
THE ROLE OF THE PROSECUTION IN STRENGTHENING DEMOCRACY AND THE RULE OF LAW: AN AMERICAN VIEW

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As many of our Bulgarian partners know, one of our leading priorities at the United States Embassy in Sofia is providing assistance to Bulgaria designed to strengthen the rule of law and establish strong criminal justice institutions. In Bulgaria, I also represent the United States Department of Justice, which assists partners across the globe in building robust systems of justice where the rule of law prevails.

The Department of Justice supports a holistic approach to building the rule of law and strong criminal justice institutions. For any system of justice to be effective, we have learned that all actors in the system must be effective – police, investigators, prosecutors, judges, the bar, prison officials – and we have assisted each of these functions in our programs throughout the world. I would like to concentrate on the prosecution function and share the United States Department of Justice’s vision of how a strong prosecution service fits into a democratic society.

It is certainly a fair question to ask why the United States would have an interest in assisting prosecutors in other countries, especially those in countries with a different legal heritage, such as Bulgaria.

First, an effective prosecutorial function is an indispensable component of the rule of law; the rule of law is an essential component of democracy; and democracy contributes to the peace, stability and prosperity of our world.

Second, the United States knows that crime today is among the most global of modern phenomena, that the dangers of transnational crime and international terrorism often converge, and that we in America are as vulnerable as any other country to acts of terrorism. The United States needs strong criminal justice partners throughout the world in its own fight against transnational crime and terrorism. Neither the United States nor any other country can fight transnational crime and terrorism by itself.

In the United States, prosecutors are part of the United States Department of Justice, an executive branch agency of our federal government. In Bulgaria, they are part of the judicial branch, independent of the Executive. But where prosecutors fit administratively is less important than how they function professionally. Moreover, although each legal system asks its prosecutors to execute their professional functions in a slightly different manner, I am convinced that what unites prosecutors in democracies across the world’s spectrum of legal systems is far, far greater than what separates them.

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In every democratic legal system I know, the prosecutor is responsible for presenting to an independent tribunal the case for sanctioning those accused of violating the rules which hold the democracy together. The prosecutor therefore needs to be the leader of a team, generally composed also of police or investigators, dedicated to assuring that criminals are prosecuted successfully, fully and fairly, pursuant to a process which comports with what we in the United States term due process of law.

Many of the world's legal systems are finding what we have learned by experience in the United States, that the prosecutor is most effective if he or she can be involved in some significant manner in the investigative process that precedes the trial. The prosecutor brings particular expertise to the investigative process in determining the shape and form of the case to present in court. He or she is well situated to assure that the rights of the individual are respected throughout the entire criminal justice process.

What then is our vision of the effective prosecutor in a democratic society?

First, the United States Department of Justice knows that its own prosecutors and those of its partners must have a high degree of technical skill to prosecute the complex sort of crime that most threatens us today, including terrorist crime. This requires professional competence and, very often, training in sophisticated areas of criminal law.

Second, the United States Department of Justice insists that its prosecutors have a strong ethical compass and be sensitive to basic human rights, and it also seeks to raise the ethical and human rights awareness of fellow prosecutors around the world. Given the extraordinary authority which a democracy vests in a prosecutor to lead the process of sanctioning those accused of violating democracy's rules, the prosecutor must be ever aware of the ethical limits imposed on his function, and the human rights which those involved in the criminal process nonetheless continue to enjoy.

Finally, more and more, we are finding that prosecutors need to be aware of the world-wide dimensions of their work. Today's prosecutors are members of an elite, global fraternity of crime fighters. They need to be aware of the responsibilities which membership in this elite group imposes. The perspective of today's criminal is truly global, and that of today's prosecutor simply cannot be any less.

As we dedicate resources at the United States Embassy to fortify the rule of law and strengthen Bulgarian criminal justice institutions, we remain ready to work with our partners – Bulgaria's prosecutors – and wherever possible in collaboration with our colleagues from throughout the European Union, in bringing this vision to Bulgaria.