



**Conference of Prosecutors General of Europe
5th Session**

**organised by the Council of Europe
in co-operation with
the Prosecutor General of Lower Saxony (Germany)**

Celle, 23 - 25 May 2004

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CONCLUSIONS

The Prosecutors General and other Prosecutors of Europe held their 5th Conference in Celle from 23 to 25 May 2004 under the aegis of the *Council of Europe*, at the invitation of the *Prosecutor General of Lower Saxony (Germany)*.

The Conference opened with a statement by, among others, Mr Michael GROTZ, Prosecutor at the German Federal Public Prosecution Department, who passed on a message from the Federal Minister for Justice.

The Conference programme and list of participants appear in separate documents. The proceedings of the Conference will be issued at a later date.

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1. The Conference reaffirmed that it strongly adhered to the European principles for combating crime more effectively, with due regard for Europe's shared values and human rights.

Accordingly, it was satisfied to note that several European countries had successfully completed reforms concerning their prosecution services or criminal procedure, based on the guiding principles in Council of Europe Recommendation Rec(2000)19 on the role of public prosecution in the criminal justice system. It hoped that such efforts would be continued by the legislators of all the member States.

It welcomed the opportunity that the Council of Europe had given Europe's Prosecutors General to participate in this process through annual meetings.

Concerned, however, by rising crime, both ordinary crime and internationally organised crime, and convinced that prosecution services has a key part to play in the security and freedom of all European societies, the Conference again drew attention to the urgent need to strengthen existing co-operation among prosecutors general by:

- making their Conference into an institution so as to obtain the resources needed for its efforts to enforce the rule of law, and so as to ensure that greater account was taken of its proposals;
- making unofficial arrangements aimed at ensuring that the Guiding Principles applicable to prosecution services are effectively taken into account both in legislation and in practice;
- setting up, within prosecution services, a network of contacts designed to facilitate the implementation of co-operation in Europe without replacing the bodies responsible for this; it stressed in this connection that, in addition to the reforms carried out by the European Union, there was an imperative need to mobilise the whole of Europe to combat crime and that this required closer co-operation between the two European organisations and practical arrangements to ensure that conventions were implemented quickly and effectively.

2. Welcoming the Prosecutors of the International Criminal Court, of the International Criminal Tribunal for Former Yugoslavia and the representatives of Eurojust and the European Judicial Network, it once again expressed satisfaction at the establishment of these international courts and organisations and at the role they had entrusted to prosecution services.

It hoped that all the member States would participate fully in this process and that prosecution services would be fully involved.

3. Having devoted much of its discussions to the principles of discretionary or mandatory prosecution governing the role of the prosecution services, the Conference was satisfied to note that there was a trend towards European harmonisation of the objectives of the different legal systems, which now tended to focus on the principles of public interest, the equality of all before the law and the personalisation of criminal justice, in accordance with Council of Europe Recommendation N° R (87) 18 on the simplification of criminal justice and Rec (2000) 19 above-mentioned.

It hoped that the following principles would be applied in order to strengthen this convergence:

- The question of the choice of the prosecutorial system should not avoid a prior examination of alternative responses to criminal law, such as civil or administrative options, which should be preferred as a means of dealing with the vast number of "*offences which are inherently minor*" that constitute a small hindrance to public interest and do not justify the intervention of the prosecution services or the courts. The Conference therefore encouraged States to give serious consideration to the possibility of removing these offences from the list of criminal offences.

Nor should the choice of prosecution system be influenced by the lack of budgetary resources allocated to the judiciary. In particular, the principle of discretionary prosecution should not be diverted from its proper ends because of a failure to give the trial courts the resources they needed. The same applies to the principle of mandatory prosecution when prosecutors are compelled to let voluntarily the offences become time-barred offences for want of sufficient court capacity.

- The principle of discretionary prosecution or similar schemes in legal systems governed by the mandatory prosecution principle were designed to apply only to "*offences which are minor due to the circumstances of the case*", in the light of the type of offence or the age and personality of the perpetrator; in accordance with Resolution (97) 24 for the twenty Guiding Principles for the fight against corruption, they should not apply in the case of serious offences and, in particular, to corruption offences or those involving politicians.

- In this context, when a trial and criminal sanctions are not justified in the light of the public interest, the judiciary should favour serious, credible alternatives to prosecution and trial, designed to prevent the perpetrator from reoffending and take account of the victims' interests,

for example mediation (cf. Council of Europe Recommendation N° R (99) 19 concerning mediation in penal matters).

- It is up to prosecution services to take a decision on or to propose such alternatives, depending on the system applicable.
- Any alternative should be regulated by law in terms of criteria and conduct, to prevent any risk of injustice or arbitrariness.

The decision to apply alternative sanctions presupposes the express or tacit consent of the accused and, where appropriate, the victim, and should preserve both parties' right to a trial. Accordingly, reasons should be given for such decisions, which should be taken with due regard for the principle of judicial personalisation applicable to both prosecutors and judges, and decisions should be motivated and communicated to those concerned so that they could introduce an appeal or take other appropriate action.

Furthermore, the law should specify the effects of the measures taken or conditions laid down, in the light of Recommendation N° R (92) 16 on European Rules on community sanctions and measures.

- Professionals, and particularly those in charge of prosecution services, should ensure that decisions are coherent in terms of equality of treatment and strict regard for the principle of impartiality.

Policy in this area should be periodically reviewed in order to assess its appropriateness, particularly with regard to the prevention of reoffending and victims' satisfaction.

4. Addressing, for the first time, the question of the role of prosecution services outside the criminal field, the Conference observed that in most legal systems prosecutors had also responsibilities, sometimes substantial ones, in civil, commercial, social and administrative matters and even responsibility for overseeing the lawfulness of Government departments' decisions.

Given the importance of this issue for the public and the lack of any international guiding principle, it decided to pursue its consideration of the matter and instructed its Bureau to submit a reflection document at its next plenary session.

In any case, the Conference was already of the opinion that intervention by prosecution services beyond the criminal sphere could only be justified on account of its general task to act "*on behalf of society and in the public interest, [to] ensure the application of the law*" as it is reflected in Recommendation N° R (2000) 19, and that such functions could not call into question the principle of the separation of powers of the legislature, the executive and the judiciary, or the fact that it was ultimately for the competent trial courts, and them alone, to settle disputes, after hearing both parties.

5. The Conference took note with interest of its expert's proposals concerning guiding ethical principles and instructed its Bureau to organise later this year, with the Prosecutors General and the Prosecutors interested, a meeting on this subject and to submit, following the appropriate modalities, a text taking into account the comments made during the discussions, for final adoption at the next session.

6. The Conference unanimously adopted new rules for the membership of its Bureau, designed to provide it with increased stability and to improve the continuity of its work. It decided that:

- The Prosecutors General of the States organising the plenary session that year and the next year would automatically remain members of the Bureau for a period of two years;

- The other four members of the Bureau would be elected for four years, with due regard for geographical distribution and the rotation principle, and half the members would be renewed every two years.

Accordingly, the following were elected to replace Mrs Zdenka CERAR, Prosecutor General of Slovenia, and Mr Marc ROBERT, Prosecutor General of Auvergne (France) and outgoing President, Mr João DA SILVA MIGUEL, Deputy Prosecutor General (Portugal) et Mr Jerzy SZYMAŃSKI, Prosecutor (Poland).

7. The Conference received with interest the offer from the Prosecutor General of Qatar to organise the next World Summit of Prosecutors General in November 2005. It asked its Bureau to co-ordinate European contributions to the Summit.

8. The Conference gratefully accepted the invitation from Mr Péter POLT, Prosecutor General of Hungary, to hold its next plenary Session in Budapest in May or June 2005. Mr Péter POLT therefore automatically became a member of the Bureau, in place of Mr Dobroslav TRNKA, Prosecutor General of Slovakia.

9. The Conference also gratefully accepted the invitation from Mr Vladimir USTINOV, Prosecutor General of the Russian Federation, to hold its 7th plenary Session in Russia in 2006.