

# **TRAINING TO LEADERSHIP: LEADERS TRAINING NEEDS- Roma 15- 16 May 2017**

## **LEADERSHIP TO PERFORMANCE (HOW TO BALANCE QUALITY AND QUANTITY)**

Presentation by Nicola Piacente\*

### **FOREWORD**

In any national system the balance between the number of the investigated and prosecuted cases and the quality of the enquiry is a very sensitive issue, as well as the overall quality standard of the services the Prosecution Offices are requested to perform.

The issue is extremely relevant in those systems where prosecution is mandatory and where Prosecutors lead and coordinate investigations as well as in those systems where Prosecutors are involved in civil cases (matrimonial legal disputes, incapacitation of individuals, insolvency and bankruptcy cases).

The achievement of an adequate balance between quality and quantity of cases dealt with by prosecution offices is a relevant step to ensure to offenders, victims and the whole community the fair, impartial and expeditious pursuit of justice and to preserve the credibility of the judiciary.

These aims can be achieved only through coordinated efforts by Prosecution Offices and Courts .

This issue impacts on

- 1) relevant rules of the European Convention of Human Rights (articles 5 and 6: right to life and security, right to a fair and expeditious trial),
- 2) Constitutional systems and
- 3) the rights of the accused and victims.

The issue impacts also on the performance of prosecution Offices in civil cases (such as matrimonial legal disputes, insolvency, bankruptcy cases) where National legal systems request such involvement of Prosecution Offices.

The following presentation By Nicola Piacente aims at clarifying how leadership can deal with this issue and try to combine successfully quality and quantity in the investigated/prosecuted cases and in any other matter where the involvement of Prosecution Office is requested

## I) ADEQUATE QUANTITATIVE AND QUALITATIVE PERFORMANCE IN INVESTIGATIONS AND PROSECUTION

It has been stated by the Consultative Council of European Judges (CCJE) that "quality" of justice should not be understood as a synonym for mere "productivity" of the judicial system<sup>1</sup>.

The quantity of investigated and prosecuted cases is not therefore the only parameter of evaluation of the efficacy of a Prosecution Office.

Qualitative indicators, such as proper and thorough investigation (when this is under the prosecutor's competence), appropriate use of evidence, accurate construction of the accusation, professional conduct in court should also be taken into consideration as parameters of the performance of the Prosecution Offices.

Essential prerequisites of a good performance in Prosecution Offices can be thus identified in

- the assistance of qualified staff,
- adequate modern technical equipment and
- other resources that can relieve prosecutors from undue strain and therefore improve the quality and efficiency of their work.

Keys to ensure quantitative and qualitative professional performance consist of

- a) promoting - within the office - specialization of deputy prosecutors in investigating and prosecuting specific crimes requiring special investigation techniques and specific notions and skills;
- b) ensuring, through the issuance of directives on investigations on specific crimes, that police forces are properly trained and run their enquiries on all crimes within a judicial perspective, collecting (in the frame of a systematic coordination and consultation with the prosecutors) relevant indicia and evidence that can be tendered to the Court and might lead to an effective Prosecution and - if it is the case - to a conviction;

The above mentioned efforts have to be run according to the human, technical and financial resources available in a Prosecution Office.

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<sup>1</sup> Opinion No. 11 (2016) of the Consultative Council of European Prosecutors on the quality and efficiency of the work of prosecutors

## II) THE USE OF SPECIAL AND UPDATED INVESTIGATION TECHNIQUES AND OF THE EXISTING INTERNATIONAL INSTRUMENTS ON JUDICIAL COOPERATION

Pursuant to Opinion No. 11 (2016) of the Consultative Council of European Prosecutors on the quality and efficiency of the work of prosecutors,

*“In most member states, special investigative techniques such as electronic surveillance and undercover operations have been shown to be effective tools to combat terrorism and serious and organised crime. These tools are being made available to prosecution offices, at least in jurisdictions where prosecutors have investigative powers. As they infringe the right of privacy not only of suspects but of other persons not necessarily involved in the relevant criminal situation under investigation, the use of these measures needs thorough and permanent consideration by prosecutors at any stage of the proceedings, so that the outcome of the investigation is accepted by courts and society at large”*

It cannot be ignored that criminal individuals and organizations use more and more often sophisticated strategies. The incitement to commit terrorist acts as well as frauds and money laundering through internet and complex financial transactions are an example of such strategies. The extensive use of updated investigation techniques, such as financial and cyber investigations, wire taps (when it respects the proportionality principles and the rights of the accused) escalates the quality of investigations and at the same time makes them more timely.

These results may be achieved by soliciting and allowing deputy prosecutors and police officers to have, at every phase of their career, a continuous training program in order to maintain and improve their professional skills.

## III) THE NEED OF SPECIFIC DIRECTIVES AIMED AT ENSURING BALANCE BETWEEN THE QUALITY AND QUANTITY OF THE INVESTIGATED AND PROSECUTED CASES

It would be recommendable that Chief Prosecutors set up Specialized Units of Deputy Prosecutors and investigators, by taking into account the criminal dynamics of each district.

Looking at my office, considering the criminal dynamics of the district area of Como and the resources available,

after a wide consultation with Deputy Prosecutors and Police Officers, I decided to set up five specialized units have been set up dealing with:

- 1) Public officers and environmental crimes,
- 2) Financial crimes,
- 3) Organized crime,
- 4) Crimes leading to industrial accidents and occupational diseases,
- 5) Sex and family oriented crimes.

I tried to make sure that each unit is assisted by investigators having specific skills in investigating the relevant felonies. Such approach ensures properly investigated and more expedite cases.

When setting up these units, it would also be appropriate that any of them unit has their own coordinator (such as a Deputy Chief prosecutor) supervising the work of the members of the unit and promoting periodical meetings as well as an effective exchange of information among the members of each unit and among all the units.

In order to ensure that also petty crimes are properly investigated and prosecuted, honorary assistant prosecutors (in those systems where their assistance is provided with by the law) have to be involved and their skills need to be capitalized as much as possible.

The proper balance between the quantity and quality of investigated cases implies also a systematic monitoring activity on the outcomes of these cases in Court.

Efforts need to be made to ensure that most relevant and complicated cases are dealt with in Court by the prosecutors who investigated them.

Regarding this issue, more efforts and specific organizational measures are necessary in order to make sure that each prosecutor deals with the own cases in Court.

Prosecutors and honorary assistant prosecutors should daily report to the Chief Prosecutor or to a coordinator (such as the deputy Chief Prosecutor) the outcomes of the cases in Court and briefly summarize the cases that ended up with an acquittal, so that the chances to file a successful appeal can be timely and properly evaluated and assessed.

#### IV) ENSURING BALANCE BETWEEN THE QUANTITY AND QUALITY OF CIVIL CASES INVOLVING THE PROSECUTION OFFICE

Italy is one of EU Member States where Prosecution services have also non-penal competencies.

Civil cases related to matrimonial disputes, incapacitation procedures, insolvency, bankruptcy cases are often connected with and/or lead to family oriented crimes, frauds, fraudulent bankruptcy cases. It is therefore necessary that civil cases are dealt with by the units dealing with crimes (family oriented, financial crimes) connected with these civil cases.

Cooperation with the Courts and other private and public institutions such as municipalities, social services, no profit organizations, chambers of commerce are essential in ensuring that Prosecution Offices get properly and timely involved in these cases and assume a proactive role in timely detecting for example relevant insolvency cases in local enterprises or relevant cases of limitation of legal capacity and file for bankruptcy and/or file petitions for incapacitation of certain individuals

#### V) THE INVOLVEMENT OF STAFF MEMBERS IN THE ASSESSMENT OF THE ORGANIZATION AND POLICY OF THE OFFICE

The issuance of any decision and directive on this issue needs to be anticipated by open and extensive consultations among prosecutors, police forces, administrative staff members. All of them are expected to deliver their contribution. The involvement of all of them helps to know which resources are available and which goals are achievable with the currently available resources.

VI) THE DEGREE OF MOTIVATION OF THE DEPUTY PROSECUTORS, HONORARY ASSISTANT PROSECUTORS, ADMINISTRATIVE AND POLICE STAFF AS A PREREQUISITE OF THE BALANCE BETWEEN QUANTITATIVE and QUALITATIVE PERFORMANCE

Looking at deputy prosecutors, it has to be taken into proper account that the Prosecution Office is a complex organization, whose (judicial) members are usually highly trained and conscious of the independence the national system grants to them.

The real challenge for a Chief Prosecutor is to create a friendly, supportive but at the same time compelling environment where everyone

- 1) feels his/her own independence granted,
- 2) makes the his/her professional skills available to the other members of the office,
- 3) feels involved in a working team and in the decision making process leading to,
  - a) the general organization and functioning of the office,
  - b) the identification of the overall aims of the office and the strategies to achieve them,
- 4) feels committed to follow the rules and the strategies he/she himself/herself has contributed to set up,
- 5) feels responsible for the results achieved or failed by the office.

The challenge is to avoid that independence of the deputy prosecutors could lead to the establishment of isolated highly trained professionals, taking care only of their own cases and disregarding the general needs of the office.

The achievement of the above listed goals does not imply a total deprivation of responsibility for the Chief Prosecutor

- of leading by example (in order to make sure that staff members pursue good results in their job responsibilities, Chief Prosecutors should behave how they would like their staff members to behave),
- of making the final decisions and taking the exclusive accountability of those decisions, especially when they do not meet the expectations of all the staff members.

Looking at the other staff members (such as clerks, investigators), it is relevant to involve them, through consultations in the decision making processes, in order to achieve the above mentioned results at numbers 2, 3, 4, 5.

Chief Prosecutor should thus ensure that his/her decisions and directives are enforced and that staff members enforce them not because of his/her position, but because of

- the open and fair decision making process and of
- what the Chief Prosecutor does for the Office.

## VII) THE IMPORTANCE OF AGREEMENTS WITH OTHER PRIVATE/PUBLIC STAKEHOLDERS AND INSTITUTIONS AS ANOTHER PREREQUISITE OF QUANTITATIVE AND QUALITATIVE PERFORMANCE

The efficiency of a Prosecution Office as well as of a Court is a bright combination of- among other elements-

management,

internal and external cooperation.

Prosecution Offices as well as Courts are not isolated entities.

The internal organization of a Prosecution Office needs to be consistent with the internal organization of Courts. The organization of both Courts and Prosecution Offices imply a deep and always updated knowledge of the areas where they are located and operate.

Specialized judges need to deal with equally specialized prosecutors; the establishment of specialized judges and Prosecution units should mirror

- the social, financial and criminal dynamics of the territory where both offices are located as well as;
- the social needs of local communities.

These dynamics and social needs must be periodically and timely monitored together with the resources available within Prosecution Offices and Courts. This aim may be achieved through a systematic coordination with the other law enforcement agencies and with local authorities and institutions (municipalities, social services, chambers of commerce).

Prosecutors need to be enabled to receive updated, reliable and comprehensive information and cooperation from all relevant players in a society. Therefore, relations with other actors within and outside the justice system (e.g. police and other state authorities, Municipalities, social services, Chambers of Commerce, NGOs) play a vital role in enabling prosecutors to quickly make well-founded decisions based on an effective exchange of relevant information.

Municipalities and other public institutions may also, through specific agreements, supply the Prosecution Offices as well as Courts with human resources (such as administrative staff) when these resources are lacking.

This specific aid may help Prosecution Offices and Courts to improve their qualitative and qualitative performance.

## VIII) THE NEED TO ISSUE DIRECTIVES IN ORDER TO IDENTIFY CASES AND INVESTIGATIONS TO BE PRIORITIZED WITHIN THE AIM TO ACHIEVE AN EFFECTIVE BALANCE BETWEEN QUANTITY AND QUALITY OF INVESTIGATED AND PROSECUTED CASES

It has to be taken into account that prosecution is mandatory pursuant to the National Constitution. At the same time criminal, social, and financial dynamics as well as social needs of local communities need to be systematically monitored. These dynamics and social needs have to be taken into account to set up the policy of Prosecution Offices and to decide which cases, investigations and activities need and deserve more human, technical and financial resources.

No case must be neglected or put aside causing the bar of Prosecution due to the statute of limitations.

#### IX) SETTING UP PRIORITIES IN CIVIL CASES

Looking at the local financial dynamics of the District of Como, special expedite procedures aimed at ascertaining insolvencies of local enterprises and facilitating the petitions for bankruptcy (such as the systematic information by the Court to the Prosecution Office of any relevant insolvency ascertained in civil cases) have been set up, in close cooperation with the Court.

#### X) COORDINATION WITH THE COURTS IN SETTING UP PRIORITIES

The national law binds Courts to prioritize some criminal cases (such those against detained accused, or related to sexual offences and/or family crimes).

Looking at my professional experience,

pursuant to a specific agreement with the president of the Court in Como, old cases where (pursuant to the national law) statute of limitations would apply before the end of the case in Court or before the Court of Appeal would not be prioritized.

Pursuant to this agreement, the Prosecution Office is also entitled to inform and propose the Court which cases need to be prioritized due to their complexity and or the seriousness of the charges. Of course, this indication is not binding for the Court

#### XI) THE ACHIEVEMENT OF THE BALANCE BETWEEN QUANTITY AND QUALITY OF INVESTIGATED AND PROSECUTED CASES AS A CRITERIA OF EVALUATION OF THE PROFESSIONAL PERFORMANCES OF THE DEPUTIES AND THE STAFF

*“Suum cuique tribuere”*. This is a principle that should inspire also the evaluation reports of our colleagues and staff members by taking into account that all of them have equal rights and deserve equal opportunities, but at the same time all of them have different skills and different attitudes to approach the work in the Office. In the organization of the Office and in the evaluation process of its members, we need to investigate whether attitudes and skills were properly employed. If this is the case, we need to wonder and fairly report whether a satisfying working performance was achieved.

## XII) THE USE OF PRESS RELEASES AND PRESS CONFERENCES IN ORDER TO ACHIEVE THE AIM TO PROPERLY AND TIMELY INFORM THE PUBLIC

Press releases as well as press conferences are important to properly and timely inform the public (pursuant to national legislation<sup>2</sup> and without influencing or manipulating the public opinion) of the results achieved in the cases dealt with by the Office

They are also important to explain the rationale behind certain decisions of public interest (such as the dismissal of specific relevant cases).

## XIII) THE IMPORTANCE OF THE VISIBILITY OF THE ACTIVITIES OF PROSECUTION OFFICES, TAKEN INTO ACCOUNT THE CONFIDENTIAL NATURE OF THE ENQUIRIES RUN BY PROSECUTION OFFICES

Professional performances need to be communicated.

Prosecution Offices are not isolated entities; they need to interact with society and society needs to know how justice is managed. Prosecution Offices (as well as Tribunals) need, in the framework of a proactive approach) a complete and updated web site informing which services are available to the public.

Courts and Prosecution Offices should also disseminate (also through their websites) periodical reports informing the public of the (disclosable pursuant the law) results that have been achieved in the administration of Justice, the financial costs of these results and the difficulties that have been met.

Services provided to the public such as (disclosable) information, release of copies and certificates, lodge of complaints need to be evaluated through the filing of anonymous questionnaires. The analysis of these questionnaires and of the suggestions given by the public are to be considered a precious source to try to improve the work and the performance of the Office.

This systematic and updated information might convince other Public Institutions to supply Prosecution Offices and Courts with human and technical resources.

## CONCLUSION

Being the Chief of an office is not a goal, but the starting point of new challenges and efforts that should lead to bring new energy in an Office.

The efficacy (deeming efficacy as a synonym of “energy”) of an office depends therefore on a bright combination of management with internal and external and it can be visualized with a universal formula

E= efficacy-energy

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<sup>2</sup> Pursuant to National case law, if enforced, an arrest warrant as well as search or confiscation orders are no more confidential)



M = management

C= (internal and external) cooperation

In conclusion the formula to obtain the efficacy of an office could be visualized as

$E=MC^2$ .

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