



Strasbourg, 2 March 2008

CCPE-BU(2008)3

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

**Report of the 6th meeting  
Strasbourg, 6 – 8 February 2008**

Secretariat memorandum, prepared by the  
Directorate General of Human Rights and Legal Affairs

## LIST OF THE MAIN DECISIONS TAKEN BY THE BUREAU

The CCPE-BU:

- **entrusted Mr Olivier de BAYNAST and the Secretariat** to amend the draft opinion on alternative measures to prosecution (CCPE-Bu(2007)15Rev), taking into account the discussions during this meeting and further comments to be sent by the members of the Bureau to the Secretariat no later than 1 May 2008;
  - **took note** that the scientific expert Mr Andras Varga (Hungary) would finalise in April 2008 the preparation of a report on the role of public prosecution outside the criminal law field, with a view to preparing the CCPE's opinion on this issue; however **regretted** that only 20 member states had replied to the specific questionnaire prepared to that end and therefore **invited** the CCPE's members concerned to take the appropriate measures so that the replies are sent to the Secretariat in the near future, **entrusted its President** to take contacts with them in this context and **entrusted the Secretariat** to re-launch the relevant member states through the diplomatic channel;
  - **thanked the authorities of the Russian Federation** for having offered to host a conference of General prosecutors of Europe on the role of public prosecution outside the criminal law field in Saint Petersburg on 1 – 3 July 2008;
- agreed** that the conference could concern in particular the role of public prosecutors:
- in non criminal matters in the various European legal systems,
  - as regards the protection of public interest and state interest before the courts and other institutions,
  - in the protection of Human Rights;
- entrusted Mr Alexander ZVYAGINTSEV and Mr Peter POLT** to coordinate the preparation of the programme of the conference, with the support of the Secretariat, and **invited its members** to propose relevant rapporteurs; it **agreed** to hold an informal meeting of the CCPE's Working party after the conference – being understood that the national delegations would participate in this conference at their own expenses;
- **agreed** that a work in cooperation with the CCJE on relationships between judges and prosecutors should result in a joint opinion to the attention of the Committee of Ministers, taking into account the relevant European instruments and the priority issues to be listed by both Councils; **entrusted its President** to write a letter to the CCJE introducing the preliminary views of the CCPE on this issue and to take relevant contacts with the President of the CCJE to organise proper working modalities;
  - in order to address the issue of the relations between public prosecutors and the executive and legislative powers, **entrusted the Secretariat** to collect, as a first step, the relevant information available within the Council of Europe (in particular proceedings of the Conferences of the Prosecutors General of Europe, CEPEJ, CDPC, Venice Commission, PACE, Commissioner for Human Rights, case-law of the European Court of Human Rights) with a view to develop its work further;
  - **agreed** with the possibility that the participation in the CCPE's plenary meeting of the representatives of the member states is borne by the budget of the Council of Europe, provided that the CCPE's working group holds only two meetings per year – the second one for 2008 being held in Strasbourg on 10 – 12 September;
  - **agreed** to pursue at its next meeting its reflection on a procedure for addressing issues

concerning the status of prosecutors in some member states, in line with the CCPE's terms of reference;

- **took note** that the CDPC had not yet been in a position to forward the CCPE's Opinion N° 1 on "ways to improving the international cooperation in the criminal law field" to the Committee of Ministers and **expressed the wish** that appropriate modalities can be found so that the CCPE's opinions are in the future submitted to the Committee of Ministers in due time;
- **called on the CCPE's members** to provide the Secretariat with relevant information and documents to fill the country profiles on the CCPE's Web site;
- **agreed** that the CCPE would be represented in the CCJE, CDPC and CDCJ by its President, Mr Harald RANGE; **appointed** Mr Olivier de BAYNAST as CCPE's representative to the CEPEJ; **appointed** Mr Peter POLT as CCPE's representative to Eurojustice;
- **expressed the wish** that the CCPE is invited to take part in the Forum of the European Union for the quality of justice and **entrusted its President and the Secretariat** to take appropriate contacts to that respect.

## **I. INTRODUCTION**

1. The Bureau of the Consultative Council of European Prosecutors (CCPE-BU) held its 6th meeting in Strasbourg on 6 - 8 February 2008. The meeting was chaired by Mr. Harald RANGE (Germany).
2. The agenda and list of participants appear in the Appendix.

## **II. COMMUNICATION BY THE PRESIDENT OF THE CCPE AND THE SECRETARIAT**

3. The President said the letter jointly signed by the President of the CCJE and himself in reply to MEDEL's request (letter of 28 September 2007) concerning allegations of illegal intelligence activities directed at judges and prosecutors in Italy had been sent to the President of MEDEL on 11 December 2007, as decided at the CCPE's 2<sup>nd</sup> plenary meeting.
4. The Secretariat told the Bureau that Opinion No. 1 of the CCPE on "Ways to improve international co-operation in the criminal justice field" had been submitted, in accordance with the CCPE's terms of reference, to the CDPC, with a view to its being sent to the Committee of Ministers.
5. The Bureau of the CDPC had examined the Opinion at its meeting on 16 – 18 January 2008 and had "noted that despite the Chair's contact with the CCPE, the content of the document in question was partly overlapping with the work of the PC-OC". It had also expressed "a positive view concerning the fact that most of the proposals put forward by the CCPE were already being dealt with by the CDPC and its subordinate bodies, in particular PC-OC, in substance". The Bureau had accordingly decided to send this opinion to the PC-OC for information. A document containing its comments was to be adopted at the Bureau's next meeting (13 – 14 May 2008), and then sent to the Committee of Ministers with the CCPE's Opinion.
6. The Bureau of the CCPE pointed out that the CCPE represented criminal law practitioners, and that its opinions expressed the views of prosecutors. Even when it dealt with similar issues, its work could overlap with that of the CDPC. The two bodies' approaches were complementary, although greater synergy was needed, and care must be taken to ensure that the Committee (intergovernmental) and the Council (representing prosecutors) did not adopt conflicting positions.
7. The Bureau of the CCPE hoped that ways would be found of ensuring that the CCPE's opinions were sent to the Committee of Ministers more rapidly in future. This might be done by re-wording the terms of reference to stipulate that the CDPC should receive appropriate and timely information on CCPE texts relating to its areas of responsibility, without this occasioning any delay in the sending of those texts to the Committee of Ministers.
8. The Bureau also insisted on the problem posed by preparation of the Opinion on the role of prosecutors beyond the criminal field, which should not *a priori* concern the CDPC.

## **III. DRAFT OPINION ON "ALTERNATIVES TO PROSECUTION"**

9. The Bureau thanked Mr Olivier de BAYNAST for his preparatory work (CCPE-BU(2007)27), which it was using as a basis for preparation of a draft Opinion on alternatives to prosecution.

10. This document took account of replies from 23 member states to the questionnaire prepared by the CCPE (CCPE-BU (2007)15Rev). The Bureau regretted that over half the member states had not returned it.
11. The Bureau discussed and amended the draft Opinion (CCPE-BU(2008)1Rev). In general, there should be no explicit references to specific member states.
12. The Bureau instructed the Secretariat to expand the draft Opinion in the light of the discussion at this meeting, and bring the style into line with that of Opinion No. 1. It was agreed that this version would then be sent to Mr Olivier de BAYNAST, so that he could make any additions needed in the light of any further replies to the questionnaire received in the next few weeks. The revised version would be sent to all the members of the Bureau, so that they could send any additional comments to the Secretariat by 1 May 2008. The fully revised version would be approved by the Working Party at its meeting in September 2008, before being sent to the CCPE for adoption at its plenary meeting.

#### **IV. DRAFT OPINION ON THE ROLE OF PROSECUTORS OUTSIDE THE CRIMINAL FIELD**

13. Mr Peter POLT and the Secretariat told the Bureau that the expert, Mr Andras VARGA (Hungary), would finalise his report on the role of prosecutors outside the criminal field in April 2008, with a view to preparing the CCPE's Opinion on this question.
14. It was noted that the consolidated report was at present based on replies from only 20 member states to the questionnaire (CCPE-BU(2007)13REV). The Bureau regretted that less than half the member states had responded, and asked the CCPE members concerned to take steps to ensure that replies reached the Secretariat with minimum delay. It also asked its President to contact them on this matter, and its Secretariat to reactivate the member states concerned via diplomatic channels.
15. The draft Opinion would be prepared at the Working Party's meeting in Strasbourg on 10-12 September 2008. The experts would base themselves on the above-mentioned report, and on the conclusions of the Conference of General Prosecutors of Europe, which would be held in St Petersburg on 2-3 July 2008 (see below).

#### **V. RELATIONSHIPS BETWEEN PROSECUTORS AND POLITICAL AUTHORITIES**

16. Concerning relations between prosecutors and political authorities, the Bureau agreed that it was up to the CCPE to assess the member states' application of Recommendation R(2000)19 on the role of public prosecution in the criminal justice system, and the relevant conclusions of the various Conferences of Prosecutors General of Europe.
17. The members of the Bureau discussed appropriate ways of arranging for peer assessment of the relationships of prosecution services in the member states with governments and parliaments. Some suggested building on the experience of structures like GRECO, but others pointed out that these had been set up by Council of Europe legal instruments, with appropriate operating facilities, and had nothing in common with the aims which the CCPE might set itself, and the resources it might have to verify compliance with Recommendation R(2000)19.
18. To start with, the Bureau agreed to collect relevant information within the Council of Europe (particularly the proceedings of the Conferences of Prosecutors General of

Europe, the work of the CEPEJ, the CDPC, the Venice Commission, the PACE and the Commissioner for Human Rights, and the case-law of the European Court of Human Rights). It instructed the Secretariat to list the material available, with a view to taking this work further.

19. It was proposed that Mr Peter TAG (United Kingdom) be involved in due course as a scientific expert.

## **VI. RELATIONSHIPS BETWEEN JUDGES AND PROSECUTORS: PREPARATORY WORK**

20. In accordance with the decision of the CCPE and the CCJE to work together in 2009 on relationships between judges and prosecutors, the Bureau agreed to prepare, with the CCJE, a joint Opinion for the Committee of Ministers, taking account of the relevant European instruments and of priority areas identified by both councils.
21. For that purpose, the Bureau prepared a list of priority issues to be tackled (see Appendix III). It instructed its President to write to the CCJE, indicating these preliminary views, and contact the President of the CCJE on suitable working arrangements.
22. The Bureau noted that a Joint European Conference of judges and prosecutors in 2009 might prove useful for preparation of this Opinion. It also asked the members of the CCPE to contact their national counterparts on the CCJE individually and exchange views on this question.

## **VII. 2008 WORKING CALENDAR**

### ***Conference of European Prosecutors in St Petersburg***

23. Mr Alexander ZVYAGINTSEV confirmed his authorities' offer to host a conference of General prosecutors of Europe on the role of prosecution outside the criminal field in St. Petersburg. Since the prosecutors general of the EU member states would be meeting in Vienna in October in 2008, it was proposed that this conference be held from 1 to 3 July 2008.
24. Invitations would go from the Council of Europe and the Prosecutor General of the Federation of Russia to the prosecutors general of the 47 Council of Europe member states. The members of the Bureau and the Working Party agreed that they would also, as far as possible, join the delegation. The other members of the CCPE were also asked to consider this possibility. It was emphasised that states would cover their delegations' expenses.
25. The Bureau agreed that the conference should focus on the role of prosecutors:
  - in non-criminal cases in the various European legal systems,
  - in protecting public and state interests before courts and other institutions,
  - in protecting human rights.
26. It instructed MM. Alexander ZVYAGINTSEV and Peter POLT to co-ordinate preparation of the conference programme for the CCPE with the Secretariat's support, and invited its members to suggest rapporteurs.
27. It was agreed that an informal meeting with the CCPE's Working Party would be organised after the conference, for the purpose of drawing conclusions useful for preparation of the Opinion on the role of prosecutors beyond the criminal field.

### ***CCPE meetings***

28. The Secretariat told the Bureau that, in response to the CCPE's suggestion, at its 2<sup>nd</sup> plenary meeting, that the Council of Europe should cover its members' attendance at plenary meetings, it might be possible to align financial arrangements for the holding of CCPE meetings on those applying to the Consultative Council of European Judges (CCJE). This would be offset by dropping one of the three Working Party meetings originally scheduled for 2008. The Bureau accepted this proposal, and suggested cancelling the Working Party meeting originally scheduled for 4-6 June 2008. It thanked the Secretariat for this proposal, which should make it possible to increase the member states' attendance at plenary meetings.
29. The dates of the CCPE's forthcoming meetings were accordingly confirmed as follows:
  - informal meeting of the Working Party in St Petersburg on 3 July 2008,
  - formal meetings of the Working Party and the Bureau in Strasbourg from 10 to 12 September 2008,
  - 3rd plenary meeting of the CCPE in Strasbourg from 15 to 17 October 2008.

### **VIII. CO-OPERATION OF THE CCPE WITH OTHER BODIES**

30. The Bureau agreed that the CCPE would be represented at the plenary meetings of the CCJE, the CDPC and the CDCJ in 2008 by its President, Mr Harald RANGE. It appointed Mr Olivier de BAYNAST to represent the CCPE at the CEPEJ.
31. The Bureau further appointed Mr Peter POLT to represent the CCPE at Eurojustice. Mr POLT would also be attending the meeting of Prosecutors General of the EU member states, to be held in Vienna on 16-17 October 2008.
32. Ms. Raja TOIVIANEN described the activities of the International Association of Prosecutors, which would be holding its plenary meeting in Singapore in August 2008 – she would be attending. A preparatory meeting for European members would be held beforehand. She would keep the Bureau informed.
33. The Bureau was informed of the Communication from the European Commission of 4 February 2008 (COM(2008)38 final) on the creation of a Forum for discussing EU justice policies and practice. The Bureau expressed a wish that the CCPE be invited to this Forum, and instructed its President and Secretariat to make the contacts needed for this purpose.

### **IX. PROCEDURE FOR ADDRESSING ISSUES CONCERNING THE STATUS OF PROSECUTORS IN SOME MEMBER STATES**

34. At the plenary meeting's request, the Bureau considered ways in which the CCPE could in future deal with requests addressed to it concerning the status of prosecutors in specific member states.
35. The Bureau agreed that its terms of reference, and its obligation to promote Recommendation R(2000)19, allowed it to act on these requests. It insisted, however, on the need for criteria allowing it to decide which requests formed part of its brief and merited its attention.
36. Official requests from inside the Council of Europe (Committee of Ministers, Parliamentary Assembly, Secretary General) posed no problem. The Bureau was less

certain in the case of requests from national or international professional or non-governmental organisations.

37. Several members insisted on the need to consider requests case by case, with a certain flexibility.
38. M. ZYMIN suggested that a reflection paper be prepared for the Bureau on criteria for the independence and impartiality of prosecutors, which might be considered in this context. The Bureau agreed to resume discussion of this issue at its next meeting, on the basis of this document.

#### **X. EXCHANGE OF VIEWS BETWEEN THE PRESIDENT OF THE CCPE AND THE MINISTERS' DEPUTIES (27 FEBRUARY 2008)**

39. The Secretariat said that the exchange of views between the President of the CCPE and the Ministers' Deputies, originally scheduled for 27 February 2008, might be postponed for timetable reasons. This might have the advantage of allowing the President of the CCPE to present to the Deputies Opinion No. 1, which should have been sent to the Committee of Ministers by the CDPC in the meantime. If appropriate, the President of the CCPE might emphasise the difficulties encountered by the CCPE in sending its opinions to the Committee of Ministers (see paras. 4 to 8 below).

#### **XI. OTHER BUSINESS**

40. The Bureau noted that the CCPE website would be improved by the addition of information on the functioning of prosecution services in the various member states. It accordingly asked the members of the CCPE to send the Secretariat the information and documents needed to supplement the country profile sheets on the site.
41. Mr Roy JUNKIN told the Bureau that he would shortly be retiring. All the members of the Bureau and the Secretariat thanked him warmly for his valuable contribution to the work of the CCPE.



**Appendix I****AGENDA**

- 1. Opening of the meeting**
- 2. Adoption of the agenda**
- 3. Communication by the President, members of the Bureau and the Secrétariat**
- 4. Draft Opinion on Alternatives to prosecution**
- 5. Draft Opinion on the role of prosecutors outside the criminal field**
- 6. Relationships between prosecutors and political authorities**
- 7. Relationships between judges and prosecutors: preparatory work**
- 8. 2008 Working calendar**
  - Invitation by the authorities of the Russian Federation to organise a high level conference
  - Working group meetings and plenary meeting
  - Articulation of the CCPE's meetings with other European and international meetings of prosecutors
- 9. Cooperation of the CCPE with other bodies**
  - within the Council of Europe
  - with external bodies to the Council of Europe
- 10. Procedure for addressing issues concerning the status of prosecutors in some member states**
- 11. Exchange of views between the President of the CCPE and the Committee of Ministers' Deputies (27 February 2008)**
- 12. Any other business**

## Appendix II

### List of participants / *Liste des participants*

#### BUREAU MEMBERS / *MEMBRES DU BUREAU*

**M. João Manuel DA SILVA MIGUEL**, Procureur Général Adjoint, Bureau du Procureur Général de la République, Lisbonne, PORTUGAL

**Mr Roy JUNKIN**, Deputy Director of Public Prosecutions, Public Prosecution Service for Northern Ireland, Belfast Chambers, Belfast, UNITED KINGDOM

**Ms Katarína LAIFEROVA**, Head of the Office of the Prosecutor General, Bratislava, SLOVAKIA

**M. Vito MONETTI**, Substitut du Procureur de la République près la Cour Suprême de Cassation, Rome, ITALIE

**Mr Peter POLT**, Chief Prosecutor, Head of Criminal Trial Cases, Office of the Prosecutor General, Budapest, HUNGARY, **Vice-Chairman / Vice-Président**

**Mr Harald RANGE**, Prosecutor General, Office of the Prosecutor General of Celle, GERMANY, **Chairman / Président**

**Mr Jerzy SZYMAŃSKI**, Public Prosecutor, National Prosecutor's Office, Ministry of Justice, Organised Crime Bureau, Warsaw, POLAND (Apologized / *excusé*)

**Ms Raija TOIVIAINEN**, State Prosecutor, Head of the International Unit, Helsinki, FINLAND

**Mr Antonio VERCHER NOGUERA**, Deputy Attorney General, Fiscalía General del Estado, Madrid, SPAIN

#### OTHER PARTICIPANTS / *AUTRES PARTICIPANTS*

**M. Olivier de BAYNAST**, Procureur Général près de la Cour d'Appel d'Amiens, FRANCE

**Mr Peter McCORMICK**, Prosecutor, Office of the Director of Public Prosecutors, Dublin, IRELAND

**Mr Alexander ZVYAGINTSEV**, Deputy Prosecutor General, Prosecutor General's Office, Moscow, FEDERATION OF RUSSIA

**Mr Vladimir ZIMIN**, First Deputy Chief, the General Department of International Legal Co-operation, Prosecutor General's Office, Moscow, FEDERATION OF RUSSIA

**Ms Olga TOUMBROUKAKI**, interpreter

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M. Stéphane LEYENBERGER, Secretary of the CCPE, *Secrétaire du CCPE*  
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M. Jean-Pierre GEILLER, Documentation  
Mrs Emily WALKER, Assistant / *Assistante*

**Interpreters / Interprètes**

Mme JAFFREY  
M. WORSDALE  
Mme MARCHINI

**Appendix III**

6 February 2008

**Joint CCJE – CCPE opinion on relationships between judges and prosecutors  
Preliminary views by the CCPE's Bureau**

**MAIN ISSUES TO BE ADDRESSED****At the institutional level**

- constitutional safeguards and status;
- membership to a same career (salaries, career);
- possibilities to switch from the position of judge to the position of prosecutor and vice-versa;
- judicial council;
- institution of the investigative judge;
- joint training;
- cooperation for the smooth management of the justice system;

**At the level of proceedings*****Criminal proceedings***

- investigative powers;
- cases with custody;
- control of the discretionary power of prosecutors;
- duration of cases and human rights (principle of reasonable timeframe);
- enforcement of sentences;
- alternatives to prosecution;

***Non criminal proceedings***

- relationships outside the criminal law field;

**POSSIBLE HEADLINES OF AN OPINION**

- need to safeguard both the status of judges and prosecutors;
- ways to improve the relationships between judges and prosecutors in the criminal law field;
- how to improve the efficiency of justice through the cooperation between judges and prosecutors?

**WORKING DOCUMENTS**

- Recommendation Rec(87)18 concerning the simplification of criminal justice
- Recommendation R(2000)19 on the role of public prosecution in the criminal justice system, para. 17 to 20
- Conclusions of the Conference of Prosecutors General of Europe, 3rd Session, Ljubljana, 12 – 14 May 2002
- CEPEJ's Report on "European judicial systems"