

Strasbourg, 21 May 2007



CCPE-Bu (2007) 15

**BUREAU OF THE
CONSULTATIVE COUNCIL OF EUROPEAN PROSECUTORS
(CCPE-Bu)**

**ALTERNATIVES TO PROSECUTION
IN COUNCIL OF EUROPE MEMBER STATES**

DRAFT QUESTIONNAIRE

prepared by Mr Olivier de Baynast, member of the CCPE in respect of France

Draft survey by the Bureau of the CCPE on alternatives to prosecution in Council of Europe member States

I. INTRODUCTION

Under the framework overall action plan for the work of the CCPE as approved by the Committee of Ministers at the 981st meeting of the Ministers' Deputies on 29 November 2006 and by the CCPE at its first meeting in Moscow on 6 July 2006, the Bureau of the CCPE decided, in the light of the Conference of Prosecutors General of Europe (CPGE) held in Celle from 23 to 25 June 2004 on the theme "Discretionary powers of public prosecution: opportunity or legality principle - advantages and disadvantages", to carry out a study on the adoption of alternatives to prosecution with a view to identifying the best practices followed in the Council of Europe member States and promoting them.

To that end, it is submitting the enclosed questionnaire to all the national members of the CCPE, asking them to reply in English or French by/..., in order to fuel discussion to be held on this topic at the next plenary meeting of the CCPE, at which it will be proposed to adopt a Recommendation.

The Bureau of the CCPE would be grateful if you would kindly **e-mail** your replies to the following questions to its Secretariat at the following address: dq1.ccpe@coe.int, so that they may be used to prepare the plenary meeting of the CCPE, when this question will be on the agenda.

It should be noted that the replies to this questionnaire will not in any circumstances be published in a manner suggesting that they represent the official position or situation of the States on the question considered; their sole purpose is to gather the fullest possible sample of good practices with a view to drafting a document making recommendations on this question for the CDPC, and it is the task of the members of the CCPE to gather the relevant information from the individuals and practitioners with the closest knowledge of this issue in their country. This is in no way an evaluation.

II. CONCLUSIONS OF THE CPGE IN CELLE

The Prosecutors General meeting in Celle from 23 to 25 June 2004 noted with satisfaction that there was a trend towards European harmonisation of the objectives of the different legal systems, revolving around the principles of public interest, the equality of all before the law and personalisation of criminal justice, in accordance with Council of Europe recommendation Rec(2000)19.

The Conference of Prosecutors General called for implementation of the principles of:

- 1- the possibility of choosing between the criminal law response and other responses to offences, regardless of the system of definition of punishment by law or discretionary prosecution, given the need to punish serious offences in the public interest, particularly corruption or offences by public office-holders;
- 2- serious, credible alternatives which are designed to prevent the perpetrator from reoffending and take the victims' interests into account;
- 3- respect, when applying an alternative sanction, of law provisions enshrining *inter alia* the right of victims and the objective, fair and impartial treatment of the perpetrator.

III. DEFINITIONS

For the purposes of the present survey an alternative to prosecution shall be taken to mean the temporary or conditional abandon of prosecution in a case where an infringement of the law has been committed, exposing its perpetrator to a criminal sanction such as imprisonment or a fine with or without a suspended sentence, as well as ancillary penalties such as confiscation, the deprivation of certain rights etc. It is to be noted that guilty pleas are not covered by this survey, in that they do not preclude criminal law measures.

IV. QUESTIONNAIRE

1. Concerning the legal framework: does your country follow a system of definition of punishment by law or discretionary prosecution? What is the rate of criminal prosecutions achieved in your country, whatever the system followed, over the last two years? Has the situation changed recently? Is a change envisaged?
2. In the event of an offence, are your judicial authorities able to choose between criminal law measures and other responses which leave no trace on the individual's criminal record? Is that choice definitive or can it be challenged?
3. Who decides on this choice? What is the specific role of the prosecutor?
4. Are there criteria for abandoning the criminal prosecution approach?
5. Could it happen that a serious offence escapes any prosecution because of alternative measures?
6. Are victims allowed to have their say in the event of abandon of criminal prosecution, and how are their rights preserved?
7. Given that the response chosen gives rise to obligations in respect of the persons subjected to it - such as the reparation of damage - are they able to lodge an appeal with an impartial authority (for example, for validation by a judge of a restraining order or an obligation to undergo training proposed by way of settlement)?
8. Can you give specific examples of alternatives to prosecution which you see as particularly well suited to the prevention of reoffending by the perpetrator and consideration of victims' interests?
9. Is there a method in your country for assessing the effectiveness of alternatives to prosecution and what is it?
10. Can you provide the contact details (with their consent) of someone clearly identified as a specialist on these questions and supply examples of their work to back up your choice?
11. Other comments