



COUNCIL OF EUROPE CONSEIL DE L'EUROPE

Popowo, 7 June 2007
[ccpe-bu/doc 2007/ccpe-bu (2007) 13 rev - e]

CCPE-Bu (2007) 13 rev

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

**ROLE OF THE PUBLIC PROSECUTION SERVICE
OUTSIDE THE FIELD OF CRIMINAL JUSTICE**

QUESTIONNAIRE

*adopted by the Bureau of the CCPE
at its 3rd meeting
(Popowo, Poland, 6-8 June 2007)*

I. INTRODUCTION

In 2006 the Committee of Ministers set up the Consultative Council of European Prosecutors (CCPE)¹, which has the task in particular to prepare opinions concerning issues relating to the prosecution service and to promote the implementation of Recommendation Rec(2000)19 on the role of public prosecution in the criminal justice system.

In conformity with the instruction of the CCPE (see document CCPE (2006) 06, Part II), its Bureau, during the meeting in Strasbourg on 18-20 December 2006, decided the order of priority for the actions of the CCPE in the scope of the implementation of the Framework Overall Action Plan for the work of the CCPE.

For 2008, the CCPE is considering the detailed study of the functions of the public prosecution service outside the field of criminal justice, taking into account the conclusions adopted by two of the previous Conferences of Prosecutors General of Europe, held in Celle (23-25 May 2004) and in Budapest (29-31 May 2005).

In order to facilitate the preparation of an opinion for the attention of the Committee of Ministers on this topic, the Bureau of the CCPE submits the questionnaire below. The first part of the questionnaire (questions 1 to 4) reproduces the one prepared to the Budapest Conference and no answer is therefore requested unless your delegation has not submitted an answer already² or, having done so, there is a need for clarification of relevant modifications introduced in answers previously given. All CCPE delegations are requested to answer the second part of the questionnaire (questions 5-8).

Replies should be sent, in English or in French, by 31 October 2007, to the following address: dg1.ccpe@coe.int. When preparing their replies to the questionnaire, delegations are invited to consult their relevant national bodies which could make a useful contribution to this request for information.

PART I

1. Does the prosecution service of your country have any competencies outside the field of criminal justice?
2.
 - a. If so, what are these competencies (with regard to, for example, administrative, civil, social and commercial law and / or the functioning and management of the courts)?
 - b. Please indicate the background explaining their existence.
 - c. Please indicate the role played by the public prosecutor in exercising these competencies: advisory role - ex officio or upon request -, supervisory role or decision-making role.
 - d. Where public prosecutors have decision-making powers, can their decisions be challenged by any legal remedy? Please indicate the legal remedies provided for.
3. Please give an indication (statistics, if available) of the effective use of these competencies and the workload they entail for the prosecution service as a whole.
4. Does your country envisage any reform in the above-mentioned competencies of the public prosecutor?

¹ See website: www.coe.int/ccpe

² Replies were received from: Armenia, Austria, Belgium, Bulgaria, Croatia, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Monaco, Montenegro (Serbia and Montenegro), Norway, The Netherlands, Poland, Portugal, Slovakia, Spain, Sweden, Switzerland, "the former Yugoslav Republic of Macedonia", Turkey, Ukraine and United Kingdom (Northern Ireland and Scotland).

PART II

5. Does the public prosecution service have a separate internal organisation when it acts outside the field of criminal justice? Please specify.
6. Which powers does the public prosecution service enjoy when acting outside the field of criminal justice?
 - a. Is it vested with a specific authority or does it enjoy the same powers as the other party(ies) to the trial?
 - b. Are there specific rules governing the exercise of these functions? What is the basis of such rules (the law, custom or practice)?
 - c. Does it enjoy other rights and duties ? Please specify.
7. Regarding the role of the public prosecution service outside the field of criminal justice:
 - a. has the European Court of Human Rights taken decisions or handed down judgements on that matter in respect of your country? If so, please indicate the number of the application and the date of the decision or judgement.
 - b. in your country, has the constitutional court or another court with the authority to rule on the constitutionality of laws, taken decisions or handed down judgements on the compatibility of such a role with the constitution or the basic law? If so, please indicate the references of such decisions and their main thrust.
8. Amongst the competences of the public prosecution service acting outside the system of criminal justice which are, in your view, the most important for the reinforcement of rule of law and protection of human rights?

Answer

Prosecutors in this jurisdiction do not exercise any function outside the criminal field, except in relation to Anti-Social Behaviour Orders (ASBOs) and football banning orders.

ASBOs

An 'ASBO' refers to a civil order which can be obtained by relevant authorities in civil proceedings under section 1 or section 1B of the Crime and Disorder Act 1998. Section 1(1) defines an ASBO as a "conduct which caused or was likely to cause alarm, harassment, or distress to one or more persons not of the same household as him or herself and where an ASBO is seen as necessary to protect relevant persons from further anti-social acts by the Defendant".

While an application for an ASBO is considered by the courts in its civil jurisdiction and is a civil order, breach of an ASBO is a criminal offence and conviction may result in up to five years' imprisonment (two for a minor). An ASBO may contain any prohibition even if the same is not an anti-social act, e.g. can include a prohibition in entering an area or speaking to named persons.

Under the 1998 Act, prosecutors have the power to make an 'order conviction' to the court. Section 1C(3) provides

"The court may make an order (on conviction) –

- (a) if the prosecutor asks it to do so, or
- (b) if the court thinks it appropriate to do so."

A team of specialist prosecutors to deal with ASBOs was created in April 2004. The prosecutors, stationed across the country, are responsible to the local community for pursuing anti-social behaviour cases through

the courts. They are 'local experts' in the types of powers available to tackle anti-social behaviour and a central contact point for all local agencies dealing with the problem.

Football Banning Orders

From the 6th April 2007 prosecutors have been able to apply for a 'civil' football banning order under section 14(B) of the Football Disorder Act 2000. The court must make an order if satisfied that the respondent has at any time caused or contributed to any violence or disorder in the UK or elsewhere and that there are reasonable grounds to believe that it would help to prevent violence or disorder at or in connection with any regulated football matches.

Prosecution can appeal a magistrates' court refusal to make a banning order or complaint by application to the Crown Court.

The orders are civil and preventative rather than a penalty for past misbehaviour. Their purpose is to prevent known football hooligans from causing further trouble at home and abroad. If made under the section 14 (B) civil procedures, football banning orders may be for a maximum of 5 years and a minimum of 3 years.

Breach of a banning order is a criminal offence that, on conviction, carries a penalty of up to 6 months imprisonment and/or a £5,000 fine.

The CPS does not keep statistics on the use of either of these powers.

There have not been any decisions from the European Court of Human Rights or our domestic courts on the constitutionality or compatibility of such powers with the European Convention on Human Rights.