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The History of the Prosecutor

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ABSTRACT: Today, the prosecutor is a magistrate who has the role of public prosecutor in a trial being the delegate of the prosecutor's office in court and having the role of overseeing the proper application of the law. At the same time, it must be ensured that the interests of the state are not harmed. The appearance of this institution takes place at the end of the medieval era in France and later imported into other countries in Europe and North America. At the end of the modern era, it can be found in almost every state, but, as we will see, in some places, it has different attributions. This study of synthetic origin aims to show broadly how the institution of the Prosecutor's Office was born as well as the characteristics that have shaped it over time in the various states that have adopted it. Exposure chronological information is based on information that we find in American and European historiography.

KEYWORDS: public prosecutor, lawyer, prosecutor, prosecutor's office, Ministry of Justice, Ministry of Interior, Public Ministry

The beginnings of the institution of the Prosecutor

The *idea of a prosecutor* appears in history at the end of the *medieval era*, in the 14th century (after 1300) in France, when the attributions of a new time as a public magistrate began to be delimited from the attributions of the lawyer. This was done at the request of French parliamentarians. His name and role are inspired by the procedure developed within the Inquisition court. The famous French prosecutor Jean-Louis Nadal best explains the appearance and role of this institution: *"historically, the specificity of criminal prosecution, both as a criminal prosecution body and as a defender of individual liberties, comes from the wisdom of the sea ordinances of Philip the Fair of March 23, 1303, laying down the king's oath formula in defense of the people stating that the accuser must also be responsible for the search for truth and the correct application of the law"* (Nadal 2006, 3).

Trying to explain in modern terms the delimitation of the duties of this new magistrate from those of a lawyer, we can say that the prosecutor of the *French Middle Ages* was a kind of lawyer who had the mandate to represent a certain party and had the right to plead. The separation between the two professions (prosecutor and lawyer) even if it was started in the time of *Philip the Fair* will take place definitively at the end of the fifteenth century (For a more complete overview of the entire course of shaping the institution of the prosecutor can be consultation: Perrot, 2008). Practically from now on, lawyers and prosecutors each have their own field of practice: lawyers specialize in counseling and written defense, and prosecutors will be responsible for accompanying litigants through the "mazes" of procedures (Leuwers 2010, 69-76).

In *Catholic Canon Law*, the difference between lawyer and prosecutor is very well reflected in the 1983 *Code of Canon Law* (The *1983 Code of Canon Law* or the *Codex Iuris Canonici* is the code that currently governs the *Catholic Church*. It was promulgated by *Pope John Paul II* on 25 January 1983 and entered into force on 27 November of that year, replacing the *Code of Canon Law* of 1917 and taking into account the amendments made by the Second Vatican Council, see: Metz 1983, 10-168).

Even if the "attributes" are essentially the same, only the prosecutor is mentioned as having a mandate from the parties (*Code of Canon Law).* The code also states that each party may have only one prosecutor, while the number of lawyers is not limited. This distinction between

lawyer and prosecutor was later adopted in Spain and the United Kingdom, which clearly defines the difference between the one represented and the one who applies and the one who pleads. We must add, however, that in the island for the one who has the attributions of a prosecutor the usual term used is also that of a lawyer (*Ibidem*).

In Eastern (Orthodox) Church Law, at first, the church adopted the norms of Roman or secular law and later elaborated its own legal norms. Before the church tribunals, a certain person could raise an accusation or the role of accuser could have the President of the Church Tribunal when, ex officio, he was notified. He used all the means at his disposal to prove the accusation (for example, an inquiry by a commission into the matter) after which, depending on the outcome of the investigation, a sentence could or could not be applied. These courts had the role of judging cases concerning only the church, as well as lay people for certain accusations, and the canons also mention lawyers who appeared at the beginning of the 5th century in matters concerning the church or persons under the protection of the church (Milaș 1915, 394). We can show that currently, church courts are organized in the same way as secular courts, so that a person from the church has the role of accuser - prosecutor.

In Canadian law, the prosecutor is defined as *"a person who has been given the power to represent and act in his or her place"* (Hubert 2015, 38) being the equivalent of the term English lawyer someone from the contradictory judicial system who writes pleadings on behalf of his client. There is no formal separation between lawyers and prosecutors the difference is rather between lawyers (specialists in litigation) and notaries (specialists in non-litigation). Semantically, this definition of the word "lawyer" in Canadian law is much closer to the meaning of the term when Canada (part of it) was under French administration than to the current meaning of the word in French law (*Ibidem*).

Beginning with King Philip, the French royalty in order to defend their interests appealed to this institution, which forced them to specialize and work in the service of the king, and in the fourteenth century prosecutors were even forbidden to work for people physical. It follows that the Advocates General of the French kings are the initiators of the prosecution and therefore the first prosecutors were recruited from among them. Also during this period, in order to limit the power and possibility of representation of the parties to the prosecutors, "case prosecutors" were appointed (Sueur 1994, 83-184).

Mercurials

Closely related to the fact that the prosecutor was subordinate to the king is the appearance of the term *Mercurials*. For the first time at the general assembly of the *Chambers of the French Parliament* which was convened every two weeks on *Wednesday*, the *First Prosecutor General* and the *Prosecutor General* took turns talking about reforms, Parliament's discipline and denounced the mistakes made by magistrates. Thus, the term came to refer to these discourses. The Mercurials then took place at the *French Grand Council*, as well as in other sovereign courts. This practice was prescribed by Charles VIII in 1493, then by Louis XII in 1498. Starting with 1539, the Mercurials resumed, taking place only once a month. In the sixteenth century, Mercury was reduced to one per quarter, and finally, in 1579, to one per semester (Gaudemet 2021, 482). In *Mercurials,* the *Prosecutor General's* speeches were always related to the duties of magistrates; the meeting was held behind closed doors, the speeches were sometimes very harsh to the magistrates, and in other cases they were mere reprimands. Because they took place behind closed doors, the phrase mercurial is also attributed to the phrase of small and private meetings. The most famous known Mercurials (19 in number) are those spoken by Henri François Agueseau as a lawyer and then by the Attorney General in the Parliament of Paris between 1698-1715. Agueseau's speeches were made in the purest grandiose style and referred to the duties and qualities of magistrates to the science (ignorance) of magistrates as well as to their human sense and character. His Mercurials became unofficially the code of the good magistrate (Agueseau 1865, 3, 21, *passim*).

The evolution of the prosecutor's institution in Europe and America

In *late sixteenth-century France*, we know that anyone who wanted to become a prosecutor had to be at least 25 years old, at least 10 years of study (10 classes in modern terms), to buy or inherit an office and last but not least, needed a university degree. This institution would evolve so rapidly that on the eve of the *French Revolution*, there were over six hundred prosecutors in Paris (Barbiche 1999, 339). During the French Revolution, by the laws of January 29 and March 20, 1791, the institution of "Prosecutors of Cases" was abolished, and from then on the prosecutor became a representative of power in the service of the people (Perrot 2008, 402).

On January 12, 1722, in accordance with the High Decree issued by *Peter I* (1682-1725), the *Russian Prosecutor's Office* (Senate Prosecutor's Office) will be established, the *Tsar* wanting to destroy the evil generated by unrest, injustice, bribery and iniquity. The emperor appointed *Count Pavel Jaguzhinsky* as the first attorney general of the Senate. Presenting him to the senators, Peter the Great stated: *"here is my eye, with which I will see everyone"* (*Ryazan Prosecutor's Office*, 2012). The main competence of the *Prosecutor General* was that of supervising the Senate and coordinating the subordinate prosecutors. In 1802, the institution will become an integral part of the new *Ministry of Justice*, and the *Minister of Justice* will also become *Attorney General*. In November 1917, after the *Bolsheviks* took power, the highest authority in the country, the *Council of People's Commissars*, adopted a decree by which the prosecutor's office would take over the newly established people's courts, as well as the revolutionary courts. In May 1955, by decree of the *Presidency of the Supreme Council* of the USSR, a legislative act was approved which in Article 1 gives *the Prosecutor General* of the USSR the prerogative to exercise the highest supervision over the precise application of laws by all ministries and institutions under its jurisdiction, as well as by all citizens of the USSR. After the collapse of the Soviet Union in January 1992, a new federal law on the *Prosecutor's Office of the Russian Federation* was adopted. Subsequently, in 1993, Article 129 enshrined the principle of unity and centralization of the prosecution system in the Constitution of the Russian Federation. As a result of legislative changes, the *Prosecutor's Office of the Russian Federation* was eventually formed structurally and functionally into an independent state body, which is not part of any branch of government (*Ibidem*).

By 1790, a new nation had formed in *North America*. After a revolution, a peace treaty and the election of the first American president will give birth to the *American Prosecutor's Office* which was different from similar institutions in the world at that time because it did not come from any other institution but was founded from scratch. Although much information remains unclear and undocumented about that period, some facts are known: such as the first prosecutors' offices in *Jamestown* and *Plymouth,* and until the *American Civil War* (1861-1865) the office of prosecutor was given to an officer whom changed after that (Jacoby 1997). According to a study published in the *Missouri Crime Survey* in 1926, the *American prosecutor* was defined as a senior public prosecution officer similar to the one in England whose duties were to prosecute for crimes and misdemeanors. However, the information is inaccurate or partially correct because in England, until 1879, no system of public prosecution of crimes was adopted (*Ibidem*).

In the history of Great Britain until 1829 there were no "instruments" of prosecution, and the only way was for the victim, at his own expense and in his own name, to organize such a demonstration or delegate a lawyer. After this year, with the emergence of new police forces, this institution began to take on tasks and criminal prosecutions against alleged criminals. However, the prosecutor's office was established in 1880 and Sir John Maule was appointed the first director of the Public Prosecutor's Office for England and Wales, which operated within the Ministry of the Interior (*The Crown Prosecution Service*, 2007).

In Spain, the foundation of this institution was laid only in the nineteenth century in 1835 during the reign of *Queen Maria Cristina* by the promulgation of a provisional Regulation for the administration of justice. In the beginning, the prosecutor was called *"the king's man"* and his activity was distinguished by the fact that the investigation had to be done impartially and not as before. In the modern era of Spain, the most important additions to this institution took place in 1870 when the recruitment of members had become much more transparent (Catena 2008, 66).

In Italy, institutions of the prosecutor existed in the united duchies and proclaimed the Kingdom of Italy (1861). With the reform of the Italian Penal Code in 1889, the role of the investigating judge was abolished, the process acquired distinct characteristics, and the obligation to prosecute was entrusted to prosecutors (Amato 2009).

In the historical Romanian province of *Bessarabia*, after its taking by force by the *Tsarist Empire*, the regional institution of the prosecutor's office was created by the Regulation of July 23, 1812, through the functioning of the provisional institutions. In May 1818, Russia appointed a general prosecutor in this Romanian province and in the counties a county prosecutor (*Istoria organelor Procuraturii* 2008, 2).

The appearance of the Romanian prosecutor's institution will see the world in the modern era of history, more precisely with the establishment of the *Organic Regulations* when, in 1831, the *Public Ministry* will be established in *Wallachia* (Cochinescu 1997, 161-163). The next step in the evolution of the institution will take place after the *"Little Union"* when the institution of the prosecutor will be organized according to the French model, this happening in 1865. From this moment, the Public Ministry will be organized in prosecutor's offices to be led by prosecutor's magistrates. Starting with 1866, they will be appointed by Carol I, being hierarchically subordinated under the general prosecutors of the courts of appeal (Șerban and Barbu 2009, 89).

This institution will change in the interwar period when it will receive new responsibilities such as the detention of defendants for investigations for a period of 48 hours and the possibility of extending the detention for another three days (Poenaru 2003, 3-4). Starting with 1945, when the Public Ministry will change in the Prosecutor's Office, the prosecutor's attributions regarding the person's freedoms will be extended, including by the appearance of the preventive arrest measure (Muraru and Tănăsescu 2003, 180) transferred to the judge (Șerban and Barbu, 2009, 90) *("Representative changes in this regard were made in 2003, by Law no 281/2003 amending and supplementing the code of criminal procedure, as well as by Law no 429/2003 revising the Romanian Constitution, when the power to order pre-trial detention was passed exclusively to the judge").*

Although the institution of the prosecutor will be regulated in the Constitution of 1952, no improvement will be brought to him regarding the freedom of the person (Constitution of Romanian People's Republic of 1952). The 1965 constitution comes with significant provisions for prosecutors such as the right to supervise the activities of criminal prosecutors and those serving sentences, ensure compliance with the law as such the role of a prosecutor was much more complex (Șerban and Barbu, 2009, 90). Currently, the institution of the prosecutor is regulated within the judicial authority section II, art. 131-132 of the Romanian Constitution and in Law no. 304/2004 regarding the judicial organization, with the last modification by G.E.O. no. 215/2020 (Republished in "Of. G." 2005).

Conclusions

The prosecutor appears in history in the fourteenth century when the duties of a new time as a public magistrate began to be delimited from the duties of a lawyer.

At the beginning, those who led, in order to defend their interests, turned to the institution of the Prosecutor, whom they forced to specialize and work in their own service.

Mercurials were speeches by the Prosecutor General and were always related to the duties of magistrates.

The first country where the prosecutor appeared was France, a few centuries later it spread to Russia, and with the beginning of the nineteenth century this institution spread throughout Europe.

On the American continent, in the USA, the institution of the Prosecutor was a new one that was not based on any other old foundation and the one who served as a prosecutor was a military officer.

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