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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
OF THE COUNCIL OF EUROPE
(VENICE COMMISSION)

PERU

**ORGANIC LAW ON THE
PUBLIC PROSECUTOR'S OFFICE**

UNOFFICIAL TRANSLATION

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ORGANIC LAW ON THE PUBLIC PROSECUTOR'S OFFICE**LEGISLATIVE DECREE N°052**

NOTE: A reference number has been added to the text of each article of the Organic Law on the Public Prosecutor's Office.

(*) In accordance with Article 3 of Law No. 29286, published on 04 December 2008, it is specified that when in the Organic Law on the Public Prosecutor's Office, Legislative Decree No. 052, reference is made to the terms "Senior Prosecutor" and "Senior Prosecutor" it should be understood as "President of the Board of Senior Prosecutors" or "President of the Board of Provincial Prosecutors", as appropriate.

CONCORDANCIES: D.S. N°005-81-JUS (Reglamentan Disposiciones de Decreto Legislativo N°52)

THE PRESIDENT OF THE REPUBLIC:

WHEREAS:

That, by Law N° 23230, the Executive Power has been authorised for a period of 90 days to issue the Legislative Decree referring to the Organic Law on the Public Prosecutor's Office, after review by the Permanent Commission of the Congress;

With the approving vote of the Council of Ministers: Has given the following Legislative Decree:

ORGANIC LAW ON THE PUBLIC PROSECUTOR'S OFFICE**TITLE I****GENERAL PROVISIONS**

[\(*\)NOTE SPIJ](#)

Function

Article 1.- The Public Prosecutor's Office is the autonomous body of the State whose main functions are the defence of legality, citizens' rights and public interests, the representation of society in court, for the purposes of defending the family, minors and the incapacitated and the social interest, as well as to watch over public morality; the prosecution of crime and civil reparation. It will also watch over the prevention of crime within the limitations resulting from the present law and over the independence of the judicial bodies and the correct administration of justice, as well as any other duties established by the Political Constitution of Peru and the legal system of the Nation.

Designation of the members of the Public Prosecutor's Office

Article 2.- For the purposes of this law, the words "Prosecutor" or "Prosecutors", without other words specifying their rank, designate the representatives of the Public Prosecutor's Office, except for the Public Prosecutor of the Nation, who shall always be referred to in these terms.

Powers of the members of the Public Prosecutor's Office

Article 3.- For the due fulfilment of their functions and attributions, the Prosecutor General and the Public Prosecutors shall exercise the actions or appeals and shall use the evidence admitted by the Administrative and Judicial Legislation.

Deficiency of the Law and application of General Principles of Law. Legislative Initiative

Article 4.- In cases of deficiency of National Legislation, the Public Prosecutor's Office will take into consideration the general principles of law and, preferably, those that inspire Peruvian law, in the exercise of its attributions.

In such cases, the Public Prosecutor shall submit to the President of the Republic draft laws and regulations on matters within his or her competence for the purposes referred to in Articles 190 and 211, paragraph 11) of the Political Constitution of Peru. It may also issue a reasoned opinion on bills relating to the Public Prosecutor's Office and the Administration of Justice, which it shall forward to the Legislative Chamber in which such bills are pending debate or vote. (*)

(*) See arts. 159, sub. 7 and 118, sub. 8 of the 1993 Constitution.

Functional autonomy

Article 5.- Prosecutors shall act independently in the exercise of their powers, which they shall perform at their own discretion and in the manner they deem best suited to the purposes of their institution. Being a hierarchically organised body, they shall be subject to the instructions that may be given to them by their superiors.

CONCORDANCIES: Law N° 27378, Art. 1, last paragraph.

Request for information from other entities

Article 6.- When necessary for the effective exercise of the actions and appeals that fall within the remit of the Public Prosecutor's Office, the Prosecutor General may write to the Presidents of the Legislative Chambers and the Standing Committee of Congress, the Supreme Court and the High Courts of Justice, the Ministers of State and, in general, the autonomous public bodies, legal persons under domestic public law, public companies and any other State entities, requesting the information and documents that may be necessary. Requests shall be complied with, except in the case of acts not included in the second part of Article 87 of the Constitution and which, in the judgement of the highest-ranking body of the corresponding administrative structure, could affect national security.

Exhortations to members of the Public Prosecutor's Office

Article 7.- The Executive Power, through the intermediary of the Minister of Justice (*) CORRECTED BY INACCURACIES, may issue exhortations to members of the Public Prosecutor's Office in relation to the exercise of their powers.

If the latter do not consider them to be appropriate, they shall submit them, in consultation, to the Prosecutor General, who shall immediately acquit them or submit them to the decision of the Board of Supreme Public Prosecutors, depending on the nature of the matter consulted

Activity of the Public Prosecutor's Office during emergency regimes

Article 8.- The declaration by the President of the Republic of states of emergency or siege, in all or part of the national territory, shall not interrupt the activity of the Public Prosecutor's Office as ombudsman, nor the right of citizens to appeal or access it personally, except insofar as it refers to constitutional rights suspended while the corresponding declaration remains in force; and under no circumstances shall it interfere in matters that are the responsibility of military commanders.

Intervention by the Public Prosecutor's Office during the police phase

Article 9.- The Public Prosecutor's Office, in accordance with paragraph 5 of Article 250 of the Constitution, oversees and intervenes in the investigation of crime from the police stage. To this end, the police forces carry out the investigation. The Public Prosecutor's Office intervenes in the investigation by guiding it in terms of the evidence that needs to be gathered and supervises it to ensure compliance with the relevant legal provisions for the timely exercise of the criminal action.

The same function corresponds to the Public Prosecutor's Office in police actions to prevent crime.

CONCORDANCIES: [Const. 1993, Art. 159 num. 4.](#)

Intervention by the Public Prosecutor's Office in guaranteeing the right to a defence

Article 10: As soon as the Provincial Criminal Prosecutor is informed of the police detention of a person accused of committing a crime, he/she shall contact the detainee, either by him/herself or through his/her Deputy or duly authorised assistant, in order to ensure the right of defence of the detainee and others, as recognised by the Constitution and the law.

The Public Prosecutor's Office shall have the right to prosecute.

Article 11.- The Public Prosecutor's Office is the holder of the public criminal prosecution, which it exercises ex officio, at the request of the injured party or by popular action, in the case of crimes committed immediately or those against which the law expressly grants it.

Processing of the complaint

Article 12.- The complaint referred to in the preceding Article may be filed with the Provincial Public Prosecutor or with the Senior Public Prosecutor. If the latter considers it appropriate, he shall instruct the Provincial Prosecutor to formalise it before the competent Examining Magistrate. If the Public Prosecutor before whom it has been presented does not consider it to be appropriate, he shall inform the complainant in writing, who may appeal in complaint before the immediate superior with whose decision the proceedings are terminated. ()*

(*) Article modified by the Sole Article of Law N° 25037, published on 13-06-89, the text of which is as follows:

Processing of the complaint

Article 12.- "The complaint referred to in the preceding article may be filed with the Provincial Public Prosecutor or with the Senior Public Prosecutor. If the latter considers it appropriate, he shall instruct the Provincial Public Prosecutor to formalise it before the competent Examining Magistrate. If the prosecutor before whom it has been presented does not consider it appropriate, he shall inform the complainant in writing, who may lodge a complaint with the prosecutor immediately above him within three days of notification of the refusal. Once the Provincial Prosecutor's decision has been approved or with the decision of the Superior, as the case may be, the procedure is over"(*)

(*) In accordance with Article 1 of the Resolution of the Transitory Council of the Public Prosecutor's Office N° 036-2001-CT-MP, published on 21-02-2001, Directive N° 01-97-1FSP-MP, published on 11-04-97, by which general instructions were established regarding exceptional consultation by diffuse control; ratifying the full and absolute validity of the provisions of Article Twelve Second of the Organic Law of the Public Prosecutor's Office.

Complaints against Prosecutors

Article 13.- The accused or aggrieved party who considers that a prosecutor is not duly exercising his or her functions may file a complaint with the immediate superior, specifying the act or omission that motivates the complaint. The superior shall proceed, in such a case, in accordance with the powers conferred by law.

Burden of Proof

Article 14.- The Public Prosecutor's Office shall bear the burden of proof in civil, criminal and guardianship actions brought by it, as well as in cases of disciplinary misconduct reported by it. Judges and other public officials, without prejudice to the powers granted to them by law in this respect, shall, under their responsibility, summon in due time the public prosecutor acting in the proceedings before them to their basic proceedings and to those for the taking of evidence offered by any of the parties or ordered ex officio. The said Public Prosecutor shall also be notified of the decisions issued in the proceedings, under penalty of nullity.

Procedural prerogative of pre-trial proceedings

Article 15.- The Prosecutor General and the Supreme Public Prosecutors, in accordance with Article 251, in accordance with Articles 183 and 184 of the Political Constitution, have the procedural prerogative of the pre-trial (*)

(*) See art. 99 of the Constitution of 1993.

Jurisdiction of the Supreme Court in trials of responsibility of members of the Public Prosecutor's Office.

Article 16.- The Supreme Court is competent to hear civil liability suits brought against the Public Prosecutor of the Nation or Supreme Prosecutors. The same jurisdiction corresponds to cases of civil or criminal liability of Senior Public Prosecutors.

Jurisdiction of the High Courts in lawsuits and complaints against Provincial Prosecutors

Article 17.- The High Courts of Justice shall hear in the first instance any claims or complaints against Provincial Public Prosecutors in cases where civil or criminal liability is attributed to them.

The jurisdiction of the Chambers is that established in the Organic Law of the Judiciary and the procedures are those established in the relevant laws.

Prerogatives and pensions of members of the Public Prosecutor's Office.

Article 18.- Members of the Public Prosecutor's Office have the same prerogatives and pension systems established by law for members of the Judicial Branch in their respective categories.

Excuses of Prosecutors

Article 19.- Prosecutors are not subject to recusal; however, they must excuse themselves, under liability, from intervening in a police investigation or in an administrative or judicial process in which they directly or indirectly have an interest, or in which their spouse, their relatives in a straight line or within the fourth degree of consanguinity or second degree of affinity, or by adoption, or their compadres or godchildren, or their proxy in the case referred to in the following article, paragraph c), have an interest.

Prohibitions on the exercise of functions

Article 20.- Members of the Public Prosecutor's Office may not:

- a.- Hold positions other than that of their function, other than those expressly indicated by law.
- b. Exercise lucrative activity or intervene, directly or indirectly, in the direction or management of a company. This prohibition does not prevent the administration of movable or immovable property owned by him/her.
- c. Defend as a lawyer or give advice of any kind, publicly or privately. When they have to litigate in their own cause unrelated to their function, they shall grant power of attorney.
- d.- Accept donations, gifts or be instituted as voluntary heir or legatee of a person who, directly or indirectly, has had an interest in the process, complaint or denunciation in which the members of the Public Prosecutor's Office have intervened or may intervene.
- e.- Accepting mandates, except from their spouse for acts that have no relation whatsoever to the exercise of their function, nor have the purpose of enforcing them before the Public Administration or the Judiciary.
- f.- Buying, leasing or exchanging, directly or indirectly, property belonging to a person included in paragraph d) of this article.
- g.- Admitting recommendations in the matters in which they intervene or making them to other prosecutors, judges or public officials or employees or bodies linked to the Central Government or Regional or Local Governments.
- h.- To intervene, publicly or privately, in political acts, other than in fulfilment of their electoral duty.
- i.- To join trade unions and go on strike.
- "j.- To take cognizance of complaints or proceedings when he/she personally, his/her spouse or common-law spouse has or has had an interest or employment relationship with any of the parties. Exempt from the prohibition contained in this paragraph are complaints or proceedings to which the Public Prosecutor's Office is a party." (*)

(*) Subsection added by Article 2 of Law N° 27197, published on 08-11-99.

"k. Absenting themselves from the premises where they exercise their office during office hours, except in the case of carrying out tasks related to their function outside the office, holidays, leave of absence or authorisation from the corresponding superior. Nor may they leave the city where they hold their office without the respective leave of absence, unless they remedy this omission by giving immediate notice and justifying such action. If the alleged cause is not sufficient to justify it, the corresponding disciplinary measure shall be applied". (*)

(*) Subsection added by Article 2 of Law N° 28219, published on 07-05-2004.

CONCORDANCIES: R.N° 071-2005-MP-FN-JFS, Art.23, inc c); 62.

Exceptions to the exclusivity of the fiscal function

Article 21.- It is not included in paragraph a) of the previous article to participate in National Legislation Reform Commissions or in National or International Congresses or in professional improvement courses, as long as the corresponding authorisation has been obtained. Neither is university teaching.

CONCORDANCIES: R.N° 071-2005-MP-FN-JFS, Art.62

Infringement of impediments and prohibitions. Responsibilities

Article 22.- Infringement of the impediments and prohibitions referred to in the preceding articles shall give rise to disciplinary, civil or criminal liability, as the case may be. They are also liable, in any of these forms, for the infractions they commit in the exercise of their functions, as well as in cases of irregular conduct or conduct that makes them lose face in the public eye.

CONCORDANCIES: R.N° 071-2005-MP-FN-JFS, Art.62.

Impediment and substitution

Article 23.- When a Prosecutor is prevented from intervening in a specific case, the respective Deputy Prosecutor shall substitute him/her. If there is no Deputy Prosecutor, the Board of Prosecutors to which the impeded Prosecutor belongs shall designate the one who should replace him/her. If the Board of Public Prosecutors has not been constituted or if it is not possible to convene it immediately, the senior or the least senior Provincial Prosecutor, depending on who is replaced, shall replace him or her.

Replacement of the Public Prosecutor's Office

Article 24.- In cases of impediment, illness, bereavement, temporary absence and holidays of the Prosecutor General, the person who is to replace him/her in the following shift shall assume his/her functions until the incumbent resumes them.

Licensing. Procedure

Article 25.- Leave of absence due to illness, bereavement or other justified cause shall be granted by the Prosecutor General, in the case of a Supreme Public Prosecutor. They shall be granted by the Board of Public Prosecutors to which the applicant for leave belongs or, failing that, by the most senior Public Prosecutor of his or her respective grade or whoever is exercising his or her functions, and on the merit of the medical certificate or other documents that must be submitted, as the case may be, in the case of other Public Prosecutors. If the applicant for leave is the only prosecutor in the province, the leave shall be granted, by telegraph, by the Senior Deputy Prosecutor General or whoever is acting in his or her stead. **(1)(2)(3)**

- (1) Article suspended until 31 December 1998, according to Article 3 of Law N° 26738, published on 07.01.97.
- (2) Article suspended during the term of the Executive Commission of the Public Prosecutor's Office, until 31 December 2000, in accordance with Article 5 of Law N° 27009, published on 05.12.98.
- (3) Pursuant to Article 1 of Law No. 27367, published on 06-11-2000, the Executive Commission of the Public Prosecutor's Office was deactivated and the Transitory Council of the Judiciary and the Transitory Council of the Public Prosecutor's Office were established. Upon expiry of the period set for the development of their functions, the Executive Council of the Judiciary and the Board of Supreme Prosecutors of the Public Prosecutor's Office are re-established.

Term of the leave of absence

Article 26.- Leave of absence may not exceed 60 continuous calendar days nor the same number of days granted in a year.

Replacement of Prosecutors on leave of absence of more than 60 days

If the leave of absence is granted or extended for more than sixty days, as well as in the case of suspension from office as referred to in Article 184 of the Constitution (1), the Prosecutor General shall be replaced by the next in line. In the case of a Supreme Public Prosecutor, the Prosecutor General shall call the most senior of the Senior Public Prosecutors in the speciality to serve in the post.

If the position to be filled is that of Senior Public Prosecutor, the most senior Provincial Public Prosecutor shall be called upon to serve, according to the civil or criminal nature of the function to be performed. And if it is a question of replacing a Provincial Prosecutor, the respective Deputy shall be called to serve the position, provisionally. (2)(3)(4)(5)

- (1) See art. 99 of the 1993 Constitution.
- (2) Article suspended until 31 December 1998, according to Article 3 of Law N° 26738, published on 07-01-97.
- (3) Article suspended during the term of the Executive Commission of the Public Prosecutor's Office, until 31 December 2000, in accordance with Article 5 of Law N° 27009, published on 05-12-98.
- (4) Pursuant to Article 1 of Law N° 27367, published on 06-11-2000, the Executive Commission of the Public Prosecutor's Office is deactivated.
- (5) Article modified by Article 2 of Law N° 28367, published on 28-10-2004, which reads as

follows: "Article 27.- Replacement of Prosecutors for leaves of more than sixty (60) days.

If the leave of absence is granted or extended for more than sixty (60) days, as well as in the case of suspension from office referred to in Article 100 of the Constitution, the Prosecutor General shall be replaced by the next in line. In the case of a Supreme Public Prosecutor, the Prosecutor General shall call to serve the position the Senior Public Prosecutor who meets the requirements for access to the Supreme Public Prosecutor's Office, who shall be called on the basis of his or her speciality, service record, prosecutorial production, academic degrees, studies at the Academy of the Magistracy and further training, seniority and other merits of a legal nature.

If the position to be filled is that of Senior Prosecutor, the Provincial Prosecutor who meets the requirements for access to the Senior Prosecutor's Office shall be called, in accordance with the criteria indicated in the previous paragraph. And if it is a question of replacing a Provincial Prosecutor, the respective Deputy shall be called upon to serve the position, provisionally."

CONCORDANCIES: R.N° 1747-2005-MP-FN

Appeals to replace a Provisional Prosecutor

Article 28.- In cases where, in the opinion of the Prosecutor General, duly justified, it is necessary to replace a Prosecutor who is provisionally replacing another of higher hierarchy, he/she shall make the corresponding successive calls, observing the rules of the preceding article. (1)(2)(3)

(1) The validity of this article is suspended until 31 December 1998, according to Article 3 of Law N° 26738, published on 07-01-97.

(2) Article suspended during the term of the Executive Commission of the Public Prosecutor's Office, until 31 December 2000, in accordance with Article 5 of Law N° 27009, published on 05-12-98.

(3) Pursuant to Article 1 of Law N° 27367, published on 06-11-2000, the Executive Commission of the Public Prosecutor's Office is deactivated.

Salaries of the Provisional Prosecutor

Article 29.-Provisional Public Prosecutors shall receive the salary corresponding to the position they are serving, for the duration of the interim. For this purpose, the resolution issued by the Public Prosecutor of the Nation shall serve as a title.()*

(*) Article modified by Article 4 of Law N° 26898, published on 15-12-97, which reads as follows:

Salaries of the Provisional Prosecutor

Article 29.- Supreme, Superior and Provincial Prosecutors who are appointed as Provisional Prosecutors in any of the organs of the Public Prosecutor's Office foreseen in Article 36, have the same duties, rights, attributions, prerogatives, prohibitions and incompatibilities as the Titular Prosecutors in their respective categories for the duration of their provisional status, both as head of the public criminal action and in the institutional and administrative progress. (*)

(*) Compare with Article 1 of Law N° 27362, published on 31-10-2000, which repeals Law N° 26898.

Budgetary Autonomy of the Public Prosecutor's Office. Ownership

Article 30.- The Public Prosecutor's Office constitutes an independent budget line in the Public Sector Budget.

The Public Prosecutor of the Nation, as the head thereof, formulates the Budget Project, submits it to the review of the Board of Supreme Prosecutors, which approves it and submits it to the Executive Power for the consequent purposes.(1)(2)(3)

(1) Paragraph suspended by the Second Transitory, Complementary and Final Provision of Law No. 26623, published on 19-06-96.

(2) Paragraph suspended during the term of the Executive Commission of the Public Prosecutor's Office, until 31 December 2000, in accordance with Article 5 of Law N° 27009, published on 05-12-98.

(3) Pursuant to Article 1 of Law 27367, published on 06-11-2000, the Executive Commission of the Public Prosecutor's Office is deactivated.

Appointment of auxiliary personnel

Article 31.- The auxiliary and administrative staff of the Public Prosecutor's Office is appointed by the Public Prosecutor.

The staff to be appointed by the Chief Prosecutor, with the agreement of the Board of Senior Prosecutors of each judicial district, is determined by the Regulations.(1)(2)(3)

(1) This article is suspended by the Second Transitory, Complementary and Final Provision of Law No. 26623, published on 19-06-96.

(2) Article suspended during the term of the Executive Commission of the Public Prosecutor's Office, until 31 December 2000, in accordance with Article 5 of Law N° 27009, published on 05-12-98.

(3) Pursuant to Article 1 of Law N° 27367, published on 06-11-2000, the Executive Commission of the Public Prosecutor's Office was deactivated.

Central hierarchy

Article 32.- The records containing seniority and merit tables, leaves of absence, holidays, provisional performance of prosecutor's offices, participation in legislative reform commissions or formulation of draft laws, national and international congresses, seminars and courses in law and related scientific disciplines; of professorships held and books published on legal disciplines, disciplinary sanctions imposed and proceedings opened on civil or criminal liability of members of the Public Prosecutor's Office, shall be kept in the office of the Public Prosecutor, under his or her supervision. The Regulations shall determine the official responsible for their updating, preservation and reserve.

CONCORDANCES: Law No. 28367, Sole Transitory Disp.

District hierarchy

Article 33.- The most senior Senior Prosecutor of each judicial district will have under his responsibility and supervision a copy of the records of seniority, leaves of absence, holidays, provisional performance of Prosecutor's Offices, disciplinary sanctions imposed and civil and criminal liability processes that refer to the District Prosecutors and Deputy Prosecutors of the district, for the effect of the attributions that correspond to him.

The leaves of absence due to illness, bereavement or any other justified cause granted to the same Prosecutors and their Deputies shall be recorded in the corresponding Register, with notice to the Prosecutor General. **(1)(2)(3)(4)**

(1) Article suspended by the Second Transitory, Complementary and Final Provision of Law N° 26623, published on 19-06-96.

(2) Article suspended during the term of the Executive Commission of the Public Prosecutor's Office, until 31 December 2000, in accordance with Article 5 of Law N° 27009, published on 05-12-98.

(3) Pursuant to Article 1 of Law 27367, published on 06-11-2000, the Executive Commission of the Public Prosecutor's Office was deactivated.

(4) Pursuant to Article 3 of Law 29286, published on 04 December 2008, it is specified that when the terms "senior prosecutor" and "senior prosecutor" are referred to in the Public Prosecutor's Office Statutes, Legislative Decree 052, they should be understood as "President of the Board of Senior Prosecutors" or "President of the Board of Provincial Prosecutors", as appropriate.

Evaluation of the National Council of the Judiciary's Evaluation of the Senior Public Prosecutor's Office

Article 34.- The National Council of the Judiciary shall request from the Prosecutor General the relevant information resulting from the records referred to in the preceding article for the purposes of the merit-based competition and personal evaluation involving a prosecutor or Deputy Prosecutor applying for an appointment in the Public Prosecutor's Office or the Judiciary.

Consideration of legal specialisation in the qualification of Prosecutor applicants

Article 35.- The National Judicial Council shall give particular consideration to the legal speciality of the prosecutor or deputy prosecutor in service and that of the position in the Public Prosecutor's Office to which he or she is applying, for the purposes of the corresponding proposal.

TITLE II CHAPTER I**ORGANISATION****Organs of the Public Prosecutor's Office.**

Article 36.- The following are bodies of the Public Prosecutor's Office:

1. The Prosecutor General
2. Supreme Prosecutors.
3. Superior Prosecutors.
4. Provincial prosecutors.

They are also:

Deputy Prosecutors.

The Boards of Public Prosecutors

Exercise of the Prosecutor's Office

Article 37.- In addition to the National Public Prosecutor, there are three Supreme Public Prosecutors. They shall rotate every two years, in order of their seniority in the function, in the position of Public Prosecutor of the Nation. ()*

(*) Article modified by Article 4 of Law N° 26898, published on 15-12-97, which reads as follows:

Exercise of the Office of the Public Prosecutor of the Nation

Article 37. - *In addition to the Prosecutor General, the incumbent Supreme Public Prosecutors as well as the Provisional Supreme Public Prosecutors are active Supreme Public Prosecutors. The Prosecutor General, the Principal Supreme Public Prosecutors and the Provisional Supreme Public Prosecutors constitute the Board of Supreme Public Prosecutors.*

The Prosecutor General is elected by the Board of Supreme Public Prosecutors, from among its members, for a period of three years, renewable by re-election only for another two years". ()*

(*) Article replaced by Article 3 of Law N° 27362, published on 31-10-2000, which reads as follows:

Exercise of the Office of the Attorney General

Article 37.- The Prosecutor General and the Supreme Public Prosecutors constitute the Board of Supreme Public Prosecutors.
Supreme Prosecutors.

The Prosecutor General is elected by the Board of Supreme Public Prosecutors from among its members for a period of three years, renewable for re-election only for another two years".

Equality of seniority.

Article 38.- If two or more Public Prosecutors have the same seniority in the function, the time they have served as judges shall be calculated; and if none of them have served as judges, the time they have served as practising lawyers according to their registration in the respective Bar Association shall be calculated **(1)(2)(3).**

- (1) The validity of this article is suspended until 31 December 1998, according to Article 3 of Law N° 26738, published on 07-01-97.
- (2) Article suspended during the term of the Executive Commission of the Public Prosecutor's Office, until 31 December 2000, in accordance with Article 5 of Law No. 27009, published on 05-12-98.
- (3) Pursuant to Article 1 of Law N° 27367, published on 06-11-2000, the Executive Commission of the Public Prosecutor's Office was deactivated.

Requirements to be Supreme Prosecutor

Article 39.- To be a Supreme Prosecutor, the following are

required:

1. Be Peruvian by birth.
- 2.- Be an active citizen.
- 3.- Be over fifty years of age.
- 4.- Have been a prosecutor or member of a High Court for at least ten years, or a practising lawyer, or have held a university chair in a legal discipline for at least twenty years.
- 5.- Be of impeccable conduct, publicly recognised.

Requirements to be a Senior Prosecutor

Article 40.- To be a Senior Public Prosecutor, in addition to being Peruvian by birth, a practising citizen and of impeccable conduct, one must be over 35 years of age and have been a court prosecutor or first instance or examining magistrate for no less than seven years or a practising lawyer or have held a university professorship in the legal discipline for no less than ten years.

CONCORDANCES: R. N° 322-2006-CNM (*Regulation of Competitive Examinations for the Selection and Appointment of Judges and Prosecutors*)

R.C. N° 989-2005-CNM, Art. 11

R. No. 253-2007-CNM (*Regulations on Competitive Examinations for the Selection and Appointment of Judges and Prosecutors*).

Requirements to be a Provincial Prosecutor

Article 41.- To be a provincial prosecutor, in addition to being Peruvian by birth, a practising citizen and of impeccable conduct, one must be no less than 28 years of age and have been a deputy provincial prosecutor, or a justice of the peace, court reporter or clerk for four years, or a practising lawyer or university professor in a legal discipline for no less than five years.

CONCORDANCIES: R. N° 322-2006-CNM (*Regulation of Competitive Examinations for the Selection and Appointment of Judges and Prosecutors*).

R.C. N° 989-2005-CNM, Art. 11

R. N° 253-2007-CNM (*Regulations on Competitive Examinations for the Selection and Appointment of Judges and Prosecutors*)

Determination of the number of Prosecutors

Article 42.- The number of senior prosecutors in each judicial district shall be determined periodically by the Board of Supreme Prosecutors at the proposal of the Prosecutor General, taking into account the needs of the district in which they operate and the possibilities of the Public Prosecutor's Office budget.

The same shall apply to the number of Provincial Prosecutors in each province (1)(2)(3)

- (1) This article is suspended by the Second Transitory, Complementary and Final Provision of Law N° 26623, published on 19/06/96.
- (2) Article suspended during the term of the Executive Commission of the Public Prosecutor's Office, until 31 December 2000, in accordance with Article 5 of Law N° 27009, published on 05-12-98.
- (3) Pursuant to Article 1 of Law 27367, published on 06-11-2000, the Executive Commission of the Public Prosecutor's Office was deactivated.

Assistance to Deputy Prosecutors

Article 43.- Prosecutors may be assisted by Deputy Prosecutors in the exercise of their attributions when the needs of the position require it and according to the possibilities of the corresponding Budgetary Plan.

Rank and Assets of Deputy Public Prosecutors

Article 44.- Deputy Supreme Public Prosecutors shall have the rank and assets of a Senior Public Prosecutor. The Deputy Prosecutors of the Superior Prosecutors shall have the rank and assets of a Provincial Prosecutor. And their deputies shall have the rank and the credit corresponding to that of the Secretary of the High Court.

Requirements to be Deputy Prosecutor.

Article 45.- Deputy Prosecutors must meet the same requirements as those established by this law and, if applicable, by the Organic Law of the Judiciary for the position of Superior Court Secretary. ()*

(*) Article modified by Article 1 of Law N° 26767, published on 09-04-97, which reads as follows:

Requirements to be Deputy Prosecutors

Article 45.- Deputy Prosecutors must meet the same requirements as those demanded of the incumbents of their rank".

Incompatibilities to be Prosecutors

Article 46.- The President of the Republic, Ministers of State, Senators and Deputies, as well as officials of Ministries, state bodies and public companies, may not be proposed as Prosecutors while they are in office. Neither may members of regional government bodies, municipalities or departmental development corporations, nor those who exercise political authority and, in general, those who exercise any other public function, with the sole exception of university teaching.

Incompatibilities for reasons of kinship

Article 47.- Members of the Public Prosecutor's Office in the same judicial district may not be spouses, relatives in direct line, or collateral relatives to the third degree of consanguinity and second degree of affinity. The Regulations of the Councils of the The Rules of Procedure of the Councils of the Judiciary shall determine the documents required to ensure that their nomination is not made by an incapacitated person. ()*

(*) Article modified by Article 1 of Law N° 26767, published on 09-04-97, which reads as follows:

Incompatibilities for reasons of kinship.

Article 47.- There is incompatibility by reason of kinship up to the fourth degree of consanguinity, second degree of affinity and by marriage:

- 1.- Between the Prosecutor General and the Supreme Public Prosecutors; between the latter and the Senior, Provincial and Deputy Public Prosecutors of the Judicial Districts of the Republic.
- 2.- Within the same Judicial District between Senior Public Prosecutors and between these and the Provincial and Deputy Public Prosecutors in the respective categories; between Provincial Public Prosecutors and between these and the Deputy Public Prosecutors.
3. Between the administrative staff and between them and the Prosecutors belonging to the same Judicial District".

Appointment of Prosecutors

Article 48.- The President of the Republic appoints the Supreme and Superior Public Prosecutors and their respective deputies at the proposal of the National Council of the Judiciary; and of the District Council, the Provincial Public Prosecutors and their deputies.

The Councils of the Judiciary shall make the proposals for deputies at the request of the Prosecutor General **(1)(2)(3)**.

- (1)** Article suspended until 31 December 1998, according to Article 3 of Law N° 26738, published on 07-01-97.
- (2)** Article suspended during the term of the Executive Commission of the Public Prosecutor's Office, until 31 December 2000, in accordance with Article 5 of Law N° 27009, published on 05-12-98.
- (3)** In accordance with Article 1 of Law N° 27367, published on 06-11-2000, the Executive Commission of the Public Prosecutor's Office is deactivated.

Ratification of appointments

Article 49.- The appointments of Public Prosecutor and Supreme Prosecutors shall be ratified or not by the Senate within thirty days of their receipt. This period shall include the days on which the Senate is functioning in ordinary and extraordinary sessions, if the latter has been convened for this purpose. The senatorial resolution ratifying the appointment shall be published in the official gazette. ⁽¹⁾⁽²⁾⁽³⁾

- (1)** Compare with [Article Twenty-First paragraph b of Law 26397](#), published on 07 December 1994.
- (2)** Article suspended until 31 December 1998, according to Article 3 of Law N° 26738, published on 07-01-97.
- (3)** Article suspended during the term of the Executive Commission of the Public Prosecutor's Office, until 31 December 2000, in accordance with Article 5 of Law N° 27009, published on 05-12-98.
- (4)** In accordance with Article 1 of Law N° 27367, published on 06-11-2000, the Executive Commission of the Public Prosecutor's Office is deactivated.

Swearing in of Prosecutors

Article 50.- The Public Prosecutor takes the oath of office before the President of the Republic. Supreme and Superior Prosecutors take the oath of office before the Prosecutor General.

Provincial Prosecutors are sworn in by the Senior Deputy Prosecutor or whoever replaces him or her in the exercise of such functions. **(1)(2)(3)(4)**

- (1)** Compare with [Article Thirty-seventh paragraph g of Law 26397](#), published on 07 December 1994
- (2)** Article suspended until 31 December 1998, according to Article 3 of Law N° 26738, published on 07-01-97.
- (3)** Article suspended during the term of the Executive Commission of the Public Prosecutor's Office, until 31 December 2000, in accordance with Article 5 of Law N° 27009, published on 05-12-98.
- (4)** Pursuant to Article 1 of Law N° 27367, published on 06-11-2000, the Executive Commission of the Public Prosecutor's Office is deactivated.

CHAPTER II

RESPONSIBILITIES, SANCTIONS

CONCORDANCES: R. N° 915-2001-MP-FN

R.N° 071-2005-MP-FN-JFS, Art.24

Responsibility of Prosecutors

Article 51.- The civil and criminal responsibilities of the members of the Public Prosecutor's Office are governed by legal regulations on the respective matter. Disciplinary liability is enforced by the Board of Supreme Public Prosecutors, following a hearing and defence of the accused. Disciplinary offences shall be determined by the Regulations. (*)

(*) Article modified by the Ninth Transitory, Complementary and Final Provision of Law N° 26623, published on 19-06-96, which reads as follows:

"Article 51.- The civil and criminal responsibilities of members of the Public Prosecutor's Office are governed by legal regulations on the respective matters, and disciplinary responsibility is enforced by the Governing Body of the Public Prosecutor's Office and the Supreme Prosecutor's Office for Internal Control, following a hearing and defence of the prosecutor summoned.

The Regulations shall determine the organisation and functions of the Supreme Internal Control Prosecutor's Office, as well as the procedure and disciplinary offences." ()*

(*) Article modified by Article 2 of Law N° 28149, published on 06-01-2004, which reads as follows: "Article 51.- Responsibility of Prosecutors.

The civil and criminal responsibilities of the members of the Public Prosecutor's Office are governed by legal regulations on the respective matter. Disciplinary responsibility is enforced by the governing body of the Public Prosecutor's Office and the Supreme Prosecutor's Office for Internal Control, which is headed by a Supreme Prosecutor appointed by the Board of Supreme Prosecutors for a non-extendable term of three (3) years.

(3) years. The function is full-time.

Likewise, the Supreme Prosecutor's Office of Internal Control is composed of:

- A retired or dismissed Supreme Prosecutor, of recognised probity and democratic conduct, elected by the other members of the Supreme Prosecutor's Office of Internal Control;
- A representative of the Bar Associations of the country, elected by their deans;
- A representative of the Law Faculties of the five (5) oldest public universities in the country, elected by their deans; and
- One representative of the Law Faculties of the five (5) oldest private universities in the country, elected by their deans.

These members shall exercise their functions for a non-extendable term of two (2) years, with exclusive dedication. The Supreme Prosecutor's Office of Internal Control is made up of a Central Office with headquarters in Lima, whose jurisdiction covers the entire territory of the Republic, being able to create decentralised Offices covering one or more judicial districts, establishing their composition and scope of jurisdiction, as well as their sanctioning powers. These offices shall have representatives of the Bar Association or Bar Associations of the judicial district or districts and of the Law Faculties of the same territorial area, elected in accordance with the provisions of the regulations of this Law, for a non-extendable term of two (2) years."

CONCORDANCIES: D.S. N° 001-2004-JUS, Art. 4.1.

Disciplinary sanctions

Article 52.- The only disciplinary sanctions that can be imposed are:

- a.- Reprimand;
- b.- Fine;
- c.- Suspension;
- and d.- Dismissal (*).

(*) CONCORDANCIES: See art. 21, inc. c) of the Law of the National Council of the Judiciary.

Disciplinary proceedings

Article 53.- Disciplinary sanctions shall be imposed in summary proceedings to be established by the relevant Regulations, upon a complaint or denunciation by the Minister of Justice, a Judge or Court, an interested party or another Public Prosecutor, submitted to the Prosecutor General, who shall commission one of the Supreme Public Prosecutors to investigate it. (*)

(*) Article modified by the Ninth Transitory, Complementary and Final Provision of Law No. 26623, published on 19-06-96, which reads as follows:

"Article 53.- Disciplinary sanctions shall be imposed in summary proceedings to be established by the relevant Regulations.

The Supreme Prosecutor's Office of Internal Control shall periodically visit, or when it deems it convenient, or at the request of the Governing Body of the Public Prosecutor's Office, the Public Prosecutor's Offices of the Republic to verify due compliance with the obligations that the law imposes on prosecutors and the personnel under their control".

Reprimand and fine

Article 54.- No summary procedure shall be required to impose the sanctions of reprimand or fine when the hierarchical superior, at the time of hearing the case, verifies that an offence has been committed; or when the Visiting Public Prosecutor discovers irregularities in the offices visited or verifies misconduct on the part of the visited office holder.

CONCORDANCIES: R.N° 071-2005-MP-FN-JFS, Art.16, inc e); Art.22

Determination of the sanction

Article 55.- Sanctions shall be applied according to the nature of the infringement, without it being necessary to follow the order in which they are set out in Article 52.

Fine

Article 56.- The fine shall not exceed 25% of the basic monthly salary and shall not be less than 5%.

Suspension

Article 57.- Suspension shall not exceed thirty days, with a reduction of 50% of the basic salary for the duration of the suspension.

Legality of the sanction

Article 58.- Members of the Public Prosecutor's Office may not be dismissed or suspended except for any of the reasons provided for in the Law or its Regulations, if, in the latter case, it is the consequence of a disciplinary offence; always with the guarantees respectively granted in defence of the accused.

Transfers

Article 59.- Transfers of members of the Public Prosecutor's Office, for whatever reason, may only be made at their request or with their consent.

Termination of the office of the Public Prosecutor

Article 60.- The office of Prosecutor shall be terminated:

- a) By dismissal or retirement.
- b) By resignation, as soon as it is accepted.
- c) By reason of the impediment referred to in Article 47, in which the person whose appointment was impeded is removed, if it is not possible to transfer him/her to another judicial district.
- d) By disqualifying illness or supervening incapacity, of a permanent nature.
- e) By dismissal.

Reprimand to third parties for insulting prosecutors.

Article 61.- Members of the Public Prosecutor's Office may reprimand anyone who insults them by word of mouth or in writing, as well as the lawyer who authorises it, bringing the fact and the disciplinary sanction imposed to the attention of the respective Bar Association.

In cases of recidivism or of misconduct which, in his opinion, requires a greater disciplinary penalty, he shall report the lawyer to his Bar Association, for any disciplinary action that may be appropriate. They may proceed in the same way against anyone who promotes disorder in the proceedings in which they are involved.

CHAPTER III**BOARDS OF PROSECUTORS****Board of Supreme Public Prosecutors**

Article 62.- *The Supreme Public Prosecutors shall meet in a Board under the chairmanship of the Prosecutor General and at his or her summons (*)*

(*) Article modified by the Ninth Transitory, Complementary and Final Provision of Law N° 26623, published on 19-06-96, which reads as follows:

Article 62.- The Supreme Public Prosecutors meet, under the presidency of the Prosecutor General and at his summons.

The powers of the Board of Supreme Public Prosecutors are as follows:

To request the disciplinary sanction of dismissal of Prosecutors from the National Council of the Judiciary;

To approve, at the initiative of the Head of the Public Prosecutor's Office, the budget of the Public

Prosecutor's Office; To elect, by secret ballot, the representative of the Public Prosecutor's Office before the

National Jury of

Elections and the National Council of the Magistracy, in accordance with the Constitution."

CONCORDANCIES: R.N° 058-2005-MP-FN-JFS

Board of Senior and Provincial Prosecutors

Article 63.- *When there are three or more Senior Prosecutors, they meet in a Board under the chairmanship and summoned by the most senior Prosecutor or whoever is exercising their functions. The same applies to the Provincial Prosecutors in civil and criminal matters of a province, who form a single Board.(1)(2)(3)(4)*

(1) Article suspended by the Second Transitory, Complementary and Final Provision of Law No. 26623, published on 19-06-96.

(2) Article suspended during the term of the Executive Commission of the Public Prosecutor's Office, until 31 December 2000, in accordance with Article 5 of Law N° 27009, published on 05-12-98.

(3) Pursuant to Article 1 of Law N° 27367, published on 06-11-2000, the Executive Commission of the Public Prosecutor's Office was deactivated.

(4) Article modified by Article 1 of Law N° 29286, published on 04 December 2008, which reads

as follows: Article 63.- Board of Superior and Provincial Prosecutors.

In judicial districts where there are three or more Senior Public Prosecutors, the Board of Senior Public Prosecutors is constituted, led by its President. The same applies to the Titular Provincial Prosecutors".

TITLE III ATTRIBUTIONS**Representation of the Public Prosecutor's Office by the Public Prosecutor.**

Article 64.- The Prosecutor General represents the Public Prosecutor's Office. His authority extends to all the officials who are part of it, whatever their category and specialised functional activity.

Military Justice Prosecutors are not covered by the provisions of this Law; but they shall inform the Prosecutor General when they are requested by him/her about the status of a trial or about the situation of a defendant in the Military Prison Courts. ()*

(*) Paragraph declared unconstitutional by Resolution N° 2 of the Clarification of File N° 0023-2003-AI-TC, published on 07-01-2005.

Functions of the Public Prosecutor's Office

Article 65.- *The Prosecutor General's Office is responsible for:*

1.- To preside over the National Council of the Magistracy ()*

() See art. 36 of Law N° 26397, published on 07/12/94.*

2. - To convene and preside over the Board of Supreme Public Prosecutors.

3.- To sit, either by himself or through his appointed representatives, on the Councils and other public bodies established by law.()*

(*) Article modified by the Ninth Transitory, Complementary and Final Provision of Law No. 26623, published on 19-06-96, which reads as follows:

"Article 65.- It is incumbent upon the Public Prosecutor of the Nation:

1.-Convene and preside over the Board of Supreme Prosecutors;

2.-To be a member, either by himself or through his appointed representatives, of the Councils and other public bodies specified by law".

Powers of the Prosecutor General

Article 66.- *The powers of the Prosecutor General are as follows*

1. - To bring before the Court of Constitutional Guarantees an action for the partial or total unconstitutionality of laws, legislative decrees, regional regulations of a general nature and municipal ordinances that contravene the Political Constitution, in form or substance.

2.- To bring, before the appropriate Chamber of the Supreme Court, the civil and criminal actions that may be appropriate against the President of the Republic, Senators and Deputies, Ministers of State, Members of the Supreme Court of Justice, members of the Tribunal of Constitutional Guarantees and senior officials of the Republic as indicated by law, after the Senate has declared that a case has been brought

Constitutional Guarantees and high-ranking officials of the Republic specified by law, following a declaration by the Senate that proceedings have been instituted.

3.- To transmit to the Chamber of Deputies, with its own reasoned opinion and for the purposes of the impeachment referred to in Articles 183 and 184 of the Constitution, the complaints submitted to it by the National Council of the Judiciary in cases of presumed offences in the actions of Supreme Court Justices. If the Senate declares, in such cases, that there is cause for the formation of a case, the Prosecutor General shall bring the corresponding criminal action before the competent Chamber of the same Court ().*

(*) See art. 32, in fine, of Law N° 26397, published on 07/12/94.

4. - To decide on the exercise of criminal action against judges of second and first instance for crimes committed in their judicial actions when there is a complaint or denunciation from the Minister of Justice, from a Board of Public Prosecutors or from the aggrieved party. If the complaint is made by the President of the Supreme Court, the action shall be brought without further proceedings. In such cases, the Public Prosecutor shall instruct the appropriate Public Prosecutor to bring the action. If, where appropriate, the acts or omissions denounced only give rise to the application of disciplinary measures, he shall refer the proceedings to the President of the Supreme Court of Justice ().*

(*) See art. 33 of Law 26397, published on 07/12/94.

5.- Proceed as provided for in the preceding paragraph, when the complaint or denunciation is directed against a member of the Public Prosecutor's Office. If the act or omission only gives rise to a disciplinary sanction, he/she will pass the proceedings to one of the Supreme Public Prosecutors so that he/she may act on the process and report to the Board of Supreme Public Prosecutors.

6.- To bring charges, ex officio or by complaint from any person, by means of the appropriate legal action or the relevant preparatory proceedings, against public officials and civil servants who are required by law to make sworn declarations of assets and income, or who administer or manage State funds or those of bodies supported by the State, when illicit enrichment is presumed, before the competent judge or court; or before the Office of the Comptroller General of the Republic, if only irregularities in such administration are noted.

If the proceedings are to be pursued outside the capital of the Republic, he shall instruct the appropriate Public Prosecutor for the purpose.

7. - to bring, either ex officio or on the basis of a sufficiently substantiated complaint from any person, such actions as may be appropriate against public officials and employees for acts or omissions that may render them liable, in accordance with the law on the matter. If the proceedings have to take place outside the capital of the Republic, he shall instruct the appropriate Public Prosecutor for the purpose. If the act or omission only gives rise to the application of disciplinary measures, it shall request the opening of the corresponding proceedings.

8. - to act on its own behalf or through a Public Prosecutor, as is most effective and appropriate, before the appropriate authority, to clarify the facts, put an end to the harmful or damaging situation and, if necessary, request the punishment of those responsible, when it becomes aware, in any way, of acts or omissions contrary to the rights of the individual or citizen, or of minors, disabled persons and other persons entitled to invoke the action of the State, except in the case of private action.

9. - to visit the Public Prosecutor's Offices of the Republic periodically or whenever he/she deems it appropriate, in order to verify due compliance with the obligations imposed by law on prosecutors and their staff. For this purpose he may request the Judges and Courts, officials and public bodies, the information and the documentation that he deems appropriate. It deems appropriate. He may also hear lawyers and other professionals or their representative associations, as well as litigants or other persons, when they request a hearing to inform him of the actions of those under investigation.

10.- Any other duties established by law. ()*

(*) Article modified by the Ninth Transitory, Complementary and Final Provision of Law No. 26623, published on 19-06-96, which reads as follows:

"Article 66.- The following are attributions of the Public Prosecutor of the Nation:

- 1.-To bring an action of unconstitutionality before the Constitutional Court.
- 2.-To bring before the appropriate Chamber of the Supreme Court the civil and criminal actions that may be brought against the senior officials mentioned in Article 99 of the Political Constitution of the State, following an accusatory resolution by Congress;
- 3.-Form charges before the Judiciary when illicit enrichment of public officials and civil servants is presumed; and
- 4.-To exercise the right of legislative initiative, in accordance with the Constitution".

Article 67.- Any natural person who has a direct interest in relation to the object of the complaint may complain to the Public Prosecutor of the Nation, either by himself or through another or a Public Prosecutor, without any impediment to this being the nationality, residence, sex, minority of age, legal incapacity of the complainant, his or her internment in a social readaptation or reclusion centre, school, hospital, clinic or in general, any special relationship of subjection or dependence in fact or in law to a third person or to a Public Administration. (*)

(*) Article repealed by the First Final and Transitory Provision of Law N° 26520, published on 08-08-1995.

Article 68.- Deputies and Senators, individually, the Commissions of Inquiry appointed by Congress or one of the Legislative Chambers, their Commissions for the Protection and Defence of Human Rights; as well as associations legally constituted for the latter purpose, may request the intervention of the Public Prosecutor of the Nation to order another Public Prosecutor to promote the investigation or clarification and sanction, where appropriate, of specific acts of the Public Administration, in relation to a citizen or group of citizens and the rights granted to them by the Constitution or the laws. (*)

(*) Article repealed by the First Final and Transitory Provision of Law N° 26520, published on 08-08-1995.

Article 69.- The Prosecutor General shall ensure effective compliance with the independence of judicial bodies and the proper administration of justice, for which purpose he may request from the President of the Supreme Court any information he deems necessary. If, as a result of his investigation, he considers that there has been an abnormal act of the Administration of Justice or an irregularity on the part of one of its officials, he shall inform the said President with the result of his investigation, for the consequent legal effects, without, in any case, the action of the Prosecutor General being able to interfere in the exercise of jurisdictional power. In the event that it should find that an authority outside the judicial body is interfering in the latter's own functions, it shall proceed to take the appropriate legal action against the former in order to put an end to the interference and punish the person responsible. (*)

(*) Article repealed by the First Final and Transitory Provision of Law N° 26520, published on 08-08-1995.

Article 70.- The Prosecutor General shall ensure respect for the rights of the person proclaimed by Title I, Chapter I of the Constitution in the sphere of public administration, including the Armed Forces and Police Forces, without in any case interfering in what is proper to the respective commands. To this end, it shall act on any complaints or denunciations it receives in this regard, requesting a prior report from the relevant Minister of State. It shall inform the latter in due time of the outcome of the investigation, with such opinions or recommendations as it may deem appropriate. (*)

(*) Article repealed by the First Final and Transitory Provision of Law N° 26520, published on 08-08-1995.

Inviolability of correspondence addressed to the Prosecutor general

Article 71.- In accordance with the provisions of Article 2, paragraph 8 of the Constitution, correspondence addressed to the Prosecutor General from any barracks, ship, aircraft, police station, detention or social rehabilitation centre, hospital, clinic or similar, regardless of their location in the Republic, may not be subject to seizure or censorship of any kind. Nor may conversations between the Public Prosecutor or his or her delegate and any of the persons referred to in the first part of this article be listened to or interfered with.

Infringement of these provisions is an offence under Article 362 of the Criminal Code.

Article 72.- Any complaint shall be submitted by the interested party in writing, on ordinary paper, within six months of the event giving rise to it. The signature of a lawyer shall not be required for its admission, nor shall the payment of fees, duties, mutual ballots, or any other formal or economic requirement be required. (*)

(*) Article repealed by the First Final and Transitory Provision of Law No. 26520, published on 08-08-1995.

Article 73.- Once the complaint has been received, the Prosecutor General may admit it for processing or reject it. In the latter case, he/she shall do so by means of a substantiated resolution indicating, in each case, which are the appropriate means of asserting the action or claim, if, in his/her opinion, there are any. No appeal shall lie from this decision (*).

(*) Article repealed by the First Final and Transitory Provision of Law N° 26520, published on 08-08-1995.

Article 74: Once the complaint has been admitted for processing, it shall be investigated in a summary manner, and the accompanying documentation shall be added and records shall be drawn up of the statements and any other proceedings that may be carried out. In any case, the Prosecutor General or the Public Prosecutor in charge of the complaint on behalf of the former shall inform the administrative body concerned so that it may submit a written report on the matter within a non-extendable period of thirty days, plus the time allowed for distance. Refusal or negligence on the part of the official obliged to issue a report shall give rise to a written summons to do so within five days of its receipt, plus the period of distance, under penalty of being denounced for the crime of resistance or disobedience to a public official. (*)

(*) Article repealed by the First Final and Transitory Provision of Law N° 26520, published on 08-08-1995.

Article 75.- During the verification of a complaint or the investigation of a fact that has given rise to it, the Public Prosecutor of the Nation or the Public Prosecutor to whom he/she has been entrusted, may appear before any body or agency of the Public Administration to obtain whatever data and information may be necessary, or to proceed to the study of administrative files and any other documents that he/she may consider useful for the investigation. To this end, he or she may not be denied access to any administrative file or documentation related to the facts that are the subject of the complaint or investigation, except only those referred to in the final part of article 6 of this law. (*)

(*) Article repealed by the First Final and Transitory Provision of Law N° 26520, published on 08-08-1995.

Article 76.- When the complaint admitted for investigation affects the conduct of persons in the service of the Public Administration, the Prosecutor General shall inform the Head of the corresponding Administrative Body, with copies addressed to the persons affected and to their immediate superior. In this case, the person concerned shall report the facts giving rise to the complaint through his or her hierarchical superior within five days of receipt of the aforementioned copy, attaching any documentation he or she deems appropriate for his or her defence. The Prosecutor General or the Public Prosecutor in charge of the investigation may verify the veracity of the said report and its accompanying documentation and summon the person concerned for a personal interview, which shall be recorded in the minutes if the investigator deems it appropriate or if the declarant so requests. (*)

(*) Article repealed by the First Final and Transitory Provision of Law No. 26520, published on 08-08-1995.

Article 77.- The hierarchical superior or the administrative body that prohibits the official or servant under his orders to respond to the request of the Public Prosecutor of the Nation or the Public Prosecutor in charge of the investigation of a complaint, shall inform the latter in writing, stating the reasons, as well as the requested or summoned person. If the Public Prosecutor nevertheless insists on his or her request, the prohibition shall be lifted by the relevant hierarchical or administrative superior. In any case, the person issuing the prohibition shall be subject to the legal responsibilities that may be applicable, if it is established that the prohibition was unjustified. (*)

(*) Article repealed by the First Final and Transitory Provision of Law N° 26520, published on 08-08-1995.

Article 78.- When it emerges from the investigation carried out that there has been functional misconduct, the Public Prosecutor of the Nation or the Public Prosecutor in charge of the investigation shall contact the hierarchical superior or the administrative body to which the person who is the subject of the complaint belongs, to inform him/her of this result and his/her recommendations in this regard. A copy of this official letter shall be sent directly to the person concerned or to the respective body (*).

(*) Article repealed by the First Final and Transitory Provision of Law No. 26520, published on 08-08-1995.

Article 79.- Complaints, their procedures and resolutions do not interrupt or suspend the terms or deadlines of the administrative or judicial proceedings on which they are based. Nor do they annul or modify what has been acted upon or resolved in the latter.

However, if the Public Prosecutor's Office is convinced, as a result of the investigation, that strict compliance with the resolutions in an administrative file will lead to unfair or harmful situations for the persons concerned, it shall bring the fact to the attention of the competent administrative body so that it may adopt the appropriate measures (*). (*)

(*) Article repealed by the First Final and Transitory Provision of Law N° 26520, published on 08-08-1995.

Knowledge of the Public Prosecutor of the Nation of wilful misconduct

Article 80.- When the Prosecutor General, due to the exercise of the functions of his office, becomes aware of a presumably criminal conduct or facts, he shall send the documents that prove it, as well as his instructions, to the corresponding Superior Prosecutor, so that the latter, in turn, transmits them to the competent Provincial Prosecutor in criminal matters, so that he may file a criminal complaint or open the appropriate prior police investigation.

"Article 80-A.- Appointment of a team of prosecutors for complex cases

The Prosecutor General, as he/she deems appropriate, may designate, when the circumstances so require and due to the complexity of the cases, a team of Provincial Criminal Prosecutors and Deputy Prosecutors, under the coordination of a Senior Prosecutor, to undertake the preliminary investigation and to participate in the criminal proceedings at the corresponding stage. In these cases, he/she may also designate a senior prosecutor to intervene in the procedural stages within his/her competence.

In order for the Prosecutor General to exercise this power, the following is required:

- a) That the offences are punishable by a custodial sentence of no less than four years;
- b) That there is a connection between them;
- c) That they are against more than ten persons under investigation, or against an equal number of persons; and,
- d) That due to the characteristics of the facts there is a special difficulty in the search for evidence". (*)

(*) Article incorporated by the Sole Article of Law N° 27380, published on 21-12-2000.

"Article 80-B.- Appointment of Specialised Prosecutors for certain offences

The Prosecutor General, with the prior approval of the Board of Supreme Public Prosecutors, may designate prosecutors to intervene, according to their category, in the investigation and trial of all those criminal offences linked to each other or which have similar characteristics and which require specialised intervention by the Public Prosecutor's Office.

The regulations to be issued by the Board of Supreme Prosecutors, within a period of no more than 15 (fifteen) days, and at the initiative of the Public Prosecutor, shall establish the territorial jurisdiction, organisation, operation and coordination and supervision mechanisms that correspond to these specialised bodies". (*)

(*) Article incorporated by the Sole Article of Law N° 27380, published on 21-12-2000.

CONCORDANCIES: R. N° 009-2001-MP-FN-JFS (REGULATION)

Jurisdiction of the Supreme Prosecutors

Article 81.- Of the Supreme Public Prosecutors, one deals with criminal matters, another with civil matters and the third intervenes in contentious-administrative proceedings in accordance with their respective specialities and the provisions of this law and its regulations.

"Likewise, the Supreme Military and Police Criminal Prosecutor acts in military and police criminal matters under the jurisdiction of the Specialised Jurisdiction in Military and Police Criminal Matters, and the Supreme Military and Police Criminal Prosecutor acts in the area of Control of the Public Prosecutor's Office, "in accordance with the provisions of the Law on the Organisation, Functions and Jurisdiction of the Specialised Jurisdiction in Military and Police Criminal Matters". (*)

(*) Paragraph added by the Fifth Amending and Repealing Provision of Law No. 28665, published on 07 January 2006. Subsequently, the aforementioned Provision was declared unconstitutional at the end "in accordance with the provisions of the Law of Organisation, Functions and Jurisdiction of the Specialised Jurisdiction in Military and Police Criminal Matters", by Resolution N° 01 of File N° 0006-2006-PI-TC, published on 20 July 2006, which, in accordance with Resolution 5, will have a vacatio sententiae that will expire on 31 December 2006. Furthermore, Resolution 6 states that the vacatio sententiae period should not only be used for the issuance of the provisions that the Legislator, in the use of his constitutional powers, may establish, but also to have a specialised jurisdictional organisation in military criminal matters compatible with the Constitution during this period.

Powers of the Supreme Criminal Prosecutor

Article 82.- The Supreme Criminal Prosecutor shall be responsible for:

1- To file, when he/she considers it appropriate, the appeal for review of the conviction before the Full Chamber of the Supreme Court or to participate in the proceedings that give rise to it when it is filed by the convicted person or another person to whom it is granted by law; proposing, in any case, the compensation that corresponds to the victim of the miscarriage of justice or his/her heirs.

2. - To deduce the nullity of what has been done in criminal proceedings in which procedural irregularities have been committed to the detriment of the defendant's right to defence, or the defendant has been convicted in absentia, or by reviving a process that has expired, or by committing some other serious breach of procedural law.

3. - To request the President of the Supreme Court to open disciplinary proceedings against the judge or members of the Court who have intervened in the criminal proceedings in which the procedural defects referred to in the preceding paragraph have been committed.

It shall refer the matter to the Public Prosecutor if it is a question of the civil or criminal liability of the said judges or if the person responsible for the offence is a member of the Public Prosecutor's Office, for the consequent effects.

4. - To issue an illustrative opinion in extradition proceedings, pronouncing on whether the extradition request is admissible or inadmissible.

5. to instruct, by the quickest possible means, the Provincial Civil Prosecutor of the place where the assets of the convicted person are located to request the judicial appointment of a guardian within 24 hours of the sentence being enforced.

6.- Any others established by law (*).

(*) Pursuant to the Sole Article of Law No. 28311, published on 04-08-2004, it is provided that the investigation and prosecution of offences against the National Superintendent of Tax Administration or the Deputy Superintendents, in the exercise of their functions, and up to five (5) years after they have ceased to hold such functions, shall be heard by the Supreme Criminal Prosecutor's Office and by the Criminal Chambers of the Supreme Court of Justice of the Republic, respectively.

Functions of the Supreme Criminal Prosecutor

Article 83.- The Supreme Criminal Prosecutor shall issue an opinion prior to sentencing in the following cases:

- 1- In cases in which a custodial sentence of more than ten years has been imposed.
- 2- For the crime of illicit drug trafficking.
- 3- For crimes of terrorism, assassination and genocide.
- 4- For smuggling and customs revenue fraud.
- 5- For offences classified as social-political in the sentence appealed against or in the tax accusation.
- 6- For crimes committed by means of the press, radio, television or any other means of social communication, as well as crimes of suspension, closure or impediment to the free circulation of any organ of expression.
- 7- For the crime of usurpation of public or private property.
- 8- For the offence of air piracy.
- 9- For the crime of rioting.
- 10- For the crime of sabotage with damage or hindering of public services; or of the functions of State or Regional or Local Government agencies; or of activities in centres of production or distribution of necessary consumer goods, with the aim of disrupting or affecting the economy of the country, the region or localities.
- 11- For crimes of extortion, as well as extortion and embezzlement.
- 12- For crimes against the State and National Defence.
- 13- For crimes of rebellion and sedition.
- 14- For offences against the will of the people.
- 15- For offences against the duties of office and professional duties.
- 16- For offences against public faith.
- 17- For offences originally heard by the Supreme Court.
- 18- For other offences established in the Code of Criminal Procedure.

Powers of the Supreme Civil Prosecutor

Article 84.- The Supreme Civil Prosecutor has the following powers:

1- In issuing an opinion, the Court may declare the proceedings null and void if it becomes aware, in any way, and if it proves this by examining the case file and the documents it requests for this purpose, that the judgment appealed against has been issued citing a minor or incompetent person with the application, or in cases where a serious procedural irregularity has been committed which would result in the disregard or violation of any of the rights enshrined in the Constitution, and to report to the President of the Supreme Court of Justice the Judges or Members of the Court who have intervened in the proceedings.

2- If the civil or criminal liability of the said judges is found, or if the person responsible for the infringement is a member of the Public Prosecutor's Office, he/she shall inform the Public Prosecutor for the consequent effects.

3- To request the President of the Supreme Court of Justice to proceed as appropriate to ensure the independence of the judicial body and the correct administration of justice in cases where the Public Prosecutor has had knowledge, in any way, to the contrary.

4- Any other duties established by law

Functions of the Supreme Civil Prosecutor

Article 85.- The Supreme Civil Prosecutor shall issue an opinion prior to the ruling to be issued in the following proceedings:

1- On the nullity or annulment of marriage, separation of the married couple or divorce, insofar as it is aimed at ensuring the rights of minor and incapable children, as well as those of the spouse without assets of his or her own and the defence of the marriage bond.

2- In which minors or incapable persons have moral or economic rights or interests.

3- In those in which an absent party is a party.

4- In cases of division and participation of assets in de facto unions referred to in Article 9 of the Political Constitution, insofar as the aim is to secure the assets and rights of the parties and of the common children.

5- In cases of contestation or contestation of matrimonial filiation.

6- In cases of civil liability of Ministers of State and other public officials and servants.

7- in cases of enforcement of judgments issued abroad.

8- In those cases in which the competence of Peruvian Judges and Courts is disputed. 9.-

9- In other cases determined by law.

Powers of the Supreme Prosecutor for Contentious-Administrative Matters

Article 86.- The Supreme Prosecutor for Contentious-Administrative Matters shall have the following powers:

1- To issue an opinion prior to the final Resolution in contentious-administrative proceedings.

2- others established by law.

Duties of the Senior Senior Public Prosecutor of the Judicial District

Article 87.- The most senior Senior Prosecutor of each judicial district is responsible for:

1- To convene and preside over the District Council of the Judiciary.

2- To convene and preside over the Board of Prosecutors before the High Court and to exercise the powers of the latter in cases where it has not been constituted or is unable to meet.

3- Any other duties resulting from the Law. (*)

(*) Article modified by Article 1 of Law N° 29286, published on 04 December 2008, which reads as follows:

"Article 87.- Election of the President of the Board of Superior and Provincial Prosecutors.

The President of the Board of Senior Prosecutors is elected for a period of two (2) years from among the Titular Senior Prosecutors. In the event of a tie, the candidate with the most seniority in the position will be elected. The President of the Board of Provincial Prosecutors will be elected in the same manner.

In judicial districts where there is no Board of Senior Public Prosecutors, the functions of the President of the Board of Senior Public Prosecutors are assumed on a rotating basis by the Titular Senior Public Prosecutors. If there are no Titular Prosecutors, the Provisional Senior Prosecutors rotate. The same rule shall apply in the case of Provincial Prosecutors".

"Article 87-A.- Powers of the President of the Board of Senior Public Prosecutors.

The powers of the President of the Board of Senior Public Prosecutors are as follows:

1. To represent the Public Prosecutor's Office in the judicial district under his or her jurisdiction;
2. To convene and preside over the Board of Senior Public Prosecutors;
3. exercise the functions required of their judicial districts, in accordance with the institutional policy governing the Public Prosecutor's Office, planning, organising, directing and supervising the activities of the Prosecutor's Offices of the judicial district, with the knowledge of the Prosecutor General;
4. presenting initiatives and proposals to the Public Prosecutor's Office on matters within its competence;
and,
5. any other duties resulting from the law and the Regulations on the Organisation and Functions of the Public Prosecutor's Office". (*)

(*) Article added by Article 2 of Law N° 29286, published on 04 December 2008, which reads as follows:

Replacement of the most senior prosecutor

Article 88.- In cases of holidays, leave or temporary impediment of the most senior prosecutor, the powers referred to in the preceding article shall be exercised by the next most senior prosecutor. (*)

(*) Article amended by Article 1 of Law N° 29286, published on 04 December 2008, which reads as follows:

"Article 88.- Replacement by the most senior Prosecutor.

If the President of the Board of Senior Prosecutors is unable to act, the most senior Senior Prosecutor shall take over the position for as long as the impediment lasts, as well as in the case of holidays or leave of absence. In the event of the death or resignation of the President of the Board of Senior Public Prosecutors, the most senior Senior Public Prosecutor takes office and calls for a new election within fifteen (15) calendar days.
(15) calendar days. The same shall apply to the President of the Board of Provincial Prosecutors". (*)

(*) In accordance with Article 3 of Law N° 29286, published on 04 December 2008, it is specified that when in the Organic Law of the Public Prosecutor's Office, Legislative Decree N° 052, reference is made to the terms "Senior Public Prosecutor" and "Senior Public Prosecutor", it should be understood as "President of the Board of Senior Public Prosecutors" or "President of the Board of Provincial Public Prosecutors", as the case may be.

Powers of the Senior Civil Prosecutor

Article 89.- The powers of the Senior Civil Prosecutor are as follows:

A. To issue an opinion prior to the decision that puts an end to the proceedings:

- 1- In the trials and proceedings referred to in Article 85 of this Law.
- 2- In incidents concerning opposition to the marriage of those who intend to marry.
- 3- In proceedings aimed at safeguarding public morals and decency.
- 4- In proceedings to resolve conflicts and competition disputes
- 5- In proceedings brought by third parties against the founders of a public limited company incorporated by public subscription, in cases of joint and several liability as provided for in the relevant law.
- 6- In cases of rehabilitation of the bankrupt.
- 7- In third-party actions against the seizure of the assets of the criminal defendant or of the civilly liable third party, as well as in the bankruptcy of either of them. In these cases, he may request the appropriate information from the Senior Criminal Prosecutor who heard the attachment or its substitution.
- 8- In amparo actions (*)

(*) Subsection repealed by Article 45 of Law N° 23506, published on 08-12-82.

- 9- In contentious-administrative proceedings.
- 10- In all other matters specified by law.

B. The opinion shall be merely illustrative and its omission shall not cause procedural nullity in the cases expressly indicated by the Law.

"Article 89. - A.- The powers of the Senior Family Prosecutor are as follows:

a) To issue an opinion prior to the decision that puts an end to the instance:

1. In the proceedings referred to in Article 85 (1), (2), (3), (4) and (5) of this Law.
2. In incidents concerning opposition to the marriage of those who intend to contract it.

b) The opinion will be merely illustrative and its omission will not cause procedural nullity in the cases expressly indicated by law.

1. To issue an opinion prior to the final superior decision: When the competent Court reviews the investigation carried out in cases of a minor who has not been found to be in abandonment or moral danger or who is presumed to be the perpetrator or victim of a crime.

2. In investigations carried out in cases of dangerous minors, or in a state of abandonment or moral danger, or of commission of a crime, in which the hearing held by the competent court shall be strictly private and shall take precedence". (*)

(*) Article added by Article 5 of Law N° 27155, published on 11-07-99.

Intervention of the Senior Public Prosecutor in habeas corpus actions

Article 90.- Once the decision declaring a habeas corpus action founded on facts constituting a crime has been consented to or executed, the senior prosecutor shall instruct the provincial criminal prosecutor to bring the corresponding action, or the senior prosecutor shall do so if the competent judicial body is the superior or second instance court. If the action arising in such a case is for the guardianship of the minor, it shall be brought by the Provincial Public Prosecutor for Civil Matters before the Juvenile Judge.

Intervention of the Senior Criminal Prosecutor

Article 91.- The Senior Criminal Prosecutor shall issue an opinion prior to the final superior decision:

1. In matters of judicial competence.
2. In cases of disqualification or disqualification of the Investigating Judges and Members of the High Court.
3. In cases of accumulation and decumulation of proceedings.
4. In preliminary questions, prejudicial questions and exceptions that are brought against the criminal action.
5. In cases in which the aggrieved party, his relatives or legal representatives are constituted as a civil party.
6. In cases of seizure to ensure civil reparation and in cases of substitution by surety or collateral.
7. In those referring to the provisional release of the accused.
8. In cases in which the Examining Magistrate orders the unconditional release of the accused.
9. In the special procedure for the repression, with punishment, of those responsible for the non-fulfilment of the duties of family assistance and of contraventions to the detriment of minors. In these cases, the Prosecutor General shall request in particular that the competent court give preference to the hearing, which must take place in private.
10. When the competent court reviews the investigation carried out in cases where a minor is not found to have been abandoned or in moral danger, or is presumed to be the perpetrator or victim of an offence.
11. In investigations carried out in cases of dangerous minors, or in a state of abandonment or moral risk, or of the commission of a crime, in which the hearing held by the competent court shall be strictly private and shall take precedence.
12. In all other cases established by law.

Powers of the Senior Criminal Prosecutor

Article 92.- Once the investigation has been received, the Senior Criminal Prosecutor may:

1- Request its extension, if he considers it to be incomplete or defective. In these cases, he shall indicate the evidence omitted or the proceedings that must be retaken or completed within the extension period; and shall specifically instruct the Provincial Criminal Prosecutor.

2- Request the provisional closure of the case on the grounds that the offender has not been discovered or the responsibility of the accused has not been proven. In these cases, the Provincial Criminal Prosecutor will instruct the Provincial Criminal Prosecutor to extend the police investigation that led to the provisionally closed investigation, in order to identify and apprehend the person responsible.

3- To remove the Provincial Public Prosecutor who participated in the police investigation or in the investigation from the process if, in his opinion, he acted with malice or guilt and to designate the Prosecutor or Deputy Prosecutor who should replace him. As a consequence of his or her dismissal, he or she shall immediately submit his or her report on the matter to the Prosecutor General, together with any documentation he or she deems useful.

4- Formulate a substantial accusation if the evidence gathered in the police investigation and in the investigation has led to the conviction that the accused is guilty; or merely formally, so that the accused may be tried in due course, if there are reasonable doubts as to his or her guilt.

In both cases, the written accusation will contain an assessment of the evidence, an ordered list of the proven facts and those which, in the accused's opinion, have not been proven; the classification of the crime and the proposed penalty and civil reparation.

In the formal accusation, he shall offer the evidence he deems necessary to fully establish the responsibility of the accused and shall indicate the time limit within which it will be processed.

For the latter purpose, he/she shall instruct, independently and in detail, the Provincial Prosecutor who intervened in the criminal proceedings or the incumbent or the Deputy he/she appoints in his/her place, for the performance of the evidence in the amplifying police investigation to be carried out within the period indicated, with the timely summoning, under responsibility, of the accused and his/her defence counsel.

The evidence thus gathered will be ratified at the trial.

Functions of the most senior Provincial Prosecutor

Article 93.- *It is the responsibility of the most senior Provincial Prosecutor of the province in which he/she acts to convene and preside over the corresponding Board of Prosecutors or to exercise its powers if it has not been constituted or if it is not possible to convene it in a timely manner, as well as the other powers established by law. (*)*

(*) Article amended by Article 1 of Law N° 29286, published on 04 December 2008, which reads as follows:

"Article 93.- Functions of the President of the Board of Provincial Prosecutors.

The powers of the President of the Board of Provincial Public Prosecutors are as follows:

1. to convene and preside over the Board of Provincial Prosecutors;
2. to execute the decisions of the Board of Senior Public Prosecutors and of the President of the Board of Senior Public Prosecutors;
3. to present initiatives and proposals to the President of the Board of Senior Public Prosecutors in matters within its competence;
4. coordinating the criteria for common action in the exercise of their functions; and,
5. any other duties resulting from the law and the Regulations on the Organisation and Functions of the Public Prosecutor's Office".

Duties of the Provincial Criminal Prosecutor

Article 94.- The duties of the Provincial Criminal Prosecutor are as follows:

- 1- Proceed as provided for in Article 10 of this Law.

If the detainee refuses to appoint defence counsel, the prosecutor shall call the public prosecutor or, failing that, shall appoint one of those on the list that the corresponding Bar Association shall draw up, in due course, for this purpose. The Public Prosecutor shall inform the defence counsel and, where appropriate, the bar association of his summons or his designation, immediately and in such manner as the circumstances permit, and shall record this in the police report.

2- When the injured party or any member of the public, in cases of popular action, reports a crime, a report shall be drawn up and signed by the complainant, if this has not been done in writing, for the purposes referred to in Article 11 of this law. If the Public Prosecutor considers the complaint to be admissible, he may, alternatively, open a police investigation to gather the necessary evidence or formalise it before the Examining Magistrate. In the latter case, he shall state the facts of which he is aware, the offence they typify and the penalty for which they are punishable, according to the law; the evidence he has and that which he offers to act or hopes to obtain and offer in a timely manner. Upon completion of the police report without sufficient evidence to file a complaint, the Public Prosecutor shall so declare; or when sufficient evidence has been gathered, he shall proceed to formalise the complaint before the Examining Magistrate as established in the present article. ()*

(*) Paragraph amended by Article 6 of Law No. 29574, published on 17 September 2010, which reads as follows:

"2. Once an act considered to be a crime has been reported by the injured party or any of the people, in cases of popular action, a report shall be drawn up and signed by the complainant, if he/she has not done so in writing, for the purposes referred to in Article 11 of this Law. If the public prosecutor considers the complaint to be inadmissible, he shall reject it outright in a duly reasoned decision or, alternatively, he shall open a preliminary investigation to gather the necessary investigative acts or formalise it before the criminal judge. In the latter case, he or she will set out the facts of which he or she is aware, the offence that they typify and the penalty for which they are punishable, according to the law; the acts of investigation that he or she has available and those that he or she offers to carry out or hopes to obtain and offer in a timely manner. At the end of the preliminary investigation without sufficient acts of investigation, the public prosecutor will declare it so, ordering the filing of the complaint; or when the acts of investigation that he considers sufficient have been gathered, he will proceed to formalise the complaint before the criminal judge. In the event of failure to comply with the deadlines for carrying out the corresponding prosecutorial acts, a report must be sent to the Supreme Prosecutor's Office for Internal Control, justifying the delay, under disciplinary responsibility."

3- To denounce to the Senior Public Prosecutor those Investigating Judges who incur in manifest partiality or inexcusable guilt. If the High Public Prosecutor endorses the complaint, the Correctional Court shall order the proceedings to be regularised or shall appoint a replacement Examining Magistrate.

4- To participate in the investigation for the purpose of acting on the evidence offered, to demand that the deadlines established in the law be observed and to file the appeals granted by the law.

5- To participate and lodge the appropriate appeals in the relevant cases referred to in Article 91 of this law.

6- Any other powers established by law.

Powers of the Provincial Criminal Prosecutor

Article 95.- The Provincial Criminal Prosecutor shall have the following powers

1. To bring the appropriate criminal action when the judge in the case brings to his attention indications of a prosecutable offence committed ex officio in the substantiation of a civil proceeding.
2. Request the seizure of movable property and the entry of the relevant decision in the registry records of the real estate owned by the accused or the civilly liable third party that is sufficient to secure the civil reparation.
3. Request that the investigation be discontinued with respect to the minor who was erroneously included in it and that he/she be placed at the disposal of the Juvenile Judge, with the pertinent antecedents.
4. Request the examination of the accused by psychiatrists, when there is suspicion that the accused suffers from mental illness or other pathological states that could alter or modify his criminal responsibility; and if necessary, request his internment in a hospital, cutting short the investigation with respect to the unimputable.
5. Request, on the occasion of the police investigation being carried out or in the investigation, that the Examining Magistrate orders the examination of the body and its autopsy by medical experts, in cases where the circumstances of the death raise suspicion of a crime.
6. Request that jurisdiction be transferred when, given the circumstances, such a measure would be the most appropriate for the timely administration of justice. It may oppose the request of the accused on the grounds of health or physical incapacity, if the Public Prosecutor does not consider them to be duly proven.
7. Issue a report when he deems it appropriate and, in any case, on expiry of the term of the pre-trial investigation.
8. Visit penitentiary and provisional detention centres to receive complaints and claims from defendants and convicted persons in relation to their judicial situation and respect for their constitutional rights. A duplicate of the corresponding record shall be submitted, with its report, to the Senior Criminal Prosecutor, without prejudice to taking any legal measures that may be necessary.
9. Request the revocation of provisional release, conditional release or conditional sentence, when the accused or convicted person fails to comply with the obligations imposed or his or her conduct is contrary to the provisions or presumptions that determined them.
In these cases the request of the Public Prosecutor shall be accompanied by the police report organised in compliance with the provisions of article 9 of the present law.
10. Any others established by law.

Powers of the Provincial Civil Prosecutor

Article 96.- The powers of the Provincial Public Prosecutor in Civil Matters are as follows:

1- To intervene as a party, exercising appeals and offering relevant evidence, in marriage annulment, separation and divorce proceedings.

2- To issue an opinion prior to the decision terminating the proceedings in the other cases referred to in Article 89 of the present law.

"Article 96 - A.- The Provincial Family Prosecutor has the following powers:

1. To intervene as a party, presenting appeals and offering the relevant evidence, in marriage annulment, separation and divorce proceedings.
2. To intervene in all matters established by the Code of Children and Adolescents and the law that establishes the policy of the State and society in the face of domestic violence.
3. Intervene in proceedings on the status and capacity of the person, contained in Section One of Book I of the Civil Code. **(1)(2)**

- (1) Article added by Article 5 of Law No. 27155, published on 11-07-99.
 (2) Article amended by Article 1 of Law No. 28494, published on 14 April 2005, which in accordance with the First Complementary Provision shall enter into force thirty (30) days after its publication, the text of which is as follows:

"Article 96-A.- The powers of the Provincial Family Prosecutor are:

1. To intervene as a party, presenting appeals and offering relevant evidence in marriage annulment, separation and divorce proceedings.
2. To intervene as an examiner in proceedings on the status and capacity of the person, contained in Section One of Book I of the Civil Code.
3. To intervene, at the request of a party, as conciliator in family matters, in order to promote agreements between the parties and achieve a consensual solution to the conflict, provided that no legal proceedings have been initiated, in matters of alimony, custody of minors, visiting rights and parental authority. Agreements may not be reached on unavailable or unwaivable rights, or on matters that have a criminal connotation.
 The Fiscal Conciliation Act constitutes a title of execution, when an agreement is reached between the parties.
4. Intervene in all matters established by the Code of Children and Adolescents and the law that establishes the policy of the state and society regarding family violence.

CONCORDANCIES: R. N° 1133-2005-MP-FN (Conciliatory power of the prosecutors in family matters).

Powers of the Board of Supreme Public Prosecutors

Article 97.- The powers of the Board of Supreme Public Prosecutors are as follows:

- 1- To resolve the consultations referred to in Article 7 of this law, which are submitted to it by the Prosecutor General.
- 2- To review the corresponding Public Sector Budget Statement submitted by the Prosecutor General in order to consider the needs of the Public Prosecutor's Office that need to be met and to approve it.
- 3- At the proposal of the Prosecutor General, to agree, by speciality, on the number of Superior and Provincial Prosecutors in each judicial district, taking into account the corresponding needs and the possibilities of the Public Prosecutor's Office's Budgetary Plan.
- 4- Agree on the disciplinary sanction applicable in a specific case, in accordance with the provisions of Articles 51 and following of the present law.
- 5- The others established in the Regulations of the present law.(1)(2)(3)

- (1) This article is suspended by the Second Transitory, Complementary and Final Provision of Law N° 26623, published on 19/06/96.
 (2) Article suspended during the term of the Executive Commission of the Public Prosecutor's Office, until 31 December 2000, in accordance with Article 5 of Law N° 27009, published on 05-12-98.
 (3) Pursuant to Article 1 of Law 27367, published on 06-11-2000, the Executive Commission of the Public Prosecutor's Office was deactivated.

Powers of the Board of Senior Prosecutors

Article 98.- The powers of the Board of Senior Prosecutors of the judicial district are as follows:

- 1- To commission one of its prosecutors to visit, ordinarily or extraordinarily, one or more district prosecutor's offices in order to investigate the functional conduct of those under investigation or complaints about irregular conduct by the prosecutor visited. The corresponding report, with the opinions or recommendations of the Board, shall be submitted to the Prosecutor of the Nation.
- 2- To appoint a replacement in the absence of a Deputy Prosecutor, who is prevented from intervening in a specific case.
- 3- To grant leave for illness, bereavement or other justified cause, on the basis of the merits of the evidence that corresponds to the Senior Prosecutors, both permanent and deputy.
- 4- To agree, at the proposal of the Senior Public Prosecutor, on the appointment of administrative staff as determined by the regulations of this law.
- 5- Any other powers established by the present law and its regulations.(1)(2)(3)(4)

- (1) This article is suspended by the Second Transitory, Complementary and Final Provision of Law N° 26623, published on 19/06/96.
 (2) Article suspended during the term of the Executive Commission of the Public Prosecutor's Office, until 31 December 2000, in accordance with Article 5 of Law N° 27009, published on 05-12-98.
 (3) Pursuant to Article 1 of Law N° 27367, published on 06-11-2000, the Executive Commission of the Public Prosecutor's Office was deactivated.
 (4) Article modified by Article 1 of Law N° 29286, published on 04 December 2008, which reads as follows: "Article 98

“Article 98 Powers of the Board of Senior Prosecutors

The Board of Senior Prosecutors has the following powers:

1. To elect the President of the Board of Senior Prosecutors in accordance with the provisions of this Law;
2. submit annually to the Prosecutor General the table of needs in terms of personnel, budget, logistical support and others;
3. propose the creation, merger, suppression or relocation of Prosecutor's Offices in the judicial district, in accordance with the needs of the prosecutorial function;
4. to draw up common criteria for functional action; and,
5. any other duties resulting from the law and the Regulations on the Organisation and Functions of the Public Prosecutor's Office".

Powers of the Board of Provincial Public Prosecutors

Article 99.- The powers of the Board of Provincial Public Prosecutors are as follows:

- 1- To designate who should replace, in the absence of a Deputy Prosecutor, the Prosecutor prevented from intervening in a given case.
- 2- To grant leave of absence for illness, bereavement or other justified cause, on the merits of the corresponding evidence, to the Provincial Prosecutors and their Deputies.
- 3- Any others established by the present law and its regulations. (1)(2)(3)(4)

- (1) This article is suspended by the Second Transitory, Complementary and Final Provision of Law N° 26623, published on 19/06/96.
 (2) Article suspended during the term of the Executive Commission of the Public Prosecutor's Office, until 31 December 2000, in accordance with Article 5 of Law N° 27009, published on 05-12-98.
 (3) Pursuant to Article 1 of Law N° 27367, published on 06-11-2000, the Executive Commission of the Public Prosecutor's Office was deactivated.
 (4) Article modified by Article 1 of Law N° 29286, published on 04 December 2008, which reads as follows:

"Article 99.- Powers of the Board of Provincial Prosecutors.

The Board of Provincial Prosecutors has the following powers:

1. Elect the President of the Board of Provincial Prosecutors in accordance with the provisions of this Law;
2. seek and promote the development of common criteria for functional action; and,
3. any others that may arise from the law and the Regulations on the Organisation and Functions of the Public Prosecutor's Office.

TITLE IV**THE NATIONAL INSTITUTE OF THE PUBLIC PROSECUTOR'S OFFICE****Purpose**

Article 100.- The National Institute of the Public Prosecutor's Office is created, under the presidency and direction of the Public Prosecutor of the Nation and with the income assigned to it in the corresponding Budgetary Plan, for the purpose of organising advanced training courses, seminars, academic activities, congresses, including international ones, in which the Public Prosecutors of Peru or of one or several of its judicial districts participate; publication of books, journals and studies on the legal and scientific subjects on which the Public Prosecutor's Office bases or inspires its function and, in general, to promote the best preparation of its members and the full efficiency of the Institution. (*)

(*) Article repealed by the Tenth Transitory and Final Provision of Decree Law N° 25726, published on 17-09-92.

TITLE V**TRANSITORY, DEROGATORY AND AMENDING PROVISIONS****Ratification of Prosecutors**

Article 101.- In accordance with the first part of Article 250 of the Political Constitution and its Thirteenth General and Transitory Provision, the Board of Supreme Prosecutors shall proceed to the ratification of the Senior and Provincial Prosecutors that make up the Public Prosecutor's Office, within one hundred and twenty days of the entry into force of the present law. Until the Board of Supreme Prosecutors is constituted, ratifications may be made by the Prosecutor General.

Exception to budgetary limitations

Article 102.- The Public Prosecutor's Office is exempted until 31 December 1981 from the prohibitions contained in Articles 64 and 65 of Law N° 23233.

Personnel that will integrate the Public Prosecutor's Office

Article 103.- The current staff of Public Prosecutors and Public Prosecutors' Agents shall become part of the Public Prosecutor's Office referred to in this Law, maintaining their categories and rights until the corresponding ratification.

The Auxiliary Personnel and the movable property that the Public Prosecutor's Office currently possesses shall continue to be at its service. The respective budget items shall be transferred from the Judiciary to the Public Prosecutor's Office.

The additional budgetary resources required for the operation of the Public Prosecutor's Office during the current year shall be met by the Ministry of Economy, Finance and Commerce in the manner provided for in the Budget Law, within thirty days following the date of publication of this law, through the expansion of the Public Sector Budget in force.

Organisation and equipment of the Public Prosecutor's Office

Article 104.- The Prosecutor General shall, during the six months following the enactment of this law, give priority to the work of organising, installing and equipping the Public Prosecutor's Office in the Republic.

Repeals

Article 105.- Title XXIII Public Prosecutor's Office of the Organic Law of the Judiciary and Articles 20, 29, 30, 38, 40, 40, 41, 42, 42, 58, 58, 61, 70, 73, 79, 88, 90, 94, 95, 100, 128, 137 clauses 12 and 15, 145 clause 4, 278, 279, inc. b) and 280 of the aforementioned law, as well as Articles 3 of Decree Law No. 18347 and 1 clauses 2) and 3) of Decree Law No. 19957, insofar as they refer to members of the Public Prosecutor's Office.

Other derogations

Article 106.- Title III Public Prosecutor's Office of Book One of the Code of Criminal Procedure and Articles 41, insofar as it refers to the intervention of the Examining Magistrate and the Correctional Court in the excusal of the Public Prosecutor, are also repealed; Articles 50, 199, insofar as they authorise the Examining Judge to return the case file to the Public Prosecutor to issue an opinion; 220, modified by Decree Law No. 21895, insofar as it authorises the Court to alternatively order the Public Prosecutor to rule on the merits of the case, and Articles 222 and 223, modified by the aforementioned Decree Law.

Amendments to the Code of Criminal Procedure

Article 107.- Amend Articles 74, 75 and 77 of the Code of Criminal Procedure, modified by Decree Law No. 21895, to the effect that the investigation can only be initiated ex officio or by complaint from the Public Prosecutor's Office, when the criminal action is public, and from the injured party or their relatives, when it is private; 91, insofar as it declares the attendance of the Public Prosecutor's Office to judicial proceedings optional, which is obligatory; 219, to the effect that it is eight calendar days if there is a prisoner in prison and twenty, if there is not; 225 and 239, in the sense expressed in article 96, paragraph 4), of the present law; 230, in the sense that, in the cases referred to, if they are imputable to the Public Prosecutor's Office, it will inform the Public Prosecutor of the Nation; 266, modified by the aforementioned Decree Law, in that it establishes that the members of the Public Prosecutor's Office may be replaced at the discretion of the Court, replacement to be made as provided for in articles 22 and 92, of the present law.

Therefore:

I order it to be published and complied with, giving account to Congress.

Given in the House of Government, in Lima, on the sixteenth day of March of the year one thousand nine hundred and eighty. eighty y one.

FERNANDO
Constitutional President of the Republic

BELAUNDE

TERRY

FELIPE
Minister of Justice.

OSTERLING

PARODI

TABLE OF AMENDMENTS TO THE ORGANIC LAW OF THE PUBLIC PROSECUTOR'S OFFICE

ARTICLE LEGAL EFFECT DATE OF EFFECT PUBLICATION

Art. 12 AMENDED by the Sole Article of Law No. 25037 13-06-89
Art. 20, inc k) ADDED by Art. 2 of Law No. 28219 07-05-2004
Art. 25 SUSPENDED by Art. 3 of Law No. 26738 07-01-97
Art. 25 SUSPENDED by Art. 5 of Law No. 27009 05-12-98
Art. 27 SUSPENDED by Art. 3 of Law No. 26738 07-01-97
Article 27 SUSPENDED by Article 5 of Law No. 27009 05-12-98
Article 27 AMENDED by Article 2 of Law No. 28367 28-10-2004
Article 28 SUSPENDED by Article 3 of Law No. 26738 07-01-97
Article 28 SUSPENDED by Article 5 of Law No. 27009 05-12-98
Art. 29 AMENDED by Article 4 of Law No. 26898 15-12-97
Article 30 SUSPENDED by the Second Transitional, Complementary and Final Provision of Law No. 26623 19-06-96
Art. 30, second paragraph SUSPENDED by Art. 5 of Law No. 27009 05-12-98
Art. 31 SUSPENDED by the Second Transitional, Complementary and Final Provision of Law No. 26623 19-06-96
Art. 31 SUSPENDED by Art. 5 of Law No. 27009 05-12-98
Art. 33 SUSPENDED by the Second Transitional, Complementary and Final Provision of Law No. 26623 19-06-96
Art. 33 SUSPENDED by Art. 5 of Law No. 27009 05-12-98
Art. 37 AMENDED by Art. 4 of Law No. 26898 15-12-97
Art. 38 SUSPENDED by Art. 3 of Law No. 26738 07-01-97
Article 38 SUSPENDED by Article 5 of Law No. 27009 05-12-98
Article 42 SUSPENDED by the Second Transitional, Complementary and Final Provision of Law No. 26623 19-06-96
Art. 42 SUSPENDED by Art. 5 of Law No. 27009 05-12-98
Art. 45 AMENDED by Art. 1 of Law No. 26767 09-04-97
Art. 47 AMENDED by Art. 1 of Law No. 26767 09-04-97
Article 48 SUSPENDED by Article 3 of Law No. 26738 07-01-97
Art. 48 SUSPENDED by Art. 5 of Law No. 27009 05-12-98
Art. 49 SUSPENDED by Art. 3 of Law No. 26738 07-01-97
Article 49 SUSPENDED by Article 5 of Law No. 27009 05-12-98
Article 50 SUSPENDED by Article 3 of Law No. 26738 07-01-97
Article 50 SUSPENDED by Article 5 of Law No. 27009 05-12-98
Article 51 AMENDED by the Ninth Transitory, Complementary and Final Provision of Law No. 26623 19-06-96
Art. 53 AMENDED by the Ninth Transitory, Complementary and Final Provision of Law No. 26623 19-06-96
Art. 62 AMENDED by the Ninth Transitory, Complementary and Final Provision of Law No. 26623 19-06-96
Art. 63 SUSPENDED by the Second Transitional, Complementary and Final Provision of Law No. 26623 19-06-96
Art. 63 SUSPENDED by Article 5 of Law No. 27009 05-12-98
Art. 63 AMENDED by Article 1 of Law No. 29286 04-12-2008
Art. 65 AMENDED by the Ninth Transitory, Complementary and Final Provision of Law No. 26623 19-06-96
Art. 66 AMENDED by the Ninth Transitory, Complementary and Final Provision of Law No. 26623 19-06-96
Art. 67 REPEALED by the First Final and Transitional Provision of Law No. 26520 08-08-95
Art. 68 REPEALED by the First Final and Transitional Provision of Law No. 26520 08-08-95
Art. 69 REPEALED by the First Final and Transitory Provision of Law No. 26520 08-08-95
Art. 70 REPEALED by the First Final and Transitory Provision of Law No. 26520 08-08-95
Art. 72 REPEALED by the First Final and Transitory Provision of Law No. 26520 08-08-95
Art. 73 REPEALED by the First Final and Transitory Provision of Law No. 26520 08-08-95
Art. 74 REPEALED by the First Final and Transitory Provision of Law No. 26520 08-08-95
Art. 75 REPEALED by the First Final and Transitory Provision of Law No. 26520 08-08-95
Art. 76 REPEALED by the First Final and Transitory Provision of Law No. 26520 08-08-95
Art. 77 REPEALED by the First Final and Transitory Provision of Law No. 26520 08-08-95
Art. 78 REPEALED by the First Final and Transitory Provision of Law No. 26520 08-08-95
Art. 79 REPEALED by the First Final and Transitory Provision of Law No. 26520 08-08-95

Art. 80-A INCORPORATED by the Sole Article of Law No. 27380 21-12-00
Art. 80-B INCORPORATED by the Sole Article of Law No. 27380 21-10-00
Art. 81, 2nd paragraph ADDED by Fifth Amending and Repealing Provision of Law No. 28665 07-01-06
Art. 87 AMENDED by Article 1 of Law No. 29286 04-12-2008
Art. 87-A INCORPORATED by Article 2 of Law No. 29286 04-12-2008
Art. 88 AMENDED by Article 1 of Law No. 29286 04-12-2008
Art. 89, paragraph 8 REPEALED by Art. 45 of Law No. 23506 08-12-82
Art. 93 AMENDED by Article 1 of Law No. 29286 04-12-2008
Art. 96-A AMENDED by Article 1 of Law No. 28494 14-04-2005
Art. 97 SUSPENDED by the Second Transitional, Complementary and Final Provision of Law No. 26623 19-06-96
Art. 97 SUSPENDED by Article 5 of Law No. 27009 05-12-98
Art. 98 SUSPENDED by the Second Transitional, Complementary and Final Provision of Law No. 26623 19-06-96
Art. 98 SUSPENDED by Article 5 of Law No. 27009 05-12-98
Art. 98 AMENDED by Article 1 of Law No. 29286 04-12-2008
Art. 99 SUSPENDED by the Second Transitional, Complementary and Final Provision of Law No. 26623 19-06-96
Art. 99 SUSPENDED by Article 5 of Law No. 27009 05-12-98
Art. 99 AMENDED by Article 1 of Law No. 29286 04-12-2008
Art. 100 REPEALED by the Tenth Transitory and Final Provision of Decree Law No. 25726 17-09-92