



COUNCIL OF EUROPE CONSEIL DE L'EUROPE

Strasbourg, 31 May 2005

Website of the Conference:
<http://www.coe.int/prosecutors/>

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CONFERENCE OF PROSECUTORS GENERAL OF EUROPE
6TH SESSION

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

Budapest, 29 – 31 May 2005

House of Parliament
Hotel Margitsziget Termál

CONCLUSIONS

- 1.1 The Prosecutors General and other Prosecutors of Europe held their 6th Conference in Budapest, Hungary from 29 to 31 May 2005, under the aegis of the Council of Europe, at the invitation of the Prosecutor General of Hungary.
- 1.2 The Conference was opened in the Chamber Room of the Hungarian Parliament with, amongst others, an opening address and welcome from Mr Ferenc MADL, President of the Republic of Hungary.
- 1.3 The proceedings of the Conference will be published, both in the form of a CD-ROM and on the web-site of the Conference.
- 2.1 The Conference shared the conviction that, as proclaimed in the Recommendation on the role of the public prosecution in the criminal justice system (Rec (2000) 19), as adopted by the Committee of Ministers of the Council of Europe, the public prosecution service plays a key role in combating crime, safeguarding the Rule of Law and ensuring the full respect of the European Convention on the Protection of Human Rights and Fundamental Freedoms.
- 2.2 Considering the rise in international organised crime, including terrorism, cybercrime, economic crime, corruption, and trafficking in human beings, the Conference welcomed the recent opening for signature of three Conventions in the fields of terrorism, moneylaundering and trafficking of human beings¹ and the entry into force of the Convention on Cybercrime² as well as the adoption of Recommendations concerning the protection of witnesses and collaborators of justice and special investigation techniques in relation to serious crimes including acts of terrorism³.
- 2.3 Taking into account that confidence building at the highest level between various legal systems in Europe would considerably improve the efficiency in fighting international crime and recognising the need to enhance the capacity of prosecution services to ensure mutual legal assistance to fight such crime effectively, the Conference is committed to maintain its practice of regular meetings to promote communication and co-operation of prosecution services in criminal matters within the member States of the Council of Europe. It registered, with gratitude, the opportunity given by the Council of Europe, to hold regular meetings and welcomed, in particular, the proposal to institutionalise the Conference, through the creation of a consultative body of prosecutors to act in an advisory capacity to the Committee of Ministers of the Council of Europe.
- 3.1 The Conference welcomed the participation of the representatives of the European Committee on Crime Problems (CDPC) and the Council for Police Matters (PC-PM) in its work and recognised the desirability for fruitful co-operation in the future with these bodies, as well as with other Council of Europe bodies.
- 3.2 The Conference also welcomed the participation of international organisations such as the International Criminal Court, Eurojust and the European Judicial Network, as well as by MEDEL, representing the judiciary, and again expressed its desire to intensify its contacts with all institutions which play an important role in the administration of criminal justice.
- 4.1 After referring to Recommendation Rec (2000) 19 and inviting its participants to ensure the translation of this Recommendation into the official languages of their States and agreeing on the need to promote its implementation in their States, the Conference consecrated the main part of its discussions to "The relationship between public prosecutors and the police".

¹ Council of Europe Convention on Action against Trafficking in Human Beings (ETS 197)
Council of Europe Convention on the Prevention of Terrorism (ETS 196)
Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (ETS 198)

² Convention on Cybercrime and Explanatory Report (ETS 185)
Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems (ETS 189)

³ Recommendation of the Committee of Ministers to member States on the protection of witnesses and collaborators of justice (Rec (2005) 9)
Recommendation of the Committee of Ministers to member States on "Special investigation techniques" in relation to serious crimes including acts of terrorism (Rec (2005) 10)

4.2 On the basis of the 34 replies received to a questionnaire sent to the 46 member States of the Council of Europe, the Conference concluded that:

- in criminal matters, the police and the public prosecution service are interdependent in the proper performance of their respective duties;
- in general, European legal systems empower the public prosecutor to scrutinise the lawfulness of police investigations as well as to monitor the observance of human rights by the police;
- in general, the public prosecution service, as part of the criminal justice system, takes the decision whether or not to prosecute a case;
- the police should be accountable to the public prosecution service or to another appropriate body, in particular to prevent abuse of power during the pre-trial investigation stage and to ensure the respect of human rights.

4.3 The Conference emphasised the importance of the relevant guidelines contained in Recommendation Rec (2000) 19, noting that paragraphs 21-23 continue to provide a very appropriate and pragmatic method for ensuring the role of public prosecutors in their relations with the police, taking into account the continuing wide variety of public prosecution systems in Europe, arising from different legal traditions.

5.1 Given the important role and status of public prosecutors in the justice system and in society at large, the Conference recalled that this requires that all public prosecutors observe strict ethical behaviour so as to ensure impartiality and maintain public confidence and respect.

5.2 The Conference therefore unanimously adopted the appended European guidelines on ethics and conduct of public prosecutors (the "Budapest Guidelines"). The Conference invited its participants to ensure the translation of these guidelines into the official languages of their countries, to disseminate these guidelines amongst the public prosecutors in their countries and to report back to the next Conference on the progress made in this respect.

5.3 The Conference considered that these guidelines are open to updating in accordance with any new developments.

6.1 Having addressed for the first time during the 5th Conference the role of the public prosecution service outside the criminal field, the Conference was aware of the fact that, in most member States of the Council of Europe, public prosecutors also have responsibilities in civil, social, administrative and other matters.

6.2 The Conference again underlined the variety of public prosecution systems in this field, resulting from different traditions in Europe.

6.3 Some member States do not feel any need to provide extra-penal competencies to the public prosecutor and do not consider these tasks as being within the remit of the public prosecutor. This can be considered as an acceptable approach to the role of the public prosecutor.

6.4 At the same time, other countries consider it as an integral part of their system to grant public prosecutors competencies outside the criminal sector, giving them a role in ensuring the operation of a democratic society under the rule of law and in protecting human rights. There is no reason not to consider this as an appropriate practice as well.

6.5 Furthermore, where public prosecutors are provided with competencies outside the criminal sector, member States have to ensure the rule of law and within that framework, the respect of human rights and other basic principles which govern all democratic societies.

6.6 In this context, the Conference also recalled its opinion that intervention by prosecution services beyond the criminal sphere could never call into question the principle of separation of powers of the legislative, the executive and the judiciary, nor the fact that it is ultimately for the competent trial courts and them alone, to settle disputes after having heard all parties.

- 6.7 Considering the absence of specific international guidelines in this field, comparing these two approaches to the role of public prosecutors, the Conference concluded that this important and complex issue deserved further consideration at a later stage. In this context, the Conference invited delegations who had not yet replied to the questionnaire to do so as soon as possible. The Conference instructed its Bureau to continue its work taking into account, in particular, the case law in this area and to report back to the Conference.
7. The Conference invited its Bureau to prepare the next conferences, and to decide upon the themes to be considered. Participants were invited to send any proposals for future work to the Secretariat of its Bureau by 1 October 2005. The following suggestions were already made during the Conference:
- International co-operation
 - Relationship between public prosecution services and prison administrations including the role of public prosecutors in ensuring the respect of the human rights of persons deprived of their liberty
 - Relationship between public prosecution services and the media
 - Contribution of the public prosecution service to the establishment of the criminal justice policy, including restorative justice
 - Public prosecutors' role with regard to juveniles
8. Taking note of the pending decision by the Committee of Ministers regarding the future role of the Conference within the institutional structure of the Council of Europe, the Conference decided not to hold elections for the Bureau at this time, but to invite the representative of the public prosecution service of the next host country to join the Bureau.
9. The Conference took note of the invitation to prosecutors general from the Prosecutor General of Qatar to participate in the second world summit of attorneys general, prosecutors general and chief prosecutors, which will take place in Doha, Qatar from 14 – 16 November 2005.
10. The Conference expressed its profound appreciation to Mr Peter Polt, the Prosecutor General of Hungary, and to his collaborators, for the excellent organisation of this 6th Conference and for the kind hospitality extended to all.
11. The Conference recalled its gratitude for the invitation by Mr Vladimir Ustinov, Prosecutor General of the Russian Federation, to hold the next plenary session in 2006. Mr Ustinov was therefore invited to join the Bureau.
12. The Conference also gratefully accepted the invitations by Mr James Hamilton, Director of Public Prosecutions, Ireland and Mr Gilles Lucazeau, Prosecutor General at the Appeal Court of Nancy, France to host future Conferences.



Appendix I

Budapest, 31 May 2005

**EUROPEAN GUIDELINES ON ETHICS
AND CONDUCT FOR PUBLIC PROSECUTORS**

„THE BUDAPEST GUIDELINES”

Adopted by the 6th Conference of Prosecutors General of Europe

Introduction

1. Public prosecutors play a key role in the criminal justice system and, furthermore are in some jurisdictions assigned other tasks in the field of for example commercial, civil or administrative law as general upholders of legality.
2. Bearing this in mind The Conference of Prosecutors General of Europe is convinced that the definition of common principles for public prosecutors should be encouraged and the Conference has, at its plenary session in Budapest in May 2005, approved the following European Guidelines on Ethics and Conduct for public prosecutors.
3. According to the Recommendation R (2000) 19 of the Committee of the Ministers of the Council of Europe on the Role of Public Prosecution in the Criminal Justice System, the founder document of the Conference of the Prosecutors General of Europe, the public prosecutors are public authorities who on behalf of society and in the public interest ensure the application of the law where the breach of the law carries a criminal sanction taking into account both the rights of the individual and the necessary effectiveness of the criminal justice system.
4. In all criminal justice systems, public prosecutors decide whether to initiate or continue prosecutions; conduct prosecutions before the courts and may appeal or conduct appeals concerning all or some court decisions.
5. The guidelines are not binding on the different national prosecution services but should be seen as containing widely accepted general principles for public prosecutors in the performance of their duties and which can be considered as guidance at national level concerning ethical and similar questions.
6. The guidelines set out standards of conduct and practice expected of all prosecutors working for or on behalf of a public prosecution service.
7. In order to ensure that public prosecutors are able to carry out their professional responsibilities autonomously and in accordance with these guidelines, the Conference notes the safeguards embodied in §§ 4 to 10 of Recommendation Rec (2000) 19 on the role of public prosecution in the criminal justice system.

I. Basic duties

Public prosecutors should at all times and under all circumstances

- perform their duties, including the duty to take action, always in accordance with relevant national and international law.
- carry out their functions fairly, impartially consistently and expeditiously.
- respect, protect and uphold human dignity and human rights.
- take into account that they are acting on behalf of society and in the public interest.
- strive to strike a fair balance between the general interests of society and the interests and rights of the individual.

II. Professional conduct in general

Public prosecutors should at all times adhere to the highest professional standards and

- a. at all times maintain the honour and dignity of their profession,
- b. always conduct themselves professionally,
- c. at all times exercise the highest standards of integrity and care,.
- d. exercise their functions on the basis of their assessment of the facts and in accordance with the law, free of any undue influences,
- e. keep themselves well-informed, trained and abreast of relevant legal and social developments,
- f. strive to be – and to be seen to be - impartial and consistent, including by adopting and publishing general guidelines, principles and criteria, as referred to in §36 a. of Recommendation Rec (2000) 19, which should guide them in the individual and collective performance of their duties, seeking to ensure, where appropriate, dialogue and team work,
- g. perform their duties fairly and without fear, favour or prejudice,
- h. remain unaffected by individual or sectional interests and public and media pressures,
- i. respect the right of all persons to be held equal before the law and abstain from discrimination against any person on any ground such as gender, race, colour, language, religion, political or other opinion, sexual orientation, national or social origin, association with a national minority, property, birth, health, handicaps or any other status,
- j. preserve professional confidentiality,
- k. consider the views, legitimate interests, privacy and possible concerns of individuals they meet in their professional capacity,
- l. seek to ensure that individuals are properly informed of their rights and legal position insofar as the public prosecutor is competent to do so,
- m. discharge their duties with the courts, the police and other public authorities as well as with other members of the legal profession with respect and courtesy,
- n. render assistance to public prosecutors and public authorities of other jurisdictions in accordance with the law and in order to further international co-operation to the largest possible extent,
- o. not allow the public prosecutor's personal or financial interests or the public prosecutor's family, social or other relationships improperly to influence the public prosecutor's conduct as a public prosecutor. In particular, they should not act as public prosecutors in cases in which they, their family or business associates have a personal, private or financial interest or association.

III. Professional conduct in the framework of criminal proceedings

When acting within the framework of criminal proceedings public prosecutors should at all times:

- a. uphold the principle of fair trial as enshrined in Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms and the Case-law of the European Court of Human Rights,
- b. carry out their functions fairly, impartially, objectively and, within the framework of provisions laid down by law, independently,

- c. seek to ensure that the criminal justice system operates as expeditiously as possible, being consistent with the interests of justice,
- d. respect the principle of the presumption of innocence,
- e. seek to ensure that all necessary and reasonable investigations and enquiries are being or have been made before taking a decision to prosecute or not or before taking other decisions that may affect the course of justice,
- f. have regard to all relevant circumstances of a case including those affecting the suspect irrespective of whether they are to the latter's advantage or disadvantage,
- g. not initiate or continue proceedings when an impartial investigation shows the charge to be unfounded,
- h. prosecute the case firmly, but fairly and not beyond what is indicated by the evidence,
- i. examine proposed evidence to see if it has been lawfully obtained,
- j. decline to use evidence reasonably believed to have been obtained through unlawful methods which constitute grave violation of the suspect's or other person's human rights, against anyone other than those who applied such methods,
- k. seek to ensure that appropriate action is taken against those responsible for using those methods,
- l. safeguard the principle of equality of arms in particular by disclosing information to the accused and his or her counsel in accordance with the law and the principle of fair trial,.
- m. take proper account of the interests of witnesses and victims,
- n. assist the court to reach a just verdict,
- o. take decisions based upon an impartial and professional assessment of the available evidence.

IV. Private conduct

- a. ***Public prosecutors must not compromise the actual or the reasonably perceived integrity, fairness and impartiality of the Public Prosecution service by activities in their private life.***
- b. Public prosecutors shall respect and obey the law at all times.
- c. Public prosecutors should conduct themselves in such a way as to further and retain public confidence in their profession.
- d. Public prosecutors must not use any information to which they have had access during the course of their employment to further unjustifiably their own private interests or those of others.
- e. Public prosecutors must not accept any gifts, prizes, benefits, inducements or hospitality from third parties or carry out any tasks which may be seen to compromise their integrity, fairness and impartiality⁴.

⁴ The present guidelines have been inspired by , in particular :

- the European Convention for the Protection of Human Rights and Fundamental Freedoms,
- Recommendation Rec (2000) 19 on the role of public prosecution in the criminal justice system,
- Recommendation Rec (2000) 10 on codes of conduct for public officials.
- Guidelines for the Role of Prosecutors adopted by the 8th United Nations Congress on the prevention of crime and the treatment of offenders (Havana, 27 August-7 September 1990)
- Other relevant ethical or professional codes, proposed or adopted by Public bodies or private and international Associations.