



COUNCIL OF EUROPE CONSEIL DE L'EUROPE

Strasbourg, 16 March 2007

CCJE/RAP(2007)4
English only

**CONSULTATIVE COUNCIL OF EUROPEAN JUDGES
(CCJE)**

3RD EUROPEAN CONFERENCE OF JUDGES

WHICH COUNCIL FOR JUSTICE?

ROME, (ITALY), 26-27 MARCH 2007

Session I

*The position of the Consultative Council of European Prosecutors (CPPE)
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I. INTRODUCTION.

It has been constantly repeated that crime itself is increasingly an international phenomenon. This is not surprising since, day by day, we are witnessing a higher level of international integration, an increasing international trade and an increasing international data flow. As a result, crime prevention and control can no longer remain within a national framework. It is obvious that steps must be taken, and in fact are being taken, to achieve a coherent international crime policy, at least in respect of the most serious dangers to modern society. This involves co-operation in detection, apprehension, prosecution and adjudication.

It goes without saying that the judiciary and the public prosecution services are both essential pieces to reach the above mentioned goals in a successful way. This is why the Council of Europe attaches a very especial importance to, both, the judiciary and to the public prosecutor services.

II. THE COUNCIL OF EUROPE, THE JUDICIARY AND THE PUBLIC PROSECUTION SYSTEM.

However good national laws may be, they can only be effective if judges are independent, impartial, competent and efficient. In fact, the right to an independent and impartial tribunal is clearly established in article six of the European Convention of Human Rights. This statement has also been reiterated in Recommendation Rec (94) 12, on the independence, efficiency and role of judges. In that regard, the European Charter for the statute for judges, adopted in 1998, provides a reference for states wishing to reinforce the independence of the judicial powers.

Parallel to the judiciary, the public prosecution also plays a key role in the criminal justice system. Regardless of national differences and legal traditions, in all democratic regimes, public prosecutors are responsible for requesting the judicial application of the criminal law. Prosecutors, therefore, participate in the process of rule application. In addition, the prosecuting authorities play a crucial role as the interface between governments, which are responsible for crime policy and courts, which must be independent. This is why the Committee of Ministers of the Council of Europe adopted the Recommendation Rec (2000) 19 on the role of public prosecution in the criminal justice system.

Recommendation Rec (2000) 19 aims at laying down a number of fundamental principles that should guide the public prosecutors' action. It defines the public prosecution, its functions and the safeguards that are necessary to carry those functions out, as well as its relationship with the executive and legislative powers to avoid undue interferences. The Recommendation also refers to the public prosecutor duties and responsibilities towards individuals, as well as its role in international cooperation. Last but not least, the Council of Europe is fully aware of the importance of the relations between the public prosecution and the judiciary. It is also aware of the fact that the dealings between the two professions must be characterised by mutual respect, objectivity and the observance of procedural requirements. This is why Recommendation (2000) 19 establishes some basic principles, from paragraph 17 to 20, to guarantee a fair and proper relationship between judges and prosecutors in the development of their professional tasks.

Paragraph 19 of the Recommendation underlines what is, perhaps, one of the most outstanding of aforementioned principles, when establishing that "**Public prosecutors must strictly respect the independence and impartiality of judges**". The Explanatory Memorandum of Recommendation (2000) 19, clarifies that point when precisising that "*Public*

prosecutors, whose job is to guarantee the application of the law, must be vigilant on this point while at the same time scrupulously respecting the court decisions which it is often their duty to implement, save where exercising their normal right of appeal". Accordingly, the prosecutor guarantees the proper implementation of the law, which often extends to the effectiveness of the court decision.

It has to be said, however, that it would be a useless guarantee if the Recommendation would not provide with a previous safeguard to make sure that whatever initiative is taken by the prosecutor it is adopted in a fair and objective manner, so that nothing is hidden to the court as the best way to deliver a proper decision. In that regard, paragraph 20 points out that **"Public prosecutors must be objective and fair during the court proceedings. In particular, they should ensure that the court is provided with all relevant facts and legal arguments necessary for the fair administration of justice"**. The Explanatory Memorandum also explains those aspects, underlining that, what has been said, *"concerns the need for objectivity on the part of the public prosecutors and for transparency in their dealings with judges, so that the latter have a sound basis on which to deliver a ruling. The first priority for ensuring transparency must be the communication of all relevant facts and arguments"*.

It is evident that there is a constant professional intercourse between the two bodies, whose adequate functioning is essential for an adequate and fair administration of justice. It is so, since, according again to the Explanatory Memorandum, *"It is the task of the public prosecutors, as of judges, to apply the law or to see that it is applied. Judges do this reactively, in response to the cases brought before them, whereas the public prosecutor proactively ensures the application of the law. Judges sit on the bench and deliver decisions; public prosecutors are in the business of vigilance and action to bring cases to court"*. As a result, and despite the differences that could exist between judges and prosecutors, both institutions have important common tasks such as the utmost respect to the law under all possible circumstances, the protection of citizens' rights and to guarantee their individual liberties.

This is why it is so important for public prosecutors to work hand by hand with judges, not only when developing their daily professional work, but also when it comes to develop European strategies to fight against criminality. Only in that way will be possible to develop a common judicial culture in Europe.

III. A FORUM FOR THE PROSECUTORS IN EUROPE

Departing from the aforementioned context, and taking into consideration what has been said, the Council of Europe provided a forum for prosecutors at European level which was the Conference of Prosecutors General in Europe, integrated by high level representatives of the prosecution system of all Member States. The Conference has meet yearly since 2000 to discuss issues related to the functioning of the prosecution system such as the relations between public prosecution and the judiciary, politics and the police, the advantages and disadvantages of discretionary powers in public prosecution, and so forth and so on.

There have been some recent and interesting events, on that regard, which are important to mention. Perhaps the most important of those novelties is the setting up of the Consultative Council of European Prosecutors, a consultative body to the Committee of Ministers of the Council of Europe which was created by decision of the Ministers' Deputies on July 13, 2005. The Consultative Council, among other objectives, is aimed at institutionalising the yearly Conference of Prosecutors General of Europe.

IV. SOME FINAL REMARKS.

Following the perspectives previously outlined, the European prosecutors are fully conscious of the need to accomplish the content of Recommendation (2000) 19, especially those paragraphs dealing with the relationship between judges and prosecutors. Accordingly, the Consultative Council of European Prosecutors , to which I personally have the honour to represent in this conference, would like to express our most positive concern with everything which has to do with the judiciary. We would also like to express our highest disposition to collaborate with the judiciary in the fields of our mutual interests, for the development of justice and the rule of law in Europe.