

Prosecutors Under Law: Separating Investigation, Politics and the Supervision Organs

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Series: Justice, Rule of Law & Criminal Procedure — research papers accompanying [the Justice, Rule of Law & Criminal Procedure working blueprint](#). **Paper J3.**

1. The question

Prosecutors decide who is charged, what evidence reaches the court and, in the PRC (Mainland), whether a suspect is arrested at all. A transition that rebuilds the bench but leaves the procuratorate untouched keeps the criminal process's most powerful gate under the old control.

How can the people's procuratorates become a public prosecution service that answers to law? It must be insulated from party and executive direction in individual cases, yet stay publicly accountable. A second question runs through the design: should the procuratorate keep its constitutional "legal supervision" role, or be limited to criminal prosecution?

2. The hub position, cited

The hub covers justice institutions, criminal procedure, detention, due process and remedies, comparing current Mainland policy with Third Republic alternatives ([Justice, Rule of Law & Criminal Procedure](#)). Its detention dossier sets commitments that bind any prosecution design: prompt appearance before an independent judge, guaranteed counsel, an end to incommunicado designated-location detention, and safeguards judged by "actual access, notification, recording, inspection and remedy outcomes" ([Justice, Detention & Criminal Procedure](#)). The dossier records 344 procuratorate correction opinions on residential-surveillance execution in January–November 2025, and notes that these show detected problems, not a national violation rate (same source). The hub thus already treats the procuratorate's self-supervision as insufficient evidence of lawful practice.

The Movement's position on adjudicators applies by analogy: independence and accountability coexist when protection from pressure is paired with discipline for proven misconduct ([CCE-016: Why Does Judicial Independence Matter?](#)).

3. Evidence and comparative options

3.1 The current design in the PRC (Mainland)

On paper, Article 134 of the 2018 PRC Constitution makes the procuratorates "state organs for legal supervision". Article 136 says they exercise their power free of interference by administrative organs, public organizations or individuals. Article 137 makes higher procuratorates lead lower ones, and Article 138 makes the Supreme People's Procuratorate responsible to the National People's Congress ([PRC Constitution, Constitute Project](#)). The same text, as amended in 2018, declares Communist Party leadership the defining feature of the system (Article 1, same source).

Under the Organic Law of the People's Procuratorates (2018), the procuratorate investigates certain crimes, approves arrests, prosecutes, brings public-interest litigation, and supervises litigation,

enforcement of judgments, and prisons and detention centres (Article 20). Higher procuratorates may correct, revoke or change the decisions of lower ones (Article 24). A procuratorial committee working under "democratic centralism" decides major cases (Articles 31–32) ([Organic Law of the People's Procuratorates, China Law Translate](#)). The Procurators Law (2019) makes upholding Communist Party leadership a qualification for office (Article 12). It also asks procurators to act objectively and impartially on the basis of facts and law (Article 5) ([Procurators Law of the PRC, SPP English text](#)).

The Party's 2019 Regulation on Political-Legal Work makes the chain explicit. Procuratorates are political-legal units, the special force under Party leadership (Article 3). Political-legal committees guide, support and oversee those units (Article 13). The Supreme People's Procuratorate's Party group must report to the Party Centre (Article 19). Local units must request instructions and report when important situations arise (Article 22) ([Regulation on the CPC's Political-Legal Work, China Law Translate](#)). The constitutional "no interference" clause does not list the Party; the Party's own rules fill that gap.

The 1983 amendments to the organization laws already provided for military and other specialised procuratorates, though their existence does not prove who held investigative authority in a given case ([People's Daily, 1983-09-03, p. 3](#)).

3.2 International standards

The UN Guidelines on the Role of Prosecutors were adopted in 1990 ([OHCHR: Guidelines on the Role of Prosecutors](#)). Their main requirements are:

- States must let prosecutors work free from intimidation and improper interference (Guideline 4).
- The prosecutor's office must be strictly separated from judicial functions (Guideline 10).
- Prosecutors must give serious attention to crimes committed by public officials (Guideline 15).
- They must refuse to use evidence obtained by torture against anyone other than those responsible (Guideline 16).
- Discretion must be governed by published guidelines (Guideline 17).
- Discipline must follow fair procedures and be subject to independent review (Guideline 21).

For systems where prosecutors are subordinate to government, Council of Europe Recommendation Rec(2000)19 requires written, published general instructions and safeguards such as written reasons for case instructions; instructions not to prosecute should, in principle, be prohibited (paragraph 13). Prosecutors should check the lawfulness of police investigations (paragraph 21). In return for independence, the service should report publicly on its activities and priorities (paragraph 11) ([Rec\(2000\)19 and explanatory memorandum](#)).

The Venice Commission adopted its report on the prosecution service, CDL-AD(2010)040, in December 2010 ([Venice Commission, CDL-AD\(2010\)040 record](#)). Its official compilation of opinions quotes paragraph 56 of that report: an instruction in an individual case should be reasoned and, where possible, open to public scrutiny. It also collects the Commission's repeated finding that the Soviet-era prokuratura model of "general supervision" is incompatible with European standards and that prosecutors should be limited to criminal prosecution ([Venice Commission compilation on prosecutors](#)).

3.3 Comparative models

Italy: prosecutors inside an independent judiciary. Prosecutors and judges form one judiciary under a High Council. Two-thirds of the Council's elected members are chosen by magistrates and one-third by Parliament (Article 104). Prosecutors carry the guarantees set by the law on the judiciary (Article 107). The criminal police serve the judiciary (Article 109). The public prosecutor has a duty to institute criminal proceedings (Article 112) ([Constitution of the Italian Republic, Senate English text](#)). Insulation is strong; outside accountability can be weak.

Germany: hierarchy under ministerial supervision. Prosecution officials must follow their superiors' official instructions (Courts Constitution Act, §146) ([GVG §146](#)). The federal and state justice ministries

hold the right of supervision and direction (§147) ([GVG §147](#)). Accountability runs through a minister answerable to parliament — the channel most open to capture in a transition.

Japan: a lay check on decisions not to prosecute. Committees for the Inquest of Prosecution, each with 11 citizens drawn by lot, review decisions not to prosecute. Since a 2004 amendment took effect in 2009, a second resolution to prosecute is binding, and a court-appointed lawyer conducts the case ([MOJ Japan White Paper on Crime 2012](#)).

ROC (Taiwan): a protected chief, peer-reviewed personnel, outside evaluation.

- Prosecutors' offices sit at each court but act independently of it (Court Organization Act, Articles 58 and 61).
- The Prosecutor General is presidentially nominated with Legislative Yuan consent for one non-renewable four-year term (Article 66).
- A Prosecutorial Personnel Review Committee with elected prosecutor members reviews appointments, transfers, evaluations and discipline (Article 59-1).
- Ministry of Justice supervision "shall not affect" the exercise of prosecutorial authority (Articles 111–114) ([Court Organization Act, MOJ English text](#)).
- Under the 2011 Judges Act, a Prosecutor Evaluation Committee was set up in January 2012, with a majority of lawyers, academics and civil-society members ([ROC \(Taiwan\) High Prosecutors Office](#)).

The ROC (Taiwan) record also shows risks. The Special Investigation Division, active since 2007, was abolished from 2017 after legislators cited concerns over abuse of power and fairness; it had earlier drawn controversy for tapping a Legislative Yuan phone line ([CNA via GlobalSecurity, 2016-11-18](#)). Critics warn that evaluation bodies with only recommending power risk becoming a "paper tiger" ([Wild at Heart Legal Defense Association](#)).

4. Recommended design

The first post-transition legislature should enact a Public Prosecution Act containing at minimum:

1. **Single criminal mandate.** Powers are limited to overseeing criminal investigations, prosecution and appeals. "General legal supervision" is abolished; detention inspection moves to an independent inspectorate, and public-interest litigation to statutory standing for ombudspersons and civil society.
2. **No party channel.** No party, party committee or political-legal commission may instruct, demand reports on, or approve decisions in any case. Party loyalty ceases to be a qualification. Interfering in a prosecution is a crime.
3. **Separation from the bench.** Prosecutors stop approving arrests. Arrest, detention beyond a short statutory limit, searches and surveillance require a judicial warrant. Prosecutors may not supervise the courts that judge their cases.
4. **Protected Prosecutor General.** Nominated by a Prosecutorial Council, approved by a qualified legislative majority, appointed by the head of state, for a single non-renewable term longer than the legislative term. Removal only on statutory grounds, after a hearing, with judicial review.
5. **Prosecutorial Council.** Prosecutor-elected members plus lawyers, academics and lay members chosen by qualified legislative majority decide appointment, promotion, transfer and discipline on published merit criteria.
6. **Rules on instructions.** Policy is set in published written guidelines. Any case instruction must be written, reasoned and filed. Instructions not to prosecute are prohibited. A prosecutor may seek review of, and decline without penalty, an unlawful instruction.
7. **Checks on decisions not to prosecute.** Victims may seek judicial review of non-prosecution. A citizen inquest committee on the Japanese model may compel prosecution by a court-appointed lawyer after a second resolution.
8. **Command of investigations, lawfully.** Prosecutors check the legality of police and security investigations. Evidence obtained by torture or incommunicado detention must be excluded and

- reported, and the officials responsible must be investigated.
9. **Crimes by officials.** An independent office with its own appointment safeguards prosecutes crimes by police, prosecutors, judges and senior officials, under the same warrant rules and periodic legislative audit — the ROC (Taiwan) Special Investigation Division lesson.
 10. **Public accountability.** Annual reports, charging and declination statistics by offence and region, and prosecution guidelines are published. External evaluation bodies have binding referral power, not only recommendations.
 11. **Individual vetting, not collective dismissal.** Serving procurators continue in post during individual review of integrity and political-case conduct, with due process; leadership first.
 12. **Defence parity.** Prosecutors must disclose evidence that helps the defence, and counsel's access to the client may never depend on prosecutorial permission. Designed jointly with J4.

5. Open questions and risks

- **Who appoints the first council?** Prosecutor-elected members presuppose an already independent service; the first council needs a transitional composition with a sunset.
- **Too much independence.** A self-governing corps can resist accountability; provisions 7 and 10 are counterweights, but the balance is open.
- **Mandatory or discretionary prosecution.** Mandatory prosecution limits selectivity but may overload a post-transition system; published discretion guidelines may be the better default.
- **Capacity.** Moving arrest approval and inspection elsewhere needs staff and money that will be scarce.
- **Military and security procuratorates.** They need their own paper; untouched, they keep a parallel system alive.
- **Informal habits.** Telephone instructions leave no record; provisions 2 and 6 need whistleblower protection and enforcement.

6. Cross-links

- [Justice, Rule of Law & Criminal Procedure hub](#)
- [Justice, Detention & Criminal Procedure dossier](#)
- [CCE-016: Why Does Judicial Independence Matter?](#)
- [Roadmap for Constitutional and Legal Reform in the ROC](#)
- [Truth Commission Act \(Model Draft\) v1.2](#), the companion to provision 11
- Sibling papers in this series: J1 "An Independent Bench From a Party-Controlled Court System"; J2 "Ending Detention Without Law"; J4 "Legal Aid and Public Defense"

In this series: [Legal Aid and Public Defense](#).

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