

THE SPANISH PROSECUTION SERVICE



THE PROSECUTION SERVICE : **A CONSTITUTIONAL BODY.**

The Prosecution Service is an important constitutional body, with legal personality and incorporated with functional autonomy in the Judiciary, as stated in Article 124 of the Spanish Constitution in the following terms:



The Prosecution Service, without prejudice to the functions entrusted to other bodies, has the task of promoting the action of Justice in defence of legality, the rights of the citizen and the public interest as protected by law, whether ex officio or at the request of interested parties, as well as that of ensuring the independence of the Courts and securing through them the satisfaction of social interest. The Prosecution Service discharges its duties through its own bodies in accordance with the principles of unity of action and hierarchical dependency, subject in all cases to the principles of legality and impartiality.

The basic regulations governing the Spanish Prosecution Service are set out in the Organic Statute of the Prosecution Service approved by Law 50/81 of 30 December and amended by Law 24/2007 of 9 October, which strengthens its autonomy and modernises its territorial organisation.

The Organic Statute contains the basic regulations concerning functions, organisation, structure and principles, rules of action, acquisition and loss of the status of prosecutor, rights and duties of prosecutors, and the disciplinary system.

The principles of legality and impartiality govern in all cases the action of the Prosecution Service. Under the principle of legality, the Prosecution Service acts subject to the Constitution, the laws and all other regulations included in the legal system. Under the principle of impartiality, the Prosecution Service acts with full objectivity and independence in defence of the interests entrusted to it.

The Prosecution Service is a single body for the entire State and its members are public authorities to all effects, always acting on behalf of the entire Institution.

History

The origins of this Institution can be traced back to the age-old figures and terms designating the King's Man and *Procurador Fiscal*, although its current form is of a more recent making.

The 1870 Organic Law of the Judiciary conceived of the Prosecution Service as being the body responsible for promoting the action of Justice vis-à-vis matters of public interest and for representing the Government in its relations with the Judiciary.

The Trial Procedure Codes of 1881 and 1882 gave it a place in criminal and civil proceedings, albeit considering it both on a par with the State Counsel and as a party. The rules governing criminal proceedings placed it in a special position, different from the other parties.

The Prosecution Profession became an autonomous career under the Royal Decree of 21 June 1926, which established its first Statutes, which included definitions similar to those set out in the 1870 Organic Law. The Prosecution Service was now charged with representing the Government in its relations with the Judiciary and for ensuring compliance with the law, promoting the action of Justice in defence of public interests to maintain public order and satisfy the social interest.

The legal framework of the State that emerged after the Civil War placed the Prosecution Service in an unusual position serving as a means of communication between the Administration and the Courts of Justice.

In line with the new spirit of the times, the establishment of democracy and its legal expression in the 1978 Constitution entrusted the Prosecution Service with the task of promoting the action of justice to defend legality, citizens' rights and the public interest as protected by law, securing before the Courts the satisfaction of social interest.

At the same time, the Prosecution Service was constituted as an autonomous institution, forming part of the Judiciary, which acts through its own bodies (organic autonomy) without depending on the General Council of the Judiciary (functional autonomy). Its role as a means of communication between the Government and Courts disappeared and its dependence on the Government was likewise ended, as the Government could now only request Prosecution Service actions to defend the public interest; it is the Prosecutor General, having heard the Board of High Prosecutors, who freely decides on the viability or legitimacy of the request.

The headquarters of the Prosecutor General's Office

The Prosecutor General's Office now has its own headquarters, at Paseo de la Castellana, number 17. It was previously housed in the Palacio de las Salesas, seat of the Supreme Court.

The building, built by the family of the Marquis of Fontalba y Cubas in 1912, also counts access from Calle Fortuna, number 4. One of its main distinctive features is

the restrained and harmonious front garden, making it stand out among the other beautiful buildings lining the Paseo de la Castellana.

It was purchased by the State in the 1940s and was given various official uses, most notably during the period when it housed the Supreme Council for Military Justice, which was the highest authority for military justice matters.

The Prosecution Service initially had to share the premises with that military body. But after the latter was disbanded the building became the exclusive headquarters of the Prosecutor General's Office.

The building regained its former elegance with the renovation completed in late 2004, which dignifies the institution it houses.

The restored building was officially inaugurated by King Juan Carlos and Queen Sofia on 11 January 2006.

THE PROSECUTION PROFESSION

Entrance into the Prosecution Profession is open to holders of degrees in law, with the necessary requirements, who pass the corresponding open competitive examination process. Those wishing to follow a career in either Prosecution or the Judiciary are first subject to a common examination. After passing the theoretical tests, the candidates choose one or the other. Those opting for Prosecution must then pass a training course at the Centre for Legal Studies, after which they become members of the Prosecution Profession by taking the corresponding oath and are assigned a position.

The personnel framework comprises the High Prosecutors, on the same level as Supreme Court Justices, Senior Prosecutors, on the same level as Senior Judges, and Junior Prosecutors, on the same level as Judges. These are the so called first, second and third categories of the Prosecution Profession.

Whenever the Organic Statute of the Prosecution Service does not include specific provisions regarding the acquisition and loss of the status of member of the Prosecution Profession, incapacity, administrative situations, rights and duties, incompatibilities, prohibitions and responsibilities of prosecutors, the provisions established for Judges and Justices in the Organic Law of the Judiciary shall apply, which treats members of the Prosecution Service on a par with Justices, except with respect to the institution's own particularities.

ORGANISATION OF THE PROSECUTION SERVICE.

I. THE PROSECUTOR GENERAL

The Prosecutor General is the highest leader and representative of the Prosecution Service. He is appointed and removed by the King, at the proposal of the Government, having heard the General Council for the Judiciary and after the candidate's suitability has been assessed by the corresponding committee in the Chamber of Deputies. The three branches of the State thus participate in the appointment. The choice must be made from among Spanish jurists of recognised prestige with more than fifteen years of active professional practice. The Prosecutor General shall be a public authority throughout Spanish territory.

The Prosecutor General is given a four-year mandate. He can only be removed on legally established grounds duly considered by the Council of Ministers. In any case, the Prosecutor General leaves office with the Government that proposed him.

The Prosecutor General acts with impartiality and independence, and cannot receive instructions or orders from the Government or any other administrative or judicial body. However, the Government may ask the Prosecutor General to initiate before the Courts the corresponding proceedings in order to defend public interest. The Prosecutor General, after having heard the Board of High Prosecutors, shall decide upon the viability or legitimacy of such request. The governing bodies of the Autonomous Communities may also address the Prosecution Service in similar terms through the Superior Prosecutor for each Community.

The Prosecutor General imparts all convenient orders and instructions regarding the service, the institution's internal order and the exercise of prosecution functions, whether of a general nature or referring to specific matters. General guidelines are essential for maintaining the principle of unity of action and are basically produced by means of three instruments: Circulars, Instructions and Enquiries.

Circulars: Contain general criteria for the performance and interpretation of rules. Also set standards to define the structure and operation of the Prosecution Service bodies



Instructions: Contain general provisions on the performance and organisation of matters that are more specific and less important than those referred to in Circulars.

Enquiries: Settle questions that any Prosecutor's Office may bring to the Prosecutor General's attention about the interpretation of a given rule.

II. THE PROSECUTOR GENERAL'S OFFICE

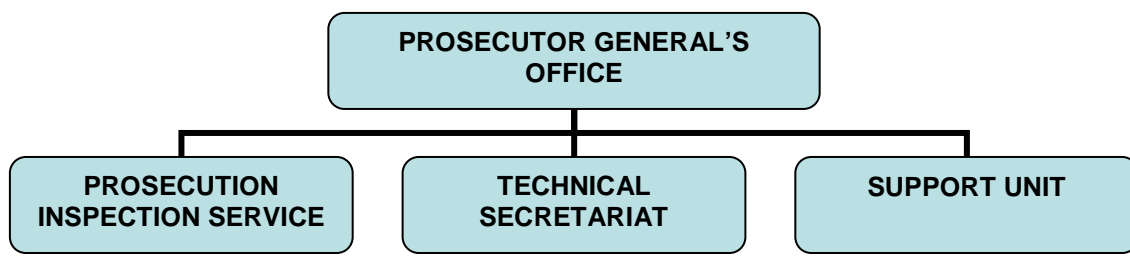
The units headed by the Prosecutor General in the Prosecutor General's Office are:

The **Prosecution Inspection Service** has powers of inspection by permanent delegation of the Prosecutor General, without prejudice to the ordinary inspection tasks of Superior Prosecutors and the control functions of the Chief Prosecutors regarding the Prosecutors accountable to them.

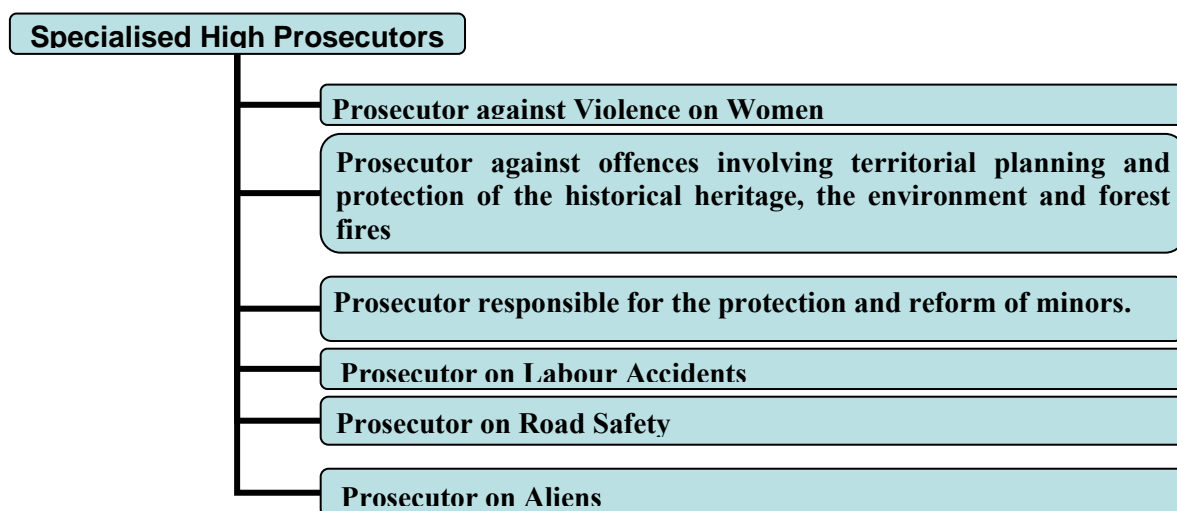
It includes a Permanent Rating Section that centralises information on the merits and capacity of Prosecutors with a view to supporting the Prosecution Council when reporting on discretionary appointments for the Prosecution Profession.

The **Technical Secretariat**, through its studies, research and reports, provides constant support to the Prosecutor General for the performance of his tasks as head of the Prosecution Service and carries out preparatory work for the Board of High Prosecutors. It contributes to planning the training of Prosecutors for which the Centre for Legal Studies is responsible and assumes the functions that in the scope of international juridical cooperation are attributed by law to the Prosecution Service, per the framework of foreign policy guidelines deriving from the Government.

The tasks of the **Support Unit** include representation and institutional relations with public authorities, as well as communication and citizen services. It is in charge of analysing and preparing reports about the organisation and operation of the Prosecution Service in matters concerning statistics, computing, human and material resources, information, and documentation. In general, it carries out support and assistance duties for the Prosecutor General, the High Prosecutors attached to the Prosecutor General's Office, the Prosecution Council and the Board of High Prosecutors that do not correspond to the Inspection Service or the Technical Secretariat.



The Prosecutor General's Office also includes **Specialised High Prosecutors** responsible for coordinating and supervising the Prosecution Service's activities in specific matters, as follows:



III. THE PROSECUTION COUNCIL.

The **Prosecution Council** is the body that represents the Prosecution Profession. It is chaired by the Prosecutor General and is composed of two kinds of members: ex officio members, who are the Deputy Chief Prosecutor of the Supreme Court and the Chief Prosecutor Inspector; and elective members, who are nine prosecutors belonging to any category within the Prosecution Profession, elected for a four-year period by all the members of the Prosecution Service in active service.

As a body meant to help the Prosecutor General perform his tasks, its main responsibilities are, among others, to give advice on as many subjects as required, draw up general criteria to ensure the Prosecution Service's unity of action with regard to the structure and operation of its different bodies, provide information on proposed appointments for different public offices and promotions, encourage appropriate reforms for the service and practice of prosecution, report on draft bills or regulations that affect the structure, organisation and functions of the Prosecution Service, and rule

on the appeals filed against decisions made by Chief Prosecutors in disciplinary proceedings.

IV. THE BOARD OF HIGH PROSECUTORS AND THE BOARD OF SUPERIOR PROSECUTORS OF THE AUTONOMOUS COMMUNITIES.

The **Board of High Prosecutors** is a technical assistance body. The chair is held by the Prosecutor General and it is composed of the Deputy Chief Prosecutor of the Supreme Court and the High Prosecutors. The Board assists the Prosecutor General in doctrinal and technical matters, the setting of standard criteria for legal action and interpretation, handling enquiries, drawing up statements and circulars, and the preparation of drafts and reports to be submitted to the Government.

The **Board of Superior Prosecutors of the Autonomous Communities** is chaired by the Prosecutor General and composed of the Deputy Chief Prosecutor of the Supreme Court, the Superior Prosecutors and the Chief Prosecutor of the Technical Secretariat, who acts as Secretary. Its purpose is to ensure the unity and coordination of the actions and operation of all Prosecutor Offices throughout State territory.

V. THE PROSECUTOR'S OFFICE AT THE SUPREME COURT

The **Prosecutor's Office at the Supreme Court** exercises its functions before said court, which is the highest judicial authority, and has jurisdiction throughout Spain. Parallel to the structure of the Supreme Court, the Prosecutor's Office is divided into sections that act before the different Sections of the Court – Civil, Criminal, Contentious Administrative, Social and Military. Its responsibilities are most typically to handle extraordinary appeals and to review judgments issued in lower instances. The Prosecutor General is directly in charge, assisted and substituted by the Deputy Prosecutor at the Supreme Court.

VI. THE PROSECUTOR'S OFFICE AT THE CONSTITUTIONAL COURT.

The **Constitutional Court** is regulated in the Constitution and in its own Organic Law. It has jurisdiction throughout Spain and is empowered to take cognizance, among other relevant matters, of appeals against the alleged unconstitutionality of laws and other regulations with force of law and of appeals for protection concerning the violation of fundamental rights and liberties or conflicts of jurisdiction between the

State and the Autonomous Communities or between the latter. The Prosecution Service is a party to the proceedings and operates through the **Prosecutor's Office at the Constitutional Court**.

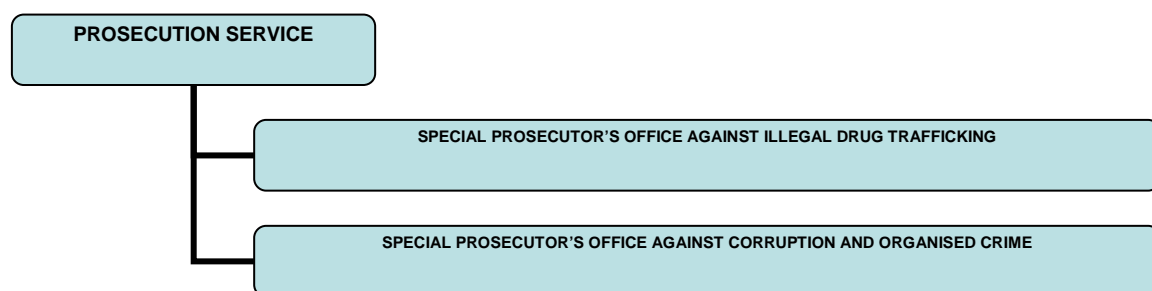
VII. THE PROSECUTOR'S OFFICE AT THE COURT OF AUDITORS.

The **Court of Auditors** is also a constitutional body whose composition and duties are envisaged in its own Organic Law. It is constituted as the highest body in charge of auditing the State's accounts and financial management as well as those of the public sector. **The Prosecutor's Office at the Court of Auditors** is established with the purpose of participating in the corresponding proceedings.

VIII. THE PROSECUTOR'S OFFICE AT THE NATIONAL COURT.

The **Prosecutor's Office at the National Court** exercises its functions before said Court, which has jurisdiction throughout Spain in criminal, contentious administrative and social matters, in accordance with the speciality of their content, with particular emphasis on those concerning the terrorism offences.

IX. SPECIAL PROSECUTOR'S OFFICES.



The **Special Prosecutor's Office against Illegal Drug Trafficking** participates in criminal proceedings concerning trafficking in drugs, narcotics and psychotropic substances or money laundering associated to said trafficking which fall under the jurisdiction of the National Court and the Central Courts of Inquiry; it also coordinates activities of the different Prosecutor's Offices regarding the above matters. The Prosecutor's Office takes on, where appropriate, the possible investigative activities of

the Prosecution Service in this criminal sector and works with the judicial authorities to monitor application of the means used to treat drug addiction among such delinquents.

The **Prosecutor's Office against Corruption and Organised Crime**, due to the particular relevance of its subject matter, investigates and takes cognizance of proceedings concerning certain economic offences or those committed by public servants in the performance of their duties, connected in both cases with the phenomenon of corruption and linked to illicit economic benefits. Subject to the special jurisdiction of the Prosecutor's Offices at the National Court and against Illegal Drug Trafficking, it investigates the economic activities of organised criminal groups or the respective economic proceeds from criminal activities.

X. TERRITORIAL PROSECUTOR'S OFFICES.

TERRITORIAL PROSECUTOR'S OFFICES

PROSECUTOR'S OFFICE AT AN AUTONOMOUS COMMUNITY

PROVINCIAL PROSECUTOR'S OFFICE

AREA PROSECUTOR'S OFFICE

The **Prosecutor's Office at an Autonomous Community** is located in the capital of the Community in question. It is headed by a Superior Prosecutor, under whose authority all other Prosecutors of the Community are subject due to the principles of unity of action and hierarchical dependence. This Prosecutor's Office exercises its function before the Superior Court of Justice. The Superior Prosecutor represents the Prosecution Service in the given territory and works in close communication and collaboration with the autonomous community's government bodies, and must also submit an Annual Report to the Legislative Assembly of same.

The **Provincial Prosecutor's Office** exercises the Prosecution Service's functions in the given territory. To adjust its organisation to the needs and circumstances of said territory, separate units may be established apart from the Provincial Prosecutor's Office though accountable thereto. These are the **Area Prosecutor's Offices** and the **Territorial Section**, which take into account factors such as case volume, the number of judicial bodies and the existence of sections transferred from the Provincial Court.

Due to the singular nature of the subject matter or the volume of proceedings, the Prosecutor's Offices at autonomous communities and provinces may also set up **Specialised Sections**.

FUNCTIONS OF THE PROSECUTION SERVICE.

In accordance with the principles of legality and impartiality, the Prosecution Service exercises its functions in the areas indicated by its regulations and by the Spanish legal system.

As this is done with a view to satisfying social interest through the defence of legality and public interest protected by law, it is undertaken on most occasions by action before the Courts of Justice per the distinct sections of law: criminal, civil, contentious administrative and social.

A brief overview is provided below:

ACTION IN CRIMINAL MATTERS

Participation in all the stages of **criminal cases**, except in those for offences and misdemeanours that can only be prosecuted at the request of a party.

Exercises **criminal and civil actions** in criminal cases, contesting actions exercised by others when appropriate.

Assures the **procedural protection of victims and damaged persons**, ensuring the provision of effective aid and assistance.

Receives formal complaints and initiates preliminary investigations, which may then be passed on to the judicial authority for the corresponding legal action or be shelved if no grounds for further action are found.

Visits detention centres and penitentiaries. Takes part in **Penitentiary Control** proceedings involving claims and appeals presented by those subject to prison terms.

ACTION IN CIVIL MATTERS

In **cases concerning incapacity** of individuals with physical or psychological disabilities, or those who may eventually request such status. Action is always in defence of legality and the public and social interest. Visits treatment centres of any kind.

In **marriage annulment cases** acts in defence of legality and the public and social interest.

In **matrimonial separation or divorce cases**, when any interested party is a minor, disabled or legally declared absent.

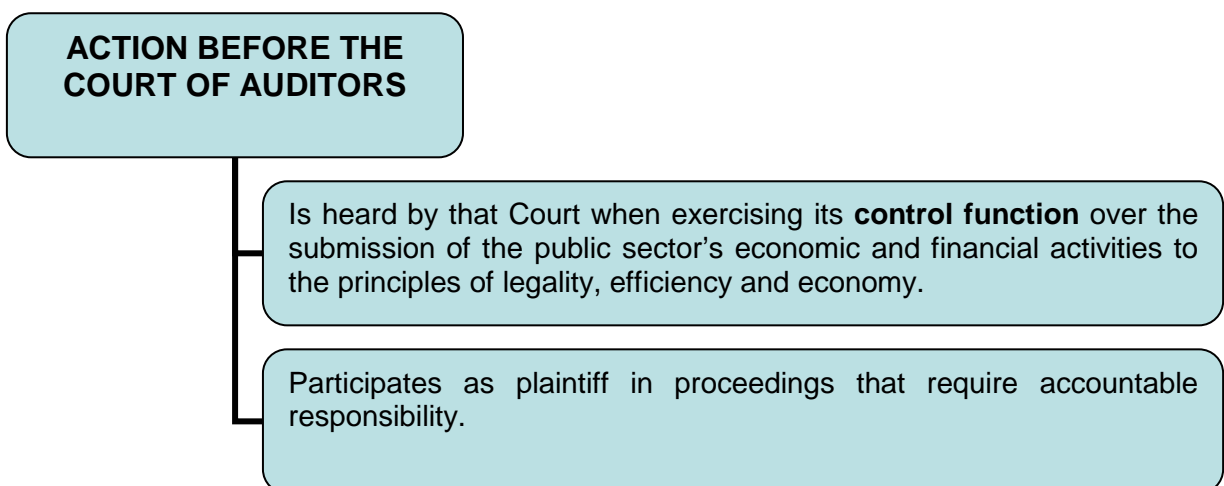
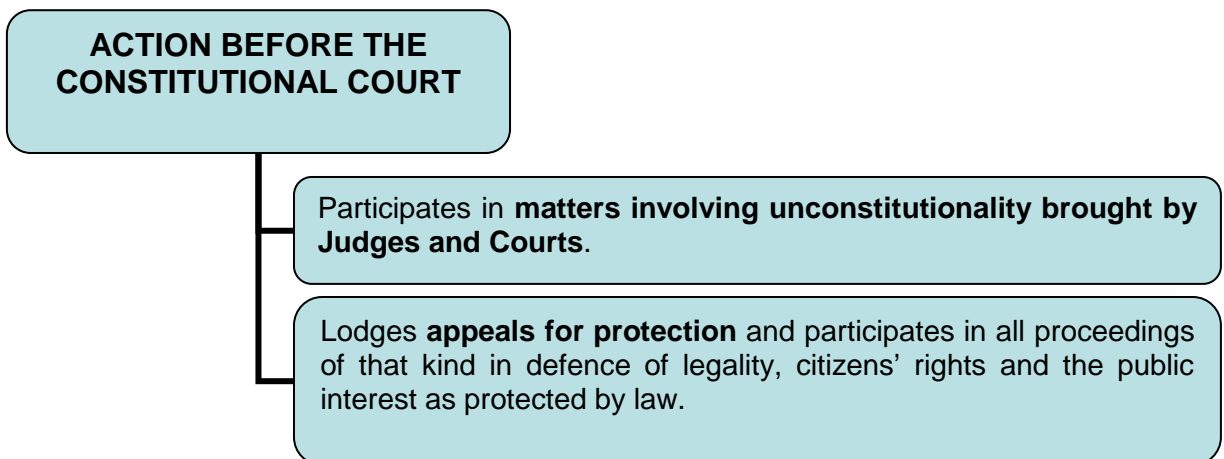
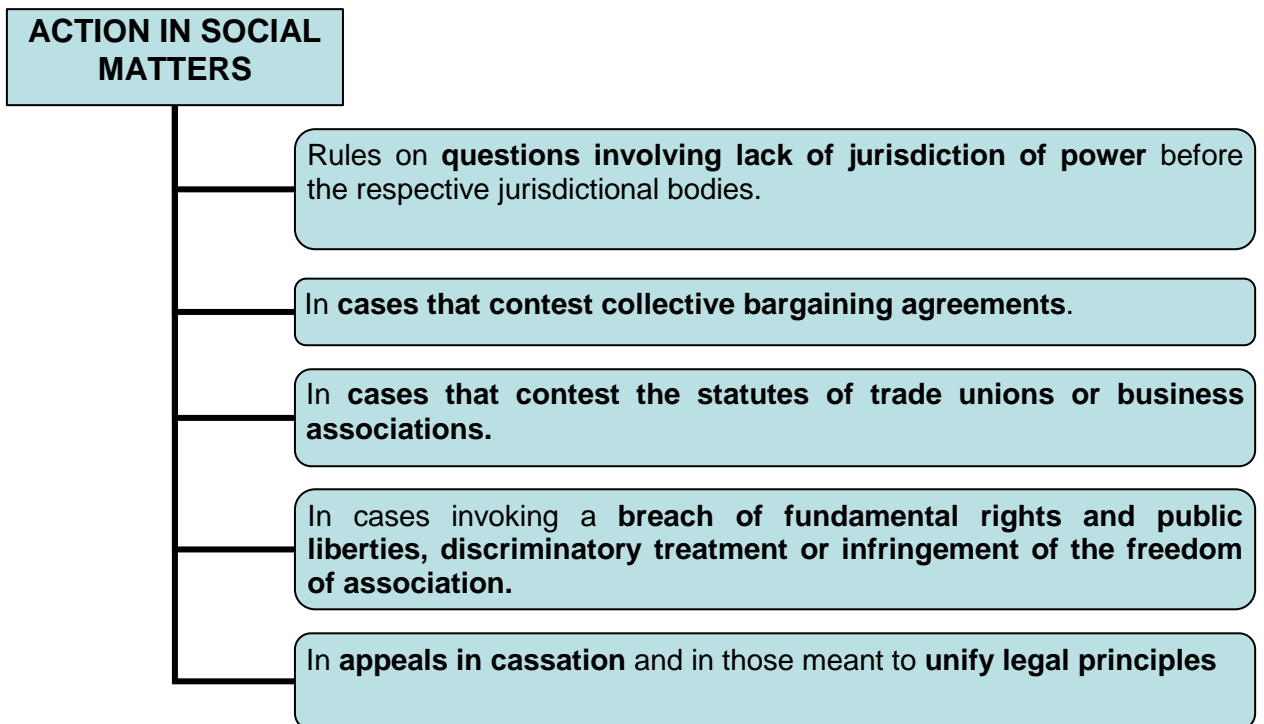
In **cases to determine or contest parentage claims**

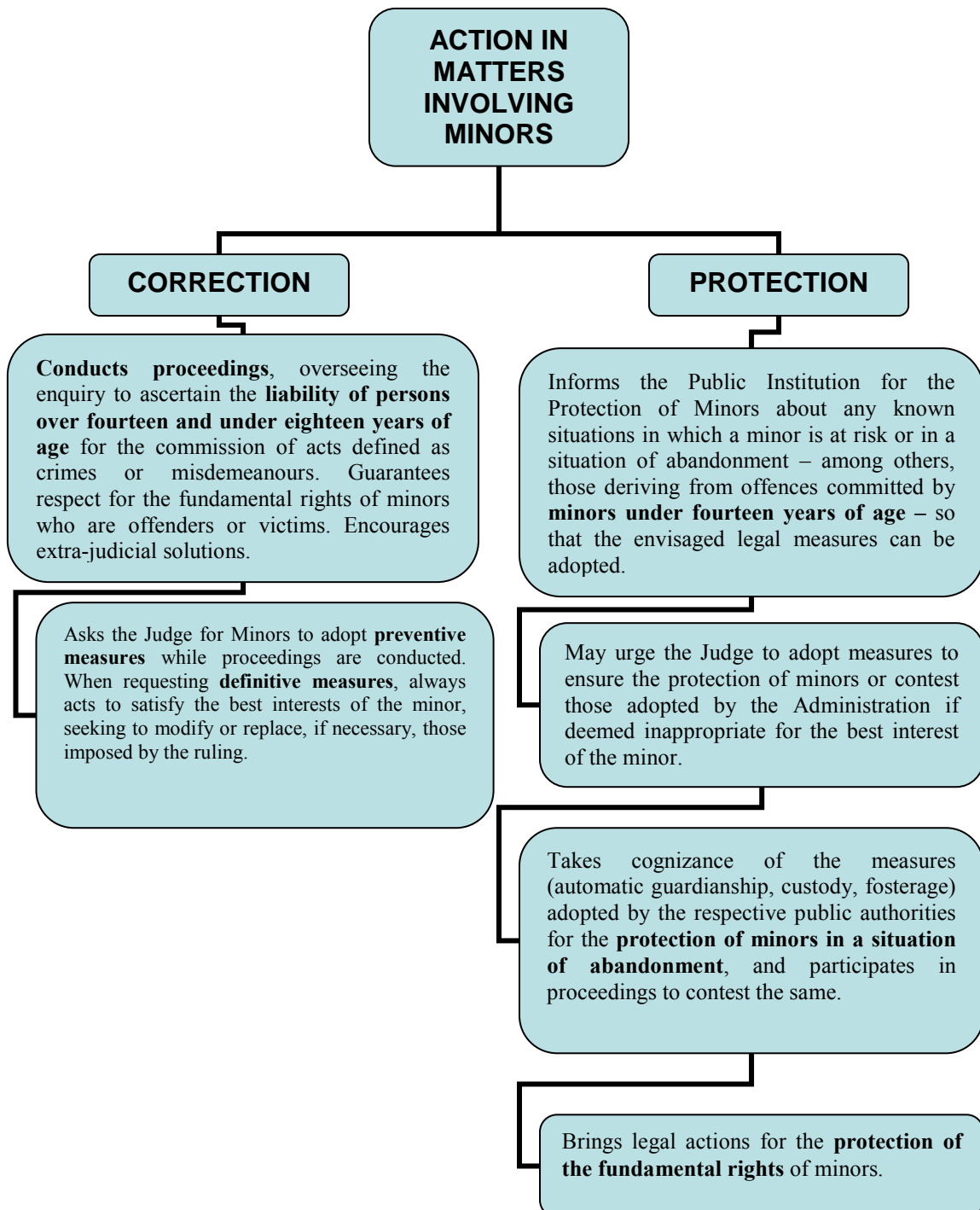
ACTION IN CONTENTIOUS ADMINISTRATIVE MATTERS

Issues opinions on **questions involving lack of jurisdiction or power** before the respective jurisdictional bodies.

May legitimately lodge appeals in the **interest of law**.

Is a party in proceedings that invoke a **breach of fundamental rights**.





INTERNATIONAL COOPERATION

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The Organic Statute of the Prosecution Service establishes in its article 3.15 that the Prosecution Service shall "*promote or, where appropriate, provide international legal cooperation as established in the law and in international treaties and conventions*".

International judicial cooperation is nowadays an essential tool for ensuring the efficacy of Justice. In the context of criminal law, in particular, a number of factors, among them the gradual disappearance of frontiers within the European Union and the consolidation of transnational organised crime, have contributed towards making mutual assistance among the judicial authorities of different countries an effective mechanism for fighting such crime.

Prosecutors are judicial authorities for the purposes of international judicial cooperation. Regarding the European context, the European Convention on Mutual Assistance in Criminal Matters, signed in Strasbourg on 20 April 1959, was ratified by Spain on 18 August 1982, with a declaration concerning article 24, according to which: "for the purposes of this Convention the members of the Prosecution Service shall be deemed judicial authorities". The same applies with respect to the Convention for the Implementation of the Schengen Agreement and the Convention on Mutual Assistance in Criminal Matters between Member States of the European Union, signed on 29 May 2000, as both are deemed to complement the provisions of the 1959 Convention.

The Technical Secretariat of the Prosecutor General's Office is, without prejudice to the functions corresponding to other authorities, charged with exercising or, where appropriate, coordinating the functions attributed to Prosecutors per the terms of international judicial cooperation. Instruction 2/2007 established within the Technical Secretariat an International Cooperation Section charged with carrying out the respective statutory tasks incumbent upon the former.

The Prosecutor General's Office periodically attends international meetings of Prosecutor Generals organised by the Council of Europe, the European Union and other Iberian American and worldwide organisations. Activities undertaken in the Iberian American Association of Prosecutor's Offices (AIAMP) are especially noteworthy. The latter gathers prosecutors from the Americas and the Iberian Peninsula and has held sixteen ordinary assemblies to date, besides several extraordinary assemblies and many technical meetings. This has resulted in important conclusions and resolutions, such as the decision to support autonomy processes for prosecutor's offices, the establishment of an accusation model in Iberian American criminal proceedings and the priority fight against organised crime. Another crucial achievement has been the promotion of international judicial cooperation through its membership in the Iberian American Network for International Judicial Cooperation (Iber-Red). The Spanish Prosecutor General currently holds the AIAMP Presidency. More details can be obtained at www.aiamp.net.

The Spanish Prosecutor's Office plays an active role in all international cooperation institutions:

EUROJUST



Eurojust was established by Decision 2002/187/JHA as an EU body with legal personality to stimulate and enhance coordination and cooperation between the competent judicial authorities of the Member States. The Prosecutor Office collaborates with Eurojust in its task of coordinating international judicial cooperation. The first Eurojust correspondent office has also fallen to the Technical Secretariat of the Prosecutor General's Office. At present both the National Member representing Spain and his Assistant are members of the Prosecution Profession.

EUROPEAN JUDICIAL NETWORK (EJN)



The European Judicial Network (EJN) established by Joint Action of 29 June 1998 also has the purpose of "boosting criminal judicial cooperation between Member States of the Union".

The network comprises a number of contact points in each Member State which are either central authorities responsible for international judicial cooperation or any other judicial or prosecutorial authority with specific responsibilities in the framework of international cooperation. In Spain 7 of the 12 EJN contact points are public prosecutors.

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Its aim is to enhance judicial cooperation in criminal and civil matters between the countries of the Iberian American Community of Nations, complementing the efforts of their respective governments and central authorities. Judicial powers, public prosecutors and justice ministries are the three pillars upon which Iber-Red is based.

AIAMP



The Iberian American Association of Prosecutor's Offices was founded in the Federal Republic of Brazil in 1954. Initially called the Inter-American Association of Prosecutor's Offices, it changed to the current name when Spain and Portugal became members. It was recently re-launched and restructured at its 14th Assembly, held in Madrid in October 2007. AIAMP aims to boost the activity of prosecutors in the administration of justice in Iberian America, corresponding to their role as defenders of legality and human rights, based on consolidation of the Rule of Law.

PROSECUTORS NETWORK ON INTERNATIONAL JUDICIAL COOPERATION

Instruction 2/03 created a special service devoted to international judicial cooperation formed by the so-called Prosecutors Network on International Judicial Cooperation.

Each Territorial Prosecutor's Office has a Prosecutor who belongs to this network and who is responsible, among other tasks, for dealing with the international judicial assistance requests received by the Prosecutor's Office and for collaborating with other Prosecutors in drafting the international assistance requests that must be sent from the Prosecutor's Office to foreign judicial authorities.

Further information may be obtained on the official website of the Prosecutor's Office.

www.fiscal.es

