



**Conference of Prosecutors General of Europe  
5<sup>th</sup> 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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**« Prosecutors' duties outside the criminal justice sector »**

**Introductory Memorandum by Mr. Marc ROBERT  
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Chair of the Co-ordinating Bureau**

As indicated by its title, Recommendation Rec (2000) 19 relates exclusively to the role of public prosecution in the criminal justice system. In view of the high priority attached to fighting crime with due regard for human rights, and the importance of this criminal justice role for all prosecution services, it was clear that any attempt to seek European harmonisation by means of guiding principles needed first and foremost to focus on this fundamental question.

However, many legal systems assign to the prosecution service duties falling outside the criminal justice sector, for example in civil, commercial, social or administrative matters, such as monitoring – and even sanctioning – certain professions. These duties can be just as important as those in the criminal field, for instance when it comes to protecting children or limiting the social and economic consequences of a company's misfortunes.

And yet, in the course of the last decade, these duties outside the criminal justice sector have been discussed nowhere except at the multilateral meetings organised by the Council of Europe to consider the transformation of the legal systems of the countries of central and eastern Europe. Very often such questions were limited to the need to curb the general power of supervision over the administration given to the Prokuratura of the former USSR<sup>1</sup>.

At our first pan-European conference in Strasbourg from 22 to 24 May 2000 on “*What public prosecution in Europe in the 21<sup>st</sup> Century*”, several principal state prosecutors had expressed their wish for the question to be looked into in greater depth, and this wish was repeated in the conclusions of the Bratislava conference and more recently by the Parliamentary Assembly of the Council of Europe.

As much ground needed to be covered, the Bureau felt it would be a good idea to have an initial debate on the question at this conference here in Celle, on the basis of the questionnaire distributed, in order to take stock of the situation prior to conducting a more detailed study, the conclusions of which would be discussed at the 6<sup>th</sup> conference in 2005.

With reference to the guiding principles in *Recommendation (2000) 19* – which, because they are largely general, can also apply beyond the criminal justice sector – thought needs to be given to:

- the foundation for the action taken by the public prosecution service in this area of non-criminal law: is it still “...*on behalf of society and in the public interest, [to] ensure the application of the law*” (cf. guiding principle no.1)? On what basis is the prosecution service, a public authority body, entitled to intervene and interfere in relationships (often of a contractual nature) falling under private law? Are there any “private interests” which, by their very nature, justify such intervention? Is the supervision of the administration carried out by the prosecution service in conformity with the principle of the separation of powers and non-interference with the competence of the executive power (cf. guiding principle no. 12)?

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<sup>1</sup> cf. the Budapest meeting (27-29 September 1994) on “*The transformation of the Prokuratura into a body compatible with the democratic principles of law*” (in particular recommendations 11 et 12); the Messina meeting (5-7 June 1996) on “*The role of the public prosecutor's office in a democratic society*” (in particular Professor Perrot's consolidated report); and the Moscow meeting (8-9 January 1997) on “*The Prokuratura in a state governed by the rule of law*”.

- how the prosecution services acts in such matters: while the right to intervene (whereby the prosecution service can express its opinion before a judge ruling on a case) shows due regard for the rights of the parties and the judge, what about the right which it is sometimes granted to take direct action? Given that the prosecution service is organised hierarchically and occasionally subordinate to the executive or legislative powers, is the fact that it can be equated to a party to the trial compatible with the rights of individuals? What should be the parameters of such assimilation?