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Conférence des Procureurs Généraux d'Europe**

**organised by the Council of Europe
in co-operation with the Prosecutor General of Slovakia**

**organisée par le Conseil de l'Europe
en coopération avec le Procureur Général de la Slovaquie**

Bratislava, 1 – 3 June / juin 2003

Questionnaire in preparation of the Bratislava Conferences and replies thereto from:
*Armenia, Denmark, Finland, France, Hungary, Iceland, Latvia, Liechtenstein,
Lithuania, Norway, Poland, Romania, Russia, Slovenia, Spain, Switzerland and
Ukraine*

Questionnaire en préparation de la Conférence de Bratislava et réponses en
provenance de :
*Arménie, Danemark, Finlande, France, Hongrie, Islande, Lettonie, Liechtenstein,
Lituanie, Norvège, Pologne, Roumanie, Russie, Slovaquie, Espagne, Suisse et Ukraine*

QUESTION 1. State of implementation of Recommendation (2000) 19 on the role of public prosecution in the criminal justice system

To enable an assessment of implementation of the recommendation, which contains guiding principles common to all public prosecution services in Europe, please provide information on:

- reforms and initiatives of any kind undertaken in 2002 or early 2003, concerning all public prosecutors and based on all or part of the recommendation
- future plans in this area.

QUESTION 1. L'état de la mise en oeuvre de la Recommandation (2000) 19 sur "le rôle du ministère public dans le système de justice pénale"

Afin de permettre d'établir un bilan de la prise en compte de la *Recommandation*, qui rassemble les principes directeurs communs à l'ensemble des Ministères Publics d'Europe, il importe de connaître :

- les réformes et initiatives de toute nature survenues en 2002 ou début 2003 et intéressant chaque Ministère Public, qui ont pris pour base tout ou partie de la *Recommandation*
- les projets en la matière pour l'avenir

REPLIES / REPONSES

ARMENIA

Taking into consideration the importance of above mentioned Recommendation it was translated into Armenian and published in the General Prosecutor Office's magazines "Orinakanutyun"(Legality) in 2002 .

The main principles of the Recommendation are included in the Constitution of RA , adopted in 1995 and "Law on Procuracy of RA ", adopted in 1998.

We've organized the seminar on "Code of conduct of procuracy employees in the RA" in November 2002, during which the Recommendation was discussed.

DENMARK

I can inform you that no specific reforms or initiatives have been undertaken in 2002 or early 2003 concerning all public prosecutors and based on all or part of the recommendation. At the moment there are no specific plans for the future concerning the recommendation, which is nevertheless used as underlying guiding principles for our activities.

FINLAND / FINLANDE

There have not been any special reforms originating from this Recommendation (2000) 19. The different laws and bylaws, which determine the work of the prosecutors are in broad outline in accordance with the Recommendation. However, the Recommendation has been used as on source of the internationally accepted principles for prosecutors status and activities. It has been referred to for example in the context with prosecutors duties in the preliminary investigation and with the victims and also witnesses rights.

FRANCE

La Conférence nationale des procureurs généraux de France a arrêté, lors d'une réunion tenue à Paris les 19-20 février 2003, au terme de deux années de travaux, un projet de Charte du Ministère Public français, qui prend largement en compte les dispositions de la Recommandation 2000-19 sur le rôle du Ministère Public dans le système de justice pénale.

Ce projet de Charte est actuellement en cours de discussion, dans le ressort de chaque cour d'appel, avec l'ensemble des magistrats du Ministère Public, qui ont été appelés à faire valoir leurs observations et leurs suggestions.

Le projet, complété de ces observations et de ces suggestions, sera à nouveau soumis, pour adoption définitive, à la Conférence nationale des procureurs généraux lors d'un séminaire qui sera tenu en septembre 2003.

HUNGARY / HONGRIE

After the comprehensive structural reforms of 2001 there were no general structural changes in the year of 2002 at the Hungarian Public Prosecution Service. The prosecutorial system and the relevant rules of law are in harmony with the Recommendation. The implementation of the second part of the structural reform is being finished by the second half of 2003.

In relation to 2002 however, the following developments should be mentioned.

Structure

In 2002 there was no change in the constitutional situation of the Public Prosecution Service. The organisation is independent and it is subordinated only to the rule of law, according to Act V of 1972 on the public prosecution The Public Prosecution Service is led by the Prosecutor General who is obliged to report about his activities to the Parliament [Constitution, Arts 52 (2) and 53 (3)].

The Act on the public prosecution provides the division of the organisation:

- a) Office of the Prosecutor General;
- b) Regional Prosecution Offices attached to the Courts of Appeals (hereinafter: Regional Prosecution Offices);
- c) County Chief Prosecution Offices;
- d) Local Prosecution Offices

Act XXII of 2002 “On the establishment of headquarters and competency of the Courts Appeals and Regional Prosecution Offices” set up the Courts Appeals and incorporated the Regional Prosecution Offices into the prosecution system with the modification of the Act on public prosecution. The aim of the establishment of the Courts of Appeals was to relieve the Supreme Court of its burden as an appellate court by considerably reducing its work load, in order to enable the Supreme Court to concentrate on its principal task of securing the uniform application of law. The Regional Prosecution Offices were established in Budapest, Pécs and Szeged and they start to operate 1 July 2003.

In 2002 the Office of the Prosecutor General led the 19 county chief prosecution offices and the Chief Prosecution Office of the Capital. The chief prosecution offices are organisationally divided according to the certain activities in the criminal, the administrative and the private law fields. Beside these, the county prosecutorial investigating offices, which exclusively investigate certain crimes stipulated by the law, also belong to the chief county prosecution offices.

The structure of the Chief Prosecution Office of the Capital is more complex, and it was slightly modified in December 2002. A Section for Special Cases was established similarly to its counterpart operating at the Office of the Prosecutor General. This section supervises investigations, makes proposals of accusation and represents charges before court. The Central Prosecutorial Investigating Office operated unchanged in 2002 as a separate unit belonging to the Chief Prosecution Office of the Capital.

Relationship between the Public Prosecution and the Parliament

As a consequence of the constitutional situation of the Public Prosecution Service the basic rules of the relationship are set in the Constitution.

According to the relevant legislation the Prosecutor General can take part in sessions of Parliament with a right to speech. At the sessions he can be interpellated and questioned (by intermediate, oral and written questions) by the MPs.

In 2002 the Prosecutor General was interpellated 7 times, one intermediate question was asked of him, and he answered 28 written questions.

Participation in the work of the National Council of Justice

Act LXXXVI of 1997 “On the organisation and management of courts of law” established the fifteen-member National Council of Justice (hereinafter NCJ) that has the Prosecutor General among its members. Consequently, the Prosecutor General has the possibility to take part in all the decisions of the NCJ and he can raise questions relating to the public prosecution and its activities in the scope of operation of courts.

The Prosecutor General’s participation in the work of NCJ makes the co-operation easier with the courts and it helps to handle properly the matters concerning both organisations.

Co-operation between the public prosecution and the central administrative organs

As one form of the regular co-operation with different ministries, the prosecution service expresses its opinion on draft pieces of legislation.

For several years now, the Office of the Prosecutor General informs in details the Department for Local Municipalities at the Ministry of Interior about its experiences of legality supervision of the municipalities. As a follow up procedure, this information is distributed amongst all local municipalities. In this way a wide range of law enforcement officials can make good use of the prosecutorial experiences.

The public prosecution also carries out legality inquiries for the request of ministries and high ranking ministerial officials, who are also informed about the findings of the prosecution.

When, in the course of prosecutorial legality inquiries, the necessity of drafting or amending pieces of legislation emerge, the prosecution service initiate the codification procedure at the relevant ministries.

Mutual legal assistance

In the year of 2002 the continuously increasing number of international criminal cases made necessary the application of different forms of legal assistance, especially in relation to European countries.

In 2002 the Office of the Prosecutor General requested legal assistance from foreign authorities in 852 cases (in 2001 this number was 307) and took measures for fulfilling 522 requests (in 2001 this number was 377).

Besides the traditional procedures (e.g. hearing of witnesses, house search, seizure), the number of requests for obtaining bank account documentation and freezing of bank accounts, and also the proportion of complex and difficult economic abuse cases have increased considerably.

All requests for legal assistance were fulfilled by us with some few exceptions (e. g. because lack of double criminality).

The fulfillment of a great deal of our requests for legal assistance to foreign authorities contributed to the success of several Hungarian criminal procedures.

Legal assistance requests are fulfilled within 5 month as a general rule, but it is not rare that they are replied within some days, e.g. in the cases of criminal records data supply. It happens that the fulfillment of requests takes more than one year, because of the imperfect information given by the foreign authorities. One example: The necessary declaration of secrecy is often not attached to requests for supplying data of bank secrets.

One of the most important tasks mentioned both in the “Regular Report of the European Commission on Hungary’s Progress Towards Accession” and the “National Programme for the Adoption of the Acquis” is the access of the Hungarian Prosecution Service to the European Judicial Network and the EUROJUST. On the basis of Government Degree No 1087/2001 (VIII. 8.) “On the tasks and measures relating to judicial cooperation within the European Union” the Prosecutor General, in harmony with the invitation of the Government, appointed the prosecutorial contact point of the EJM already in 2001. In 2002 the contact point to the EUROJUST, also in accordance with the invitation of the Government, was appointed.

The Office of the Prosecutor General is ready to participate in the EJM and in the EUROJUST and in other forms of bi- or multilateral co-operation that are offered by the accession. Professional, organisational and personnel conditions of lower level direct cooperation between prosecution offices urged by the EU are essentially given.

The Personnel Situation of Public Prosecution

The current personnel situation of the public prosecution is mainly determined by the tendencies of the latest years.

Owing to the increasing number of young graduates of Law Schools the interest towards the prosecutorial profession has increased, although the requirements of the designation became more severe and the real value of the salaries have decreased. In the year of 2003 the basic salaries and the different additional bonuses will increase in two steps, i.e. by 25 %- 25%.

In 2002 similarly to the previous year the number of prosecutors seemed to be in deep point. Trainee prosecutors who have been nominated after the aggravation of requirements of the prosecutorial position will finish their trainee period at the beginning of 2003. Then the designation to prosecutors will be possible out of more trainees and this fact shall result in the improvement of filling vacant prosecutorial positions.

There was no possibility for increasing the number of prosecutors in 2002. The lacking proportion of prosecutors was 9,5%. This number is quite similar to that of the previous year (9,4%).

Training of prosecutors

In the frame of the preparation for the EU accession the most important aims in 2002 were the professional and foreign language training of prosecutors, and their training on informatics. The preparation for implementation of planned new rules of law – the modified Criminal Code and the brand new Criminal Procedure Code – and the

fulfillment of different training claims initiated by the structural and personnel changes were also high priorities. The central training of trainee and junior prosecutors was given emphasised attention too. The 75% of prosecutors, juniors, trainees and other prosecutorial employees took part in one of the forms of organised training.

From the spring of 2003 the EU-law training of prosecutors continued in the frame of the common Phare programme of the Office of the Prosecutor General and the National Council of Justice. The prosecutorial training is realised from the sum of 600 000 € Phare support and 180 000 € co-financing by the Hungarian Government. The Twinning Partner of the prosecution is the German Foundation for International Legal Cooperation. In the frame of this programme plus 400 prosecutors take part in basic EU-law training and in special trainings on judicial cooperation or administrative law furthermore in different study tours. In order to ensure the continuous EU law training of prosecutors, 30 prosecutors were appointed and trained to teach their colleagues after finishing the Phare programme. As part of the project, EU Member State experts will prepare a Feasibility Study on the establishment of a judicial and / or prosecutorial training institution and on an EU documentation centre. In 2002 5 one-week seminars took place with the participation of 200 prosecutors.

The way of communication of the public prosecution

The public prosecution follows “open communication” strategy, with the main objective of giving quick, efficient and commonly understandable information both to the professional and lay public. The basic requirements of the work done by the Press Division are to give authentic and objective exposition of the work of the prosecutorial authorities and to provide factual information of the results. Beside its regular informational duties, the Office of the Prosecutor General takes special care of spreading information on the preparation of the organisation for EU accession. The communication of the public prosecution is not determined by an ex-post but a proactive attitude.

Information for citizens

According to the orders of the Prosecutor General consulting hours shall be organised at each public prosecution office for citizens submitting complaints, requests or other information. Citizens making their legal requests must be informed about their rights at once. If the case is beyond the competence of the public prosecution, the citizen must be informed about the competent authority too.

At the Complaints Office of the Office of the Prosecutor General the prosecutor on duty comes to the assistance of the citizens addressing legal requests. In the year of 2002 the Complaints Office dealt with different legal requests of 1,869 citizens. If the complaint or the information given by the citizen is of extremely high importance the prosecutor on duty may propose – with the determination of the subject – the prosecutorial leader to receive the citizen.

Ethics

In Hungary it was the National Association of Prosecutors which has endorsed a Code of Ethics with commentary and procedural rules in 2000. This document is in full harmony with the following international documents:

- UN General Assembly Res 34/169 17 December 1979
Code of Conduct for Law Enforcement Officials
- Standards of professional responsibility and statement of the essential duties and rights of prosecutors – adopted by the International Association of Prosecutors on the 23rd of April 1999

The Code has the following chapters:

- Aim, role and scope of the Code
- General professional behaviour of prosecutors
- Special moral requirements of prosecutors
- Impartiality and independence of prosecutors
- Co-operation with other institutions
- Rights of prosecutors
- Principles of research and publication
- Ethical decisions.

ICELAND / ISLANDE

Icelandic legal statutes on the role of the public prosecution are in principle in accordance with REC (2000) 19.

Rules on the public prosecution are set out in the Act on Criminal Procedure, which is currently under revision by the Minister of Justice's Standing Committee on Criminal Procedure. REC (2000) 19 is included in the material of the Committee. Presumably, the Committee will regard the recommendation when making proposals on the organisation of the prosecution, its position and role.

LATVIA / LETTONIE

Based on Article 7 of Recommendation (2000) 19, the Prosecutor General issued new rules on the selection and training of prosecutors

LIECHTENSTEIN

- none
- there are plans for the introduction of a „Staatsanwaltschaftsgesetz“ (Law on Public Prosecution)

LITHUANIA / LITUANIE

1. The amendments to Articles 84 and 118 of the Constitution of the Republic of Lithuania.

On 20 April 2003, the amendments of the Constitution came into force, which defined the major functions of a prosecutor. One new and very important function is the protection of rights and legal interests of a person, society and state. The principle of prosecutors' independence and rule of law, structure of prosecutor's office and procedure of the appointment of the Prosecutor General have been established.

2. On 1 May 2003, the Criminal Code, Criminal Procedure Code and Penitentiary Code came into force.

The new package of criminal laws was standardised following the EU *acquis*.

3. The Law on the Prosecutor's Office of the Republic of Lithuania came into force on 1 May 2003.

The majority of the norms of this Law partly or fully comply with the norms of Recommendation (2000) 19 on the role of public prosecution in the criminal justice system.

Structural Changes

1. Restructuring of the prosecutor's office.

The restructuring of the prosecutor's office began in the middle of 2002. After the statement of the Prosecutor General, the Parliament of the Republic of Lithuania commissioned to conduct such a restructuring at the Prosecutor General's Office and territorial prosecutor's offices by its resolution setting forth the major guidelines of activities for 2003. The restructuring is being carried out aiming at making the prosecutors' work more effective under the new effective laws of the criminal law and at harmonising the principles of the prosecutors' activities with the international standards of prosecutors' activities.

2. Organised Crime and Corruption Investigation Department

Organised Crime and Corruption Investigation Department have been established at the Prosecutor's Office with subdivisions in five regions. It includes specially trained prosecutors, who are experienced in investigating organised crimes and in performing the activity control of the criminal process conducted by special police, security and other institutions of pre-trial investigation.

3. OLAF

There is the Co-ordination Structure for the Fight against the Financial Fraud established at the Prosecutor's Office to protect the EC financial interests and to fight with financial fraud. This Co-ordination structure includes 21 prosecutor, three of them work at the Prosecutor General's Office and eighteen of them work at the territorial prosecutor's offices (in regions and counties). They are commissioned to co-ordinate the criminal proceedings conducted by all pre-trial investigation institutions in respect of the criminal acts related to the EC infringed financial interests. This is a new structure, which will start to function from the middle of 2003.

The Initiative of Prosecutors

On the initiative of the Prosecutor's Office, the audit of the Prosecutor's Office's activities is being conducted together with the Law University, which includes the evaluation of the delegation of functions, their rational distribution, defining of responsibilities and accountability, internal as well as external communication system of the Prosecutor's Office. With respect to the raised issues, the major trends of evaluation are the economy, effectiveness and productiveness.

The Prosecutor's Code of Ethics

The panel was established to draft the Code of Ethics at the Prosecutor's Office, which will prepare it till October 2003; afterwards, the Commission of Ethics will start to operate in order to hear the acts degrading the name of a prosecutor. The Code of Ethics is being drafted on the basis of the Prosecutor's Standards of the International Association of Prosecutors.

NORWAY / NORVÈGE

No specific initiatives has been undertaken based on the Recommendation during 2002 or early 2003.

We are still considering a national Code of Conduct for the Prosecuting Authority inspired *inter alia* by rec. no. 35. However, we would very much like to see a draft code of ethics for public prosecutions in Europe - set up by our Conference - before we start this process, cf. the conclusions from the Ljubljana conference. It is regrettable that the Bureau has not been able to take up this task due to budgetary reasons.

POLAND / POLOGNE

a/ At the beginning of the year 2003 the Polish Parliament started proceedings on the governmental draft bill on the Public Prosecution. The most important solution – from the point of view of the Council of Europe Recommendation (2000)19 on the Role of the Public Prosecution Service in the Criminal Justice System - is a new version of art. 10 of the Law on Public Prosecution. Since the constitutional system in Poland foresees that the public prosecutor is subordinate to the executive authority i.e. to the Minister of Justice (who at the same time plays a role of the General Prosecutor), according to the proposed provision of art. 10 of the Law, **any instruction related to the individual case shall be prohibited**. This solution had also been proposed by the European Union during preaccession negotiations.

b/ In the year 2002, the Association of Prosecutors of Republic of Poland elaborated **the Code of Ethical Principles of Prosecutors**, which has been disseminated among all prosecutors.

ROMANIA / ROUMANIE

The enforcement situation of the Recommendation no.19/2000 regarding “The Role of the Public Ministry in the criminal justice system”

The Romanian Government has adopted, on 11 April 2002, the draft Law on the amendment and supplementation of the criminal Procedure Code and of certain special laws.

The draft Law on the amendment and supplementation of the criminal Procedure Code and of certain special laws aims at harmonising the provisions of the Romanian criminal Procedure Code with the principles, recommendations including the Recommendation 19 (2000) and the regulations contained in the international documents in the field of criminal justice to transpose into the national legislation the provisions of the Convention for the defence of human rights and fundamental freedoms and its Additional Protocols, as well as the jurisprudence of the European Court of Human Rights.

The draft contains essential amendment regarding the development of the criminal lawsuit, that, on the one hand, increase the procesual criminal guarantees, especially those regarding the measures that deprive of or restrict freedom, or those pertaining to the instatement of the judicial control regarding the prosecutor's solutions of not sending to justice. On the other hand, new institutions are being introduced into the criminal Procedure Code, institutions such as witness protection, or undercover investigators, meant to provide effective and modern instruments for the discovery, prosecution and judgement of criminals who use organised forms and improved methods of perpetration.

Thus, the criminal Procedure Code has been substantially modified and supplemented with respect to the following institutions:

Measures depriving of and restricting freedom

The most important amendment in this matter is ascribing the decision of preventive arrest in the course of the criminal prosecution, to the prosecutor's competence, on a period of a maximum three days, and, after this term, exclusively to the competence of the law court, unlike the present regulation that provides this competence only to the prosecutor. This legislative solution is in accordance with the jurisprudence of the European Court for Human Rights which has established that the body that orders or maintains the measure of preventive arrest must show certain guarantees among which independence and impartiality both in relation with the executive power, as well as to parties. European legislations, such as the French, Italian, German, Polish, agree on this matter, stipulating that the measure of preventive arrest is ordered by a judge or a law court, and not by the prosecutor.

This regulation has also taken into account the fact on the role of the European Court of Human Rights there are several Romanian causes having this object, the sentences against the Romanian state being unavoidable.

In order to ensure the development of the criminal prosecution in the case of criminals presenting the danger of leaving the country, a new preventive measure depriving of freedom has been provided, namely the "**obligation not to leave the country**", which can be ordered by the prosecutor during the criminal prosecution or by the law court

during the trial on a period of maximum 30 days with the possibility of it being prolonged, within the conditions of the law.

Enhancing the guarantees granted to juvenile accused or defendants

In the chapter destined to preventive measures, a new section has been included, containing regulations regarding specific rights and a special preventive detention in relation with the particularities of their age, special terms for the length of the measure of retention or preventive arrest, as well as a maximum term in which juveniles can be kept in preventive arrest.

Judicial control over some measures or acts ordered during the criminal prosecution

A judicial control has been instated regarding the prosecutor's solution of not sending to justice, at present, the prosecutor's ordinances in this matter being liable of contestation only with the hierarchically superior prosecutor. Thus, in the light of decisions of the Constitutional Court and of the jurisprudence of the European Court of Human Rights it has been stipulated that injured person or any other person whose legitimate interests have been injured through the prosecutor's ordinance of dismissal removal from criminal prosecution or of terminating the criminal prosecution or by his/her resolution not to commence criminal prosecution can address the court which would, according to the law, have the competence to judge the cases in first instance.

The draft also provides that the court should order, and, for urgent cases and well justified also the prosecutor can order domicile searches, **detainment and handing over of correspondence and objects**, as well as **audio or video surveillance and recording**. In what concerns the safety measures of obligation to **medical treatment and hospitalisation**, these may be ordered only by the law court.

Witness protection

During the year 2002, the Law no.682 on witness protection was adopted, which settles, at the level of the exigencies imposed by the legislation in the advanced European countries, the specific modalities for witness protection, programmes at social level to reinsert the witnesses by providing confidentiality regarding their identity, and adequate trial-related measures.

Also, the draft of the criminal and criminal procedure codes introduces stipulations that provide witness protection in the case where declaring their real identity could jeopardise their life, corporal integrity or freedom. In such cases, the prosecutor, during the criminal prosecution, or the court during the trial may order the allotment of another identity under which the witnesses can appear before the judicial body, or that the hearing of witnesses be done by modern technical means, such as television networks with image or voice distortion. The measures of protection for these witnesses shall be maintained for the length of the threat against them.

The amendments and supplementations of the criminal Procedure Code that refer to witness protection are supplemented by the **Law on witness protection**.

Undercover investigators

The institution of the undercover investigator is already settled in Romania through a number of special laws out of which the Law no.143/2000 regarding prevention and combating of illicit drugs trafficking and the Law no. 39/2003 regarding prevention and combating of organized crime should be specified.

Bearing in mind that the instrumentation of certain causes, regardless of their nature, is difficult, and the administering of the evidence through classical means proved to be insufficient, the institution of undercover investigators has also been settled amply in the draft criminal procedure code. These persons' activity is strictly delimited by the law, meaning that undercover investigators may be used only in certain causes stipulated by the law, that they act only with the authorization of a prosecutor designated for this purpose by the General Prosecutor from the Prosecutor's Office Attached to the Supreme Court of Justice and only in a limited period of time. The data obtained by them can be used only in the criminal cause and in connection to the persons to whom the authorization refers.

Expansion of the right to reparation of damage has been carried out, on the one hand, by eliminating the limits stipulated in the texts in force at present, and on the other hand, through referring not only to the persons deprived of freedom, but also to those whose freedom has been restricted.

Functional subordination of police investigation bodies

For a greater efficiency of the activity of criminal prosecution, it has been stipulated in the draft that the police investigation bodies and the police officers specialized in carrying out activities of finding offences, collecting data for beginning the criminal prosecution and criminal investigation make up the **judicial police** that carries out its activity under the authority of the General Prosecutor from the Prosecutor's Office Attached to the Supreme Court of Justice.

The draft was adopted by the Senate and it is now under debates by the plenum of the Chamber of Deputies.

In the course of the year 2002 and at the beginning of year 2003, the following laws were also adopted:

The Law no. 656/2002 for the prevention and sanctioning of money laundering.

The National Anticorruption Prosecutor's Office was set on the basis of Government Urgency Ordinance no.43/2002 approved and amended by the Law no.503/2002. This new institution, a component part of the Public Ministry, disposes of investigation methods and instruments enabling the discovery in time of corruption acts and bringing the guilty persons to a criminal responsibility.

For the first time in the post- December history of the Romanian substantial criminal and trial- related laws the criminal investigation is carried out by a team made up of: policemen, specialists, experts in various fields, all of them working under the coordination by the prosecutor, the only competent to perform criminal prosecution.

An important step was made through the adoption of the Law no. 653/2002 by which was approved the Government Urgency Ordinance no. 20/2002 for amendment of the Law no.92/1992 on judicial organization, republished, there being provided the democratic framework for designating the candidates for the Superior Council of the Magistrature. However, for the purpose of strengthening the role of the Superior Council of the Magistrature in the magistrates' training, appointment and promotion, as well as in order to constitute the only decision- body with to the engagement of the disciplinary or other nature responsibility by the magistrates, it is necessary to amend and supplement the Law no.92/1992 on the judicial organization, republished.

From the perspective of the Recommendation no.19(2000) of the Council of Europe, the Public Ministry considers it necessary that within the legal process of the Romanian Constitution amendment the provisions of art.170 and 171 in the present Constitution should also be taken into account in the sense of redefining the status of the Public Ministry in terms of its independence within the judicial power, concomitantly with specifying both the role of the Superior Council of the Magistrature as a council of discipline for all magistrates, and its attributions in appointment and promotion of magistrates. These legislative amendments as well as the permanent concern for training honest magistrates with an irreproachable professional training are objectives whose achievement will provide us, from the justice point of view, the place among the countries of Europe with an advanced democracy and consequently in the European Union.

SLOVENIA / SLOVÉNIE

In the spirit of Recommendation (2000) 19, the public prosecution in Slovenia has proposed an amended State Prosecutor Act to parliament. Its provisions retain full independence of function for state prosecutors and adds the possibility of greater mobility for prosecutors, of training of their own trainee-staff, the right to its own journal and the independent exchange of international and internal information. To that purpose the amended act establishes a legal information centre for the prosecution office.

The biggest move towards Recommendation (2000) 19 was made with the establishment of an Expert Council – a council of experts from various fields that will assist state prosecutors in deliberating on difficult cases, especially in the field of financial crime.

An amended Criminal Procedure Act is in preparation that explicitly states the method of cooperation between the prosecution office and the police, as independently agreed by both services in a mutual agreement. The content of the act gives the public prosecution a directing role in pre-trial procedures and the role of watchdog over the legality of police actions. Respect for the prosecution's instructions should be mandatory and the procedural acts of the police are given greater legal force than to date.

The introduction of an “order of punishment” is anticipated, on the initiative of the state prosecution office. The order was taken from German law and offers the possibility of simplifying judicial decisions without proceedings before court.

Through implementing alternative methods – deferred prosecution and settlement – the state prosecution office in Slovenia has already reduced the work of local courts with minor crimes in a large number of procedures. There remains, in Slovenia, the problem of over-burdened courts and backlogs in court proceedings, due to which the proposed new Criminal Procedure Act is a step towards modernising procedural law.

The adoption of the amended Criminal Procedure Act is expected in the first half of 2003. In addition to the innovations mentioned above, it also contains a range of other changes allowing the state prosecution office to perform the role set out in Recommendation (2000) 19.

SPAIN / ESPAGNE

Sur cette question, il faut commencer en rappelant que la loi qui règle le Ministère Public en Espagne c'est la Loi 50/1981, du 30 Décembre sur "el Estatuto Orgánico del Ministerio Fiscal". À vrai dire c'est une loi qui suit à grands traits la Recommandation (2000) 19, en particulier en qui concerne le régime administratif du Ministère Public, sa formation continue, la défense de ses intérêts professionnels ou les garanties de sécurité qui doivent être fournies à ses membres. Mais aussi les relations du Ministère Public avec le Pouvoir Exécutif ou avec les Juges ou la Police et les devoirs et responsabilités de ses membres vis à vis des justiciables répondent en général aux principes contenus dans la Recommandation.

Elle n'a subie aucune réforme pendant la dernière année. Mais au début du 2003 un projet de loi - qui deviendra bientôt une loi - a été envoyé au Parlement: c'est un projet qui modifie le Statut du Ministère Public. Cette modification satisfait le but d'accomplir le Pacte d'État pour la Justice qui a été signé par presque toutes les forces politiques et dont le but est de moderniser et rendre la justice plus efficace.

Le préambule du projet ne contient pas de référence explicite quant à la Recommandation 2000 (19), mais les innovations qu'il introduit vont dans le même sens que la Recommandation.

Il convient de préciser que, bien que la carrière de Procureur dépend dans l'ordre administratif du Ministère de la Justice (nominations, promotions, certaines sanctions disciplinaires, etc.), le Ministère Public bénéficie d'une indépendance fonctionnelle totale. Le Gouvernement ne peut pas donner d'instructions générales ou sur un cas particulier, ni s'adresser à aucun Procureur individuellement, mais seulement au Procureur Général de l'État, qui détient les fonctions de direction du Ministère Public. Le Gouvernement peut lui demander, jamais lui ordonner, l'exercice d'actions pour la défense de l'intérêt public, mais c'est au Procureur Général de décider librement après avoir entendu l'Assemblée des Avocats Généraux de la Cour de Cassation.

Les innovations du Projet sont plus organiques que fonctionnelles. Il nous semble utile de mettre en valeur comme plus importantes les suivantes: **a)** le caractère temporel de la direction des Parquets -jusqu'à présent il s'agissait d'une fonction à vie, jusqu'à la retraite-, en des termes identiques à ceux prévus pour la carrière des juges; **b)** l'intervention des procureurs dans les procédures civiles est augmentée lorsque l'intérêt social ou celui des mineurs est engagé, ainsi que pour veiller à la protection des victimes dans la procédure pénale (cfr. Recommandation 33); **c)** la

promotion à l'intérieur de la carrière combine l'ancienneté avec les mérites professionnels. Cette promotion est menée sur proposition du Procureur Général de l'État, sur le rapport préalable du Conseil des Procureurs qui est l'organe consultatif élu parmi les Procureurs et par eux (cfr. Recommandation 5.b); **d)** le système disciplinaire est clairement établi, il équivaut au système qui existe pour les juges (cfr. Recommandation 5.e); et **e)** il est décidé que le Conseil des Procureurs informera sur les plans de sélection et de formation des procureurs (cfr. Recommandation 7).

Cependant, on n'a pas réussi à fixer un délai temporel pour le mandat du Procureur Général de l'État, qui est nommé par le Gouvernement sur l'avis préalable du Conseil Général du Pouvoir Judiciaire, ainsi que les causes de cessation ou révocation de ses fonctions, malgré une demande croissante des milieux professionnels, politiques et académiques d'agir ainsi. Il faut préciser que, s'agissant d'un mandat de la Constitution que le Procureur Général de l'État soit désigné par le Gouvernement et non pas par le Parlement (cette possibilité ayant été refusée à plusieurs reprises), déterminer la durée des ses fonctions rencontre des difficultés: notamment, que cette durée ne pourrait pas dépasser ou ne devrait pas dépasser la durée de la législature qui l'aurait nommé.

UKRAINE

In 2002 September 11-13, Prosecutor General of Ukraine Sviatoslav Piskun visited Strasbourg to have meetings with the higher officials of the Council of Europe.

At these meetings Mr. S.Piskun's proposal to make out and implement the special Action Plan for the reform of Public Prosecution of Ukraine according to the provisions of the Constitution of Ukraine and European standards was supported.

Furthering the reached agreements, on November 14-16, 2002 in Kyiv there was a meeting between the representatives of the Prosecutor General's Office of Ukraine and the group of experts of the Council of Europe. As a result the Joint Action Plan of the Prosecutor General's Office of Ukraine and the Council of Europe for the reform of Public Prosecution of Ukraine was prepared and approved.

Implementing this Plan the Prosecutor General's Office of Ukraine worked out the Concept for the reform of Public Prosecution of Ukraine and on March, 20 2003 forwarded it to the Director of Legal Cooperation of the Council of Europe Mr. Roberto Lamponi to consider.

With a view of discussing the Concept the Prosecutor General's Office of Ukraine and Council of Europe are planning to conduct a "round table" in Kyiv in late June 2003. Besides, it is worth mentioning that on October 25 2002 under the Decree of the Cabinet of Ministers the Academy of Public Prosecution of Ukraine attached to the Prosecutor General's Office of Ukraine was established. It will come into operation from September 2003. Its aim is to prepare the highly skilled personnel for the Public Prosecution of Ukraine.

QUESTION 2. Official recognition of the Conference of Prosecutors General of Europe

As was the case in Bucharest in 2001, the 3rd plenary session, held in Ljubljana in May 2002, constituted an opportunity (cf. point 2 of the Conclusions) to request that the Committee of Ministers of the Council of Europe officially recognise the Conference as a fully-fledged body, in the same way as the Consultative Council of European Judges, and allot it the material resources necessary to its functioning.

It has so far not been possible to obtain this recognition, as some member states' representatives have expressed reservations and asked that the Conference, as an advisory body, be attached not to the Committee of Ministers direct, but to the European Committee on Crime Problems (on this subject see the report of the 4th meeting of the Bureau, to be found on the Council of Europe web-site).

Could you please give your opinion on this issue, which will determine the Conference's institutional strength and independence. Please also state the considerations on which you base your opinion.

QUESTION 2. L'officialisation de la "Conférence des Procureurs Généraux d'Europe"

Comme à Bucarest en 2001, la 3ème session plénière tenue à Ljubljana en mai 2002 a été l'occasion (cf. le point 2 des conclusions) d'inviter le Comité des Ministres du Conseil de l'Europe à reconnaître formellement *la Conférence*, au même titre que le *Conseil consultatif des juges européens*, comme organe à part entière et à lui attribuer les moyens matériels nécessaires à son fonctionnement.

Il n'a pas été jusqu'alors possible d'obtenir la reconnaissance sollicitée, certains représentants des Etats-membres émettant des réserves et souhaitant que la "*Conférence des Procureurs Généraux*" soit placée, en tant qu'organe consultatif, non pas directement auprès du *Comité des Ministres*, mais auprès du "*Comité directeur pour les problèmes criminels*" (cf. sur cette question, le compte-rendu de la 4ème réunion du Bureau, qui se trouve sur le site Web du Conseil de l'Europe).

Sur cette question, dont dépend la force institutionnelle ainsi que l'autonomie de la *Conférence*, il est demandé à chaque Procureur Général de faire connaître son opinion et les motifs qui l'inspirent.

REPLIES / REPOSES

ARMENIA / ARMÉNIE

We think, that it will be better, if the Conference as an advisory body be attached directly to the Committee of Ministers.

DENMARK / DANEMARK

I can support that the Conference is recognised as a fully-fledged body attached directly to the Committee of Ministers of the Council of Europe. I find it natural that the Conference of prosecutors have the same position as the Council of European Judges. The status of the prosecution service differ from country to country. Therefore it is in itself problematic to make the Conference refer to the CDPC, a body where the delegations represents the member states and their governments. If prosecutors want to make their voices heard on a European level they should be able to address the Committee of Ministers directly.

FINLAND / FINLANDE

From our point of view it would be desirable that the Conference of Prosecutors General should report directly to the Committee of Ministers. As an argument for this one can firstly state that judges, police officers, and prison governors have possessed official structure of the same type for many years. Prosecutors role as the securer of human rights is also important and similar to judges. We would also like to point out that the constitutions of member states ensure prosecutors and especially Prosecutors General an independent status. In addition to this we would like to refer biannual conferences of the Prosecutors General and Presidents of the Supreme Courts of the European Union. These conferences have a quite long history which shows how two distinguished, high-level authorities have done fruitful cooperation working as equal bodies. It seems to us that there is no need to make exception in the context of Council of Europe.

FRANCE

Il paraît tout à fait souhaitable d'obtenir la reconnaissance officielle de la Conférence des Procureurs Généraux d'Europe par le Comité des Ministres du Conseil de l'Europe au même titre qu'a été reconnu le « Conseil Consultatif des juges ».

Toutefois, la différence sémantique entre ces deux organes – Conférence et Conseil Consultatif – n'est pas neutre : on peut en effet s'interroger sur l'étendue du champ de compétence d'une « Conférence des Procureurs Généraux » dont l'intitulé est de nature à faire penser à la création d'une sorte d'instance détachée des divers gouvernements et qui pourrait s'arroger de droit de leur adresser des « remontrances ». De ce point de vue, l'expression de « Conseil consultatif » adoptée pour les juges semblerait sans doute mieux appropriée en ce que l'organe réunissant l'ensemble des Procureurs Généraux d'Europe pourrait être plus facilement légitimé en tant qu'«Assemblée Consultative» ou «Comité Consultatif» ou encore «Commission Consultative», ce qui permettrait de mieux « cibler » l'objet même de

la Conférence consistant essentiellement à conduire une réflexion d'ordre éthique sur les missions et activités du Ministère Public et à donner avis au Comité des Ministres du Conseil de l'Europe sur les conditions de renforcement de la lutte contre la criminalité internationale.

Par ailleurs, au regard des représentants du Ministère Public français, qui font partie du même corps que les juges, il ne serait pas compréhensible que l'organe qui regroupe les représentants du Ministère Public en Europe ne bénéficie pas du même statut que celui qui regroupe les juges.

HUNGARY / HONGRIE

After scrutinising the Report of the 4th meeting of the Bureau on the subject matter, we came to the conclusion that the only possible status for the Conference is to be a fully-fledged body reporting to the Committee of Ministers of the Council of Europe. This status is in harmony with the spirit of the Recommendation which provides similar position to prosecutors as judges in relation to their professional standards and reputation. The institutional strength enjoyed by the Consultative Council of European Judges should be provided for the Conference of Prosecutors General of Europe too.

We fully agree with the opinion of the Bureau that taking into account the constitutional status, the functions and the professional standards of public prosecution services of Europe, it would be insufficient if the Conference would report to the Steering Committee on Crime Problems. This solution would jeopardise the position and the future progress of the Conference so successful so far.

ICELAND / ISLANDE

It is important that the Conference of the Prosecutors General of Europe be acknowledged as a fully-fledged body directly attached to the Committee of Ministers. This position would without doubt strengthen the independence of the prosecution authority within the administration and increase its high-level status within the criminal justice system.

LATVIA / LETTONIE

Supports attachment to the Committee of Ministers

LIECHTENSTEIN

The Liechtenstein General Prosecutor thinks that this matter should be discussed further at the conference. It would be interesting to hear, of what kind the reservations were, that the Dutch, German and French representatives of the CDPC expressed. On principle the Liechtenstein Prosecution Service thinks that the conference should be more than an advisory body and be officially recognized as a body attached directly to the Committee of Ministers. However the upcoming conference should discuss what the nature of the reservations of the CDPC was (budgetary ?).

LITHUANIA / LITUANIE

Our position is that the Conference should be recognised as a fully-fledged body operating under the EC Committee of Ministers. We fully agree with the motives of such a decision presented in the report of 4th meeting of Bureau.

NORWAY / NORVÈGE

The DPP do not have intimate knowledge of the bureaucratic machinery in the Council of Europe. Consequently, we are not in position to make an assessment of the advantages and disadvantages of our Conference being attached directly to the Committee of Ministers rather than to the CDPC. However, *if* the strength, independence and funding of the conference is best maintained by being directly to the Committee of Ministers, that should be preferred.

POLAND / POLOGNE

The Prosecutor General of Republic of Poland supports the idea of the official recognition of the Conference of Prosecutors General of Europe as a fully-fledged body in the same way as the Consultative Council of European Judges. In our opinion the Conference of Prosecutors General should be attached directly to the Committee of Ministers. This concept would guarantee due strength and independence of the Conference and enable direct and smooth reporting on the scope of the implementation of the Recommendation by the member States. According to the vast majority of European legal systems general prosecutors are recognised as the highest state officials ranked equally as ministers of governments. Thus there is no justification to locate the Conference in the „worse” position than that enjoyed by Consultative Council of European Judges. Furthermore the crucial role played by prosecutors not only in the criminal justice system but also in other areas [as shown in Rec. 2000(19)] indicates the necessity to attach the Conference to the Committee of Ministers.

ROMANIA / ROUMANIE

As regards the officializing of “The Conference of the Prosecutors General of Europe” it is necessary for this to be officially recognized as a fully developing body at the same level as “Consultative Council of the European Judges” and to be allotted with material means necessary for its functioning.

SLOVENIA / SLOVÉNIE

We support the Coordinating Bureau of the Conference of Prosecutors General of Europe in its efforts to obtain an appropriate permanent and independent position and special organisational form within the Council of Europe. We support the direct linking of the conference to the Committee of Ministers, as the conference has an administrative and not just expert function. This means that a link-up with the European Committee on Crime Problems, which is supported by some members, is not acceptable for us.

SPAIN / ESPAGNE

Sur ce point, nous croyons qu'il faut insister sur ce qui a été décidé à ce sujet lors de la première des conclusions de la Conférence de Bucarest, qui a été répété à Ljubjana (conclusion 2). Il faut donc persister à obtenir cette reconnaissance en insistant sur les raisons qui ont été largement exposées à Bucarest.

UKRAINE

The Prosecutor General's Office of Ukraine considers that the Conference of Prosecutors General of Europe should be attached directly to the Committee of Ministers of the Council of Europe. To our opinion this status will determine the Conference's institutional strength and independence.

QUESTION 3. Main theme of the Bratislava conference: political influence over public prosecution

At the request of a number of Prosecutors General, it has been decided to make the above matter the main theme of the next session, so as to enable representatives of public prosecution services who so wish to report any difficulties they have encountered and discuss in greater depth the guiding principles already set out in the recommendation, particularly those relating to public prosecutors' institutional role and impartiality.

To fuel the discussions, you may, if you desire, submit your thoughts on this theme, which you might expand upon in Bratislava.

QUESTION 3. Le thème principal de la réunion de BRATISLAVA : "Ministère Public et politique"

Sur les sollicitations de plusieurs Procureurs Généraux, il a été décidé de retenir comme thème principal pour la prochaine réunion la question précitée, afin de permettre aux représentants des Ministères Publics qui le souhaitent de faire part de leurs éventuelles difficultés et d'approfondir les principes directeurs d'ores-et-déjà énoncés par la Recommandation, notamment ceux relatifs à la place institutionnelle du Ministère Public et à son impartialité.

Afin d'alimenter le débat, il est proposé que les Procureurs Généraux qui le souhaitent adressent une contribution, qu'ils pourraient développer à Bratislava.

REPLIES / REPOSES

HUNGARY / HONGRIE

The representative of the Hungarian Public Prosecution Service took part in the seminar "The prosecutor's office in a democratic and constitutional state" 25-27 April 2003 in Statá Lesná. The following conclusions of the seminar drawn with the active participation of the Hungarian delegate reflect the position of our organisation.

- a) As Prosecutors play a significant role in the protection of fundamental human rights and freedoms and they play a decisive role in the administration of Justice, it is important that Prosecutors exercise their competences impartially, independently and without any political influence and in accordance with law.
- b) With regard to this, Prosecutors appointed (elected) to the position of the General Prosecutor should be impartial and independent persons, not subject to any interference from the Government.
- c) If the Prosecution (State Attorney Office) is not part of the Judiciary it should have the same guarantees of independence as experienced by the Judiciary.
- d) An important safeguard of the Prosecution's independence is a separate chapter in the state budget. The General Prosecutor should play a basic role in the formulation of the proposal of this Chapter.
- e) The role of the Prosecutors is to ensure the Rule of Law, protect public interest, human rights and dignity and to maintain the principles of the Ethical Code of Prosecutors.
- f) The independence of the Prosecution should be safeguarded by the rules of the professional status of Prosecutors.
- g) It is necessary to strengthen the international co-operation of the Prosecution as a means to:
 - counter organised crime and terrorism, and
 - solving the principal professional problems related to the position and activity of prosecution mainly with regard to EU integration.

NORWAY / NORVÈGE

This is a very interesting topic which has been discussed both by the Nordic Directors of Public Prosecutions in their last annual meeting and also touched upon in the last meeting of the Director Generals in the Baltic Sea Region. We look forward to the discussion in Bratislava.

SLOVENIA / SLOVÈNIE

As we underlined in the previous reports, our legislation guarantees a high level of independence for the work of state prosecutors in Slovenia. They have working immunity, their decisions cannot be influenced by a superior, ministers, the Government, or other bodies – so political influence on decision-making in specific cases, is according to legislation, excluded.

There remains the open issue in another area which is to what extent a state prosecutor can be politically active outside of his or her office. Is membership of a political party appropriate or not when there is a case of incompatibility between expressing commitment to a specific political orientation and performing the function of state prosecutor? Can a state prosecutor publicly come out as the supporter or even representative of an idea from a specific political orientation or not? Which is relevant – either formal membership of a political party or clearly demonstrated political activity.

The discussion does not then concern just the incompatibility of holding the public office of state prosecutor with profitable activity, but also the issue set out above.

SPAIN / ESPAGNE

Lorsqu'on parle de Ministère Public et de la Politique, nous nous reportons certainement aux relations avec les autres pouvoirs de l'État, en particulier avec le Gouvernement. La Recommandation 2000 (19) pose cette question dans ses alinéas 11 à 16. Les deux principes fondamentaux sont les suivants: non ingérence des pouvoirs politiques dans la mission du Ministère Public, et non ingérence de celui-ci dans les compétences des pouvoirs politiques, ainsi que délimiter de façon précise les facultés du Gouvernement dans le cas où le Ministère Public soit d'une certaine façon dépendant du Ministère de la Justice.

En ce qui concerne le régime juridique espagnol, le Ministère Public dépend administrativement du Ministère de la Justice, comme il a déjà été précisé dans une autre partie de ce questionnaire, bien qu'il profite d'une indépendance fonctionnelle totale, tel qu'il est indiqué à l'article 124 de la Constitution espagnole qui établit que l'action du Ministère Public devra s'en tenir aux principes de légalité (non pas d'opportunité, même lorsque celle-ci est réglée) et d'indépendance.

Conformément à la lettre de la loi (Constitution et Statut du Ministère Public), l'indépendance fonctionnelle du Ministère Public est garantie vis à vis du Gouvernement. La non ingérence vis à vis des forces politiques se manifeste dans l'interdiction pour les membres du Ministère Public, aussi bien que pour les Magistrats, d'intervenir activement dans des fonctions politiques: "ils ne pourront pas non plus occuper d'autres fonctions publiques, ni appartenir à des partis politiques ou à des syndicats" (art. 127.1 de la Constitution). Ainsi, le procureur qui soit nommé pour un poste politique ou bien qui soit candidat à une élection également politique, doit passer à la situation administrative de mise en disponibilité volontaire (hors service). Lorsqu'il aura mis fin à son charge politique ou représentatif il passera pendant trois ans à la situation administrative de mise en disponibilité obligatoire (il ne pourra exercer aucun poste qui entraîne un pouvoir juridictionnel).

Il est interdit d'appartenir à des syndicats mais non à des associations professionnelles, qui, dans une grande mesure, occupent les fonctions propres des syndicats, bien que leur action soit limitée au domaine professionnel.

Pour conclure, l'indépendance du Ministère Public vis à vis de la Politique, doit être sauvegardée en deux sens: l'indépendance fonctionnelle du Ministère Public qui implique l'absence d'ingérence dans sa mission de toute force politique, du pouvoir exécutif ou de toute autre formation politique et, d'autre part, l'interdiction pour les membres du Ministère Public de participer à la politique active, aussi bien pour occuper des postes politiques désignés par le Gouvernement que pour participer en tant que candidats à des élections pour des fonctions publiques représentatives.

QUESTION 4. International co-operation in criminal matters: setting up "contact points" between public prosecution services

In view of the conclusions of the Ljubljana meeting (see point 5), the Bureau proposes setting up a network of contact points, bringing together all the member states of the Council of Europe, including those that are members of the European Union.

These contact points should be made up solely of members of the public prosecution service, and their chief purpose should be to facilitate international co-operation in criminal matters between public prosecution services by supplying information on request relating to procedure to be followed and the authorities concerned. The aim would therefore be to provide assistance of a documentary nature. Save exceptions, the network would not have a functional role, since, under the international conventions in force, it is still diplomatic channels that predominate.

From a practical standpoint, the Bureau thought it inexpedient to increase the number of lists of correspondents, in view of the fact that the Council of Europe has already drawn up a "list of persons involved in the practical application of European Conventions" (cf. document PC-OC/INF.6).

With a view to the Bratislava conference, you are requested to indicate:

- whether you endorse the Bureau's proposals;
- where the above-mentioned list, appended hereto, already contains the name of a member of your country's public prosecution service specialising in international co-operation in criminal matters, whether that person could in future play the role of "contact point", as defined above;
- where this is not the case, whether another public prosecution service official (or several if your public prosecution service has no centralised organisation) could assume this role (please specify the working languages and personal particulars (name, address, etc.) of the person(s) concerned).

QUESTION 4. La coopération pénale internationale : l'organisation de "points de contact" entre Ministères Publics

Compte-tenu des conclusions de la réunion de Ljubljana (*cf. point n°5*), le *Bureau* propose la création d'un réseau de points de contact rassemblant l'ensemble des Etats-Membres du Conseil de l'Europe, y compris les Etats de l'*Union européenne*.

Ces points de contact devraient être composés exclusivement de membres du Ministère Public et avoir pour ambition principale de faciliter la coopération pénale internationale entre Ministères Publics en fournissant, à la demande, l'information utile sur la procédure à respecter et les autorités concernées : il s'agirait ainsi d'apporter une aide de nature documentaire, ce réseau n'ayant pas vocation, sauf exception, à instrumenter, eu égard aux conventions internationales en vigueur qui font prédominer encore la voie diplomatique.

Sur un plan pratique, le *Bureau* a estimé inopportun de multiplier des listes de correspondants, compte-tenu du fait que le Conseil de l'Europe a déjà élaboré une "*liste de personnes impliquées dans l'application pratique des conventions européennes*" (*cf. le document PC-OC/INF.6*).

Dans la perspective de la réunion de Bratislava, chaque Procureur général est invité à faire savoir

- s'il adhère aux propositions émises par le *Bureau*
- si, dans l'hypothèse où la liste précitée et jointe en copie contient déjà, pour l'Etat considéré, un membre du Ministère Public spécialiste de la coopération pénale internationale, ce membre pourrait jouer, dans l'avenir, le rôle de point de contact tel que défini plus haut.
- si, dans l'hypothèse inverse, un autre responsable du Ministère Public (voire plusieurs si le Ministère Public concerné ne connaît d'organisation centralisée) pourrait jouer ce rôle (préciser les langues utilisées et les coordonnées)

REPLIES / REPONSES

ARMENIA / ARMÉNIE

We are supporting the proposal of the Bureau on setting up a network of contact points bringing together all the member states' public prosecution services. For implementation of this proposal please be informed that *The International Legal Division of the General Procuracy* is responsible for International co-operation in criminal matters between Public Prosecution Services.

The head of the division is

Mrs. Nelly Harutyunyan.

Working languages are English, Russian & Armenian.

Address: 5 V. Sargisyan s., 375010, Yerevan

Tel + 3741 58 60 81

Fax: + 3749 58 60 81

E-mail: Louise_manukian@edu.aua.am

DENMARK / DANEMARK

I can endorse the bureau's proposals. On the list in doc. PC-OC/INF.6 of 18.10.2002 appears the name of assistant deputy director of public prosecutions Mr. Jesper Hjortenberg. He can play the role of future contact point.

FINLAND / FINLANDE

We support the Bureau's proposal. The undersigned (Ms Raija Toiviainen, Head of the International Unit, State Prosecutor) is mentioned on the list and this is how our office want to keep the list so far. Other persons who have been named from Finland as contact points do not come from Prosecution Service. However, they are experts in the practical application of European Conventions. If it is important to create a list of prosecutors these experts should not be dealt as contact points in this new context.

FRANCE

Je suis favorable à l'élaboration d'une liste de points de contact sous réserve des observations suivantes :

- que cette liste soit limitée en nombre de correspondants;
- que cette liste soit calquée pour partie sur la liste des points de contact déjà désignés dans le cadre du réseau judiciaire européen.

Ainsi les points de contact identifiés au titre des « Ministères Publics Européens » en seraient en quelque sorte les « correspondants privilégiés ». Je ne verrais qu'avantage à ce qu'un seul correspondant spécialiste de la coopération pénale internationale soit désigné par Etat considéré. Mais alors cette désignation ne devrait-elle pas relever du pouvoir central, ce qui pourrait en France revenir à confier au Service des Affaires Européennes et Internationales le soin de cette désignation ?

HUNGARY / HONGRIE

The Hungarian Public Prosecution Service supports the Bureau's proposal to use the "List of persons involved in the practical application of European Conventions" as a "network of national contact points" as proposed by the Ljubljana meeting of the Conference.

However, this list should be supplemented with the prosecutorial contact point of Hungary, since the independent public prosecution can not be represented by the Ministry of Justice in a prosecutorial network. The Office of the Prosecutor General, in addition to the Ministry of Justice, acts as a central authority in mutual legal assistance cases, and the contact points for the European Judicial Network and the EUROJUST have also been nominated at the Office of the Prosecutor General.

Our contact point is:

Ms Ilona LÉVAI, Director General, Office of the Prosecutor General
 Department for International and European Affairs
 1055 Budapest, Markó utca 16.
 Phone: + 36 1 269 28 17
 Fax: +36 1 269 26 62
 E-mail: ilona.levai@mku.hu
 Working languages: English, French

ICELAND / ISLANDE

The Bureau's proposals of setting up a network of contact points are supported. The current list of persons involved in the practical application of European Conventions does not include a contact point within the prosecution system. Therefore, named as contact point of the prosecution system:

Ragnheidur Hardardottir, public prosecutor
 Office of the Director of Public Prosecutions
 Hverfisgata 6, 150 Reykjavík, Iceland
 Tel. + 354 530 1600
 Fax. + 354 530 1606
 e-mail ragnheidur.hardardottir@tmd.is

LATVIA / LETTONIE

Supports the proposal

Contact points:
 Mr M Strads (already listed in doc INF 6)
 Mr Gunārs Bundzis, PG Office, E/A/T, English
 O. Kalpaka bld 6, Riga, LV 1801
 Tel +371 704 4525
 Fax +371 704 4449
 e-mail gen@lrp.gov.lv

LIECHTENSTEIN

The Liechtenstein Prosecution Service supports the bureau's proposal. The following persons of the Liechtenstein Prosecution Service are named as contact points as defined in the bureau's proposal:

Dr. Robert Wallner	lic.iur. Alma Willi
Äulestrasse 51	Äulestrasse 51
FL-9490 Vaduz	FL-9490 Vaduz
Tel. + 423 / 236 67 94	Tel. + 423 / 236 67 92
Fax + 423 / 236 67 99	Fax + 423 / 236 67 99
E-Mail: robert.wallner@sta.llv.li	E-Mail: alma.willi@sta.llv.li
www.liechtenstein.li	www.liechtenstein.li
German and English	German, English, French and Italian

LITHUANIA / LITUANIE

¶ We suggest to adopt the proposals of the Bureau.

¶ We do not have any information, whether any member of the Lithuanian Prosecutor's Office is included into the list, as we did not get the list mentioned in the Questionnaire. The role of our contact point could be performed by Ms Laima Čekelienė, Chief Prosecutor of the International Relations and Legal Assistance Division of the Prosecutor General's Office of the Republic of Lithuania, tel (370 5) 2662360, fax (370 5) 2662360, e-mail cekelil@lrgp.lt.

NORWAY / NORVÈGE

Contact points is a good idea, if well known, consisting of practitioners and often used. If such conditions are not fulfilled the list may easily turn out to be another "paper tiger".

It is stressed in the questionnaire that "these contacts point should be made up solely of members of the public prosecution service". The list of officials involved in the practical application of the Council of Europe conventions that the Bureau brings to attention seems for many states to contain both persons from the prosecution service and officials from the Ministry of Justice etc. At least that is the case for Norway.

In order to set up a list of contact points that could serve as a practical tool in everyday work the list should, like in the European Judicial Network (EJN), contain practitioners. Moreover, it would facilitate the use of the list if it gives some information on the contact point's workplace, specialisation, language skills etc.

Although Norway has a central unit for the prosecution service – the Director of Public Prosecutions – the Norwegian contact points should not only be drawn from that unit. The prosecutors in the DPP office do not regularly carry out operational functions.

A list of contact points from Norway – set up with regard to the above mentioned premises and in line with the EJN list – would be:

Mr. Knut H. Kallerud

Function:	Senior Public Prosecutor
Organisation:	Office of the Director of Public Prosecutions
Specialisation:	General prosecutorial matters
Address:	P.O. Box 8002 Dep., NO-0030 Oslo, Norway
Spoken language:	Norwegian, English
Read language:	Norwegian, English
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Mr. Kim Sundet

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 Organisation: Regional office of the public prosecution service in Oslo
 Specialisation: All serious crimes
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 E-mail: statsadv@online.no, att: Kim Sundet
 Remarks: May assist - or refer to colleagues - in cases all over the country

POLAND / POLOGNE

The Prosecutor General of the Republic of Poland is of a position that the contact points between public prosecution services should be made up **solely of members of the public prosecution service** and their main purpose should be to facilitate international co-operation in criminal matters by supplying information on request relating to procedure to be followed and the authorities concerned (as proposed by the Bureau).

The contact point in Poland shall be:

Mr Andrzej Kępiński, prosecutor, Head of the International Cooperation Division,
 National Prosecutor's Office, Ministry of Justice
 00-950 Warsaw, Al. Ujazdowskie 11
 Tel +48 22 5212 401, Fax +48 22 5212 360;
 E-mail: kepinski@ms.gov.pl.
 Working language - english

ROMANIA / ROUMANIE

Further to the joint action of creating the European Judicial Network of 29 June 1998 as a form of co-operation between central authorities in order to facilitate international judicial co-operation, especially for the serious forms of organized crime, Romania was invited to appoint for it, in the year 2002, a contact point in this network. For this purpose was appointed Mrs. **Angela Nicolae**, chief prosecutor of section- the Prosecutor's Office attached to the Supreme Court of Justice, address: 14 Libertății Blv., sector 5, Bucharest, tel. 004021.410.54.35, fax 004021.410.54.35, e-mail: arcde@kappa.ro, who also provides the connection among the European public ministries.

SLOVENIA / SLOVÉNIE

Experience in establishing reciprocal links has demonstrated that having specific persons as contacts is only suitable as long as they hold the specific position where they can fulfil that contact role.

We therefore assess it would be best if the contact points be, for example, the heads of office for public prosecutors general – not a specific person by name but rather the persons that are always present in that position. These persons could then direct those requesting a specific action or assistance to the right place.

In establishing reciprocal links at the international level, we must ensure that a prosecutor arrives at the right source in the simplest possible manner, so it would be beneficial to have an unnamed person in a specific position as a contact point, who would know how to establish the desired contact.

Nevertheless we are pleased with the list of contact persons made to date, which provides a "window on the world of prosecution" and we put forward our idea for consideration.

SPAIN / ESPAGNE

Sur ce point, il faut avant tout montrer notre accord par le fait de la création d'un réseau de points de contact rassemblant l'ensemble des États membres du Conseil d'Europe. C'est une mesure qui sans doute va s'avérer non seulement pratique mais aussi efficace, en tant que moyen pour améliorer la coopération pénale entre les divers États membres.

À cet égard, il nous semble utile de profiter de l'existence des points de contact du réseau judiciaire européen dans la mesure où certains Procureurs qui appartiennent déjà à ce réseau pourraient devenir, en même temps, « points de contact » des États membres du Conseil d'Europe. Cette solution permettra d'éviter la multiplication des listes de correspondants tel qu'est proposé par le Bureau. En tout cas, nous adhérons aux propositions émises par le Bureau.

Cela dit, en ce qui concerne la « liste des personnes impliquées dans l'application pratique des conventions européennes » (document PC-OC/INF.6), tantôt M. Moix comme Mme Morán sont en état de jouer le rôle de point de contact. Tous les deux sont des Procureurs qui siègent dans le Parquet du Procureur Général de l'État, dont est centralisée la coopération pénale internationale, sont spécialistes dans ce domaine et en plus ils sont points de contact du réseau judiciaire européen. Par contre, M. Alarcón, qui n'appartient pas au Parquet, a déjà pris sa retraite, donc sa présence sur cette liste ne semble plus être utile.

Il faut rappeler que la coopération judiciaire international est aussi objet d'attention dans la réforme qui est en cours en Espagne. Le Projet de loi confie au Parquet du Procureur Général de l'État ("Secretaría Técnica del Fiscal General del Estado") toutes les tâches concernant cette matière. Cela va permettre que ce Parquet continue

à centraliser et à coordonner l'activité en ce domaine avec un renforcement des moyens personnels et matériels, favorisant ainsi la formation et la spécialisation de certains de ses membres (cfr. Recommandation 38 et 39).

SWITZERLAND / SUISSE

Quant à la création de points de contact, le Ministère Public de la Confédération souligne l'importance du lien avec EUROJUST et l'intention de ne pas faire naître des parallélismes avec cette institution forte importante. La résolution elle-même tient compte de ce problème et vise vers l'efficacité et à séparer les rôles clairement. L'acte constitutif d'EUROJUST prévoit en outre une telle collaboration. Il sied de souligner que des points de contact entre les Procureurs Généraux sont fort utiles pour notre tâche opérative.

Si, dans l'hypothèse où la liste précitée et jointe en copie contient déjà, pour l'Etat considéré, un membre du Ministère Public spécialiste de la coopération pénale internationale, ce membre pourrait jouer, dans l'avenir, le rôle de point de contact tel que défini plus haut.

Si, dans l'hypothèse inverse, un autre responsable du Ministère Public (voire plusieurs si le Ministère Public concerné ne connaît d'organisation centralisée) pourrait jouer ce rôle (préciser les langues utilisées et les coordonnées).

Le responsable pour la coopération internationale qui pourrait jouer ce rôle et le ressort Entraide judiciaire / Coopération internationale du Ministère Public de la Confédération. Ce ressort est sous la responsabilité de Me Michel-André Fels, Procureur Fédéral. Les langues utilisés dans ce ressort sont le français, l'allemand, l'italien, l'anglais, l'espagnol, le russe, le serbo-croate.

coordonnés:

Ministère Public de la Confédération, Ressort ECI/RIZ
Taubenstrasse 16, CH-3003 Berne
+41 31 322 09 60 (Chancellerie)
www.ba.admin.ch

UKRAINE

The Prosecutor General's Office of Ukraine endorses the proposal of setting up "contact points" between public prosecution services to facilitate international cooperation in criminal matters and to supply information on requests relating to the procedure to be followed and the authorities concerned.

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