable review

(Anterior Article 185)

CHAPTER IX

Inquiries and investigations

Article 211

Inquiries and investigations

(Anterior Article 186)

Article 212
Preliminary investigation

(Anterior Article 187)

Article 213
Report

(Anterior Article 188)

Article 214
Conversion to disciplinary proceedings

1. *(Anterior paragraph 1 of Article 189).*
2. In the case referred to in the previous paragraph, the notification to the Defendant of the decision of the Governing Board of the Public Prosecution Service shall determine the beginning of the disciplinary proceedings.

CHAPTER X

Auxiliary bodies

Article 215
Secretaries and staff

1. Notwithstanding the support and assistance rendered by the divisions and the judicial secretaries, the Public Prosecution Service shall avail of its own technical-administrative services.
2. The technical-administrative services assure support, namely, in the following areas:
 - a) Prevention and criminal investigation;
 - b) International judiciary cooperation;
 - c) Working together with the criminal police bodies and institutions of treatment, recovery and social reintegration;
 - d) The direction of human resources, management and stewardship;
 - e) Notation and statistical analysis;
 - f) Communication and information technology support.

3. In the State legal departments, the duties of assistance may also be assured by staff of the Public Administration, on secondment, request or detachment, and by experts and legal executives contracted for that purpose.

CHAPTER XI

Definitive and transitional provisions

Article 216

Supplementary system

In all situations which do not contradict this current law the provisions of the Disciplinary Statute for Civil Servants, the Penal Code and the Penal Proceedings Code apply on a supplementary basis.

Article 217

State prosecutors in the seats of judicial districts

The system of assistance established in Article 45, paragraph 2 of the previous law shall continue to apply to state prosecutors carrying out duties in the seats of judicial districts until the date of entry into vigour of this current law.

Article 218

Application of paragraph 3 of Article 153

The system of seniority established in paragraph 3 of Article 153 is applicable to all assistant attorneys general therein referred to, if they are nominated, until the date of entry into vigour of this current law.

Article 219

Seniority

1. Seniority of Public Prosecution Service magistrates consists of the length of service given in the judicial magistrature, as a sub-delegate of the state prosecutor qualified in Law and as a placement delegate.

2. (*Anterior paragraph 2 of Article 195*).

Article 220
Exempted situations

1. (*Anterior paragraph 1 of Article 197*).
2. The provisions of paragraph 4 of Article 102 and paragraph 3 of Article 101 in the previous law and in the present bill shall not prejudice rights acquired by permanent appointment.

Article 221
Financial and budgetary provisions

(Anterior Article 199)

Article 2

The Organic Law of the Public Prosecution Service, approved by Law 47/86, of 15 October, altered by Laws 2/90, of 20 January, 23/92, of 20 August, and 10/94, of 5 May, is republished in annex in its entirety, with the alterations resulting from the present diploma, which shall now be named Statute of the Public Prosecution Service.

Article 3

1. The Court of Criminal Investigation of Lisbon shall be responsible for carrying out the jurisdictional duties related to the inquiry, notwithstanding the provisions of the Penal Proceedings Code regarding urgent acts, making preliminary investigations and giving investigatory decisions in the processes referred to in Article 47, paragraph 3 of Law 47/86, of 15 October, with the amendments introduced by Article 1 of the present bill.

2. The Courts of Criminal Investigation of Lisbon and Oporto shall be responsible, respectively, for carrying out the duties referred to in the previous paragraph in the processes referred to in Article 73, paragraph 1, subparagraphs b) and c) of Law 47/86, of 15 October, with the amendments introduced by Article 1 of the present bill.

3. In the counties corresponding to the seat of the judicial districts of Coimbra and Évora, it shall be the responsibility of the first criminal judge to carry out the duties referred to in the previous paragraph.

Article 4

The Government shall approve the regulatory norms of the present bill within 90 days of its publication.

Approved on 29 June 1998.

President of the Assembly of the Republic, *António de Almeida Santos*.

Approved on 30 July 1998.

Issued,

The President of the Republic, *Jorge Sampaio*.

Countersigned on the 6 August 1998,

The Prime Minister, *António Manuel de Oliveira Guterres*.

Annex of Table referred to in Article 96, paragraph 1.

Category/Scale	Scale index
Attorney General	260
Vice Attorney General	260
Assistant attorney general with 5 years service	250
Assistant attorney general	240
State prosecutor	220
Assistant state prosecutor:	
With 18 years service	200
With 15 years service	190
With 11 years service	175
With 7 years service	155
With 3 years service	135
Entry	100

Salary span — 2:6.

ANNEX

Status of the Public Prosecution Department

SECTION I

Public Prosecution Service

HEADING I

Structure, Functions and System of Intervention

CHAPTER I

Structure and Functions

Article 1

Definition

The Public Prosecution Service represents the State, defends the interests that the law determines, takes part in the execution of criminal policy as defined by the organs of sovereignty, carries out penal action according to the principle of legality, and defends democratic legality, in the terms of the Constitution and of the current Statute and legislation.

Article 2

Status

1. The Public Prosecution Service is autonomous in relation to the other organs of central, regional and local power, under the terms of this law.
2. The autonomy of the Public Prosecution Service is characterised as being bound by criteria of legality and objectivity and by the fact that Public Prosecution Service magistrates are answerable only to the directives, orders and instructions set out in this law.

Article 3
Jurisdiction

1. The Public Prosecution Service has special responsibility for the following:

- a) To represent the State, Autonomous Regions, local authorities, the incapacitated, the unidentifiable or those whose whereabouts are not known;
- b) To take part in the execution of criminal policy as defined by the organs of sovereignty;
- c) To carry out penal action according to the principle of legality;
- d) To carry out the *ex officio* protection of workers and their families in the defence of their social rights;
- e) In cases provided for in law, to assume the defence of collective and diffuse interests;
- f) To defend the independence of the courts in the area of its powers, and to ensure that the jurisdictional duty is carried out in conformity with the Constitution and the legislation;
- g) Within its powers to promote the execution of decisions taken by courts;
- h) To direct criminal investigation, even where it is carried out by other bodies;
- i) To promote and effect crime prevention initiatives;
- j) To oversee the constitutionality of regulatory acts;
- l) To take part in bankruptcy and insolvency proceedings and all others that are of public interest;
- m) To carry out consultative duties, under the provisions of this law;
- n) To supervise the procedural activity of criminal police bodies;
- o) To appeal a decision where this has been arrived at by collusion of the parties to defraud the legislation or has been given in clear violation of the law;
- p) To carry out all other duties conferred by the law.

2. The jurisdiction referred to in sub-paragraph f) of the above paragraph includes a binding duty to appeal in cases, and under the terms, of the Law of Organization, Operation and Proceedings of the Constitutional Court.

3. In the exercise of its duties, the Public Prosecution Service is aided by justice employees and by criminal police bodies and has access to advisory and consultation services.

CHAPTER II

System of intervention

Article 4

Representation of the Public Prosecution Service

1. The Public Prosecution Service is represented at the law courts:
 - a) In the Supreme Court, the Constitutional Court, the Supreme Administrative Court, the Supreme Military Court and in the Audit Court, by the Attorney General;
 - b) In the High Courts and in the Central Administrative Court, by assistant attorneys general;
 - c) In courts of 1st instance, by state prosecutors and by assistant state prosecutors.
2. The Public Prosecution Service is represented in other courts in accordance with the legislation.
3. The magistrates of the Public Prosecution Service may appoint substitutes according to the provisions of this law.

Article 5

Main and complementary intervention

1. The Public Prosecution Service shall have a central role in proceedings:
 - a) Where it represents the State;
 - b) Where it represents the Autonomous Regions and the local authorities;
 - c) Where it represents those who are incapacitated, unidentifiable or whose whereabouts are not known;
 - d) Where it carries out the ex officio protection of workers and their families in the defence of their social rights;
 - e) Where it represents collective and diffuse interests;
 - f) In inventories demanded by law;
 - g) In other cases where the law gives it jurisdiction to intervene in this capacity.

2. Where it is representing an Autonomous Region or local authority, its central role ceases when their own power of attorney is given.

3. Where it is representing the incapacitated, unidentifiable or those whose whereabouts are not known, its central role ceases if their respective legal representatives bring a petition into the proceedings opposing representation by the Public Prosecution Service.

4. The Public Prosecution Service has complementary intervention in proceedings in the following cases:

- a) Where, in cases other than those set out in paragraph 1, Autonomous Regions, local authorities, other public bodies, public utilities, incapacitated or absent persons have an interest in the proceedings, or where the action is aimed at the realization of collective or diffuse interests;
- b) In other cases provided for in law.

Article 6

Complementary Intervention

1. When acting in a complementary capacity, the Public Prosecution Service shall be attentive to the interests entrusted to it and shall take such measures as it considers appropriate.

2. The provisions for intervention are set out in procedural law.

HEADING II

Bodies and agents of the Public Prosecution Service

CHAPTER I

General Disposals

Article 7

Bodies

The bodies of the Public Prosecution Service are:

- a) The Attorney General's office;

- b) The District Attorney General's offices;
- c) The State Prosecution Offices.

Article 8
Agents of the Public Prosecution Service

1. The agents of the Public Prosecution Service are:
 - a) The Attorney General;
 - b) The Vice Attorney General;
 - c) The assistant attorneys general;
 - d) The state prosecutors;
 - e) The assistant state prosecutors;

2. The agents of the Public Prosecution Service may be aided by advisors, in the terms of the law.

CHAPTER II

The Attorney General's Office

SECTION I

Structure and jurisdiction

Article 9
Structure

1. The Attorney General's Office is the superior body of the Public Prosecution Service.
2. The Attorney General's Office is composed of the Attorney General, The Governing Board of the Public Prosecution Service, the Consultative Board of the Attorney General's Office and the legal auditors and services of technical and administrative support.
3. The Central Department of Investigation and Penal Action, the Office of Documentation and Comparative Jurisprudence and the Nucleus of Technical Advice all operate within the bounds of the Attorney General's Office.

4. The organisation, personnel and staffing system of the Office of Documentation and Comparative Jurisprudence and the Nucleus of Technical Advice are defined in their own diplomas.

Article 10
Jurisdiction

The Attorney General's Office has jurisdiction:

- a) To promote democratic legality;
- b) To appoint, place, transfer, promote, discharge, consider professional merit, take disciplinary action and carry out, in general, all acts of an identical nature with regard to the magistrates of the Public Prosecution Service, with the exception of the Attorney General;
- c) To direct, coordinate and supervise the activity of the Public Prosecution Service and issue directives, orders and instructions that are binding on the magistrates of the Public Prosecution Service while carrying out their functions;
- d) To render judgement on the lawfulness of contracts in which the State has an interest, where its opinion is required by law or requested by the Government;
- e) To give opinion in cases of consultation provided for in law and where requested by the President of the Assembly of the Republic or by the Government;
- f) To propose legislative measures to the Minister of Justice with a view to increasing the efficiency of the Public Prosecution Service and improving the judicial institutions;
- g) To inform, through the intermediary of the Minister of Justice, the Assembly of the Republic and the Government of any obscurities, deficiencies or contradictions in legal texts;
- h) To supervise the procedural activity of the criminal police bodies;
- i) To carry out other functions conferred by law.

Article 11
Presidency

The Attorney General's Office shall be presided over by the Attorney General.

SECTION II

The Attorney General

Article 12

Jurisdiction

1. The Attorney General has jurisdiction:
 - a) To preside over the Attorney General's Office;
 - b) To represent the Public Prosecution Service in the courts referred to in subparagraph a) of paragraph 1 of Article 4;
 - c) To apply to the Constitutional Court for a declaration, of general binding nature, of the unconstitutionality or illegality of any rule.

2. As president of the Attorney General's Office, the Attorney General has jurisdiction:
 - a) To promote democratic legality;
 - b) To direct, coordinate and supervise the activity of the Public Prosecution Service and issue directives, orders and instructions that are binding on the respective magistrates;
 - c) To call together the Governing Board of the Public Prosecution Service and the Consultative Council of the Attorney General's Office and to preside over the respective meetings;
 - d) To inform the Minister of Justice of the need for legislative measures to ensure the enforcement of constitutional principles;
 - e) To supervise the procedural activity of the criminal police bodies;
 - f) To inspect or order the inspection of the Public Prosecution services and to order the instigation of inquiries, investigations and criminal or disciplinary proceedings with regard to their magistrates;
 - g) To propose legislative measures to the Minister of Justice with the aim of increasing the efficiency of the Public Prosecution Service and improving the judicial institutions or to settle divergent decisions from the courts and organs of Public Administration;
 - h) To intervene, either in person or by representation, in contracts when the State is a party and where this is required by laws;
 - i) To direct the inspection services of the Public Prosecution Service;
 - j) To invest powers in the Vice Attorney General, the assistant attorneys general and the inspectors of the Public Prosecution Service;

- l) To exercise over the employees of the services of technical and administrative support of the Attorney General's Office and over those of the services which operate within the bounds of this Office, the jurisdiction which ministers have, except with regard to appointment;
- m) To carry out such other functions as are assigned to him by law.

3. The directives referred to in subparagraph b) of the previous paragraph which interpret legal provisions, are published in the Second Series of the *Diário da República* (Official Journal).

4. The Attorney General is supported by an office in the exercise of his duties.

5. The structure and composition of the office of the Attorney General are defined in their own diploma.

Article 13 Assistance and substitution

1. The Attorney General is assisted and substituted by the Vice Attorney General.

2. In the courts referred to in subparagraph a) of paragraph 1 of Article 4, assistance and substitution are also ensured by assistant attorneys general, the number of whom appear from the table set by ordinance from the Minister of Justice, upon the proposal of the Governing Board of the Public Prosecution Service.

3. The Attorney General shall appoint, every two years, an assistant attorney general to coordinate the activity of the Public Prosecution Service in each of the courts referred to in the previous paragraph.

Article 14 Substitution of the Vice Attorney General

The Vice Attorney General shall be substituted, where he is absent or otherwise prevented from acting, by an assistant attorney general nominated by the Attorney General or, in the absence of such a nomination, by the most senior of the assistant attorneys general carrying out duties in Lisbon.

SECTION III

Governing Board of the Public Prosecution Service

SUBSECTION I

Organisation and operation

Article 15

Composition

1. The Attorney General's Office carries out its responsibility for the discipline and management of the Public Prosecution Service staff through the Governing Board of the Public Prosecution Service.

2. The Governing Board of the Public Prosecution Service is composed of the following:

- a) The Attorney General;
- b) The District Attorneys general;
- c) An assistant attorney general elected from and by the assistant attorneys general;
- d) Two state prosecutors elected from and by the state prosecutors;
- e) Four assistant state prosecutors elected from and by the assistant state prosecutors, one for each judicial district;
- f) Five members elected by the Assembly of the Republic;
- g) Two persons of recognised merit, appointed by the Minister of Justice.

3. The magistrates of the Public Prosecution Service may not decline to serve as members of the Governing Board of the Public Prosecution Service.

Article 16

Election principles

1. The election of magistrates referred to in paragraphs c), d) and e) of paragraph 2 of the previous article is by universal and secret ballot, with an electoral college corresponding to each of the categories and being formed by the respective magistrates in current service.

2. The census of magistrates is organised ex officio by the Attorney General's Office.
3. The electors may make their vote by post.

Article 17

Active and passive electoral capacity

The magistrates belonging to each category and permanently carrying out duties within the Public Prosecution Service are electors and eligible to be elected.

Article 18

Date of elections

1. The elections shall take place within the 30 days prior to the termination of duties or in the first 60 days after a vacancy has arisen.
2. The Attorney General shall announce the date of the election, a minimum of 45 days beforehand by notice published in the *Diário da República*.

Article 19

Special form of election

1. The members of the Governing Board of the Public Prosecution Service referred to in subparagraphs d) and e) of paragraph 2 of article 15 shall be elected by means of lists that are signed by a minimum of 20 and 40 electors respectively.
2. The election of the magistrates referred to in the previous paragraph shall be according to the principle of proportional representation and the method of highest average, in compliance with the following rules:
 - a) The number of votes obtained by each list is ascertained separately;
 - b) The number of votes is divided in succession by 1, 2, 3 and 4, the quotients being considered with the decimal part aligned in descending order in a series of as many categories as mandates assigned to the respective body;
 - c) The mandates belong to the lists that correspond to the categories of the series established by the previous rule, each of the lists receiving as many mandates as there are categories in the series;

- d) Where one or more mandates remain to be distributed and where the categories of the series are equal and the lists are different, the mandates shall fall to the lists that have obtained the greatest number of votes. If more than one list obtains the same number of votes, no mandate may be assigned and the election must be repeated.
3. The lists include two substitute candidates for every permanent candidate.
 4. Candidates may not appear on more than one list.
 5. In the absence of candidates, the election shall be carried out on a list organised by the Governing Board of the Public Prosecution Service.

Article 20 **Distribution of positions**

1. The distribution of positions is made according to the order in which votes are converted into mandates.
2. The distribution with regard to the assistant state prosecutors is carried out in the following way:
 - 1st assistant state prosecutor mandate proposed for the judicial district of Lisbon;
 - 2nd assistant state prosecutor mandate proposed for the judicial district of Oporto;
 - 3rd assistant state prosecutor mandate proposed for the judicial district of Coimbra;
 - 4th assistant state prosecutor mandate proposed for the judicial district of Évora.

Article 21 **Election Committee**

1. The supervision of the regularity of the elections and the final ascertainment of the voting is the responsibility of an election committee.
2. The election committee is composed of the Attorney General and the members referred to in sub-paragraph b) of paragraph 2 of Article 15.
3. One representative from each list competing in the election has the right to join the election committee.

4. The functions of president are carried out by the Attorney General and decisions are taken by majority vote, with the president having the casting vote.

Article 22

Responsibilities of the election committee

The election committee has the special responsibility of resolving doubts raised in the interpretation of the election regulations and deciding upon complaints that arise during the process of election.

Article 23

Electoral disputes

Appeals resulting from electoral disputes must be brought, within a period of 48 hours, to the Supreme Administrative Court.

Article 24

Regulatory provisions

Those stages of the electoral process that do not appear in previous articles are set out in regulations published in the *Diário da República*.

Article 25

Term of office

1. The members referred to in sub-paragraphs c), d) and e) of paragraph 2 of Article 15 shall hold their offices for a term of three years, which may be renewed once only, in the term immediately following.

2. Whenever, during his term in office, a magistrate no longer belongs to the original category or hierarchical ranking or there is an impediment to carrying out his duties, the first substitute is called forward or, failing this, the second substitute; where the latter is not possible, a vacancy is declared and a new election is held, in the terms of the previous articles.

3. The substitutes and members that are subsequently elected hold the respective office until the end of the office with which the original holder was invested.

4. The mandate of the members appointed by the Assembly of the Republic lapses at the time of the first meeting of a subsequently elected Assembly.

5. The mandate of the members appointed by the Minister of Justice lapses when a new minister takes up the post, who must either confirm them or make a new appointment.

6. In spite of the cessation of the respective mandates, the elected or appointed members remain in office until those who are to replace them commence service.

7. The Governing Board of the Public Prosecution Service decides on cases where the duties of the member should be carried out full time or with a reduction of service corresponding to the original post.

8. The members of the Governing Board who carry out full time duties receive remuneration corresponding to the original position, if public, or a salary corresponding to that of a director-general.

9. The members are entitled to attendance vouchers or an allowance under the terms and in the amount fixed by the Minister of Justice and, if resident outside Lisbon, to assistance with expenses under the legal provisions.

Article 26 **Constitution**

1. The Governing Board of the Public Prosecution Service shall operate in plenary session or in sections.

2. Plenary session is constituted by all the members of the Board.

Article 27 **Jurisdiction**

The Governing Board of the Public Prosecution Service has jurisdiction:

- a) To appoint, place, transfer, promote, discharge, consider professional merit, take disciplinary action and carry out, in general, all acts of an identical nature with regard to the magistrates of the Public Prosecution Service, with the exception of the Attorney General;
- b) To approve the electoral regulations of the Board, the internal regulations of the Attorney General's Office, the regulations

provided for in Paragraph 4 of Article 134, and the budget proposal for the Attorney General's Office;

- c) To deliberate and issue directives regarding internal organisation and staff management;
- d) To propose to the Attorney General the issuing of directives that are binding on the magistrates of the Public Prosecution Service while carrying out their functions;
- e) To propose to the Minister of Justice, through the intermediary of the Attorney General, legislative measures to increase the efficiency of the Public Prosecution Service and improve the judicial institutions;
- f) To acknowledge claims provided for in this law;
- g) To approve the annual plan of inspections and to order the carrying out of inspections, investigations and inquiries;
- h) To give opinion regarding the organisation of the judiciary and, in general, the administration of justice;
- i) To carry out such other functions as are assigned to it by law.

Article 28

Operation

1. The meetings of the Governing Board of the Public Prosecution Service shall ordinarily take place every two months and, extraordinarily, whenever called by the Attorney General, on his instigation or at the request of, at least, seven of its members.

2. Decisions are taken by majority vote, with the Attorney General having the casting vote.

3. For decisions to be valid, there must be a minimum of 13 members of the Board present or, in the case of sections, a minimum of 7 members.

4. The secretarial functions of the Board are carried out by the secretary of the Attorney General's Office.

Article 29

Sections

1. Regarding matters relating to the evaluation of professional merit, the Governing Board of the Public Prosecution Service may meet in sections, in terms defined by internal regulations in the Attorney General's Office.

2. Matters relating to the exercise of disciplinary action fall within the jurisdiction of the disciplinary section.

3. The disciplinary section is composed of the Attorney General and the following members of the Board:

- a) Five of the members referred to in subparagraphs b), d) and e) of paragraph 2 of Article 15, elected by their peers, in proportion to their respective representation;
- b) The assistant attorney-general, referred to in subparagraph c) of paragraph 2 of Article 15;
- c) Three of the persons referred to in subparagraph f) of paragraph 2 of Article 15, elected by and from themselves, for terms of 18 months;
- d) One of the persons referred to in subparagraph g) of Article 15, chosen by the drawing of lots, for rotational terms of 18 months.

4. Where an election is not possible or where there is a draw, the Attorney General shall appoint the non-elected members, with reference to the provisions in the final part of subparagraph a) of the previous paragraph.

5. Objections to decisions of the sections should be made to the Board sitting in plenary session.

Article 30 **Distribution of processes**

1. Processes are distributed by the drawing of lots by members of the Board, according to the terms of internal regulations.

2. The member to whom the process is distributed is the court reporter for that process.

3. In the case of a claim to the plenary session, the process shall be distributed to a different reporter.

4. The reporter may call for the requisition of such documents, processes and measures as he considers necessary. These processes are requisitioned for the necessary period of time, with exemption from the sub judice rule and in such a manner as not to cause harm to the parties.

5. Where the reporter votes against the decision, the decision must be drawn up by a member appointed by the president.

6. Where the matter is one of clear simplicity, the reporter may submit it for consideration without examination.

7. A decision that adopts the grounds and proposals, or only the former, of the inspector or instructor of the process may be expressed by judgement in concordance, and dispensing with any report.

Article 31
Delegation of powers

The Governing Board of the Public Prosecution Service may delegate to the Attorney General such acts as, by their nature, should not await a meeting of the Board.

Article 32
Presence of the Minister of Justice

The Minister of Justice shall appear at meetings of the Governing Board of the Public Prosecution Service where he considers this to be appropriate, to communicate information or to seek or give clarification.

Article 33
Appeals

Decisions of the Governing Board of the Public Prosecution Service may be appealed, and such appeal is lodged in the terms and according to the procedure for appeals for government actions.

SUBSECTION II
Inspection services

Article 34
Composition

1. The Public Prosecution Service Inspectorate functions alongside the Governing Body of the Public Prosecution Service.
2. The Public Prosecution Service Inspectorate is composed of inspectors and inspection secretaries, the number of whom appears in a table approved by

ordinance from the Minister of Justice, upon a proposal from the Governing Board of the Public Prosecution Service.

3. When inspection is for the purpose of collecting information on the service and merit of magistrates, the inquiries and disciplinary proceedings may not be carried out by inspectors of category or seniority below those of the magistrates being inspected.

4. The inspection secretaries are recruited from justice employees and are appointed on secondment.

5. Inspection secretaries, when they are judicial or technical secretaries with the classification *Very Good*, are entitled to receive a salary corresponding to that of a secretary of a superior court.

Article 35 **Jurisdiction**

1. It is the responsibility of the Public Prosecution Service Inspectorate to undertake, in accordance with the law, inspections, inquiries and investigations into the services of the Public Prosecution Service and to order disciplinary proceedings, in compliance with the decisions of the Governing Board of the Public Prosecution Service or upon initiative of the Attorney General.

2. Additionally, the inspection services have the function of collecting information on the service and merit of the Public Prosecution Service magistrates.

SECTION IV

Consultative Board of the Attorney General's Office

Article 36 **Composition**

1. The Attorney General's Office carries out consultative functions through its Consultative Board.

2. The Consultative Board of the of the Attorney General's Office is composed of the Attorney General and assistant attorneys general, the number of whom appear in a table approved by ordinance of the Minister of Justice, upon a proposal from the Governing Board of the Public Prosecution Service.

Article 37
Jurisdiction

The Consultative Board of the Attorney General's Office has jurisdiction:

- a) To give opinion restricted to matters of lawfulness in cases of consultation provided for in law or where it is requested to by the President of the Assembly of the Republic or by the Government;
- b) To give opinion, at the request of the Government, on the legal formulation and content of legislative bills;
- c) To give opinion on the lawfulness of contracts in which the State has an interest, where its opinion is required by law or requested by the Government;
- d) To inform the Government, through the intermediary of the Minister of Justice, with regard to any ambiguities, deficiencies or contradictions in the legal texts and to propose suitable amendments;
- e) To give opinion on questions submitted to them by the Attorney General during the course of his duties;
- f) To approve internal rules.

Article 38
Operation

1. The distribution of opinions to be given shall be made by the drawing of lots, according to the order of seniority of the assistant attorneys general admitted to the distribution.
2. Notwithstanding the provisions of the previous paragraph, the Attorney General may decide that opinions be distributed according to the criterion of specialisation of the assistant attorneys general.
3. The Consultative Board may only function where at least half of its members plus one are present.

Article 39
Time period for drawing up opinions

1. Opinions shall be drawn up within a period of 60 days, except where, due to complexity, a longer period is necessary. In such a case the body requesting the opinion shall be given prior notice of the probable delay.

2. Opinions that are requested with a declaration of urgency shall take priority over others.

Article 40 **Meetings**

1. The Consultative Board ordinarily meets once every fortnight and extraordinarily when called by the Attorney General.

2. During the summer judicial holiday there shall be one meeting to consider urgent matters.

3. The secretary of the Attorney General's Office shall act as secretary for the Consultative Board.

Article 41 **Voting**

1. The resolutions of the Consultative Board shall be taken by majority vote and the opinions signed by the assistant attorneys general that take part in them, together with statements as may be made.

2. The Attorney General has the casting vote and signs the opinions.

Article 42 **Binding force of opinions**

1. The Attorney General may decide, under the powers conferred on him by subparagraph b) of paragraph 2 of Article 12, that the doctrine of Consultative Board opinions be followed and upheld by Public Prosecution Service magistrates.

2. The opinions referred to in the previous paragraph, shall be circulated to all Public Prosecution Service magistrates and published in the Second Series of the *Diário da República* with an indication of the dispatch which confers them with mandatory status.

3. On his own initiative, or upon a statement with grounds from any magistrate of the Public Prosecution Service, the Attorney General may submit questions to be reconsidered for possible review of the doctrine previously set out.

Article 43

Ratification and taking effect of opinions

1. After approval by the entities who have requested them or to whose sector the matter relates, Consultative Board opinions on general provisions shall be published in the Second Series of *Diário da República* to take effect as the official interpretation, within the respective services, of the matters that they are intended to clarify.

2. If the object of the consultation is of interest to two or more ministries that do not agree on ratification of the opinion, this shall fall under the jurisdiction of the Prime Minister.

SECTION V

Legal auditors

Article 44

Legal auditors

1. For the Assembly of the Republic, for each ministry and for the Ministers of the Republic for the Autonomous Regions, there may be one assistant attorney general with the category of legal auditor.

2. The legal auditors are appointed on secondment.

3. The legal auditors may combine their functions with those assigned to them by the Attorney General in the context of the powers of the Public Prosecution Service which, by law, do not belong to specific bodies.

4. The costs of the legal auditors are borne by funds from the budget of the Department of Justice.

Article 45

Jurisdiction

1. The legal auditors carry out the functions of legal consultation and support at the request of the President of the Assembly of the Republic, members of the Government or Ministers of State for the Autonomous Regions in which they operate.

2. The legal auditors must propose to the Attorney General that opinions be submitted to the Consultative Board of the Attorney General's Office where

they have given rise to doubts, the complexity of which justifies their discussion in conference, or where matters concerning more than one ministry are in question.

3. Where the consulting bodies do not agree with the solutions proposed by the legal auditors or where they have doubts about the doctrine set out by them, they may submit the matter for the consideration of the Consultative Board of the Attorney General's Office.

4. Where consultations are being discussed in relation to the Assembly of the Republic or to ministries in which they are carrying out functions, the legal auditors shall take part in the sessions of the Consultative Board of the Attorney General's Office with voting rights.

SECTION VI

Central Department of Investigation and Penal Action

Article 46

Definition and Composition

1. The Central Department of Investigation and Penal Action is a body which coordinates and directs the investigation and prevention of crime, which is violent, highly organized or particularly complex in its nature.

2. The Central Department of Investigation and Penal Action is composed of an assistant attorney general, who leads the department, and state prosecutors, the number of whom appears in a table approved by ordinance from the Minister of Justice, after consultation with the Governing Board of the Public Prosecution Service.

Article 47

Jurisdiction

1. The Central Department of Investigation and Penal Action has jurisdiction to coordinate the direction of the investigation of the following crimes:

- a) Crimes against peace and humanity;
- b) Terrorist organisation and terrorism;
- c) Crimes against national security, with the exception of electoral crimes;

- d) Traffic of narcotics, psychotropic and precursory substances, except in situations of direct distribution to the consumer, and criminal association for drug-trafficking;
- e) Money laundering;
- f) Corruption, embezzlement and economic subterfuge in business;
- g) Fraudulent insolvency;
- h) Prejudicial management in economic units of the public sector;
- i) Fraudulent receipt or embezzlement of subsidies, grants or credit;
- j) Economic or financial breaches committed as part of an organised crime, namely using information technology;
- l) Economic or financial breaches on an international or transnational scale.

2. The exercise of the functions of coordination of the Central Department of Investigation and Penal Action include:

- a) The examination and implementation of ways to work together with other departments and services, namely the criminal police, with a view to reinforcing the simplification, rationality and efficiency of the proceedings;
- b) Carrying out studies, in conjunction with the investigation and penal action departments in the seat of the judicial districts, concerning the nature, amount and tendency to develop of criminal activity, and concerning the results obtained through prevention, detection and control.

3. The Central Department of Investigation and Penal Action shall be responsible for directing inquiries and carrying out penal action:

- a) Concerning the crimes outlined in paragraph 1, when the criminal activity occurs in areas belonging to different judicial districts;
- b) Following an order of the Attorney General, when, concerning crimes that display severity, or a particular complexity or where the criminal activity is widespread throughout the territory, a concentrated direction to the investigation is justified.

4. The Central Department of Investigation and Penal Action is responsible for carrying out the actions of prevention provided for in law, concerning the following crimes:

- a) Money laundering;

- b) Corruption, embezzlement and economic subterfuge in business;
- c) Prejudicial management in economic units of the public sector;
- d) Fraudulent receipt or embezzlement of subsidies, grants or credit;
- e) Economic or financial breaches committed as part of an organised crime, namely using information technology;
- f) Economic or financial breaches on an international or transnational scale.

SECTION VII

Office of Documentation and Comparative Jurisprudence

Article 48

Jurisdiction

1. The Office of Documentation and Comparative Jurisprudence has jurisdiction:

- a) To supply legal assistance, collect, deal with and disperse legal information, especially in the areas of community, foreign and international law, and carry out studies and disperse information regarding comparative systems of law, notwithstanding the powers of other services of the Department of Justice;
- b) To cooperate in the organisation and treatment of documentation originating from international bodies;
- c) To support the Department of Justice in the area of international legal and judicial cooperation;
- d) To participate in international meetings, by means of magistrates or employees selected for that purpose, to support the experts selected to participate in them, and to collaborate with national representatives in international organisations;
- e) To prepare, publish and distribute publications organised or directed by the Attorney General's Office or by the Attorney General;
- f) To collaborate in the disclosure, abroad, of the Portuguese legal system, namely among the member states of the Community of Portuguese speaking countries;
- g) To develop projects of legal information and management, relating to the powers of the Attorney General's Office, according to the plans approved by the Department of Justice;

h) To carry out other functions conferred on it in documentation and of legal information.

2. The organisation, personnel and staffing system of the Office of Documentation and Comparative Jurisprudence shall be defined in its own diploma.

SECTION VIII

Nucleus of Technical Advice

Article 49

Jurisdiction

1. The Nucleus of Technical Advice has jurisdiction to assure technical consultation and advice to the Attorney General's Office and, in general, to the Public Prosecution Service about economic, financial, banking, accounting matters and regarding the securities market.

2. Paragraph 2 of the previous article also applies.

SECTION IX

Technical and Administrative Support Services of the Attorney General's Office

Article 50

Structure, staff and system of provision

The structure, staff and system of appointment of the employees of the technical and administrative support services of the Attorney General's Office are fixed by Decree-Law, after consultation with the Attorney General's Office.

CHAPTER III

State contentious matters

Article 51

State legal departments

1. State legal departments may be created.
2. The State legal departments have jurisdiction in civil or administrative matters or in matters combining civil and administrative issues.

3. The State legal departments are created by ordinance of the Minister of Justice, upon proposal by the Governing Board of the Public Prosecution Service.

4. The ordinance of the Minister of Justice shall fix the territorial area of jurisdiction of the State legal departments, and establish the respective staff of magistrates and regulations of the support services, in the terms of Article 215.

5. The State legal departments will fall within the bounds of the Attorney General's Office or the District Attorney General's Offices, depending on whether their territorial area of jurisdiction falls within or exceeds the area of the judicial district.

Article 52 **Composition**

1. The State legal departments are directed by assistant attorneys general or by state prosecutors.

2. State prosecutors and assistant state prosecutors carry out functions in the State legal departments.

Article 53 **Jurisdiction**

The State legal departments have jurisdiction to:

- a) Represent the State in court, in the defence of its patrimonial interests;
- b) Prepare, examine and accompany forms of extrajudicial composition of litigation in conflicts where the state has an interest.

CHAPTER IV Access to Information

Article 54 **Information**

1. Access, for the public and the mass media, to information related to the activity of the Public Prosecution Service, is assured in the terms of the law.

2. For the purposes provided for in the previous paragraph, press offices may be set up alongside the Attorney General's Office and the District Attorney

General's Offices, these being under the supervision of the Attorney General or the District Attorneys General.

CHAPTER V

District Attorney General's Offices

SECTION I

District Attorney General's Office

Article 55

Structure

1. The seat of every judicial district shall have a District Attorney General.
2. Assistant attorneys general shall carry out functions in the District Attorney General's office.

Article 56

Jurisdiction

The District Attorney General's office has jurisdiction:

- a) To promote the defence of democratic legality;
- b) To direct, coordinate and supervise the activity of the Public Prosecution Service in the judicial district and to issue orders and instructions which are binding on magistrates when carrying out their duties;
- c) To propose directives to the Attorney General, which have as their aim the standardisation of the activity of the Public Prosecution Service;
- d) To coordinate the activity of the criminal police bodies;
- e) To supervise the procedural activity of the criminal police bodies;
- f) To supervise observance of the law in the execution of penalties and in the measures of security and fulfilment of any prison terms or coercive treatment, requesting clarification and proposing inspections whenever deemed necessary;
- g) To carry out studies regarding tendency related to doctrine and jurisprudence, with a view to uniting the law and defence of the principle of equal rights for all citizens before the law;

- h) To carry out, together with the criminal police bodies, studies concerning factors and tendencies about the future of criminality;
- i) To produce the annual activity report and progress reports that are deemed necessary or are determined necessary at a superior level;
- j) To carry out all other functions conferred by law.

SECTION II

District Attorneys General

Article 57

Status

1. The District Attorney General's Office is directed by an assistant attorney general who is named a District Attorney General.
2. The District Attorney General is substituted, when he is absent or there is an impediment to carrying out his duties, by an assistant attorney general indicated by him or, when there is no such indication, by the most senior.
3. The provisions of the present section apply, with the necessary changes, to the magistrates that carry out functions in the Central Administrative Court.
4. The District Attorney General may propose the appointment of an employee from the services of the Department of Justice to act as his secretary, on secondment.

Article 58

Jurisdiction

1. The District Attorney General has jurisdiction:
 - a) To direct and coordinate the activity of the Public Prosecution Service in the judicial district and to issue orders and instructions;
 - b) To represent the Public Prosecution Service in the High Court;
 - c) To propose, to the Attorney General, the adoption of directives which promote the standardisation of Public Prosecution Service procedures;
 - d) To coordinate the activity of the criminal police bodies;
 - e) To supervise the operations of the Public Prosecution Service and the procedural activity of the criminal police bodies and to keep the Attorney General informed in this regard.
 - f) To vigil the lawfulness of the execution of measures which restrict liberty, prison measures or coercive treatment, and to propose

measures for the inspection of the establishments or services, as well as adopting criminal or disciplinary provisions when deemed necessary;

- g) To invest powers in the state prosecutors and assistant state prosecutors in the county corresponding to the seat of the judicial district;
- h) To organise the distribution of service between the state prosecutors of the same county, department or judicial *círculo*, notwithstanding the provisions of the law of proceedings;
- i) To carry out all other functions conferred by law.

2. The District Attorney General may delegate, from among the remaining assistant attorneys general, functions of supervision and coordination of the judicial district, according to areas of material intervention of the Public Prosecution Service.

3. The District Attorney General and the assistant attorneys general may be aided by state prosecutors.

Article 59

Assistant attorneys general

The assistant attorneys general in the District Attorney General's Office are responsible for:

- a) Under the direction of the District Attorney General, representing the Public Prosecution Service in the High Court;
- b) Supervising and coordinating the areas of intervention that are delegated to them.

CHAPTER VI

State Prosecutors' Offices

SECTION I

State Prosecutors' Offices

Article 60

Structure

1. The seat of each judicial *círculo* has a state prosecutor.

2. In counties corresponding to the seat of the judicial district there may be one or more state prosecutors' offices.

3. The state prosecutors' office is composed of the state prosecutor or prosecutors and assistant state prosecutors.

4. The state prosecutors' offices are provided with their own administrative support.

Article 61
Jurisdiction

The state prosecutors' offices have the special responsibility of directing, coordinating, and supervising the activity of the Public Prosecution Service in the area of the respective judicial *círculo* or in the courts or departments in which they supervise.

Article 62
Direction

1. The state prosecutors' office is directed by one state prosecutor.

2. In the courts and departments where there is more than one state prosecutor, state prosecutors may be nominated as having specific functions of coordination.

3. The state prosecutor is substituted, when he is absent or there is an impediment to carrying out his duties, by the most senior magistrate in the same category or, if there is not one, by the assistant state prosecutor chosen by the state prosecutor.

SECTION II

State prosecutors

Article 63
Jurisdiction

1. The state prosecutors have jurisdiction:

- a) To represent the Public Prosecution Service in courts of 1st instance; they must personally take on this representation where this is justified by the severity or complexity of the cases or by the particular relevance of the interest being maintained, namely in hearings in collective court or by jury;

- b) To direct and supervise the carrying out of Public Prosecution Service duties and to keep the District Attorney General informed in this regard;
- c) To give orders and instructions;
- d) To invest powers in the assistant state prosecutors;
- e) To give decisions provided for in the laws of process;
- f) To define means of working together with the criminal police bodies, social reintegration bodies and establishments of support, treatment and cure;
- g) To carry out all other functions conferred by the law.

2. The coordinating state prosecutor is responsible for:

- a) Defining criteria for the management of services, after consultation with the other state prosecutors;
- b) Establishing rules of procedure, with a view to the objectives of standardisation, correction, and rationalisation, after consultation with the other state prosecutors;
- c) Guaranteeing the collection and treatment of procedural and statistical information related to the Public Prosecution Service and the transmitting of such to the District Attorney General;
- d) Establishing mechanisms for working together with the structures of the Public Prosecution Service which mediate in other procedural phases, in order to obtain gains in terms of operation and efficiency;
- e) Coordinating working together with criminal police bodies, social reintegration bodies and establishments of support, treatment and cure;
- f) Making decisions about the substitution of state prosecutors, in cases of absence or other factors preventing them from carrying out their duties and where is not feasible to inform the District Attorney General in reasonable time;
- g) Making decisions concerning internal conflicts of jurisdiction;
- h) Assuring the external representation of the state prosecutors' office.

3. The coordinating state prosecutor may join the functions referred to in the previous paragraph into the direction of one or more sections.

4. In the case of accumulation of service, vacancy of position or impediment of its holder, for a period greater than 15 days, the District Attorney

Generals may, subject to previous communication with the Governing Board of the Public Prosecution Service, attribute the service of other counties, courts or departments to the state prosecutors.

5. The measure provided for in the previous paragraph lapses after a period of six months, and may not be renewed for the same prosecutor, without the agreement of the same, before a period of three years has passed.

6. The state prosecutors who accumulate functions for a period longer than 30 days have the right to receive remuneration to be fixed by the Minister of Justice, after consultation with the Governing Board of the Public Prosecution Service, between the limits of one fifth of and the total salary.

SECTION III

Assistant state prosecutors

Article 64

Assistant state prosecutors

1. The assistant state prosecutors carry out functions in counties according to the table appearing in the legislation on judicial organisation.

2. It is the responsibility of assistant state prosecutors to represent the Public Prosecution Service in the courts of 1st instance, notwithstanding the provisions of sub-paragraph a) of paragraph 1 of the previous article.

3. Notwithstanding the guidance of the respective District Attorney General, the distribution of services to assistant state prosecutors in the same district is done by order of the competent state prosecutor.

4. The provisions of paragraphs 4 to 6 of the previous article also apply, with the necessary changes, to the assistant state prosecutors.

Article 65

Substitution of assistant state prosecutors

1. In the counties with two or more assistant state prosecutors, these will substitute each other according to the order established by the state prosecutor.

2. Where absence or impediment is no more than 15 days, the state prosecutor may indicate as a substitute another assistant state prosecutor from the same county.

3. The state prosecutor may also appoint as a substitute another competent person, preferably qualified and possessing a Law degree.

4. Notwithstanding the provisions of the previous paragraphs, assistant state prosecutors shall be substituted, where they are absent or otherwise impeded from acting, by the notary of the municipality where the court is based.

5. In counties with more than one notary, the substitute shall be appointed by the state prosecutor.

6. Substitutes that are not magistrates and that carry out duties for a period of more than 15 days are entitled to remuneration fixed by the Minister of Justice, after consultation with the Governing Board of the Public Prosecution Service, between the limits of one third of and the total salary.

Article 66

Substitution in urgent cases

Where there is a case of urgency and substitution cannot be made in the manner indicated in the preceding paragraphs, the judge shall nominate a competent person for each case, preferably qualified and possessing a Law degree.

Article 67

Representation of the state in civil actions

Notwithstanding the provisions of Article 51, in civil actions where the State is a party, the Attorney General, after consultation with the District Attorney General, may appoint any Public Prosecution Service magistrate to assist or substitute the magistrate who has the responsibility for this representation.

Article 68

Representation of the state in criminal actions

1. In criminal actions, and notwithstanding the provisions of Article 47, paragraph 3, subparagraph b), and Article 73, paragraph 1, subparagraph c), the Attorney General may appoint any Public Prosecution Service magistrate to assist or substitute another magistrate to whom the process has been allocated, wherever this is justified by weighty reasons of procedural complexity or social consequences.

2. The District Attorney General may decide, based on procedural reasons, that the magistrate of the Public Prosecution Service who directed the inquiry may intervene in the subsequent phases of the proceedings.

Article 69

Special representation of the Public Prosecution Service

1. Where there is a conflict of interest between bodies, persons or interests that the Public Prosecution Service has a duty to represent, the state prosecutor shall request the Bar Association to appoint a lawyer to represent one of the parties.

2. Where the matter is urgent and while an appointment cannot be made under the terms of the previous paragraph, the judge shall appoint a lawyer to take part in the proceedings.

3. The fees due for the assistance referred to in the previous paragraphs shall be borne by the State.

CHAPTER VII

Departments of investigation and penal action

Article 70

Seat of the judicial district

In the county corresponding to the seat of each judicial district there will be a department of investigation and penal action.

Article 71

Counties

1. Departments of investigation and penal action may be created in counties where there is a high volume of cases.

2. For the purposes of the previous paragraph, counties considered to have a high volume of cases are those which have registered more than 5000 inquiries annually in at least three of the last five judicial years.

3. The departments of investigation and penal action of the counties are created by ordinance of the Minister of Justice, after consultation with the Governing Board of the Public Prosecution Service.

Article 72

Structure

1. The departments of investigation and penal action may be organised in sections, in response to the nature and frequency of crimes.

2. The departments of investigation and penal action in the county corresponding to the seat of the judicial district are directed by assistant attorney generals or by state prosecutors.

3. The departments of investigation and penal action in the region are directed by state prosecutors.

4. When the departments of investigation and penal action are organised in sections, these are directed by state prosecutors.

5. Notwithstanding the provisions in the previous paragraphs, state prosecutors and assistant state prosecutors carry out functions in the departments of investigation and penal action, the number of these being by ordinance of the Minister of Justice, upon a proposal from the Governing Board of the Public Prosecution Service.

Article 73

Jurisdiction

1. The departments of investigation and penal action in the county corresponding to the seat of the judicial district have jurisdiction:

- a) To direct inquiry and carry out penal action for crimes committed in the region;
- b) To direct inquiry and carry out penal action related to crimes indicated in paragraph 1 of Article 47, when the criminal activity occurs in counties belonging to different counties of the same judicial district;
- c) Following an order from the District Attorney General, to direct inquiry and carry out penal action when, concerning crimes that display severity, or a particular complexity or where the criminal activity is widespread throughout the territory, a concentrated direction to the investigation is justified.

2. The departments of investigation and penal action in counties referred to in Article 71 shall be responsible for directing inquiry and carrying out penal action in relation to crimes committed in the county.

PART II

On the magistrature of the Public Prosecution Service

SINGLE HEADING

Magistrature of the Public Prosecution Service

CHAPTER I

Organisation and statute

Article 74

Scope of legislation

1. The magistrates of the Public Prosecution Service are subject to the provisions of this legislation, regardless of their situation.
2. The provisions of this legislation shall also be applicable, with the due amendments, to substitutes of Public Prosecution Service magistrates while these are carrying out duties.

Article 75

Parallelism in relation to the judicial magistrature

1. The magistrature of the Public Prosecution Service exists side by side with and independently of the judicial magistrature.
2. In hearings and official acts at which judicial magistrates are presiding, those of the Public Prosecution Service serving in the same court take position to their right.

Article 76

Status

1. The magistrates of the Public Prosecution Service are accountable and hierarchically subordinate.
2. The accountability consists of being answerable, under the terms of the law, in relation to fulfilling their duties and to observing the directives, orders and instructions that they receive.
3. The hierarchy consists of the subordination of magistrates of a lower rank to those of a higher rank, under the terms of this legislation, and of their

consequent obligation to observe the directives, orders and instructions that they receive, notwithstanding the provisions of Articles 79 and 80.

Article 77
Rendering accountable

Other than cases where the offence constitutes a crime, the accountability can only be enforced by means of recourse action by the State.

Article 78
Stability

Public Prosecution Service magistrates may not be transferred, suspended, promoted, retired, dismissed or have their position in any way altered other than as set out in this legislation.

Article 79
Limit of directive powers

1. The magistrates of the Public Prosecution Service may request to the hierarchical superior that orders or instructions be sent in writing, and they must always be in this form when they are to produce effects in a given process.

2. The magistrates of the Public Prosecution Service must refuse to comply with illegal directives, orders and instructions and may refuse to comply where there are grounds establishing a serious violation of their legal conscience.

3. Such refusal is made in writing, following representation of the reasons invoked.

4. In cases where the previous paragraphs apply, the magistrate who has issued the directive, order or instruction may carry it out himself or allocate it to another magistrate.

5. The following may not be refused:

- a) Decisions given by the hierarchy under the terms of the law of procedure;
- b) Directives, orders and instructions issued by the Attorney General, except where there are grounds of illegality.

6. Unjustified use of the right to refuse constitutes a disciplinary offence.

Article 80
Powers of the Minister of Justice

The Minister of Justice has jurisdiction over the following matters:

- a) To transmit, by means of the Attorney General, specific instructions in civil actions and proceedings with a composition of an extrajudicial nature in conflicts in which the State has an interest;
- b) To authorise the Public Prosecution Service, after consultation with the relevant Government department, to admit, settle or withdraw from civil actions in which the State is a party;
- c) To request, through intermediary of the Attorney General, service reports and information from any magistrate or agent of the Public Prosecution Service;
- d) To request information and clarification from the Governing Board of the Public Prosecution Service and to communicate with it as he considers appropriate;
- e) To request the Attorney General to carry out inspections, investigations and inquiries, namely into criminal police bodies.

CHAPTER II

Incompatibilities, duties and rights of magistrates

Article 81
Incompatibilities

1. The carrying out of any other public or private function of a professional nature, other than teaching duties or scientific research of a legal nature or managerial functions in representative organisations of the Public Prosecution Service magistrature, is incompatible with the performance of the office of Public Prosecution Service magistrate.

2. The exercise of teaching duties or scientific research of a legal nature may be authorised, where this is not remunerated and does not prejudice official duties.

3. The functions of full-time magistrate member of the Governing Board of the Public Prosecution Service, magistrate member of the office of the Attorney General, management or teaching in the Centre for Judicial Studies, and being in charge of preparation and review of legal statutes within the context of the Department of Justice, are all deemed to be functions of the Public Prosecution Service.

Article 82

Political activities

1. Public Prosecution Service magistrates in office are forbidden from taking part in party political activities of a public nature.
2. Public Prosecution Service magistrates in office may not hold political positions, with the exception of the President of the Republic and member of the Government or of the Council of State.

Article 83

Impediments

1. Public Prosecution Service magistrates may not serve in a tribunal or court in which duties are being carried out by judicial or Public Prosecution Service magistrates or justice employees who are linked by marriage, cohabitation, blood or affinity of any degree in direct descent or up to the 2nd degree of collateral relationship.
2. Public Prosecution Service magistrates may not serve in a court or department belonging to a judicial *círculo* in which they have had a lawyer's office in the last five years.

Article 84

Duty of secrecy

1. Public Prosecution Service magistrates may not make declarations or comments regarding proceedings, except, when given superior authorisation, when this is for the defence of honour or for the fulfilment of another legitimate interest.
2. Information which is directed at the fulfilment of rights and legitimate interests, namely that of access to information, and which is not a matter covered by the secrecy of justice or by professional secrecy, is not covered by the duty of secrecy.

Article 85

Necessary residence

1. Public Prosecution Service magistrates have necessary residence where the court or position where they are carrying out duties is located, although they may reside in any part of the district provided that this is not inconvenient for the performance of their duties.

2. Where circumstances so justify, and where there is no prejudice to the performance of their duties, Public Prosecution Service magistrates may be authorised to live in a location other than that set out in paragraph 1.

Article 86

Absence

1. Public Prosecution Service magistrates may absent themselves from their district when this is during exercise of their duties, in leave of absence or during judicial holidays, Saturdays, Sundays and public holidays.

2. Absence during holidays, Saturdays, Sundays and public holidays must not prejudice the performance of urgent service, a rota system being organised for this purpose.

3. Unjustified absence shall incur not only disciplinary liability, but also the loss of salary for the period during which such absence occurred.

Article 87

Absences

1. Where there are pressing grounds, Public Prosecution Service magistrates may absent themselves from their confines for a number of days not exceeding three every month and ten every year, after receiving prior permission from their hierarchical superior or, where it is not possible to obtain this, communicating and justifying the absence immediately after their return.

2. Absences shall not be counted as such where they occur on working days outside of normal office hours and where they do not result in default of any act of service or disruption thereof.

3. Absences that occur as a result of the performance of managerial duties in representative organisations of the Public Prosecution Service magistrature are considered as equal to those referred to in the previous paragraph, up to a limit of four per month.

4. In cases of absence, Public Prosecution Service magistrates must give information as to their whereabouts.

Article 88

Leave of absence

1. If it is not inconvenient for the service, the Governing Board of the Public Prosecution Service or the District Attorney General, acting as its delegate, may permit leave of absence for magistrates to attend congresses, symposiums,

courses, seminars, meetings, or other events taking place either in the country or abroad, connected with their professional activity.

2. The provisions of Decree-Law 272/88, of 3 August, apply to magistrates of the Public Prosecution Service, with the necessary changes, when they propose to undertake work or study programmes, or participate in courses or training of recognised public interest.

3. Intentions referred to in the previous paragraph are subject to order of the Minister of Justice, upon proposal of the Governing Board of the Public Prosecution Service, in which they should indicate the duration, conditions and terms of the programmes and training.

Article 89

Magistrates on long term unpaid leave

Public Prosecution Service magistrates on long term unpaid leave may not make reference to that attribute in any form of identification relating to the profession that they carry out.

Article 90

Treatment, honours and professional dress

1. The Attorney General has the same rank, treatment and honours as the President of the Supreme Court and uses the same professional dress.

2. The Vice-Attorney General has the same rank, treatment and honours as judges of the Supreme Court and uses the professional dress appropriate to them.

3. Assistant attorneys general have the same rank, treatment and honours as judges of the Court of Appeal and use the professional dress appropriate to them.

4. State prosecutors and assistant state prosecutors have the same rank, treatment and honours as judges in the courts where they carry out duties and use the professional dress appropriate to them.

Article 91

Remand in custody

1. Public Prosecution Service magistrates may not be arrested or held without being given an order designating the date of the trial for the crime of which they are being accused, except where they are caught in flagrant committing a crime punishable with imprisonment of more than three years.

2. In the case of detention or imprisonment, the magistrate shall be immediately brought before the competent judicial authority.

3. Remand in custody terms or deprivation of liberty sentences for magistrates of the Public Prosecution Service shall be served in a common prison establishment, but in isolation from the other inmates.

4. In the case of the need for a search of the professional or personal premises of a magistrate of the Public Prosecution service, this shall be presided over, under penalty of invalidity, by a competent judge, who will give prior notification to the Governing Board of the Public Prosecution Service, in order for a member selected by this Board to be present.

Article 92

Forum

The competent court for the inquiry, investigation and trial of magistrates of the Public Prosecution Service for criminal offence, as well as for appeal in matters against the national order, is the category immediately above the one in which the magistrate is placed. In the case of the Attorney General, Vice Attorney General and assistant attorneys general the competent court is the Supreme Court of Justice.

Article 93

Exercise of advocacy

Public Prosecution Service magistrates may act on behalf of themselves, their spouses or their descendants.

Article 94

Relations between magistrates

Public Prosecution Service magistrates maintain precedence among themselves according to rank, preferring seniority in cases of equal rank.

Article 95

Components of the payment system

1. The payment system for Public Prosecution Service magistrates is composed of the following:

- a) Base remuneration;
- b) Supplements.

2. Allocation of any other type of payment, not covered by the remuneration components referred to in the above paragraph, is not permitted, notwithstanding the provisions of Article 98.

Article 96

Base remuneration and supplements

1. The structure of base remuneration to be paid monthly to Public Prosecution Service magistrates is that set out in the indexing scale appearing in the chart appended to this law, of which it forms an integral part.

2. The base remunerations are reviewed annually, by updating the amount corresponding to the 100 index.

3. As of the 1st January 1991, the updating referred to in the previous paragraph is automatic, under the terms of the provisions of Article 2 of Law no. 26/84, of 31 July, with the wording given to it by Article 1 of Law no. 102/88 of 25 August.

4. Under the heading of supplements, allowances shall be maintained as set out in Articles 97 to 100 and 102 of this law.

Article 97

Settlement allowance

After consultation with the Governing Board of the Public Prosecution Service and the representative organisations of the magistrature, the Minister of Justice may decide that a settlement allowance should be paid to Public Prosecution Service magistrates who carry out duties in the Autonomous Regions.

Article 98

Representation expenses allowance

1. The Attorney General is entitled to a subsidy corresponding to 20 % of salary, under the heading of representation expenses.

2. The Vice Attorney General and the District Attorneys General are entitled to a subsidy corresponding to 10% of salary, under the heading of representation expenses.

Article 99

Relocation expenses

1. Public Prosecution Service magistrates are entitled to be reimbursed, if they do not opt for advance payment, for expenses resulting from relocation of themselves and their families, and, within the limits established by order of the Ministers of Finance and Justice, for the transport of personal belongings, whatever form of transport is used, when they are promoted, transferred or placed for reasons of a non-disciplinary nature.

2. Reimbursement is not due where the change of situation takes place at the request of the magistrate, except in the following situations:

- a) Where there is relocation between the mainland and the Autonomous Regions;
- b) Where, in the case of transfer upon request, the situation set out in paragraph 1 of Article 137 applies or the transfer occurs after two years of effective service in the previous location.

Article 100

Expenses

Expenses are due wherever a magistrate travels on duty outside of the district where the respective court or duties are based.

Article 101

Distribution of official publications

1. The Attorney General, the Vice Attorney General and assistant attorneys general are entitled to free distribution of the 1st and 2nd series of the *Diário da República*, of the 1st and 2nd series of the *Diário da Assembleia da República* (Parliamentary Report), the *Boletim do Ministério da Justiça* (Justice Department Bulletin) and the *Boletim do Trabalho e Emprego* (Work and Employment Bulletin).

2. State prosecutors and assistant state prosecutors are entitled to free distribution of the 1st series of the *Diário da República* in either its print or electronic version, the *Boletim do Ministério da Justiça* and, where they request it, to all other publications referred to in the previous paragraph.

Article 102

Lodging house

1. In localities where it is deemed necessary, the Department of Justice shall place at the disposal of Public Prosecution Service Magistrates, for the

period that they are carrying out their functions, a furnished lodging house, through payment of a monthly consideration, fixed by the Minister of Justice, of a sum not greater than one tenth of the total of the respective remunerations.

2. Magistrates that do not avail of a lodging house under the terms of the previous paragraph, or do not reside in one in accordance with the provisions of the final part of paragraph 2 of Article 85, are entitled to a compensatory subsidy fixed by the Minister of Justice, after consultation with the Governing Board of the Public Prosecution Service and the representative organisations of the magistrature, with consideration given to current prices in the local housing market.

Article 103

Responsibility for payment of consideration

The consideration shall be payable from the date on which the decision to appoint is published until the date when the decision changing the previous situation is published, even if the magistrate does not inhabit the house.

Article 104

Responsibility for furniture

1. Magistrates who inhabit the house receive, by means of an inventory that they must sign, the furniture and other existing equipment and record any anomalies noted on the deed.

2. The procedure referred to in the previous paragraph is also adopted when the magistrate leaves the house.

3. The magistrate is responsible for the good conservation of the furniture and equipment received, and must communicate any incidents so that the inventory can be kept up-to-date.

4. The magistrate may request that furniture or equipment be replaced or repaired where it is no longer capable of normal use, under the terms of regulations drawn up by the Department of Justice after consultation with the Governing Board of the Public Prosecution Service.

Article 105

Holidays and leave

1. Public Prosecution Service magistrates take their holidays during the period of judicial holidays, notwithstanding rota systems to which they may be subject, or to duties that have to be carried out during holidays in the terms of the law.

2. Where there are grounds of public or other legally fixed service, Public Prosecution Service magistrates may take their holidays during a period other than that referred to in the previous paragraph.

3. Absence due to holidays, and the location to which magistrates travel, must be communicated to the immediate superior in the hierarchy.

4. The magistrate's immediate hierarchical superior may require him to return to duties, for reasons based on the urgent nature of the service, without prejudice to his entitlement to annual holidays, in the terms legally fixed for public office.

5. Magistrates carrying out duties in the Autonomous Regions are entitled to take the summer judicial holidays on the mainland, accompanied by their families, the travelling expenses being borne by the state.

6. When, whilst taking holidays as provided for in the previous paragraph, magistrates have to return to the Autonomous Region to fulfil a duty according to rota, the travelling expenses shall be borne by the state.

Article 106 **Holiday rotas**

1. The Attorney General shall organise a rota service to assure urgent service during the judicial holidays or when the service so requires, in which assistant attorneys general take part.

2. Public Prosecution Service magistrates assure urgent service in the terms provided for in law.

Article 107 **Special rights**

1. Public Prosecution Service magistrates have special entitlement to the following:

- a) Exemption from any local taxes imposed by local authorities;
- b) The free use, transport and display of firearms and the acquisition of the corresponding ammunition, independently of permission or communication, which they may request from the services of the Department of Justice, through the Attorney General;
- c) Entry and free passage in stations, ports and airports, upon simple display of an identification card;

- d) While on duty within the respective area of operation, free entry onto boats anchored in ports, buildings and enclosed spaces for shows and other entertainment, recreation association halls and, in general, all places where public meetings are held or to which public access is permitted by way of payment of a duty, the payment of some expense or the presentation of a ticket that anyone can obtain;
- e) The free use of public land and water transport, as set out by the Department of Justice, within the confines of the district within which they are carrying out duties or while on duty, in the circumstances set out in the final part of paragraph 2 of Article 85, between that area and the place of residence;
- f) To make telephone calls using a confidential system, if this is accepted favourably by the Governing Board of the Public Prosecution Service;
- g) Free access, in constitutional and legal terms, to public libraries and databases, namely those of the higher courts, the Constitutional court and the Attorney General's Office;
- h) Special security for their person, family and goods, requested by the Governing Board of the Public Prosecution Service or by the District Attorney General, or by a delegate of the same, or, in urgent cases, by the magistrate, from the command of the police force in the area of residence, where pressing security grounds so require;
- i) The exemption from payment of costs in any action in which he is a principal or accessory in the course of carrying out his duties;

2. The identification card is allocated by the Governing Board of the Public Prosecution Service and is renewed where there is a change of situation. This card must set out the office that is held and the rights and privileges that are inherent to this office.

3. The Attorney General and the Vice Attorney General are entitled to a diplomatic passport and the assistant attorneys general to a special passport. Special passports may also be issued to state prosecutors and assistant state prosecutors when travelling to other countries in the course of their duties.

4. The rights set out in paragraph 1, subparagraphs e) and g), in paragraph 2 and in paragraph 3 in relation to the special passport, are extended to all members of the Governing Board of the Public Prosecution Service.

Article 108
Subsidiary provisions

The system in force for public office with regard to conflicts of interest, duties and rights, is applicable to Public Prosecution Service magistrates on a subsidiary basis.

CHAPTER III
Classifications

Article 109
Classification of Public Prosecution Service magistrates

The state prosecutors and assistant state prosecutors are classified by the Governing Board of the Public Prosecution Service as *Very Good*, *Good with Distinction*, *Good*, *Sufficient* and *Mediocre*, according to their merit.

Article 110
Criteria and effects of classification

1. The classification must take into account the manner in which magistrates carry out their duties, the volume and difficulties of the service under their charge, the conditions of work rendered, their technical training, intellectual ability, published legal works and civic aptitude.

2. The classification of *Mediocre* shall result in suspension from duties and the instigation of an inquiry as to whether the person is unfit for the position.

3. Where disciplinary proceedings are brought on the basis of the inquiry and it is concluded that the magistrate is unfit, to allow for the possibility that he remain in public service, the penalties of compulsory retirement or dismissal may be replaced by that of discharge from duties, upon request by the interested party.

4. Where the provisions of the previous paragraph apply, the proceedings, accompanied by a reasoned opinion, are sent to the Department of Justice for the purposes of ratification and placement of the interested party in a position appropriate to his abilities.

5. The ratification of the opinion by the Minister of Justice shall qualify the interested party to take up a suitable position within the dependent services of the ministry.

Article 111

Classification of magistrates on secondment

Magistrates on secondment are classified where the Governing Board of the Public Prosecution Service has sufficient information or can obtain it by means of the necessary inspections. Otherwise the last classification shall be considered up-to-date.

Article 112

Frequency of classifications

1. State prosecutors and assistant state prosecutors are classified at least every four years.

2. Classification shall be considered out-of-date after four years unless the magistrate is not responsible for the out-of-datedness or he is covered by the provisions in Article 111.

3. Where the lack of classification is not due to the magistrate, this is deemed to be *Good*, except where the magistrate requests inspection, which must then be carried out.

4. Classification in relation to subsequent service renders that referring to previous service out-of-date.

Article 113

Information to be considered

1. For the purposes of classification, consideration shall be given to the results of previous inspections, inquiries, investigations or disciplinary proceedings, term of service, annual reports and any complementary information that is in the possession of the Governing Board of the Public Prosecution Service.

2. Consideration is also given to the volume of work under the charge of the magistrate, the conditions of work and, in relation to magistrates with less than five years service, the circumstance of the inspected service having been rendered in an entry county or position.

3. The magistrate must be consulted in relation to the inspection report and may supply such information as he considers appropriate.

4. The considerations that the inspector may produce regarding the reply of the inspected party may not refer to new facts that are disadvantageous to him, and the inspected party must be informed of such considerations.

CHAPTER IV

Appointments

SECTION I

Recruitment and Promotion

SUBSECTION I

General provisions

Article 114

Applications for entry to the Public Prosecution Service Magistrature

The requirements for entry into the Public Prosecution Service Magistrature are as follows:

- a) Portuguese citizenship;
- b) Full enjoyment of civil and political rights;
- c) Possession of a law degree either obtained in a Portuguese university or recognised in Portugal;
- d) Having gainfully attended the training courses or placements, notwithstanding the provisions of Article 128;
- e) Having satisfied the other requirements established by law for the appointment of State employees.

Article 115

Training courses and placements

Training courses and placements take place in the Centre for Judicial Studies, under the terms of the statute that governs this Centre.

Article 116

Promotion

1. Advancement to superior positions in the Public Prosecution Service is by way of promotion.
2. Public Prosecution Service magistrates are promoted on merit and on seniority.

3. Promotion to the rank of state prosecutor is by merit and by seniority and promotion to assistant attorney general is by merit.

Article 117

General conditions for promotion

1. Promotion on the basis of seniority is conditional upon service classification not inferior to *Good*.

2. Promotion on the basis of merit is conditional upon service classification of *Very Good* or *Good with Distinction*.

3. Where there is more than one magistrate suitable for promotion on merit, vacancies shall be filled successively, in the proportion of three for those classified as *Very Good* for every one classified as *Good with distinction*, and, where there is equality of classification, preference shall be given to seniority.

Article 118

Renunciation

1. Public Prosecution Service magistrates to whom promotion falls on a specific occasion, may present a renunciatory declaration.

2. A renunciatory declaration shall render the magistrate ineligible for promotion on the basis of seniority for the following two years.

3. Renunciatory declarations shall be presented to the Governing Board of the Public Prosecution Service within the time period set out in paragraph 3 of Article 134.

4. Where there are no other magistrates who are eligible for promotion, renunciatory declarations shall not be effective.

SUBSECTION II

Special provisions

Article 119

Assistant State prosecutors

1. Notwithstanding the provisions of Article 128, the first appointment to the magistrature of the Public Prosecution Service is made to the rank of assistant state prosecutor for entry counties or positions.

2. Appointments are made according to the order of grades obtained in the entry courses or placements.

Article 120

Assistant state prosecutor in the Departments of Investigation and Penal Action

The filling of assistant state prosecutor vacancies in the Departments of Investigation and Penal Action in the county corresponding to the seat of the judicial district shall be made from among assistant state prosecutors who have at least seven years of service, the following being the criteria for determining preference:

- a) Classification of merit;
- b) Experience in the criminal area, especially in respect to study or direction of investigations into violent or highly organised crimes;
- c) Specific training or the performance of investigative tasks in the area of criminal science.

Article 121

State prosecutors

1. The filling of state prosecutor vacancies shall be made by means of transfer or by promotion from among assistant state prosecutors.

2. Vacancies not filled by transfer shall be filled by promotion.

3. Promotion shall be by means of competition or according to a list of seniority.

4. Only assistant state prosecutors with a minimum of 10 years service may be promoted by means of competition.

5. Vacancies are filled, by order of vacancy, successively in the proportion of three by means of competition and two according to a list of seniority.

6. Magistrate candidates who are not appointed by means of competition may be appointed according to the list of seniority, where they have not presented a renunciatory declaration.

7. In promotion by means of competition, the magistrate appointed is the one with the highest classification and, in the case of equality, the most senior.

8. Vacancies should be filled by means of competition and in the case of no competitors the promotion is effected by means of the list of seniority.

9. When vacancies are to be filled according to the list of seniority, the vacancies are filled successively, in the proportion of three on merit and one by seniority.

Article 122

State prosecutor in the departments of investigation and penal action in the county corresponding to the seat of the judicial district

1. The filling of positions of state prosecutor in the departments of investigation and penal action in the counties corresponding to the seat of the judicial district is from among state prosecutors with a classification of merit.

2. The magistrate with the highest classification is appointed, and among several with the same highest classification, the most senior is appointed.

Article 123

State prosecutor in the Central Department of Investigation and Penal Action and Coordinating State prosecutor

1. The filling of positions of state prosecutor in the Central Department of Investigation and Penal Action is from among state prosecutors with a classification of merit, with preference being given to those with:

- a) Experience in the criminal area, especially in respect to study or direction of investigations into violent or highly organised crimes;
- b) Specific training or experience of investigation applicable in the area of criminal science.

2. The filling of the position of coordinating state prosecutor is made, upon proposal from the District Attorney General, from among state prosecutors with the classification *Very Good* and with a length of service of not less than five years.

3. The offices referred to in the previous paragraphs are carried out on secondment.

Article 124

Legal Auditors

Legal auditors are appointed from among assistant attorneys general or, through promotion, from among state prosecutors.

Article 125

Assistant attorneys general in the supreme courts

1. The positions of assistant attorney general in the Supreme Court of Justice, the Constitutional Court, the Supreme Administrative Court, the Audit Court and the Supreme Military Court are filled from among assistant attorneys general or, through promotion, from among state prosecutors with the classification *Very Good*.
2. The appointment is made upon a proposal from the Attorney General, and the Governing Board of the Public Prosecution Service may not veto more than two names for each vacancy.
3. The offices referred to in paragraph 1 are carried out on secondment.

Article 126

District Attorneys General and equivalents

1. The positions of District Attorney General or of assistant attorney general in the Central Administrative Court are filled from among assistant attorney generals or, through promotion, from among state prosecutors with the classification *Very Good*.
2. The Governing Board of the Public Prosecution Service appoints one of the names proposed for each vacancy from a minimum of three.
3. The provisions of paragraph 3 of the previous article also apply.

Article 127

Assistant attorney general in the Central Department of Investigation and Penal Action, in the State legal departments and in the departments of investigation and penal action.

The positions of assistant attorney general in the Central Department of Investigation and Penal Action, in the State legal departments and in the departments of investigation and penal action in the counties corresponding to the seat of the judicial district are filled from among assistant attorneys general or, through promotion, from among state prosecutors with the classification *Very Good*, upon proposal of the Attorney General. These offices are carried out on secondment.

Article 128

Voting Members of the Governing Board

1. The positions of voting member of the Governing Board of the Public Prosecution Service are filled by assistant attorneys general, judicial and Public Prosecution Service magistrates and other jurists that apply for these positions. The number of the first-mentioned category must not be less than two thirds of the total number of voting members.

2. Conditions of appointment are as follows:

- a) For all voting members, recognised scientific merit and a proven investigative ability in the area of legal sciences;
- b) For judicial and Public Prosecution Service magistrates, twelve years of service in any of the magistratures and, with regard to magistrates who have to be classified, service classification of *Very Good*;
- c) For other jurists, civic aptitude, twelve years of professional activity in the area of legal sciences and aged not more than 60.

3. Appointment shall be made upon proposal by the Attorney General. The Governing Board of the Public Prosecution Service may not veto more than two names for each vacancy.

4. Appointment shall be made on secondment, for renewable periods.

Article 129

Appointment and relief of office of the Vice Attorney General

1. The Vice Attorney General is appointed, upon proposal by the Attorney General, from among assistant attorneys general and carries out his duties on secondment.

2. The provisions of paragraph 2 of Article 125 apply to the appointment.

3. The appointment of the Vice Attorney General as a judge of the Supreme Court of Justice does not imply termination of the secondment nor does it impede its renewal.

4. The Vice Attorney General ceases duties when a new Attorney General takes office.

Article 130

Appointment to the office of judge

Magistrates of the Public Prosecution Service may be appointed as judges under the provisions of the particular statute for each division of courts.

Article 131

Appointment and termination of office of the Attorney General

1. The Attorney General is appointed and leaves office under the terms of the Constitution.

2. The Attorney General's mandate lasts six years, notwithstanding the provisions of subparagraph m) of article 133 of the Constitution.

3. Appointment implies relief from the previous position held where this relates to a judicial or Public Prosecution Service magistrate or an employee of the State.

4. After termination of his duties, an Attorney General appointed under the terms of the previous paragraph is entitled to return to the previous position held, without loss of seniority or the right to promotion. The provisions of articles 24 to 31 of Law 4/85 of 9 April apply to Attorneys General who are neither judicial or Public Prosecution Service magistrates nor employees of the State.

5. Where the Attorney General is a magistrate, the length of service performed in that office will count in its entirety, as if the service had been performed in the magistrature, so that he may return to the position which would be incumbent on him if he had not interrupted the performance of his duties, namely without prejudice to promotions or access to which he would have been entitled in the meantime.

6. Where magistrates with seniority inferior to that of the Attorney General have been nominated for the Supreme Court of Justice, the Governing Board of the Magistrature shall reopen the contest in which, in the terms of the previous paragraph, the Attorney General would have participated and he shall take up the position which is due to him.

7. Whenever magistrates with seniority inferior to that of the Attorney General have been nominated for the Supreme Court of Justice, the Attorney General maintains the right to the remuneration given up to the date when his duties cease, with the exception of the subsidy referred to in article 98.

SECTION II

Inspectors

Article 132

Recruitment

1. Inspectors shall be appointed, on secondment, from among magistrates of a rank not less than that of state prosecutor, with a total length of service not

less than ten years and, in the case of magistrates who must be classified, with service classification of *Very Good*.

2. Inspectors are entitled to remuneration corresponding to the rank of assistant attorney general.

SECTION III

Moves

Article 133

Moves

1. Moves shall take place in the months of May and December.
2. Moves may only be made outside of the periods mentioned in the above paragraph where there are extraordinary reasons of discipline or an urgency to fill a vacancy.

Article 134

Preparation for moves

1. Magistrates who seek to occupy any position, whether by appointment, transfer, promotion, terms of mandate or return to service shall send their applications to the Attorney General's Office.
2. Applications are registered in the secretariat and lapse when the move takes place.
3. For each move, applications shall be considered where they have been entered fifteen days or more before the date of meeting of the Governing Board of the Public Prosecution Service.
4. In relation to the counties corresponding to the seat of the judicial district, the magistrates may apply for specific courts or departments, in the terms of the regulations approved by the Governing Board of the Public Prosecution Service.

Article 135

Transfers and Exchanges

1. Except where there is a disciplinary reason, Public Prosecution Service magistrates may not be transferred within one year of the start of the duties which they are performing.

2. Public Prosecution Service magistrates are transferred on request or as a result of a disciplinary ruling.

3. Public Prosecution Service magistrates may be transferred upon their request where one or two years have elapsed since publication of the decision appointing them to the previous position, according to whether or not the previous placement was made upon request.

4. Where transfer on request is made from an entry county or position to a first promotion county or position, the time period referred to in the paragraph above is five years, counting from the first appointment.

5. Where the transfer on request is made from a first promotion county or position to a final promotion county or position, the period referred to in paragraph 3 is eight years from the date of the first appointment.

6. Exchanges shall be authorised, notwithstanding the provisions of the previous paragraphs and to the rights of third parties.

Article 136

Rules of placement and preference

1. The placement of Public Prosecution Service magistrates must be made with prevalence being given to the needs of the service and the way in which the interested parties may combine their private and family life with their professional life.

2. When filling positions in courts of specialised jurisdiction, the specialised training of the candidates shall be taken into consideration.

3. When the specialised training occurs in the course of service in a specialised court, two years of performance of duties shall be required.

4. Notwithstanding the provisions of the above paragraphs, when making placements consideration may be given, in descending order of preference, to classification of service and seniority.

Article 137

Placements

1. Assistant state prosecutors may not refuse first placement after duties have been performed in an entry or first promotion county or position.

2. Assistant state prosecutors with more than 5 years effective service may not request placement in entry counties or positions where they have already been placed in first promotion counties or positions, and may not request

placement in either of these if they have been placed in final promotion counties or positions.

3. Assistant state prosecutors may not be placed in final promotion counties or positions unless they have performed duties in first promotion counties or positions, and may not be placed in either of these unless they have performed duties in entry counties or positions.

Article 138
Auxiliary Magistrates

1. Where there are reasons of service, the Governing Board of the Public Prosecution Service may make such temporary detachments of auxiliary magistrates to courts or services as are deemed necessary.

2. Detachment shall be conditional upon prior order by the Minister of Justice with regard to the availability of funds and shall lapse at the end of one year, being renewable for equal periods.

3. The Governing Board of the Public Prosecution Service may decide that the detachment referred to in paragraph 1 should give rise to a vacancy.

SECTION IV

Secondment

Article 139
Secondment

1. The appointment of Public Prosecution Service magistrates on secondment is conditional upon authorisation by the Governing Board of the Public Prosecution Service.

2. Authorisation may only be given with regard to magistrates who have carried out duties in the magistrature for at least five years.

3. Service in international institutions and organisations of which Portugal is a member, and which implies residence abroad, is also conditional upon authorisation by the Governing Board of the Public Prosecution Service. Such magistrates are considered to be on secondment for the time that this activity lasts.

Article 140

Time periods for secondments

1. Where there are no special provisions, secondments shall last for three years and shall be renewable.
2. Occasional secondments may be authorised for periods up to one year, and are renewable.
3. Occasional secondments do not give rise to a vacancy.
4. Secondments set out in paragraph 3 of Article 81 and paragraph 3 of the previous article, and those which have regard to the performance of duties in areas of international cooperation, namely with the member States of the Community of Portuguese Speaking Countries, also do not give rise to a vacancy.
5. The period of secondment is considered, for all purposes, as that of effective service in the position.

SECTION V

Taking up office

Article 141

Requirements and time period for entering office

1. Taking up office must be done personally and in the place where the magistrate is going to carry out duties.
2. Where no special time period is fixed, the time period for taking up office is 30 days starting from the day after publication of the appointment in the *Diário da República*.
3. Where cases justify it, the Governing Board of the Public Prosecution Service may extend the period for taking up office or authorise that this be done at a place other than that referred to in paragraph 1.

Article 142

Official granting office

1. Public Prosecution Service magistrates take up office as follows:
 - a) The Attorney General, before the President of the Republic;
 - b) The Vice-Attorney General and assistant attorneys general, before the Attorney General;
 - c) State prosecutors, before the District Attorney General for the respective judicial district;

- d) Assistant state prosecutors, before the respective state prosecutor or before the District Attorney General, in the counties corresponding to the seat of judicial districts that have more than one state prosecutor;
- e) Where cases justify it, the Governing Board of the Public Prosecution Service may authorise those magistrates referred to in sub-paragraphs c) and d) to take up office before an alternative personage.

Article 143

Failure to take up office

1. With regard to a first appointment, unjustified failure to take up office within the time period shall result, without the need for any formal procedures, in annulment of the appointment and ineligibility of the guilty party to be appointed to the same position for a period of two years.

2. In all other cases, unjustified failure to take up office shall be equivalent to abandonment of position.

3. Justification must be requested within a period of ten days counting from the termination of the justifying cause.

Article 144

Taking up office by magistrates on secondment

Magistrates who are promoted while on secondment enter into the new category, independently of taking up office, from the date of publication of the respective appointment.

CHAPTER V

Retirement, termination and suspension of duties

SECTION I

Retirement

Article 145

Retirement upon request

Requests for voluntary retirement are sent to the Attorney General's Office, which sends them to the administration of the *Caixa Geral de Aposentações* (Retirement Office).

Article 146

Retirement on the grounds of incapacity

1. Magistrates are retired on grounds of incapacity where, due to weakness or insensibility of physical or intellectual faculties, shown in the exercise of duties, they cannot continue in this position without serious miscarriage of justice or the respective services.

2. Magistrates who fall within the provisions set out in the paragraph above are given notice that they should, within 30 days, either request retirement or produce, in writing, such observations as they deem fit.

3. Where the provisions of paragraph 1 apply, the Governing Board of the Public Prosecution Service may decide to suspend the performance of duties of a magistrate where his incapacity especially justifies this.

4. The suspension set out in this article shall be carried out in such a manner as to preserve the prestige of the position and the dignity of the magistrate and shall not affect the remuneration received.

Article 147

Effects of retirement on grounds of incapacity

Retirement on grounds of incapacity shall not result in a reduction in pension.

Article 148

Retirement with full honours

1. Public Prosecution Magistrates who are discharged on grounds of age, incapacity or under the terms of Article 37 of the Retirement Statute, other than due to the application of a disciplinary penalty, are deemed to have retired with full honours.

2. Magistrates retired with full honours continue to be bound by their statutory duties and to be connected to the court or service to which they belonged. They continue to enjoy the titles, honours, privileges and immunities corresponding to their rank and may attend in professional dress at solemn ceremonies that take place in the said court or service, where they take position to the right of the magistrates in active service.

3. Magistrates who fall within the provisions of paragraph 1 may make a declaration renouncing retired with full honours status or may request temporary suspension of that status. In such cases they become subject, either definitively or temporarily, to the general system of public retirement.

Article 149
Rights and Duties

1. The provisions of paragraphs 1 and 2 of Article 95, and of paragraph 1, subparagraphs a), b), c), e), g) and h) and paragraph 2 of Article 107 apply to magistrates retired with full honours.

2. The retirement pension shall be calculated, without any reduction in the amount ascertained, on the basis of all remunerations that affect the respective allowance.

3. Magistrates retired with full honours are entitled to payment of a provisional pension, calculated and paid under the legal provisions by the processing department, until there has been a final assessment of the amount.

4. Magistrates retired with full honours are bound to the obligations imposed by their status.

5. Retirement with full honours status may be withdrawn by way of disciplinary proceedings.

Article 150
Supplementary and subsidiary system

The system established for public service shall apply to the retirement of Public Prosecution Service magistrates in all matters that are not regulated by the above paragraphs.

SECTION II
Termination and suspension of duties

Article 151
Termination of duties

Public Prosecution Service magistrates terminate duties as follows:

- a) On the day they reach the legal age set for retirement for State employees;
- b) On the day when the decision discharging them from service is published;
- c) On the day following that on which the edition of the *Diário da República* publishing the new situation arrives at the county or position where they are in service.

Article 152
Suspension of duties

Public Prosecution Service magistrates suspend their respective duties as follows:

- a) On the day they are given notice of the order which sets the day of trial regarding accusations against them concerning felonious crimes;
- b) On the day they are given notice of preventive suspension on grounds of disciplinary proceedings by the application of any sanction that involves withdrawal from service;
- c) On the day they are given notice of suspension as set out in paragraph 3 of Article 146.

CHAPTER VI

Seniority

Article 153
Seniority among staff and within the category

1. The seniority of Public Prosecution Service magistrates among staff and within the category is calculated from the date of publication of the appointment in the *Diário da República*.

2. Publication of appointments must respect, in the ordering, the ranking set by the Governing Board of the Public Prosecution Service.

3. Assistant attorneys general who are appointed by the Consultative Board of the Attorney General's Office from among those who are not magistrates, are allocated seniority, within the staff, equal to that of the assistant attorney general who, at the date of publication of the appointment, is the least senior, and they shall sit to his left.

Article 154
Service time counted for seniority

1. For the purposes of seniority, the following shall not be discounted:
 - a) Time spent carrying out duties as President of the Republic or as a member of Government;

- b) Time spent on preventive suspension ordered during disciplinary proceedings or decided by sentence order in criminal proceedings, where such proceedings are archived or lead to acquittal;
- c) Time spent during suspension of duties ordered under the provisions of paragraph 3 of Article 146;
- d) Time spent in remand in custody imposed by criminal proceedings, where such proceedings are archived or lead to acquittal;
- e) Time spent in compulsory military service;
- f) Absences due to illness that do not exceed 90 days in each year;
- g) Absences referred to in Article 87.

2. For the purposes of retirement, service time spent in the Autonomous Regions and in Macao is increased by one quarter.

Article 155

Service time not counted for purposes of seniority

The following does not count for purposes of seniority:

- a) Time spent in inactive status or while on long term unpaid leave;
- b) Time which, in accordance with the provisions concerning disciplinary procedure, is considered to be lost;
- c) Time of illegitimate absence from service.

Article 156

Calculation of seniority

Where various magistrates are appointed or nominated by a decision published on the same date, the following rules shall be observed:

- a) Where appointments are preceded by training courses, after which a graduation list has been drawn up, seniority shall be determined in accordance with the order established in this list;
- b) Where promotions are made on grounds of merit, seniority shall be determined by the order of promotion;
- c) Where appointments are by selection, the provisions of the above subparagraph shall apply;

- d) In all other cases, seniority shall be determined according to the seniority that prevailed in the previous position.

Article 157
Seniority List

1. The seniority list of Public Prosecution Service magistrates is published every year by the Department of Justice in the respective Bulletin or offprint thereof.
2. Magistrates are ranked in each category in accordance with time of service, with individual mention of the date of birth, position or office held, date of placement and the place of birth.
3. Copies of each edition of the Bulletin are sent to the Attorney General's Office.
4. The distribution date of the Bulletin or offprint referred to in paragraph 1 shall be announced in the *Diário da República*.

Article 158
Complaints

1. Magistrates who believe that they have been prejudiced by the rank order appearing in the seniority list may make a claim, within a period of 60 days, to be counted from the date referred to in paragraph 4 of the previous article. This is done by way of an application directed to the Governing Board of the Public Prosecution Service, accompanied by as many duplicates as the number of magistrates that may be prejudiced by the complaint.
2. The magistrates who may be prejudiced must be identified in the application and shall be given notice to respond within a period of fifteen days.
3. When the replies have been presented, or the period of time reserved for them has elapsed, the Governing Board of the Public Prosecution Service make a decision within a period of 30 days.

Article 159
Effect of complaint on moves already carried out

Where a complaint is held to have been justified, the complainant is appointed to the position for which he had been passed over, with all the legal consequences.

Article 160

Ex officio correction of material errors

1. Where the Governing Board of the Public Prosecution Service confirms that there has been a material error in the rank order, it may, at all times, order that the necessary corrections be made.

2. The corrections referred to in the previous paragraph, as soon as they are published in the seniority list, shall be subject to the system in Articles 157 and 158.

CHAPTER VII

Availability

Article 161

Availability

1. Public Prosecution Service magistrates are considered to be in a condition of availability where they are waiting to be placed in a vacancy of their category due to the following circumstances:

- a) Where the secondment under which they were serving has ended;
- b) Where they return to activity after fulfilling a penalty;
- c) Where the position they occupy becomes defunct;
- d) Where compulsory military service has been completed;
- e) In such other cases provided for in law.

2. The condition of availability does not give rise to loss of seniority, salary or remuneration.

CHAPTER VIII

Disciplinary procedure

SECTION I

General provisions

Article 162

Liability to disciplinary measures

Public Prosecution Service magistrates are liable to disciplinary measures under the terms of the following articles.

Article 163
Disciplinary offence

Disciplinary offences consist of those acts that, as well as being simply discreditable, are carried out by Public Prosecution service magistrates in breach of their professional duties and those acts or omissions in public life, or which have a bearing on it, that are incompatible with the decorum and dignity that is indispensable to the performance of their duties.

Article 164
Liability to disciplinary jurisdiction

1. Relief from office or a change of situation do not prevent punishment for offences committed during performance of duties.
2. Where there has been relief from office, the magistrate fulfils the penalty if he returns to active service.

Article 165
Autonomy of disciplinary jurisdiction

1. Disciplinary procedure is independent from criminal proceedings.
2. Where, during disciplinary proceedings, evidence comes to light of a criminal offence, notice of this is given immediately to the Attorney General's Office.

SECTION II

Penalties

SUBSECTION I
Types of penalty

Article 166
Scale of penalties

1. Public Prosecution Service magistrates are liable to the following penalties:
 - a) Warning;
 - b) Fine;

- c) Transfer;
- d) Suspension from duties;
- e) Removal from active list;
- f) Compulsory retirement;
- g) Dismissal.

2. Notwithstanding the provisions of paragraph 4, the penalties applied must always be registered.

3. Pardons do not eliminate the effects produced by the application of penalties and must be registered in the relevant individual process.

4. The penalty set out in sub-paragraph a) of paragraph 1 may be applied without the need for proceedings, provided there is a hearing and the Defendant has the right to defend himself. This penalty is not registered.

Article 167

Warning penalty

The warning penalty consists of the simple observation of an irregularity that has been committed or an admonition with the purpose of preventing the magistrate from an action or omission that might cause a disturbance to the performance of duties or which might have a bearing on such that is incompatible with the dignity that is required of him.

Article 168

Fine penalty

Fine penalties are fixed in days, with a minimum of 5 days and a maximum of 30 days.

Article 169

Penalty of transfer

The penalty of transfer consists of placing the magistrate in a position of the same category outside of the area or service in which he previously performed duties.

Article 170

Penalties of suspension from duties and removal from the active list

1. The penalties of suspension from duties and removal from the active list consist of the complete removal from service for the period of the penalty.

2. The penalty of suspension from duties may be from 20 to 240 days.
3. The penalty of removal from the active list may not be for less than one year or for more than two.

Article 171

Penalties of compulsory retirement and dismissal

1. The penalty of compulsory retirement consists of the imposition of retirement.
2. The penalty of dismissal consists of definitively withdrawing the magistrate, with termination of all connections with the office.

SUBSECTION II

Effects of penalties

Article 172

Effects of penalties

Disciplinary penalties produce effects, in addition to those inherent in them, as set out in the following articles.

Article 173

Fine penalty

The penalty of a fine involves deduction from the magistrate's salary of an amount corresponding to the number of days applied.

Article 174

Penalty of transfer

The penalty of transfer involves the loss of 60 days length of service.

Article 175

Penalty of suspension from duties

1. The penalty of suspension from duties involves the loss of time corresponding to the duration of the suspension for the purposes of payment, seniority and retirement.

2. Where the penalty of suspension applied is less than or equal to 120 days, it also involves, together with the effects set out in the paragraph above, the provisions of subparagraph b) of paragraph 3, where the magistrate subject to the penalty cannot maintain himself in a position to carry out duties without damaging the prestige that is required of him, which shall appear from the disciplinary decision.

3. Where the penalty of suspension applied is greater than 120 days, it may also imply, apart from the effects set out in paragraph 1, the following:

- a) Ineligibility for promotion or advancement for one year, counted from the completion of the penalty;
- b) Transfer to an identical position in a court or service other than that in which the magistrate was carrying out duties at the time when the offence occurred.

4. The application of the penalty of suspension does not prejudice the right of the magistrate to the welfare to which he may be entitled or to receipt of family allowance and complementary payments.

Article 176

Penalty of removal from the active list

1. The penalty of removal from the active list produces the effects referred to in paragraphs 1 and 3 of the previous article, with the period of ineligibility for promotion or advancement raised to two years.

2. The provisions of paragraph 4 of the previous article are applicable to the penalty of removal from the active list.

Article 177

Penalty of compulsory retirement

The penalty of compulsory retirement involves the immediate removal from service and loss of the rights and privileges conferred by this statute, without prejudice to the entitlement to the pensions fixed by law.

Article 178

Penalty of dismissal

1. The penalty of dismissal involves the loss of the status of magistrate conferred by this law and of the corresponding rights.

2. This penalty does not imply loss of the right to retirement, under the terms and conditions established by law, nor does it render the magistrate ineligible to be appointed to public positions or others that can be carried out without the office-holder needing to have the particular conditions of dignity and trust required for the position from which he was dismissed.

Article 179

Promotion of Defendant magistrates

1. While criminal or disciplinary proceeding are pending, the magistrate shall be ranked for promotion or advancement, but this shall be suspended with regard to him and the respective vacancy shall be reserved until the final decision.

2. Where proceedings are archived, a condemnatory decision repealed or a penalty is applied that does not prejudice promotion or advancement, the magistrate is promoted or appointed and occupies his place in the seniority list, with the right to receive the differences in remuneration, or, if he had to be passed over, the move shall be completed in relation to the vacancy that had been reserved for him.

SUBSECTION III

Application of penalties

Article 180

Warning penalty

The penalty of a warning shall be applicable to slight faults that should not be overlooked without comment.

Article 181

Fine penalty

The penalty of a fine shall be applicable to cases of negligence or indifference in the performance of the duties of the office.

Article 182

Penalty of transfer

The penalty of transfer is applicable to breaches that involve damage to the prestige that is required of a magistrate in order to maintain himself in a position to carry out the duties of office.

Article 183

Penalties of suspension and removal from the active list

1. The penalties of suspension and removal from the active list are applicable in cases of serious negligence or serious indifference in the performance of professional duties or where magistrates are given a prison sentence, except where the sentence imposes the penalty of dismissal.
2. Time spent in prison is deducted from the disciplinary penalty.

Article 184

Penalties of compulsory retirement and dismissal

1. The penalties of compulsory retirement and dismissal are imposed where the magistrate:
 - a) Shows a clear inability to adjust to the requirements of the position;
 - b) Shows a lack of honesty, serious insubordination or where his conduct is immoral or disreputable;
 - c) Shows professional unsuitability;
 - d) Has been convicted of a crime committed in flagrant and serious abuse of position or with a clear and serious violation of the duties inherent in the said position.
2. Abandonment of position shall at all times result in the penalty of dismissal.

Article 185

Length of penalty

When determining the length of the penalty, consideration shall be given to the gravity of the act, the guilt of the agent, his personality and the circumstances that weigh in his favour or against him.

Article 186

Special mitigation of penalty

The penalty may be subject to special mitigation, with imposition of a lower scale of penalty, where there are circumstances before or after the breach or contemporary with it that significantly diminish the seriousness of the act or the guilt of the agent.

Article 187

Relapse

1. Relapse occurs where the offence is committed before three years have elapsed since the date when the magistrate committed the last offence, for which a sentence greater than a warning had been imposed, already totally or partially served, and where the case shows that the previous sentence has not had a preventive effect.

2. Where the penalty imposed is any of those set out in subparagraphs b), d) and e) of paragraph 1 of Article 166, in the case of relapse the minimum limit shall be equal to one third, one quarter or two thirds of the maximum limit, respectively.

3. With regard to a penalty other than those referred to in the previous paragraph, a penalty from the next scale above may be imposed.

Article 188

Concurrent offences

1. Concurrent offences occur where a magistrate commits two or more offences before conviction for any of them becomes final.

2. Where there are concurrent offences a single penalty shall be imposed, and, where the offences correspond to different penalties, the more serious of these shall be imposed, aggravated according to the concurrence, where this is variable.

Article 189

Substitution of penalties imposed on retired magistrates

Where magistrates are retired or for any other reason are not active, the penalties of fine, suspension from duties and removal from the active list shall be substituted for loss of pension or pay of any kind for the corresponding period of time.

SUBSECTION IV

Limitation of penalties

Article 190

Limitation periods

Disciplinary penalties have the following limitation periods, counted from the date on which the decision became final:

- a) Six months, for warning and fine penalties;

- b) One year, for transferral penalties;
- c) Three years, for penalties of suspension from duties and removal from the active list;
- d) Five years, for penalties of compulsory retirement and dismissal.

SECTION III

Disciplinary proceedings

SUBSECTION I

Procedural standards

Article 191

Disciplinary proceedings

1. Disciplinary proceedings are the means by which disciplinary accountability is enforced.
2. Disciplinary proceedings are written but do not require special formalities, provided that there is a hearing and an opportunity for the Defendant to put forward a defence.
3. The examining magistrate must reject such measures as are clearly ineffectual or time-wasting, giving grounds for the refusal.

Article 192

Impediments and suspicions

The system of impediments and refusals for criminal proceedings shall apply, with the necessary adjustments, to disciplinary proceedings.

Article 193

Confidential nature of disciplinary proceedings

1. Disciplinary proceedings are confidential in nature until a final decision has been reached.
2. Certificates of procedural documents may be forwarded upon application on grounds by the Defendant, where these are for the purpose of defending legitimate interests.

Article 194

Time period for investigation

1. The investigation of the disciplinary proceedings must be completed within a period of 90 days.
2. The time period referred to in the previous paragraph may only be extended where there are justifying grounds.
3. The examining magistrate must give notice to the Governing Board of the Public Prosecution Service and to the Defendant of the date when the investigation of the proceedings shall commence.

Article 195

Number of witnesses in the investigation phase

1. During the phase of investigation there shall be no limit on the number of witnesses.
2. The investigator may refuse to hear witnesses where he considers the evidence produced to be sufficient.

Article 196

Preventive suspension of the Defendant

1. The Defendant magistrate may, upon the proposal of the examining magistrate, be suspended from duties on preventive grounds where there are strong indications that the offence shall be punishable by at least transferral and where continued performance of the duties might prejudice the investigation of the proceedings or the duties or the prestige and dignity of the office.
2. Preventive suspension shall be carried out in such a form as to ensure that the personal and professional duty of the magistrate is safeguarded.
3. Preventive suspension may not be for more than 180 days, extendable for a further 60 days where justification is given, and does not have the effects set out in Article 175.

Article 197

Charge

1. Once the investigation and the disciplinary record of the Defendant has been concluded, the examining magistrate brings a charge within a period

of ten days, specifying the facts that constitute the disciplinary offence and those aggravating or mitigating circumstances that he considers are relevant, setting out the legal principles that are applicable to the case.

2. If sufficient facts are not brought forward to establish the offence or the liability of the Defendant or the disciplinary proceedings become null and void, the examining magistrate shall draw up his report within ten days, in accordance with the applicable legislation.

Article 198

Notice to the Defendant

1. A copy of the charge shall be delivered to the Defendant, or sent by recorded delivery, setting a period of between ten and thirty days for delivery of the defence.

2. If the Defendant's whereabouts are not known, he shall be given notice by way of public notice.

Article 199

Appointment of defence counsel

1. Where the Defendant is unable to prepare a defence due to absence, illness, mental anomaly or physical disability, the examining magistrate shall nominate defence counsel to act on his behalf.

2. Where defence counsel is nominated subsequent to the date of notice referred to in the above paragraph, the time period for delivery of the defence shall re-commence as of the date when counsel is given notice.

Article 200

Examination of proceedings

The Defendant, appointed counsel or agent may, during the time period for delivery of the defence, examine the proceedings at the place where they have been deposited.

Article 201

Defendants defence

1. The Defendant may, along with the defence, indicate witnesses, append documents and make applications.

2. No more than three witnesses may be put forward in relation to each element of the charge.

Article 202

Report

After the evidence has been adduced the examining magistrate shall draw up, within a period of fifteen days, a report setting out the facts that are deemed to have been established, and the penalty to be imposed.

Article 203

Notice of decision

The Defendant shall be given notice of the final decision, accompanied by a copy of the report referred to in the previous paragraph, in accordance with the provisions of Article 198.

Article 204

Nullities and irregularities

1. An irreversible nullity shall arise where the Defendant does not have a hearing with the opportunity to defend himself or where there is an omission of essential measures to ascertain the truth that can still be effectively carried out.

2. Other nullities and irregularities shall be considered remedied if they have not been argued in the defence or, where they occur subsequently, within five days from the date when they become known.

SUBSECTION II

Abandonment of position

Article 205

Action for abandonment

Where a magistrate fails to appear for duties for a period of 10 days, expressly showing his intention to abandon office, or continues to be absent for

a continuous period of 30 working days without justifying grounds, an action shall be instituted for abandonment of office.

Article 206

Presumption of intention to abandon

1. Unjustified absence from office for a continuous period of 30 working days shall give rise to the presumption of abandonment.
2. The presumption referred to in the above paragraph may be rebutted in disciplinary proceedings by any means of proof.

SECTION IV

Review of disciplinary decisions

Article 207

Review

1. Condemnatory decisions against the Defendant that are given in disciplinary proceedings may be reviewed at all times where there are circumstances or evidence that can establish the falsity of the facts that led to the punishment and that could not have been used by the Defendant at the time of the hearing.
2. Review may not, under any circumstances lead to an increase of the penalty.

Article 208

Proceedings

1. An application for review is made by the interested party to the Governing Board of the Public Prosecution Service.
2. The application, processed by annexation to the disciplinary proceedings, must contain the grounds for the application and indicate the evidence to be adduced and must be prepared with the documents that the interested party has been able to obtain.

Article 209

Sequence of review proceedings

1. Once the application has been received, the Governing Board of the Public Prosecution Service shall decide, within 30 days, whether the premises exist for a review.

2. If decided by the review, a new investigator is nominated for the proceedings.

Article 210
Favourable review

1. Where the application for review of the judgement is held to have been justified, the decision given in the reviewed proceedings shall be revoked or amended.

2. Without prejudice to other rights that are provided by the legislation, the interested party shall be indemnified for payments that were not received due to the reviewed decision.

CHAPTER IX

Inquiries and investigations

Article 211
Inquiries and investigations

1. Inquiries have the purpose of determining the truth of specific facts.
2. Investigations take place where notice is given of facts that require a general examination into the function of the services.

Article 212
Preliminary investigation

The preliminary investigation of the inquiry and investigation proceedings shall be subject, with the necessary adjustments, to the provisions regarding disciplinary proceedings.

Article 213
Report

Once the preliminary investigation has concluded, the inquirer or investigator shall draw up a report proposing that the disciplinary proceedings be filed away or instigated, as the case may be.

Article 214

Conversion to disciplinary proceedings

1. Where a breach has been ascertained, the Governing Board of the Public Prosecution Service may decide that the inquiry or investigation proceedings in which the Defendant has been heard shall constitute the preliminary investigation of disciplinary proceedings.

2. In the case referred to in the previous paragraph, the notification to the Defendant of the decision of the Governing Board of the Public Prosecution Service shall determine the beginning of the disciplinary proceedings.

CHAPTER X

Auxiliary bodies

Article 215

Secretaries and staff

1. Notwithstanding the support and assistance rendered by the divisions and the judicial secretaries, the Public Prosecution Service shall avail of its own technical-administrative services.

2. The technical-administrative services assure support, namely, in the following areas:

- a) Prevention and criminal investigation;
- b) International judiciary cooperation;
- c) Working together with the criminal police bodies and institutions of treatment, recovery and social reintegration;
- d) The direction of human resources, management and stewardship;
- e) Notation and statistical analysis;
- f) Communication and information technology support.

3. In the State legal departments, the duties of assistance may also be assured by staff of the Public Administration, on secondment, request or detachment, and by experts and legal executives contracted for that purpose.

CHAPTER XI

Definitive and transitional provisions

Article 216

Supplementary system

In all situations which do not contradict this current law the provisions of the Disciplinary Statute for Civil Servants, the Penal Code and the Penal Proceedings Code apply on a supplementary basis.

Article 217

State prosecutors in the seats of judicial districts

The system of assistance established in Article 45, paragraph 2 of the previous law shall continue to apply to state prosecutors carrying out duties in the seats of judicial districts until the date of entry into vigour of this current law.

Article 218

Application of paragraph 3 of Article 153

The system of seniority established in paragraph 3 of Article 153 is applicable to all assistant attorneys general therein referred to, if they are nominated, until the date of entry into vigour of this current law.

Article 219

Seniority

1. Seniority of Public Prosecution Service magistrates consists of the length of service given in the judicial magistrature, as a sub-delegate of the state prosecutor qualified in Law and as a placement delegate.

2. The relative positions, appearing in the above seniority-defining list before the date when this legislation comes into force, shall be exempted.

Article 220

Exempted situations

1. The provisions of paragraph 1 of Article 224 of Law no. 39/78, of the 5th of July shall remain in force.

2. The provisions of paragraph 4 of Article 102 and paragraph 3 of Article 101 in the previous law and in the present bill shall not prejudice rights acquired by permanent appointment.

Article 221

Financial and budgetary provisions

1. The Attorney General's Office shall be exempt from stamp duty and any taxes, premiums, deductions or percentages on deposits, safekeeping, transferral and withdrawals of money carried out by the *Caixa Geral de Depósitos* (Deposit and Consignment Office).

2. The government is hereby authorised to make such budgetary measures as are necessary to implement this statute.

Article 2

The Organic Law of the Public Prosecution Service, approved by Law 47/86, of 15 October, altered by Laws 2/90, of 20 January, 23/92, of 20 August, and 10/94, of 5 May, is republished in annex in its entirety, with the alterations resulting from the present diploma, which shall now be named Statute of the Public Prosecution Service.

Article 3

1. The Court of Criminal Investigation of Lisbon shall be responsible for carrying out the jurisdictional duties related to the inquiry, notwithstanding the provisions of the Penal Proceedings Code regarding urgent acts, making preliminary investigations and giving investigatory decisions in the processes referred to in Article 47, paragraph 3 of Law 47/86, of 15 October, with the amendments introduced by Article 1 of the present bill.

2. The Courts of Criminal Investigation of Lisbon and Oporto shall be responsible, respectively, for carrying out the duties referred to in the previous paragraph in the processes referred to in Article 73, paragraph 1, subparagraphs b) and c) of Law 47/86, of 15 October, with the amendments introduced by Article 1 of the present bill.

3. In the counties corresponding to the seat of the judicial districts of Coimbra and Évora, it shall be the responsibility of the first criminal judge to carry out the duties referred to in the previous paragraph.

Article 4

The Government shall approve the regulatory norms of the present bill within 90 days of its publication.

Approved on 29 June 1998.

President of the Assembly of the Republic, *António de Almeida Santos*.

Approved on 30 July 1998.

Issued,

The President of the Republic, *Jorge Sampaio*.

Countersigned on the 6 August 1998,

The Prime Minister, *António Manuel de Oliveira Guterres*.

Annex of Table referred to in Article 96, paragraph 1.

Category/Scale	Scale index
Attorney General	260
Vice Attorney General	260
Assistant attorney general with 5 years service	250
Assistant attorney general	240
State prosecutor	220
Assistant state prosecutor:	
With 18 years service	200
With 15 years service	190
With 11 years service	175
With 7 years service	155
With 3 years service	135
Entry	100

Salary span — 2:6.