



COMMISSIONER FOR HUMAN RIGHTS
COMMISSAIRE AUX DROITS DE L'HOMME



CommDH/Speech(2011)5
English only

Plenary Meeting of the Network of Public Prosecutors or Equivalent Institutions at
Supreme Judicial Courts of the Member States of the European Union
Rome, 26-28 May 2011

The Dialogue between General Prosecutors in Europe: Justice Bodies, Promoters of Human Rights

Speech by Thomas Hammarberg
Council of Europe Commissioner for Human Rights

In the course of my work, I have always underlined that the prosecutors are one of the pillars when it comes to the defence of human rights and fundamental freedoms. In fact, prosecutors are “promoters” of human rights by:

- safeguarding the rule of law;
- defending the interest of the victims;
- ensuring respect for the rights and freedoms of those suspected of (or charged with) criminal offences; and
- overseeing the proper functioning of the bodies responsible for the investigation and prosecution of offences.

It is important however to keep in mind that the prosecutors in European countries have different mandates. This affects the role that the prosecutors play in the field of human rights. But there are certain principles that are *always* necessary to respect, whatever mandate the prosecutor may have.

The Council of Europe has developed some useful standards in this area. The most important instrument is the Recommendation mentioned in the title of this session: the Recommendation (2000)19 of the Committee of Ministers to member states on the role of public prosecution in the criminal justice system. This is a detailed reference text for public prosecutors throughout Council of Europe member states. The Recommendation calls upon member states to enhance the efficiency of not only national criminal justice systems but also international co-operation on criminal matters, whilst safeguarding the principles enshrined in the European Convention on Human Rights.

One should highlight that it is absolutely necessary for the prosecutors to avoid a “conflict of interest” situation while carrying out their tasks. There is a need for separation of powers to ensure that there are checks and balances in the way that the system of justice functions. If the prosecutor is representing the executive in his/her role, there might be problems, for example when it comes to the role of the prosecutor in investigating cases of corruption within the executive branch itself. If the prosecutor is in charge of the police forces, there may be a need for another system to investigate allegations about police misconduct.

It is also always necessary to underline the importance of the separation between the role of the prosecutor and the role of the judges. The independence of judges should always be respected.

With respect to the organisation and the internal operation of the Public Prosecution, in particular the assignment and re-assignment of cases, Recommendation (2000)19 clearly specifies that they should conform with the fundamental principles of impartiality and independence that should characterise justice.

The Council of Europe Parliamentary Assembly reinforced these standards by adopting three years later Recommendation 1604 (2003) on the role of the public prosecutor’s office in a democratic society governed by the rule of law. At the same time, the Assembly found that some particularities apparent in the national practices of member states gave rise to concern as to their compatibility with the Council of Europe’s basic principles, for instance:

- when the police has responsibility for prosecutions;
- when the public prosecutor is responsible for, or an intermediary in, challenges to decisions to detain; or
- when a judicial decision to release a detained person is suspended by an appeal by the prosecutor against it.

The case-law of the European Court of Human Rights is also of particular importance. Article 6 of the European Convention on Human Rights guarantees the right to a fair hearing, which includes the right to an adversarial trial. In criminal cases, this right requires that the prosecution, in principle, should disclose to the defence all material evidence in their possession for or against the accused, whether or not they use it in the proceedings. The prosecutors also have a unique role to play in ensuring the principle of “equality of arms”. It is important that the prosecutors respect this principle and are prepared to share the information that has come up through the investigations, which might be of great importance for the defence in the proceedings.¹ I know that this is not always respected in reality.

When reforming their criminal justice systems, member states should pay attention and give effect to these European standards.

This could have some impact for instance on the reform proposed in France to eliminate investigating judges - who are independent - and entrust all criminal investigations to

¹ See for instance the case of *Borgers v. Belgium*, judgment of 30 October 1991.

public prosecutors. The European Court of Human Rights has concluded in recent cases against France² that its public prosecutor's office is not sufficiently independent from the executive branch to constitute a competent legal authority that should have decision-making power over deprivation of liberty. The Court found that France has violated Article 5 (right to liberty and security) of the Convention on the grounds that the public prosecutor cannot be regarded as a competent legal authority for the purpose of that Article. These judgments may have important consequences on the architecture of the French justice system.

In fact, Recommendation (2000)19 lays down important principles which should guide all member states are engaged in, or considering, a reform of their justice systems, including Italy. These principles relate notably to the relationship between public prosecutors and respectively:

- the executive and legislative powers;
- court judges; and
- the police.

Another point that needs particular mention is how the system of justice works in reality vis-à-vis members of particularly vulnerable social groups such as juvenile offenders. The Council of Europe Committee of Ministers adopted in 2010 the Guidelines on child-friendly justice to enhance children's effective access to and adequate treatment in the justice system. These Guidelines underline that prosecutors should ensure that child-friendly approaches, are used throughout the investigation process. For instance, interviews of and the gathering of statements from children should be carried out by trained professionals.

Prosecutors also have a crucial role in addressing the problem of hate crimes fed by racism, anti-semitism, xenophobia, homophobia and other prejudices which regrettably persist in Europe today.

In this context, migrants find themselves particularly disadvantaged in the system of justice, in particular, when they have no permit to stay in the country. I would emphasise the importance of paying particular attention to the needs of victims of trafficking in human beings in accordance with the standards enshrined in the 2005 Council of Europe Convention on Action against Trafficking in Human Beings which entered into force in respect of Italy last March.

I hope that the prosecutors, together with others, will continue to show sensitivity and effectively safeguard the human rights of these vulnerable individuals in need of special attention and protective measures.

This is a matter that could hopefully be discussed in the course of this conference and future conferences. Thank you.

² *Medvedyev and Others v. France*, Grand Chamber judgment of 29 March 2010; *Moulin c. France*, judgment of 23 November 2010.