



**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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**Conference's summary**

**Monday 24 May 2004**

**1. Official opening of the conference**

**Prosecutor General Harald RANGE** from Celle Prosecutor General's Office opened the conference and welcomed the participants and guests.

Mr **Michael GROTZ**, Prosecutor at the Federal Court, then read out a welcoming statement from the **Federal Minister for Justice, Brigitte ZYPRIES**.

Mr **Roberto LAMPONI**, Director of Legal Co-operation at the Council of Europe Secretariat, said that the 5th conference would take account of developments in criminal justice systems, which had seen substantial changes since 2000.

In this connection, the recent improvements in co-operation between public prosecution services in Council of Europe member states brought about by bodies such as Eurojust and the European Judicial Network were to be welcomed.

The first main theme of this year's conference, namely the question of discretionary powers of public prosecution services from the angle of the principles of mandatory or discretionary prosecution, had already been addressed in 1987 in Recommendation No. R (87) 18 concerning the simplification of criminal justice. At the time, the possibility of making discretionary decisions had been seen as a measure designed to simplify procedures and increase the efficiency of justice systems. It was crucial, however, that measures to simplify criminal justice should not undermine one of the key principles of proceedings, namely the safeguarding of human rights. In addition, no outside pressure should be exerted on justice systems with a view to influencing the outcome of proceedings.

As far as the second theme of the conference was concerned, the Council of Europe was not aiming for any standardisation in the sense of binding regulations with regard to prosecutors' duties outside criminal prosecution. In terms of the factors that united public prosecutors, the Council of Europe believed that shared ethical rules played a very important role. However, they should stem automatically from prosecutors' understanding of their profession rather than being set out formally in legislation.

**Prosecutor General Harald RANGE** then presented the conference and its themes.

This was followed by the report by the Chair of the Conference Co-ordinating Bureau, **Prosecutor General Marc ROBERT**, Auvergne Prosecutor General's Office.

**Mr Eugenio SELVAGGI**, Chair of the Council of Europe's European Committee on Crime Problems (CDPC), praised Mr Marc Robert's contribution and said that the conference formed an integral part of the Council of Europe's work.

## 2. The role and organisation of public prosecution in international courts and bodies and its relations with national prosecution services

Mr **Serge BRAMMERTZ**, Deputy Chief Prosecutor at the International Criminal Court (ICC), first referred to the wide-ranging activities of Celle Prosecutor General's Office as Germany's national contact point in the European Judicial Network and then gave an overview of the International Criminal Court's position in the context of international co-operation in prosecution matters.

Mr **Stefan WAESPI**, Prosecutor at the International Criminal Tribunal for the former Yugoslavia (ICTY), said that it was generally preferable for perpetrators of war crimes to be prosecuted in their own country by its authorities in their own language and in the view of the public there. This was not usually possible immediately after the crimes, however. If, as was the case in the former Yugoslavia, the crimes were so huge that waiting for lengthy periods was not acceptable, an international tribunal was needed. The International Criminal Tribunal for the former Yugoslavia had received a mandate from the United Nations Security Council to conduct proceedings against the main figures accused and form a forum for the victims, while ensuring that knowledge of the events that had occurred was preserved for the future. The Tribunal's work was characterised by the high costs involved in conducting investigations in distant places and in foreign languages, by the problem of determining criteria for selecting the cases to be tried, as not all cases could be dealt with, and by the problem of having to conduct investigations in the region concerned without a police force of its own. The Tribunal depended on the countries in the region, which had provided much assistance, this being particularly true of Albania regarding the preparation of the charges against Slobodan Milosevic. The Tribunal had now been operating for over ten years and hearings were held in the three courtrooms every day. The United Nations Security Council had now decided, however, that all investigations should be completed by the end of the year, all pending first-instance proceedings by the end of 2008 and all appeal proceedings by the end of 2010. Given this tight timeframe and the likely length of the proceedings, the Tribunal was particularly interested in securing the earliest possible arrest of two key figures, namely Mladic and Karadzic. Any remaining uncompleted proceedings were to be handed over to the local courts. The Tribunal was therefore endeavouring to prepare the relevant authorities for such proceedings and regular visits were made in this connection by officials from Croatia and Bosnia and Herzegovina. All states which had provided the Tribunal with resources and, in particular, staff were to be thanked.

Mr **Michael KENNEDY**, President of the College of Eurojust, then presented his organisation based in The Hague:

Eurojust was currently made up of 25 representatives of the EU member states. The respective national members were permanently represented in The Hague. Eurojust currently also had an administrative team comprising a permanent staff of five. It was hoped this total could be increased to ten.

Eurojust had been set up following a decision by European Union Justice Ministers that international co-operation in cross-border crime investigations should be stepped up. Eurojust's central objective was therefore to improve co-operation and co-ordination between EU member

states in cross-border investigations. Given the wide range of different legal systems, particular emphasis was also placed on the exchange of data between the member states.

In addition to member states raising particular cases or difficulties involving the prosecution of (serious) cross-border crimes with Eurojust through their national members, Eurojust could take the initiative itself, for example in terms of:

- asking member states to launch investigations,
- calling for the establishment of joint investigation teams,
- transferring information from national databases to Eurojust.

As the focus of Eurojust's work lay in supporting operational prosecution activities, it was essential for the national members to maintain close contact with their respective national authorities. That was the only way of ensuring ongoing and, above all, up-to-date exchanges of information. This was achieved through all members having so-called national contact days once a week.

In addition to the contacts within the enlarged European Union, Eurojust was interested in developing relations with other states, primarily in eastern Europe, in particular with Belarus, Ukraine, Moldova and the countries of the western Balkans, which in fact already existed. A further objective was closer contacts with Moscow.

If cross-border organised crime was to be combated effectively, co-ordination was essential in the field of undercover investigations, as well as in the area of technical resources and in connection with investigations concerning financial assets. Promoting such co-ordination and providing operational support for it was Eurojust's central concern.

In this connection, he described an example of successful co-operation which had taken place. Through the involvement of Eurojust, it had been possible to conduct co-ordinated cross-border investigations into a group of criminals who had been recruiting young girls in Romania with false promises and then forcing them into prostitution in brothels in France and Spain. Those behind this trafficking in human beings had since been sentenced in France and Spain.

Mr **Angel GALGO PECO**, Secretary of the European Judicial Network (EJN), then addressed participants. In setting up the European Judicial Network, the aim had been to develop instruments for co-operation which would improve and speed up judicial assistance. All European Union member states had so-called national contact points, whose task was to co-ordinate judicial assistance in cases of serious cross-border crime and offer the relevant prosecution authorities support.

The decision taken in 1998 to set up the EJN had led to the development of a dynamic structure, which included experts in the individual member states who were able to take the necessary measures promptly and professionally. Regular meetings between the members of the contact points had resulted in a whole range of contacts, which were helping establish increasingly personal relations.

These trusting, personal contacts meant that it was possible to exchange information flexibly and quickly, for instance by telephone and telefax, in pursuit of the common goal of combating crime more effectively. Within the network of national contact points, the EJM Secretariat in The Hague had the task of:

- ensuring general co-ordination,
- helping to strengthen the Schengen information system,
- and organising the regular meetings of the members of the contact points.

Efforts were being made to develop an information system, in which connection attention was drawn to the network's new Web address: [www.ejm.eu.int](http://www.ejm.eu.int) (from 1 July 2004).

After the ensuing discussion, the head of the Hungarian delegation, **Prosecutor General Péter POLT**, invited the conference to hold its 2005 plenary session in Budapest. The invitation was gratefully accepted.

Mr **Alexander ARABADJIEV**, Member of the National Assembly of the Republic of Bulgaria, speaking on behalf of the Parliamentary Assembly of the Council of Europe, said that, unfortunately, no satisfactory response had yet been received from the Committee of Ministers of the Council of Europe regarding the conference. In February 2004, the Committee of Ministers had decided that further discussions were necessary before a decision could be taken concerning Recommendation 1604 which he had presented the previous year in Bratislava.

### **3. Round Table “Discretionary powers of public prosecution: opportunity or legality principle - Advantages and disadvantages”**

Mr **José-Adriano SOUTO DE MOURA**, Prosecutor General of the Republic of Portugal, took the chair for the afternoon session and pointed out that different prosecution systems existed in Europe. Improving them and bringing them closer into line with one another was the common objective of the Council of Europe - and the subject of the present meeting. It was impossible to bring all provable crimes before the courts. Aiming for solutions involving decriminalisation and out-of-court settlements was therefore right.

By way of introduction to the subject, the Director of the Department of Criminology at the University of Göttingen (Germany), **Prof. Jörg-Martin JEHLE**, gave an address in which he showed that the principles of mandatory and discretionary prosecution (legality and opportunity principles) were not alternatives, but two principles which both restricted and also complemented each other.

**Mr Joachim STÜNKER**, Member of the Legal Affairs Committee of the Bundestag (Germany), described Germany's positive experiences with a combination of the strict principle of mandatory prosecution and the flexible principle of discretionary prosecution. There were currently no plans in the German parliament to make any fundamental changes to the tried-and-tested system. Rather, legal policy debate was focusing on:

- increasing the powers of public prosecutors in relation to the police,

- legalising plea bargaining in trial proceedings, including increasing the importance of intermediate or committal proceedings,
- and European harmonisation of material and procedural criminal law.

**Chief Advocate General Egbert MYJER**, Supreme Court of Appeal, Amsterdam, presented his comments from the viewpoint of a country which applied the discretionary prosecution principle.

Mr **Gherardo COLOMBO**, Prosecutor, Milan, then presented the Italian system, which was based more closely on the mandatory prosecution principle.

**Prosecutor General Péter POLT** described the moves in Hungary towards the discretionary prosecution principle.

**Prosecutor Jerzy SZYMANSKI** from the Justice Ministry in Warsaw then presented the advantages and special features of the mandatory prosecution principle in Polish law.

**Prosecutor General José-Adriano SOUTO DE MOURA** thanked all the speakers, closed the round table and said he was looking forward to the following discussion.

#### **4. Discussion: open floor (in particular for national reports) followed by a communication by the Attorney General of Doha (Qatar)**

**Prosecutor General Marc ROBERT** pointed out that the Council of Europe had already addressed the principle of discretionary prosecution in Recommendation No. R (87) 18 concerning the simplification of criminal justice. It had been made clear that the discussion did not concern responses to serious crimes. The national representatives had also agreed that the burden on the prosecution services should be reduced by means of decriminalisation in the case of offences which, irrespective of individual circumstances, were of little public interest because of their nature. The discretionary principle was therefore applied to minor to moderately serious offences. Four minimum standards had to be guaranteed, however, ie:

- the right of all individuals to a fair hearing in court, which meant that the dropping of cases required the express consent of those concerned,
- fair treatment and decision-making, which Recommendation Rec (2000) 19 provided could be achieved by laying down in law the criteria for dropping cases,
- the prohibition of arbitrary action in the relations between prosecution services and the executive; prosecutors had to remain impartial regardless of the political environment in which they operated,
- clear delimitation of decision-making powers and of legal consequences in the relationship between measures taken by prosecution services and by the courts.

**Senior Public Prosecutor Elisabetta CESQUI**, Prosecutor General’s Office, Rome, agreed. If compatible legal systems were to be developed in Europe, she believed that a legislative system with statutorily defined exceptions, like Recommendation Rec (2000) 19, was a feasible approach. She then described the planned reforms – which she believed were problematical – aimed at altering the hierarchical structures in her country.

**Prosecutor General José-Adriano SOUTO DE MOURA** reported that the debate about the mandatory and discretionary prosecution principles was continuing in Portugal, too. While the supporters of the discretionary principle accused the supporters of the mandatory prosecution principle of a degree of hypocrisy, the supporters of the mandatory prosecution principle regarded the extension of the discretionary principle as an “attack on the rule of law.” A particular difficulty lay in applying the mandatory prosecution principle strictly when the Justice Ministry had the power to issue guidelines based on political considerations. As it happened, the principle of mandatory prosecution also offered possibilities for reducing the excessive workload of the criminal justice system. For instance, Portugal had adopted the distinction made in Germany between crimes and non-criminal administrative offences. It was also worth noting that decisions to drop cases without involving the courts only led to work being transferred to the level of the police and the prosecution services. Extending the application of the principle of discretionary prosecution would not therefore solve the problems of rising crime on its own. However, monitoring the grounds for cases being dropped was both appropriate and necessary.

This point was taken up by another representative from **Italy**, who warned that the introduction of discretionary elements could involve a danger of abuse of powers. Only transparency could counter that effectively. Moreover, when cases were dropped on the basis of the discretionary principle, an independent judge should always have the “final say”. It was therefore advisable to have a list of criteria, compliance with which could be checked. Special standards would have to apply in the case of economic crimes or other offences where there were no individual victims calling for compliance with the criteria to be checked.

A representative of **Spain** was critical of the principle of discretionary prosecution. It was a method which stemmed from Anglo-Saxon law and was foreign to the nature of continental systems such as those in Spain and Italy, for instance. The real reason for replacing the mandatory prosecution principle with the discretionary principle was the savings being demanded by politicians. Economic considerations were taking precedence over legal ones.

A representative of **France** disagreed. In addition to all its other advantages, the discretionary principle could also help make good the damage between perpetrators and victims. This was not only economical but also ensured legal peace and prevented follow-up cases.

Another representative of **France** said that the allegation that the discretionary principle undermined the rule of law needed to be put into context. As the discussion so far had shown, application of the principle could in no way be equated with arbitrariness. In France, a law had come into force in March 2004 requiring the public prosecution service to give its grounds for dropping cases and to notify the victims thereof. The law also allowed victims to appeal against decisions to drop cases. These “checks” on the discretionary prosecution principle provided adequate protection in respect of the concerns that did, indeed, exist.



Following the discussion, **Prosecutor General Harald RANGE** once again specifically welcomed **Mr Massoud AL-AMIRI, Deputy Attorney General of Qatar**, who passed on greetings from **Attorney General Dr Ali Bin FUTAIS AL-MARRI** and reported on judicial developments in co-operation with the Gulf States. He also extended an invitation to the second World Summit of Attorneys General and General Prosecutors in Qatar in November 2005. **Prosecutor General Harald RANGE** gratefully accepted the invitation.

**Tuesday 25 May 2004**

## **5. Simultaneous meetings of two working groups**

The discussions in the two working groups took place in the morning.

**Mr Jaroslav FENYK**, Deputy Public Prosecutor of the Czech Republic, chaired Working Group 1 on “Prosecutors’ duties outside the criminal sector.” **Mr Silvij ŠINKOVEC, Supreme State Prosecutor**, Office of the Prosecutor General of Slovenia, made an introductory statement.

**Mr Antonio VERCHER NOGUERA**, Chief Prosecutor at the Supreme Court of Spain, chaired Working Group 2 on “Fundamental principles of ethics for prosecutors.” **Mr Pierre HONTANG, Prosecutor** at Bayonne Court, France, made an introductory statement here.

## **6. Open floor**

At the beginning of the plenary session in the afternoon, **Mr Henk MARQUART SCHOLTZ**, Secretary General of the International Association of Prosecutors (IAP), presented his association, which now brought together some 1 400 members and 100 organisations worldwide. As an international association, it had drawn up standards on fundamental issues and sought to provide assistance with legal questions. It had also successfully trained prosecutors in Iraq and Dubai. The association worked closely with the United Nations in Vienna. In addition to other events, it would be holding the 9th International Conference of Prosecutors in Seoul (Korea) in September 2004, which would focus on comparing criminal justice systems.

**Prosecutor General Harald Range** thanked **Mr Henk MARQUART SCHOLTZ** for describing his association’s impressive achievements and offered to pass on his invitation to the 9th International Conference to prosecutors so that as many practitioners as possible could attend.

## **7. Presentation of working group reports**

**a )** As chair of Working Group 1 on “Prosecutors’ duties outside the criminal sector”, **Mr Jaroslav FENYK**, Deputy Public Prosecutor of the Czech Republic, said that the report by Supreme State Prosecutor **Silvij ŠINKOVEC** had been followed by lively discussion of prosecutors’ role outside the criminal sector. Two views had emerged. One group had felt



that state authority was also needed in areas where individuals could not protect themselves. The other group had felt that non-governmental bodies should be active outside the criminal-law sector. That would avoid excessive concentration of responsibilities in public prosecution services.

Nevertheless, there had been agreement that the authority of the courts had to be preserved. In terms of details, however, very many other points still needed to be clarified. It had therefore been recommended that the working group should be carried forward and should also draw up guidelines.

**b) Mr Vito MONETTI**, Deputy Prosecutor General at the Court of Cassation in Rome, reported on the results of Working Group 2 on “Fundamental principles of ethics for prosecutors.” The most instructive introduction by Prosecutor Pierre HONTANG about the principles that should guide the actions of “good” prosecutors had been followed by very lively discussion involving many participants. The various statements had also picked up on the different national systems. There had been differences in opinion concerning the question of the impartiality of prosecution services, precisely with regard to crime victims. In this connection, some participants had referred to Recommendation Rec (2000) 19, in particular its acknowledgment of public prosecution services as authorities which ensured the application of the law in the public interest.

There was a need to look into many other questions in greater depth and put many points in concrete terms. Some participants had also suggested that a code of conduct should be drawn up. He proposed that a resolution on the issues should not be presented until the sixth session of the conference in Budapest in 2005.

Following the presentation of the results of Working Group 2, **Prosecutor General André RIDE**, Prosecutor General’s Office, Limoges, pointed out that a trilingual brochure had been produced in France on the position of victims and of public prosecutors in French criminal law. Particular attention had been paid here to the victims of terrorist acts. The content of the brochure, including statistical data, was of relevance to the issues of ethical principles for prosecutors. Copies of the brochure were available for participants.

**Prosecutor General Harald RANGE** thanked the working group for its report and underlined that ethical issues were the focus of discussion in many countries.

## 8. Conclusions

**Prosecutor General Marc Robert** then presented draft conclusions of the 5th Conference of Prosecutors General of Europe, which were adopted unanimously following intensive discussion.

## 9. Elections

**Prosecutor Jerzy SZYMAŃSKI** (Poland) and **Deputy Prosecutor General João DA SILVA MIGUEL** (Portugal) were unanimously elected to the Conference Bureau as successors to the

outgoing members, **Prosecutor General Zdenka CERAR** (Slovenia) and **Prosecutor General Marc ROBERT** (France).

With reference to the invitation to Hungary for the conference in 2005, **Prosecutor General Péter POLT** (Hungary), who automatically joined the Co-ordinating Bureau in place of **Prosecutor General Dobroslav TRNKA** (Slovakia) because Budapest would be hosting the conference, said that discussion in 2005 should focus, inter alia, on the relationship between prosecutors and the police, as well as further consideration of the topics that had been covered in Celle.

## **10. Closing of the conference**

In a brief concluding statement, **Prosecutor General Marc ROBERT** said that he looked back with pleasure and gratitude on his term as Chair of the Co-ordinating Bureau. In his view, the 5th Conference of Prosecutors General of Europe had been a great success, thanks primarily to Prosecutor General Harald RANGE, as well as the organisers, interpreters and security personnel.

Ms **Anita VAN DE KAR** thanked Prosecutor General Harald RANGE and his team on behalf of the Council of Europe Secretariat for the hospitality and excellent co-operation in the preparation of the conference. She also thanked M Marc ROBERT for his commitment and contribution, as Chairman of the Bureau, to the Conference of Prosecutors General of Europe.

In a closing statement, **Prosecutor General Harald RANGE** thanked the Council of Europe and the outgoing Chair of the Co-ordinating Bureau, Prosecutor General Marc ROBERT, and bid the participants farewell.