



**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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**Report by Mr. Marc ROBERT
General Prosecutor, Court of Appeal of Riom (France)
Chair of the Co-ordinating Bureau**

Ladies and gentlemen,

As Chairman of our Conference's Bureau, I have pleasure in presenting to you, for the third and last time, the Bureau's progress report. In doing so, I shall make full use of the freedom allowed any chairman at the end of his term - and also, I hope, allowed to me, as a European who has worked on questions relating to prosecution services for the last 20 years at the Council of Europe.

On behalf of all of you, however, I should first like to extend our warmest thanks to Mr RANGE, Prosecutor General of Niedersachsen, who is our host for this fifth plenary session of the Conference. We all know that organising a meeting like this one is no rest cure. The work involved is considerable, and it means being constantly available - on top of all one's normal duties. All the more reason, then, for thanking you - the success of this session will be largely your doing. Our thanks, too, to all those who have helped you, and particularly Mr BERGER.

I should also like to welcome all the German prosecutors, general and other, who are playing such a gratifying part in our work.

When he opened the first pan-European Conference of Prosecutors General on 22 May 2000, Mr Walter SCHWIMMER, Secretary General of the Council of Europe, who had launched the Conference, spoke of the eminent and very special role of prosecution services, which have to reconcile respect for human rights with effective action against crime, and occupy a unique position, based on an often delicate balance between government and judiciary.

In accordance with the aims assigned to Europe's oldest organisation, he exhorted us, and through us all the Council's member states, to overcome our differences (while respecting pluralism) and focus on a single shared objective: building an ever better and ever safer society in a Europe where peace based on justice and international co-operation is the norm, and human rights and the rule of law are respected.

He ended by assuring us that questions relating to prosecution services were, and would remain, one of the Council of Europe's priorities.

This promise was rapidly and strikingly redeemed a few months later, when Recommendation (2000) 19 on the role of public prosecution in the criminal justice system was adopted - a text which went beyond issues of punishment and laid down guiding principles for the status and institutional role of prosecution services.

That recommendation is, in the fullest sense, ours: it was already the fruit of ideas put forward by representatives of prosecution services in the 25 member states and, even before it was adopted, you gave it your approval at the Strasbourg meeting which I mentioned a moment ago.

At our second meeting, in Bucharest in 2001, Mr Hans Krüger, Deputy Secretary General of the Council of Europe, urged us to take action on the recommendation and, in particular, to ensure that its standards were genuinely and consistently applied throughout Europe. "The time has

come”, he told us, “to give your meetings a framework, to guarantee their unity and continuity. You will have to take the necessary decisions, and specifically explore the possibility of setting up a practical and informal structure to make co-operation between prosecutors more effective, possibly co-ordinate prosecution measures at European level, and certainly improve contacts and the exchange of information.”

In response to his words, and on the basis of practical proposals which I put before you, you asked the Council of Europe to set up a “Conference of Prosecutors General of Europe”, the aim being to promote closer ties between prosecution services in the member states, implement Recommendation (2000) 19, strengthen co-operation and give prosecution services a bigger place in the Council’s work - in short, to establish a platform for discussion, co-operation and new ideas without, obviously, making any attempt to take over decision-making from the authorities concerned.

Once again, the Council of Europe gave us what we wanted. At its meeting on 5 September 2001, the Committee of Ministers expressed interest in the project, asked the Secretariat to submit detailed proposals, and released the funds needed in the meantime.

Since then, the Conference has again insisted, at both the Ljubljana and Bratislava meetings, on the importance of its being institutionalised, and has made action to bring that about your Bureau’s primary concern.

Shortly after our last meeting, in its Recommendation 1604 (2003) on the role of the public prosecutor’s office in a democratic society governed by the rule of law, of 27 May 2003, the Council of Europe’s Parliamentary Assembly gave the idea of turning our Conference into a permanent body its unequivocal support. On the strength of this important text, which I personally brought to the attention of all the prosecutors general, your Bureau submitted detailed proposals to the Secretary General of the Council.

When it discussed the Assembly’s recommendation at its meeting on 4 February 2004, the Committee of Ministers again stressed that prosecution services played a vital role in guaranteeing security and freedom in all European societies, and insisted on the importance of Recommendation 2000 (19) - but thought that institutionalisation of the Conference called for fuller intergovernmental discussion, and instructed the European Committee on Crime Problems to take charge of this. In other words, the question has still to be decided.

I should now like to take advantage of my end-of-term latitude and try to reassure the doubters – the few states which fear that institutionalisation may affect the internal relationship between governments and prosecution services, and any Council of Europe bodies which see it as possibly interfering with the organisation’s internal architecture.

No - our Conference is not trying to turn itself into a pressure group, let alone take over decision-making powers. It simply wants to play its role fully, for the purpose of promoting European principles, and also co-operation between prosecution services, which help to maintain the rule of law – something to which we are all committed, and which is a necessary aspect of acting more effectively to defeat the criminals who threaten our societies.

Your Bureau remains convinced that, with good will on all sides, a consensual solution can be rapidly found; that is why, on its behalf, I recently submitted new and practical proposals on institutionalisation to the relevant authorities – proposals which should, we feel, satisfy everyone. That is my own wish as I leave the chair to which you appointed me, convinced as I am that judicial Europe is urgently needed, and that prosecution services are one of the things which underpin it.

Our Conference, too, has not been idle. In the last three years, we have worked unceasingly to make Recommendation 2000 (19) a reality: assessing its implementation by states every year, developing some of the points it covers (such as protection of victims, juvenile delinquency, corruption, economic and financial crime, relations with the police, and relations with judges and politicians) and making proposals on international co-operation, improved statutory protection, fuller professional guarantees, ethics, etc.

The Conference's efforts are one thing, but you have all, ladies and gentlemen, helped to make the recommendation a success by taking the European principles as a starting point in recasting your laws on prosecution services, your codes of criminal procedure, and your regulations on the organisation, status, training and activity of prosecutors.

The replies to the questionnaire which have reached me illustrate this trend: some prosecution services have completed substantial reforms in recent years, while others are in the process of doing so or are preparing to follow suit. I am thinking of the laws on the prosecution service, or amending the code of criminal procedure, recently passed or under discussion in Armenia, Bulgaria, the Czech Republic, Estonia, France, Latvia, Portugal - and the list is far from being a full one.

Apart from the reforms, the organisation and day-to-day activity of prosecution services must also be based on the European principles. In this connection, I would like to mention a pioneering move by the Conference of French Prosecutors General, which recently made Recommendation 2000 (19) the basis of an internal recommendation on "Guiding Principles for the French Prosecution Service", covering all the relevant issues.

Your very presence here, ladies and gentlemen – and your numbers increase at each plenary session – is striking proof that, although we may disagree on some points, we are all convinced of the central role which prosecution services play, and must continue to play, in ensuring that the rule of law and the general interest are upheld in a Europe united by unwavering commitment to democracy and respect for human dignity. But our Conference and its Bureau currently operate in a way which deprives us of the resources we need to take our work further and organise the many professional meetings which we need, and of the institutional partners we must have to discuss our proposals or become more involved in Council activities which concern us directly.

That is why your Bureau - which has been able to meet only twice since our last plenary session - has problems every year, if not in doing its job at all, at least in doing it successfully.

For example, in the absence of a decision on institutionalising the Conference, the relevant Council of Europe bodies have not been able to discuss the setting-up of monitoring machinery for Recommendation 2000 (19) - although this was strongly advocated in Bratislava.

As for international co-operation in the field of criminal law, we have taken the points made by Mr Krüger, speaking in Bucharest on the Council's behalf, very much to heart. He said, and I quote: "It is vital that the European Union and Europe in general co-operate effectively. Criminals will be the only ones to gain if Europe adopts two approaches to dealing with them: one inside, and another outside, the EU. If Europe fails to take concerted action against crime, then crime will dominate Europe. A great deal remains to be done. I should like to mention just one aspect – we must have pan-European regulations which allow prosecutors to co-operate directly across physical and bureaucratic frontiers. The time has come for decisive action on this, and I urge you to take it."

We responded by deciding, in Bratislava, to launch a process aimed at easier, more effective co-operation between national prosecution services, based on an informal network of "national contact points". The network was not meant to replace existing co-operation bodies, but to facilitate exchange in a practical sense. It was to be co-ordinated with the EU network (even if the latter's aims are different), and have the resources it needed to recruit and train correspondents.

On 9 December last, as it had been instructed to do, your Bureau held a meeting with senior officials from Eurojust and the Secretary of the European Judicial Network, whom we have the pleasure of seeing here in Celle, to tell them about our Conference and its work.

Here again, informal discussions with Council of Europe officials suggest that the Conference will have to be institutionalised, and certain misunderstandings removed, before the relevant authorities can discuss this project. There is no time to be lost, since this project, however modest, would certainly help – and perhaps help more than many colloquies – to make our combined efforts to defeat the criminals, who have shown how little frontiers mean to them, more effective.

The fourth thing the Bureau was asked to do was to prepare a document on the ethics of prosecution services – which will be presented tomorrow by the expert concerned. It must be said that the draft reached the Bureau too late for discussion before this session, and so the proposals you will be considering are those of the expert alone.

This brings me to the purpose of our meeting, preparation of which was the main focus of your Bureau's work.

In accordance with the wishes expressed by some prosecutors in Bratislava, and with a view to looking more closely at a number of issues which are vital for prosecution services, but which are either ignored or merely glanced at in Recommendation 2000 (19), two main subjects of study are being proposed: the first, which will be discussed in plenary session this afternoon, concerns the opportunity or legality principle as it applies to prosecution; the second, which will

be discussed in committee tomorrow morning, concerns prosecutors' duties outside the criminal sector.

First of all, however, we shall have the pleasure of listening to two senior prosecutors from international courts – Mr Serge BRAMMERTZ, Deputy Chief Prosecutor at the International Criminal Court, and Mr Stefan WAESPI, Prosecutor at the International Criminal Tribunal for the former Yugoslavia, who have kindly accepted our invitation, and who have my warmest thanks. They will be talking about the role and organisation of prosecution in international courts and bodies, and its relations with national prosecution services, as will Mr Michael KENNEDY, President of the College of Eurojust, and Mr Angel GALGO PECO, Secretary to the European Judicial Network.

We shall also have the pleasure of hearing a statement by the Prosecutor General of Qatar, which, after Guatemala, will shortly be hosting the second World Congress of Prosecutors General - and he will be talking to us about that. I welcome him warmly.

The first part of the plenary session tomorrow afternoon will be devoted to reports and statements which individual prosecutors general may wish to make.

The session will close with the election of several new members to the Bureau.

To remedy the damage done by the present system, which jeopardises the permanence and continuity of the Bureau's work by renewing it almost totally every two years, the Bureau itself has suggested that you change the rules: it will have the same number of members (6) and two of those will still be *ex officio* (to facilitate preparation of plenary sessions, the prosecutors general of the states which are hosting the present and next sessions are members for two years), but the remaining four members will now be elected for four years, paying due attention to geographical distribution and rotation, and half will be renewed every two years.

Those of you who answered the relevant part of the questionnaire, which I sent out on 23 March, accepted this plan without reserve.

Under the new rules, which I propose inserting in our conclusions,

- Mr MONETTI (Italy) and Mr VAN ERVE (Netherlands) would remain in office until the 2006 conference
- Mr RANGE (Germany), who is organising the present session, would remain until the 2005 conference
- the three other members, i.e. the prosecutors general of Slovenia and Slovakia, and myself, will leave and be replaced by the prosecutor general who is organising the 2005 Conference (who will be an *ex officio* member for two years), and by two new prosecutors general, whom we shall be electing tomorrow for four years.

I would ask candidates to make themselves known to the Secretariat before the end of today.

Before concluding my remarks, it is my pleasant duty to pay tribute to the work done by Mr Candido CUNHA, for four years our Secretary, whom many of you know, and offer him warmest thanks from all of us for the constant support he has given our Conference, both when it was being set up and since it has been operating.

I must also introduce to you Ms Anita VAN DE KAR, the Council of Europe administrator who has taken over from Mr Cunha, and who has already provided us with much useful and highly effective assistance.