



COUNCIL OF EUROPE    CONSEIL DE L'EUROPE

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

CPGE (2006) Concl.

**CO-OPERATION PROGRAMME TO STRENGTHEN THE RULE OF LAW**

**CONCLUSIONS  
OF THE CONFERENCES OF PROSECUTORS GENERAL  
OF EUROPE  
(CPGE)**

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## **Inaugural Conference : « What public prosecution in Europe in the XXI<sup>st</sup> Century ?»**

**Strasbourg, 22 - 24 May 2000**

The Conference fully endorsed the draft Recommendation on the Role of the Public Prosecution in the Criminal Justice System.

Nevertheless, it proposed the following two amendments:

- Paragraph 5d should make clear that remuneration, retirement age and pension rights should be the same for judges and public prosecutors;
- Paragraphs 5a and 24 (on (i) recruitment, promotion and transfer of public prosecutors and (ii) non-discrimination in the performance of their duties, respectively) should include health and disability among the prohibited grounds for discrimination.

The Conference felt that the strictly criminal field - to which the draft had intentionally been restricted – was too limited and accordingly believed that consideration should subsequently be given to the role of public prosecutors in the civil, commercial and social fields. Furthermore, in order to provide a more effective response to crime, a study should be made of possible action by the public prosecution, in ways yet to be defined, in administrative, tax, customs, financial and other fields.

It was also hoped that the Council of Europe would carry out new activities on the role of the public prosecution outside the traditional criminal field, for example with regard to prevention of delinquency, or what is frequently referred to as urban policy.

Similarly, “crime policy” – the term appearing in the first indent of paragraph 3, and paragraph 21a of the draft recommendation – was a concept which remained inadequately defined – particularly when applied at local level. It therefore warranted further development.

There would also be some value in looking at the public prosecution attached to the courts of cassation. This was an issue in which the Strasbourg court was particularly interested. To this end, it would be necessary to set up a group of specialists.

Lastly, a number of speakers stated that their countries had a code of ethics. The principle was an interesting one in itself and an analysis of what these codes contained would be of great value and could lead to a number of Council of Europe recommendations.

With regard to training, reference was made to the Lisbon network and several speakers expressed the wish for this to be given greater support from the Council of Europe.

Generally speaking, the Conference believed that there would be considerable interest in promoting closer ties and more productive co-operation between the public prosecution in the various countries. To that end, there should be regular meetings along the lines of the Conference. The first aim would be to look at the follow-up to the recommendation once it had been adopted. This would not be incompatible with the proposal in the draft to set up a body specifically assigned to do this between such meetings, and to oversee the tasks listed in the commentary following the explanatory memorandum of the draft recommendation.

The Conference reiterated that the public prosecution was often a hybrid institution, occasionally serving as an interface between the executive and the judiciary; in countries under totalitarian regimes it had been used as a means of oppression and there were very few countries in Europe (both east and west) which had escaped this in the course of the 20<sup>th</sup> century. Fortunately, these regimes had now disappeared, but the balance between powers remained delicate and it was essential to underscore one of the key roles of the public prosecution – and one which was poorly understood perhaps because it was too infrequently performed – namely guaranteeing individual rights and freedoms under the control of the courts.

Lastly, the Conference also pointed out that one of the features common to all the public prosecutors attending, above and beyond the shared ideals related to the nature of their duties, was the fact that their countries were a Party to the European Convention on Human Rights, which all of them had a duty to apply as interpreted by their courts and the Strasbourg court.

With regard to international co-operation:

The Conference entirely endorsed the recommendations concerning international co-operation set out in the draft under discussion, particularly with regard to the need:

- for public prosecutors to be better acquainted with each other, both personally and professionally,
- to raise public prosecutors' awareness of the importance of international co-operation in criminal matters;
- to clarify the specific role of the public prosecution in such co-operation.

The Conference pointed out that, on the whole, the recommendations concerning international co-operation in criminal matters included in the draft represented a programme which should be implemented speedily and in a coherent manner.

It also observed that the role of the public prosecution in international co-operation was merely an extension of its role at national level.

The prosecutor's role in criminal proceedings remained the same even where the proceedings take on an international dimension. Any proceedings under international co-operation are merely a part of the criminal proceedings against an individual.

The rule of law could be guaranteed at trans-national level only by authorities which were both independent and empowered to take initiatives. These two prerogatives were a feature of the public prosecution and explained why the main dynamic role in international co-operation in criminal matters fell to the public prosecutor.

Prosecutors, in particular, were required to ensure that the fundamental rights of the people concerned were upheld. They were also required to ensure:

- that no culture of impunity developed,
- that "European" crime policy was consistently applied,
- that international police co-operation was fully controlled.

To help harmonise the application of conventions in criminal matters and avoid several countries being engaged in the same work in parallel, the Council of Europe should draft a model law on which different countries could draw totally or in part, if they so desired, when drafting or amending their own legislation.

In order to overcome the difficulties caused by the multiplicity of conventions, the Council of Europe should draw up either a "general code for co-operation in criminal matters" or a "convention on the application of conventions in criminal matters", i.e. a framework Convention.

The need was also felt to co-ordinate all activities carried out in Europe with regard to the production of treaty law and to harmonise practices.

In this connection, reference was made to the relationship between the Council of Europe and the European Union with some speakers talking of the need for greater co-operation between the two organisations, and others stressing the usefulness of building bridges between them.

The European Union's recent setting up of EUROJUST once again raised the question of whether it was possible to achieve the crime-combating objectives shared by all Council of Europe member States without institutions on a pan-European scale. The Council of Europe should therefore look at whether Eurojust should be enlarged so that all Council of Europe member States could be represented within it, in ways yet to be agreed, or whether a different structure should be set up covering all Council of Europe member States.

In any event, it was essential to put in place arrangements enabling public prosecutors from different member States to contact each other, directly or through liaison facilities, so that their tasks could be successfully carried out. In particular, the current wide gap between (i) the possibilities made available by the multitude of conventions and (ii) their application in practice, could not be filled other than by concerted action by specialist prosecutors co-operating directly beyond physical and bureaucratic frontiers.

Finally, the Conference felt that with regard to international co-operation in criminal matters there was a particularly pressing need for high-ranking prosecutors to meet on a regular basis, at the level of both Greater Europe and its various regions.

## **1<sup>st</sup> Conference : « Protecting society from organised crime »**

### **Caserta, 8 – 10 September 2000**

The first Pan-European Conference for Public Prosecutors specialising in cases relating to organised crime met at Caserta (Italy) from 8 to 10 September 2000.

It was attended by Prosecutors from Albania, Andorra, Azerbaijan, Cyprus, Denmark, Estonia, Finland, France, Georgia, Germany, Hungary, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Portugal, Romania, Russian Federation, Slovakia, Slovenia, Spain, Switzerland, “The Former Yugoslav Republic of Macedonia”.

It was organised by the Council of Europe in co-operation with the Italian National Antimafia Directorate and the Second University of Naples.

The President of the Republic of Malta, Mr Guido De Marco, honoured the Conference with his presence and presented a keynote address on “Organised crime and Human Rights”.

The Italian Minister of the Interior, Mr Enzo Bianco, and his colleague the Secretary of State for Justice, Mr Franco Corleone, also honoured the Conference with their presence.

Mr Guy De Vel, Director General of Legal Affairs of the Council of Europe presented an opening address.

Mr Piero Luigi Vigna, Director of the National Antimafia Directorate, presented a report on “Transnational crime and judicial co-operation”.

Mr Lajos Korona, Public Prosecutor, Hungary, presented a report on “The role of Public Prosecutors in the fight against money laundering”.

Mr Enrico Fontana, Journalist, Director of Legambiente’s Environmental and Law Observatory, presented a report on “Ecomafia”: Environmental damage caused by organised crime.

Mrs Gisèle Vernimmen, for the European Commission, and Mr Hans Nilsson, for the Secretariat General of the Council of the European Union, presented the views and the work of their respective institutions in the fields covered by the Conference.

Mr Giovanni Verde, Deputy Chairman of the Service Commission for the Judiciary of Italy, presented a consolidated report at the end of the Conference.

The Conference expressed its appreciation for the excellent hospitality offered by the Italian authorities.

The Conference:

- recalled and supported the conclusions of the Pan-European Conference “What Public Prosecution in Europe in the XXI<sup>st</sup> Century” organised by the Council of Europe at Strasbourg from 22 to 24 May 2000, in particular the part concerning international co-operation;
- recognised that the fight against organised crime requires international co-operation at pan-European level;

- acknowledged that international legal co-operation in criminal matters is carried out, in a formal way, under legally binding instruments and took note of efforts being undertaken at different levels in Europe in order to improve the effectiveness of such instruments, in particular the all-embracing reflection exercise that the Council of Europe plans to carry out in order to shed a new light on the sense and the purpose of international legal co-operation in criminal matters in Europe;
- highlighted the role that Public Prosecutors have in international co-operation;
- considered that closer personal contacts between Public Prosecutors in different countries efficiently contributes to improving international co-operation;
- and consequently considered that Public Prosecutors from all European States, in particular Public Prosecutors specialising in cases involving organised crime, should meet regularly, at high level;
- called upon the Council of Europe to organise such meetings;
- took note with appreciation of the fact that plans already existed to organise another such meeting at Bucarest in May 2001;
- underlined that there was a further need to organise contacts and exchanges of information between Public Prosecutors, in a more structured way, and to that end
- called on the Council of Europe to set up a Liaison Group, made up of a small number of Public Prosecutors, informally to organise contacts and exchanges of information between Public Prosecutors in general, supplementing existing arrangements, and, in particular, Public Prosecutors specialising in cases involving organised crime;
- considered that contacts should be established between the Council of Europe's Liaison Group and EUROJUST, when the latter becomes operational;
- furthermore, deemed that the fight against organised crime also required that each European State organised a central data bank where information supported by evidence obtained in the course of criminal, administrative or other legally based proceedings would be gathered;
- held the view that the Liaison Group of Public Prosecutors should inter alia be active in ensuring that information kept in such central data banks (or/and in other data banks of the same nature) could serve all Council of Europe member States in their common purpose of fighting against organised crime all over Europe;
- recognised that the safeguard of individual rights, in particular rules on data protection, rightly impose limitations on international exchanges of information and thus called on the Council of Europe to set up a committee of experts to study such questions and make recommendations;
- expressed its support to the Council of Europe activities relating to international legal co-operation in criminal matters in general, as well as the activities relating to organised crime, corruption and crime in cyber-space;
- realized the growing incidence of environmental-related criminality within organised crime in general and thus called for speedy action leading to the ratification by as many States as

possible of the Council of Europe Convention on the Protection of the Environment through Criminal Law.



## **2<sup>nd</sup> Conference : « Harmonisation and co-operation between prosecutors at European level »**

**Bucharest, 12 – 16 May 2001**

The Second Pan-European Conference of Prosecutors General of Europe was held in Bucharest, from 12 to 16 May 2001, under the aegis of the Council of Europe and Romania, with a view to pursuing in particular the following objectives:

- to contribute to the harmonisation of the principles that guide prosecutor's functions and statute, in particular by ensuring follow-up action to Recommendation (2000) 19;
- to improve international co-operation in criminal matters, both in terms of efficiency and in terms of abidance to human rights and other standards;
- to organise co-operation between public prosecutors at European level, in order to achieve the above objectives, and also to ensure horizontal exchanges between them.

The Conference was opened by the President of Romania, Mr Ion Iliescu.

The Programme of the Conference, as well as the list of participants, are appended to this document. The Proceedings of the Conference will be published in due time.

The Conference accepted with gratitude the invitation from Mrs Zdenka Cerar, Prosecutor General of Slovenia, to hold the next session in her country.

Recalling the terms of Recommendation Rec (2000) 19 of the Committee of Ministers of the Council of Europe to member States, on the Role of Public Prosecution in the Criminal Justice System, and in particular the notion of "public prosecution" that is developed therein, the Conference decided as follows:

### **I. FRAMEWORK**

The Conference invites the Committee of Ministers of the Council of Europe to set up, within this Organisation, a "Conference of Prosecutors General of Europe" that would stand upon the following ideas:

The Conference would:

- gather State Prosecutors General, Regional Prosecutors General and Prosecutors of great areas;
- promote closer ties between prosecution authorities in the different member States, both at a general level and in more specific areas; efforts should also be made to promote either closer territorial ties across the main European regions or closer operational ties (cf. for example: meetings of Supreme Court prosecutors, meetings of prosecutors specialising in economic and financial matters, etc.);
- on its initiative or at the request of the Committee of Ministers, prepare opinions for the latter on matters pertaining to the role and status of Public Prosecution;
- gather information and put forward suggestions for preparing and implementing Council of Europe activities relating to Public Prosecution;
- ensure that Public Prosecution can play its role in the field of international co-operation in criminal matters;
- provide the necessary links between public prosecutors specialising in organised crime or corruption;
- provide follow-up to Recommendation Rec(2000) 19;
- ensure appropriate links with EUROJUST and other bodies of judicial co-operation;
- encourage links and exchanges between Supreme Councils for Public Prosecution or equivalent;
- constitute a framework for setting up subject-oriented or region-based working parties.

Concerning the follow-up to Recommendation Rec(2000) 19, the Conference would :

- see to it that the Recommendation is disseminated as widely as possible;
- assess the practical effects of the Recommendation and support its implementation in each member State, by using appropriate questionnaires, ad hoc meetings or mutual evaluation exercises consisting of on the spot verifications;
- update current documentary information by means of the systematic compilation of new texts relating to Public Prosecution in each member State (laws, codes of conduct, case-law etc) and making such information available, as a first stage in the setting up of a genuine data base on Public Prosecution in Europe;
- make suggestions, as appropriate, aimed at developing given points of the Recommendation.

Concerning international co-operation in criminal matters, the Conference thinks that an informal, yet tangible, structure as mentioned below should be set up.

A Coordinating Bureau could be given the following executive tasks:

- to organise the plenary sessions of the Conference;
- to organise the meetings of the sections of the Conference;
- to provide the necessary follow-up to the work of the Conference and its sections;
- to liaise with the competent bodies of the Council of Europe, in particular the European Committee on Crime Problems (CDPC), the European Committee on Legal Co-operation (CDCJ) and the Consultative Council of European Judges (CCJE).

The Coordinating Bureau could be made up as follows:

- one member of the Public Prosecution from the country that organised the last Conference;
- one member of the Public Prosecution from the country that will organise the next Conference;
- two members of the Public Prosecution appointed by the Conference for a period of two years;
- two members of the Public Prosecution appointed by the Secretary General of the Council of Europe for a period of two years.

Membership of the Coordination Bureau shall respect the principles of geographical distribution and rotation.

Subject to the approval of these proposals by the Committee of Ministers of the Council of Europe, the Conference appoints Mr Vito Monetti, Deputy Prosecutor General at the Court of Cassation in Rome (Italy) and Mr Marc van Erve, Chief Public Prosecutor in the National Prosecutor's Office, at Rotterdam (Netherlands) as members of the Coordination Bureau for a period of two years.

## **II. INTERNATIONAL LEGAL CO-OPERATION IN CRIMINAL MATTERS**

Concerning international co-operation in criminal matters, the Conference thinks that an informal framework should be set up within the Conference of Prosecutors General of Europe designed to:

- improve the efficiency of co-operation, in particular by enabling the activities of the different bodies that are competent in each State to be coordinated;
- improve the standards of co-operation in terms of the rule of law;
- improve the standards of co-operation in terms of human rights;
- if and when necessary, assist in coordinating prosecutorial action at European level;
- organise the exchange of information and summary legal advice before requests are made;
- organise the exchange of information after a request has been made, pending its execution, in the course of execution and after execution;
- ensure appropriate links with EUROJUST and other bodies of judicial co-operation;
- identify, for each country, a point of collection and transmission of information on trans-national criminality, preferably within a central public prosecution office;

- set up a network of points capable of nourishing a permanent exchange of information and organise periodical meetings for the purpose of examining the activities and dynamics of criminal groups;
- to give priority in this respect to the speed of the exchange of information that is useful to investigations in each country.

The framework should comprise three elements, namely:

- one member of Public Prosecution per member State of the Council of Europe (and an alternate);
- a multi-lingual liaison group of prosecutors;
- a secretariat provided by the Council of Europe.

It may set up sub-regional groups.

The Council of Europe should provide further support in those matters through technical co-operation programmes, such as Octopus or PACO.

### **III. DATA BASE**

The Conference tasked its Bureau with studying ways and means of setting up within a short period of time data base including:

- (a) comparative law
  - i. information on the legislation governing public prosecution in the different countries;
  - ii. information on codes of ethics and other rules with the same aim, in the different countries
- (b) procedural information
  - i. organisation of public prosecution in each country
  - ii. geographical jurisdiction
  - iii. procedural role of public prosecution.

### **3<sup>rd</sup> Conference of Prosecutors General of Europe»**

**Ljubljana, 12 – 14 May 2002**

Under the aegis of the Council of Europe and following an invitation from the Prosecutor General of Slovenia, the Prosecutors General and other Prosecutors of Europe met at Ljubljana, from 12 to 14 May 2002.

At its opening, the Conference heard a message addressed to it by the President of the Republic of Slovenia.

The Programme of the Conference, as well as the list of participants, are available in separate documents. The Proceedings of the Conference will be published in due course.

**1. The Conference strongly reaffirmed its determination** in promoting the approximation of prosecutors and prosecutors' offices of Europe, as well as their harmonisation around common values and guiding principles, respectful of human rights and mindful of the requirement of efficiency in criminal justice.

It recalled that Recommendation Rec (2000) 19 of the Committee of Ministers of the Council of Europe to its member States, on "the Role of Public Prosecution in the Criminal Justice System" is in that respect the text of reference. It belongs to the Conference and to each prosecutor's office to ensure that the Recommendation is largely distributed, to see to it that it is taken into account, in particular where reforms are undertaken, and to react to any violations thereto.

The Conference tasked its Bureau with studying ways and means of setting up a monitoring mechanism to survey the implementation of the Recommendation in the different member States of the Council of Europe and evaluate the results.

In this framework, the Conference tasked its Bureau with reminding the appropriate instances of the applicable guidelines, in the most appropriate way and in case of urgency where it appears that, in one or another State, the implementation of certain items of the Recommendation poses a problem. It should subsequently report to the Conference.

It expressed the wish that the principles of the Recommendation may also inspire the organisation and the operation of present and future international justice-related bodies, including Eurojust, and international courts. Such bodies and courts, because of their jurisdiction raise in an entirely new way questions concerning the independence and responsibility of the actors of the system of justice. In this respect, it greeted the imminent entry into force of the Statute of the International Criminal Court (ICC), for the new Court will - at the highest level - ensure respect for the rule of law and the safeguard of human rights. Thus, it invited public prosecution offices in the different countries to bear in mind the existence of the ICC; it further underlined the need to introduce the matter in training programmes.

**2.** The Conference reiterated the invitation that it had addressed, at its session in Bucharest in 2001, to the Committee of Ministers of the Council of Europe that the latter formally recognise the Conference as a fully fledged body at the same level as the Consultative Council of European Judges, and grant it with the resources required for its operation.

**3.** As to the **relationship between public prosecution and judges**, the Conference reaffirmed that such relations are at the very heart of the criminal justice system: tasked with conducting prosecutions, enjoying the possibility of making appeals against decisions of justice, the Public Prosecution is the

judge's natural correspondent in the proceedings, but also in a larger way, in the administration of criminal justice.

The Conference insisted on the fact that the proximity and complementarity of the missions of judges and prosecutors, as well as their common references create similar requirements, in particular in terms of qualification and ethics and, as they require, rules and professional safeguards of the same nature in terms of appointment, promotions and career, and also remuneration, retirement and pension rights.

Nevertheless, the Conference noted that there cannot be any confusion about the respective roles of judges and prosecutors. Such differences, as well as the respect for the independence of each and the procedural clarification of the functions of the different actors, must be recognised. The specificity of the missions of the prosecutors is the reason for them having a different regime than that of judges in terms of discipline and hierarchical organisation.

Lastly, the Conference expressed the wish that the Council of Europe organises a meeting for the members of the Public Prosecution at the Supreme Courts and the Courts of Cassation, because of the specific difficulties with which they are presently confronted.

4. Recalling that the autonomy of prosecutors - and for greater reason their eventual independence – should necessarily be accompanied by a system of responsibility founded on strict individual ethics, the Conference noted with interest that many prosecution offices already benefit from, or are in the process of adopting, **a code of ethics**. With the aim of encouraging that approach, the Conference was in favour of a generalisation of the use of such instruments and tasked its Bureau with preparing a draft model code of ethics for interested public prosecutors in Europe.

5. Underlining the importance that it attaches to **reinforced international co-operation** and the paramount role that public prosecution should play in that respect, in conformity with items 37 to 39 of the above-mentioned Recommendation as well as its own conclusions of Strasbourg and Bucharest, the Conference took note with great interest of the proposals for a “New Start” made by the Council of Europe’s Reflection Group on developments in international co-operation in criminal matters.

It encouraged the Council of Europe to ensure a practical follow up to such proposals. It noted in particular that the objective of a European area of shared justice must be based on a commonly defined transnational justice in Europe, which will ensure unity of purpose and principle. It further noted that that area will take the form of legal provisions that introduce into the law the definition of the nature, the objectives, the guiding principles and the limits of transnational justice, as a first step to realising such a European area of shared justice.

The Conference declared its interest in taking part in such tasks.

Moreover, the Conference decided immediately to start a process to reinforce co-operation between public prosecution offices in Europe, by way of setting up a network of “national contact points” at the level of the member States of the Council of Europe. They should operate without prejudice to the role of national central authorities where they exist. Moreover, their coordination with the legal network of the European Union should be provided for.

To that effect, the Conference tasked its Bureau with submitting proposals to the Committee of Ministers, via the appropriate instances; it also tasked it with establishing contacts with Eurojust aimed at exploring the possibility of concluding a cooperation agreement, as it is provided for in Article 27.3 of Eurojust’s constituent text.

6. Expressing once again its preoccupation with respect to transnational organised crime, corruption under all its forms as well as economic and financial criminality, that each seriously threatens democracy, the Conference voiced its support to prosecutors, “juges d’instruction”, courts and police specialising in these matters.

It would wish States that do not have such specialised structures to envisage the possibility of creating such structures, endowing them with the means necessary to carry out their tasks and facilitating the exchange of information and, eventually the coordination of action.

Moreover, it expressed the wish that the competent national authorities be encouraged:

- fully to use the provisions concerning the communication and the exchange of information from judicial records, that are contained in the European Convention on Mutual Assistance in Criminal Matters and its Additional Protocol;
- fully to use the provisions concerning the spontaneous transmission of information, that are contained in particular in the 2<sup>nd</sup> Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters.

7. The Conference took note of the efforts of its Bureau designed to set up a **data base for public prosecution in Europe** and encouraged it to pursue them. The Conference also appealed to the Council of Europe to ensure the smooth operation of the data base and to the public prosecution offices to feed it regularly.

8. The Conference accepted with gratitude the invitation from the Prosecutor General of the Slovak Republic, to hold the next session in **Bratislava, from 1 to 3 June 2003**.

## **4<sup>th</sup> Conference : « Public prosecution and politics»**

### **Bratislava, 1 – 3 June 2003**

Under the aegis of the Council of Europe and following an invitation from the Prosecutor General of the Slovak Republic, the Prosecutors General and other Prosecutors of Europe held their 4th Conference in Bratislava from 1 to 3 June 2003.

At its opening, the Conference heard statements by the Prime Minister of the Slovak Republic and the President of the Slovak Constitutional Court.

The Programme of the Conference and the list of participants are available in separate documents. The Proceedings of the Conference will be published in due course.

The Conference of Prosecutors General of Europe reaffirmed its determination in promoting the approximation of prosecutors and prosecutors' offices of Europe and their harmonisation around the values and guiding principles set out in Recommendation (2000) 19 of the Council of Europe to its member States on "the Role of Public Prosecution in the Criminal Justice System".

It recalled that these values and principles, respectful of human rights while mindful of the requirement of efficiency in criminal justice, guaranteed the capacity of Public Prosecutors to contribute, with the independence required, to ensure the appropriate balance between the necessary freedom of citizens and their indispensable security.

#### **On the Recommendation**

The Conference accordingly decided to continue to circulate the aforementioned Recommendation as widely as possible and to see to it that it was taken into account, in particular where reforms were undertaken, and even to react strongly to any infringements of its principles. At the same time it expressed the hope that governments would increasingly base their policies on the text.

Moreover, the Conference strongly recommends that a monitoring mechanism for Recommendation (2000) 19 is set up. Indeed, the latter is a unique and highly valuable instrument. An effective and credible supervision of its implementation is called for.

The monitoring should be based on peer-evaluation and on-the-spot verifications, taking into account the different organisational models of prosecution services in the member States.

The Conference wishes that the principle of the monitoring mechanism be submitted to the Committee of Ministers, following which the Bureau should make proposals on guidelines for the evaluation procedure.

#### **On the institutionalisation of the Conference**

Being aware that defending principles is insufficient to ensure the desired developments and that organised action by public prosecutors at the European level is a necessary complement in order to promote the ideals of justice and democracy advocated by the Council of Europe, the Conference reiterated the invitation that it had already addressed at its previous sessions to the Committee of Ministers, that the latter formally recognise it as a fully fledged body on the same level as the Consultative Council of European Judges and grant it the resources required for its operation.

Drawing on both the Statute and the *acquis* of the Council of Europe, the Conference expressed the ambition to build a multilateral structure for linking up Public Prosecutors' Offices throughout Europe. In so doing, it sees itself as contributing to peace amongst nations.

In this context, it highlighted the fact that, in facing up to the threats of crimes against humanity, terrorism, transnational crime and corruption - even if these phenomena also called for political responses - Public Prosecutors had a frontline role to play at both the national and international levels.

### **On the International Criminal Court**

The Conference welcomed the establishment of the International Criminal Court, which would help guarantee respect for the rule of law and protection of individual freedoms. It invited all Public Prosecutors' offices to draw the requisite conclusions from the establishment of this new body, particularly in the field of vocational training for prosecutors. It also voiced the hope that this new court would base its organisation and operations on the principles of the Recommendation.

### **On international co-operation in criminal matters**

Again underlining the importance that it attached to reinforced international co-operation and the paramount role to be played by Public Prosecution in this area, the Conference regretted that no action had yet been taken on the proposals for a "New Start" which it had examined in 2002. It stressed that the Council of Europe, drawing on its traditions and experience, should take the requisite measures to implement such proposals. It reiterated its interest in taking part in the corresponding work.

### **On co-operation among public prosecutors' offices**

The Conference decided to initiate a process of reinforcing co-operation among Public Prosecutors' offices in Europe by setting up a network of "national contact points", geared to facilitating exchanges, without prejudice to the role of national central authorities where they exist. It considered that this network should be co-ordinated with the legal network operating in the European Union, and should have the necessary resources for bringing together and training the various correspondents.

### **On the relations between politics and Public Prosecution**

Being aware of the public demand for greater clarity in relations between public prosecutors and the political authorities as well as the difficulties encountered by the latter, the Conference stated its preoccupation with partisan interferences that are carried out, or may be carried out, in many Public Prosecutors' Offices in Europe. It recalled that the latter's functions required the recognition of a formal statute, on the same basis as judges, ensuring, notably in terms of appointments and career, absolute impartiality on the part of all its members and effective safeguards against any partisan interference in the exercise of their tasks. The Conference underlined that these safeguards should take into account the more or less centralised organisation of Public Prosecution, the circumstance that Prosecutors belong or not to the judiciary, as well as the legalistic or discretionary nature of prosecution. It furthermore insisted on the need for political authorities to do their utmost to promote public trust in public prosecutors. The Conference at the same time stressed that public prosecutors should not interfere with the competence of the legislative and the executive powers and must respect a strict obligation of impartiality, compliance with which should be appropriately supervised.

### **On ethical requirements vis-à-vis public prosecutors**

Further recalling that the autonomy, and even the possible independence of the Public Prosecutor's Office must be accompanied by regulations on accountability based on strict individual ethics, the Conference took note of the initial discussions held on this subject under the auspices of its Bureau, and mandated the latter to prepare a draft code of ethics for its next plenary session.

### **On juvenile delinquency**

The Conference, after an intensive discussion on new forms and trends in juvenile delinquency in Europe (e.g. severe, violent, persistent group and gang criminality, often related with drugs and alcohol, involving or not ethnic minorities) demands a new multi-disciplinary approach in response to criminal behaviour of young people.



This new approach should start on the local level in a partnership of all social and administrative agencies working in this field. The prosecution offices must play an adequate role in this partnership. They must take care of the rule of law in the investigation, the needs and interests of victims and the effectiveness of sanctions and measures against the offenders.

The Conference underlines the need for specialisation and education of prosecutors and other persons dealing with young offenders, as well as special forms of organisation both of the prosecution offices and the above-mentioned local partnerships.

The Conference called for a follow-up reflexion on this subject having in mind standards for juvenile justice that were developed by the participants of the International Conference on Juvenile Justice in Europe, held in Klagenfurt (Austria) from 16 to 18 January 2003, as well as the draft Recommendation on new ways of dealing with juvenile delinquency and the role of juvenile justice, which is in preparation within the Council of Europe.

#### **On the future work of the Conference**

The Conference examined themes that could be the subject of its forthcoming work, e.g. the organisation of Prosecutors' Offices, the role of prosecutors in the administration and management of justice, prosecutors' powers in non-criminal matters, crime policy, discretionary prosecution, prosecutors in international courts and environmental protection. The subject of prosecutors powers in non-criminal matters mostly attracted the participants.

#### **On the membership of the Bureau**

The Conference asked its Bureau, in its present composition, to remain in office until its next plenary session.

#### **On co-operation with non-European public prosecutors**

Lastly, hoping to establish pragmatic relations with Public Prosecutors' offices in other continents, the Conference took note with great interest and supported the proposal from the President of the Conference of Prosecutors General of Central America, Carlos De León, to hold a world summit of prosecutors general in Antigua, Guatemala, from 2 to 5 February 2004. It recognised the importance of such an initiative to uphold justice throughout the world. The Conference instructed its Bureau to co-ordinate the European contributions to this summit.

#### **On the next plenary session of the Conference**

The Conference gratefully accepted the invitation from the Prosecutor General of Lower Saxony to host its next plenary session in Celle, from 23 to 25 May 2004.

The Conference took note with interest of the intentions of the Prosecutor General of Ukraine to host in Kyiv a plenary session in 2005.

## **5<sup>th</sup> Conference: “Discretionary powers of public prosecution: opportunity or legal principle – advantages and disadvantages”**

**Celle, 23 – 25 June 2004**

The Prosecutors General and other Prosecutors of Europe held their 5th Conference in Celle from 23 to 25 May 2004 under the aegis of the *Council of Europe*, at the invitation of the *Prosecutor General of Lower Saxony (Germany)*.

The Conference opened with a statement by, among others, Mr Michael GROTZ, Prosecutor at the German Federal Public Prosecution Department, who passed on a message from the Federal Minister for Justice.

The Conference programme and list of participants appear in separate documents. The proceedings of the Conference will be issued at a later date.

1. The Conference reaffirmed that it strongly adhered to the European principles for combating crime more effectively, with due regard for Europe's shared values and human rights.

Accordingly, it was satisfied to note that several European countries had successfully completed reforms concerning their prosecution services or criminal procedure, based on the guiding principles in Council of Europe Recommendation Rec (2000) 19 on the role of public prosecution in the criminal justice system. It hoped that such efforts would be continued by the legislators of all the member States.

It welcomed the opportunity that the Council of Europe had given Europe's Prosecutors General to participate in this process through annual meetings.

Concerned, however, by rising crime, both ordinary crime and internationally organised crime, and convinced that prosecution services has a key part to play in the security and freedom of all European societies, the Conference again drew attention to the urgent need to strengthen existing co-operation among prosecutors general by:

- making their Conference into an institution so as to obtain the resources needed for its efforts to enforce the rule of law, and so as to ensure that greater account was taken of its proposals;
- making unofficial arrangements aimed at ensuring that the Guiding Principles applicable to prosecution services are effectively taken into account both in legislation and in practice;
- setting up, within prosecution services, a network of contacts designed to facilitate the implementation of co-operation in Europe without replacing the bodies responsible for this; it stressed in this connection that, in addition to the reforms carried out by the European Union, there was an imperative need to mobilise the whole of Europe to combat crime and that this required closer co-operation between the two European organisations and practical arrangements to ensure that conventions were implemented quickly and effectively.

2. Welcoming the Prosecutors of the International Criminal Court, of the International Criminal Tribunal for Former Yugoslavia and the representatives of Eurojust and the European Judicial Network, it once again expressed satisfaction at the establishment of these international courts and organisations and at the role they had entrusted to prosecution services.

It hoped that all the member States would participate fully in this process and that prosecution services would be fully involved.

3. Having devoted much of its discussions to the principles of discretionary or mandatory prosecution governing the role of the prosecution services, the Conference was satisfied to note that there was a trend towards European harmonisation of the objectives of the different legal systems, which now tended to focus on the principles of public interest, the equality of all before the law and the personalisation of criminal justice, in accordance with Council of Europe Recommendation N° R (87) 18 on the simplification of criminal justice and Rec (2000) 19 above-mentioned.

It hoped that the following principles would be applied in order to strengthen this convergence:

- The question of the choice of the prosecutorial system should not avoid a prior examination of alternative responses to criminal law, such as civil or administrative options, which should be preferred as a means of dealing with the vast number of "*offences which are inherently minor*" that constitute a small hindrance to public interest and do not justify the intervention of the prosecution services or the courts. The Conference therefore encouraged States to give serious consideration to the possibility of removing these offences from the list of criminal offences.

Nor should the choice of prosecution system be influenced by the lack of budgetary resources allocated to the judiciary. In particular, the principle of discretionary prosecution should not be diverted from its proper ends because of a failure to give the trial courts the resources they needed. The same applies to the principle of mandatory prosecution when prosecutors are compelled to let voluntarily the offences become time-barred offences for want of sufficient court capacity.

- The principle of discretionary prosecution or similar schemes in legal systems governed by the mandatory prosecution principle were designed to apply only to "*offences which are minor due to the circumstances of the case*", in the light of the type of offence or the age and personality of the perpetrator; in accordance with Resolution (97) 24 for the twenty Guiding Principles for the fight against corruption, they should not apply in the case of serious offences and, in particular, to corruption offences or those involving politicians.

- In this context, when a trial and criminal sanctions are not justified in the light of the public interest, the judiciary should favour serious, credible alternatives to prosecution and trial, designed to prevent the perpetrator from reoffending and take account of the victims' interests, for example mediation (cf. Council of Europe Recommendation N° R (99) 19 concerning mediation in penal matters).

- *It is up to prosecution services to take a decision on or to propose such alternatives, depending on the system applicable.*

- Any alternative should be regulated by law in terms of criteria and conduct, to prevent any risk of injustice or arbitrariness.

The decision to apply alternative sanctions presupposes the express or tacit consent of the accused and, where appropriate, the victim, and should preserve both parties' right to a trial. Accordingly, reasons should be given for such decisions, which should be taken with due regard for the principle of judicial personalisation applicable to both prosecutors and judges, and decisions should be motivated and communicated to those concerned so that they could introduce an appeal or take other appropriate action.

Furthermore, the law should specify the effects of the measures taken or conditions laid down, in the light of Recommendation N° R (92) 16 on European Rules on community sanctions and measures.

- Professionals, and particularly those in charge of prosecution services, should ensure that decisions are coherent in terms of equality of treatment and strict regard for the principle of impartiality.

Policy in this area should be periodically reviewed in order to assess its appropriateness, particularly with regard to the prevention of reoffending and victims' satisfaction.

4. Addressing, for the first time, the question of the role of prosecution services outside the criminal field, the Conference observed that in most legal systems prosecutors had also responsibilities, sometimes substantial ones, in civil, commercial, social and administrative matters and even responsibility for overseeing the lawfulness of Government departments' decisions.

Given the importance of this issue for the public and the lack of any international guiding principle, it decided to pursue its consideration of the matter and instructed its Bureau to submit a reflection document at its next plenary session.

In any case, the Conference was already of the opinion that intervention by prosecution services beyond the criminal sphere could only be justified on account of its general task to act "*on behalf of society and in the public interest, [to] ensure the application of the law*" as it is reflected in Recommendation N° R (2000) 19, and that such functions could not call into question the principle of the separation of powers of the legislature, the executive and the judiciary, or the fact that it was ultimately for the competent trial courts, and them alone, to settle disputes, after hearing both parties.

5. *The Conference took note with interest of its expert's proposals concerning guiding ethical principles and instructed its Bureau to organise later this year, with the Prosecutors General and the Prosecutors interested, a meeting on this subject and to submit, following the appropriate modalities, a text taking into account the comments made during the discussions, for final adoption at the next session.*

6. The Conference unanimously adopted new rules for the membership of its Bureau, designed to provide it with increased stability and to improve the continuity of its work. It decided that:

- The Prosecutors General of the States organising the plenary session that year and the next year would automatically remain members of the Bureau for a period of two years;

- The other four members of the Bureau would be elected for four years, with due regard for geographical distribution and the rotation principle, and half the members would be renewed every two years.

Accordingly, the following were elected to replace Mrs Zdenka CERAR, Prosecutor General of Slovenia, and Mr Marc ROBERT, Prosecutor General of Auvergne (France) and outgoing President, Mr João DA SILVA MIGUEL, Deputy Prosecutor General (Portugal) et Mr Jerzy SZYMAŃSKI, Prosecutor (Poland).

7. The Conference received with interest the offer from the Prosecutor General of Qatar to organise the next World Summit of Prosecutors General in November 2005. It asked its Bureau to co-ordinate European contributions to the Summit.

8. The Conference gratefully accepted the invitation from Mr Péter POLT, Prosecutor General of Hungary, to hold its next plenary Session in Budapest in May or June 2005. Mr Péter POLT therefore automatically became a member of the Bureau, in place of Mr Dobroslav TRNKA, Prosecutor General of Slovakia.

9. The Conference also gratefully accepted the invitation from Mr Vladimir USTINOV, Prosecutor General of the Russian Federation, to hold its 7th plenary Session in Russia in 2006.

## **6<sup>th</sup> Conference : « The relationship between public prosecutors and the police »**

### **Budapest, 21 – 31 May 2005**

- 1.1 The Prosecutors General and other Prosecutors of Europe held their 6<sup>th</sup> 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 website 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 beings<sup>1</sup> and the entry into force of the Convention on Cybercrime<sup>2</sup> 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 terrorism<sup>3</sup>.
- 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.

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<sup>1</sup> 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)

<sup>2</sup> 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)

<sup>3</sup> 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)

- 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”.
- 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 5<sup>th</sup> 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 6<sup>th</sup> 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 to the conclusions of the 6<sup>th</sup> Conference

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

**„THE BUDAPEST GUIDELINES”**

**Adopted by the 6<sup>th</sup> 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 impartiality<sup>4</sup>.

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<sup>4</sup> 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 8<sup>th</sup> 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.

**7<sup>th</sup> Conference: “The role of the public prosecutor in the protection of individuals”  
Moscow, 5 – 6 June 2006**

**a) Introduction**

1. The prosecutors general and other prosecutors of Europe held their 7<sup>th</sup> Conference in Moscow (Russian Federation) on 5 and 6 July 2006 under the aegis of the Council of Europe, at the invitation of the Prosecutor General of the Russian Federation and in the context of the Russian Chairmanship of the Committee of Ministers of the Council of Europe.
2. The Conference was honoured by the participation of the President of the Russian Federation, Mr Vladimir Putin.
3. The opening of the Conference, chaired by Mr Yuri Chaika, (Prosecutor General of the Russian Federation), was marked by statements by Mr Sergey Mironov (President of the Council of Federation of the Federal Assembly of the Russian Federation), Mr Sergey Lavrov (Minister of Foreign Affairs of the Russian Federation, Chair in Office of the Committee of Ministers of the Council of Europe) and Ms Maud de Boer-Buquicchio (Deputy Secretary General of the Council of Europe).
4. The Conference programme and list of participants appear in separate documents. The Conference proceedings will be published at a later date.
5. The Conference participants welcomed the decision of the Committee of Ministers to put the Conference of Prosecutors General of Europe on an institutional footing by setting up the Consultative Council of European Prosecutors (CCPE) as an advisory body to the Committee of Ministers of the Council of Europe. The Conference considered that the establishment of the CCPE will do much to help implement Recommendation (2000) 19 on the role of public prosecution in the criminal justice system and that it is a key instrument for its own action to establish standards in the field of public prosecution and promote the principles of the rule of law.
6. Given the important role played by public prosecutors in international judicial co-operation in criminal matters, the Conference encouraged the CCPE to contribute to the strengthening of such co-operation, including the modernisation of the European Conventions in this field, the establishment of direct contacts between prosecutors in different countries, the streamlining and harmonising mutual judicial assistance procedures and improving the efficiency of public prosecution services in the performance of their task.
7. Having met to discuss a general theme, the role of the public prosecutor in the protection of individuals, the Conference considered, in the light of the discussions, that this vast, complex issue deserved to be elaborated on and examined in further depth in the future. The best practices discussed during the Conference concerning the efficient protection by public prosecution services of individuals for questions outside the criminal field which come within their competence could be examined with a view to the possible application of this positive experience by the member states where the public prosecution services have such authority. Once again, the debate confirmed the diversity of functions of public prosecutors across Europe, which stems from differences in the status and role of prosecutors in the member states. The Conference therefore invited the CCPE to take steps to promote implementation of Recommendation (2000) 19 in member states.

**b) Victims, witnesses and juveniles**

8. Having examined the duties of the public prosecutor towards victims and witnesses, in particular those who are juveniles, the Conference would point out that, in the exercise of their profession, public prosecutors enjoy certain safeguards but are also bound by duties and responsibilities towards people

in contact with the judicial system, be they suspects, witnesses or victims, and anyone else whose rights have been violated. The main responsibility of public prosecutors is to perform their task fairly, impartially and objectively, with due respect for human rights, and as quickly as possible. The Conference stressed that measures and procedures applying to under-age victims and witnesses must be adapted to the special needs of this particularly vulnerable group.

9. In the light of the provisions of Recommendation (2000) 19 on the role of public prosecution in the criminal justice system, Recommendation (2005) 9 on the protection of witnesses and collaborators of justice and the recent Recommendation (2006) 8 on assistance to crime victims, the Conference invited the CCPE to continue examining compliance with the duties of public prosecutors towards victims and witnesses and the obstacles encountered in this respect and to draw up rules to be taken into account by states in order to encourage fairness, impartiality, coherence and effectiveness in the actions of public prosecutors in this field.
10. The Conference approved the conclusions of the Working Group on the duties of the public prosecutor in the criminal field towards victims and witnesses, in particular those who are juveniles (see the appendix to these conclusions). The Conference noted that the theme of the 27<sup>th</sup> Conference of the European Ministers of Justice (Yerevan, 11 – 13 October 2006) would deal with the theme “Victims – place, rights and assistance”.

### **c) Persons deprived of their liberty**

11. Having devoted part of the proceedings to the duties of the public prosecutor towards persons deprived of their liberty, the Conference observed that, while the circumstances and manner in which a society deprives its citizens of their liberty reflects, as it were, the values underpinning that society, the degree of concern to avoid arbitrary detention and prevent the ill-treatment of prisoners is a clear indication of the real value of a legal system when it comes to protecting human dignity. The growing importance attached to internal mechanisms for the protection of prisoners, which can be observed both in the approach adopted by the European Court of Human Rights and the Committee of Ministers on the occasion of the supervision of the execution of the Court’s judgments, and by the Committee for the Prevention of Torture (CPT), highlights the extent of prosecutors' responsibilities in ensuring the effective protection of individuals against arbitrary deprivation of liberty and ill-treatment during detention. While affirming that the role of prosecutors in this respect may be more or less pronounced, depending on national statutory provisions, the Conference stressed that it was essential that such provisions are in keeping with the fundamental values upheld by the Council of Europe.
12. The Conference also pointed out that there are, as yet, no European rules specifically concerning the role of prosecutors in the execution of custodial prison sentences and other measures depriving people of their liberty. It encouraged the CCPE to continue its work in this field, which could lead to results that would be useful for updating Recommendation (2006) 2 on the European Prison Rules, adopted by the Committee of Ministers on 11 January 2006.
13. The Conference approved the conclusions of the Working Group on the duties of the public prosecutor towards persons deprived of their liberty (see the appendix to these conclusions).

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14. The Conference warmly thanked Mr Yuri Chaika, Prosecutor General of the Russian Federation, and his staff for the excellent organisation of the 7<sup>th</sup> Conference and the hospitable welcome extended to all the participants.

**Appendix to the conclusions of the 7<sup>th</sup> Conference:**

**CONCLUSIONS OF THE WORKING GROUP I – The duties of public prosecutors in the criminal field towards victims and witnesses, and in particular those who are juveniles**

1. Working Group I examined the duties of public prosecutors towards victims and witnesses, in particular those who are juveniles in the light of the replies by member states to a questionnaire on this subject and a report by the scientific expert.
2. While recognising a diversity in member states with respect to particular measures and solutions towards victims and witnesses, the Working Group noted that member States do recognise now the special needs of victims and witnesses and the necessity to give them a more prominent place in the course of criminal proceedings. It also noted that many legal provisions and programmes in the member States draw on the same underlying principles of care for victims and witnesses directed in particular to both protection of privacy and protection of physical integrity. This is also the field where special attention for children and minors is most pronounced.
3. The Working Group agreed that more attention should be given to practical implementation processes on improving the position and treatment of victims and witnesses and that personalised and appropriate treatment of victims should become a legal duty of each public prosecutor also in order to avoid secondary victimisation.
4. The Working Group underlined that prosecutors have a duty to provide appropriate information to victims and witnesses (information not only regarding criminal proceedings, but also on victim support and other (social) services, on possibilities for legal advice and legal assistance and on different ways to obtain restitution and financial compensation). Such information should be provided effectively (in a pro-active way, in coordination with the police and victim support agencies).
5. The Working Group considered that victim-offender mediation can be in the interest of victims if certain conditions are respected; the public prosecutor can play an active role in identifying appropriate cases and referring them to mediation services in those countries where it is envisaged by law.
6. The need for special education and training for public prosecutors to deal with victims (not only legal knowledge but also focusing on attitudes and skills) was underlined by the Working Group. It observed that sufficient resources in terms of time, personnel and funding must be available.
7. The Working Group welcomed the elaboration by the Council of Europe of a new legal instrument concerning the protection of children against sexual exploitation.
8. The Working Group agreed that the integration of a victim / witness dimension and victim / witness friendly practices in the system can gain much from systematic co-operation, partnerships and networking with foreign counterparts and also NGOs. It invited the Consultative Council of European Prosecutors (CCPE) to continue examining the duties of public prosecutors towards victims and witnesses and to draw up rules in order to encourage fairness, impartiality, coherence and effectiveness in their actions in this field.
9. The Working Group encouraged the CCPE to undertake comparative research on the status of victims and the actual functioning of their participatory rights in member states, and on the right to react to any decision of the public prosecutor not to prosecute.

**CONCLUSIONS OF THE WORKING GROUP II – Duties of public prosecutors towards persons deprived of their liberty**

1. Working Group II examined the duties of public prosecutors towards persons deprived of their liberty, in particular in the framework of criminal proceedings, in the light of the replies by member states to a questionnaire on this subject and a report by the scientific expert.

2. While recognising the significant differences in member states concerning the duties of public prosecutors towards persons deprived of their liberty, the Working Group considered that a considerable advance in the protection of such persons would be made if public prosecutors, within the limits of their powers, adopted a pro-active approach in order to protect the rights of individuals e.g. in case of pre-trial detention or extradition.
3. As regards arbitrary deprivation of liberty, the Working Group agreed that public prosecutors, within the limits of their powers, should seek, when necessary, in co-operation with all other competent authorities, to ensure that persons are not improperly or unnecessarily deprived of their liberty and that, as soon as it is appropriate to do so, such persons are immediately released.
4. As regards ill-treatment during detention, the Working Group recognised that public prosecutors, within the limits of their powers, have the duty to protect the rights of all persons deprived of their liberty, in particular having regard to the standards and requirements of the European Court of Human Rights (especially Article 5 of the European Convention on Human Rights), the European Committee for the prevention of torture, inhuman or degrading treatment or punishment (CPT) and the European Prison Rules.
5. The Working Group considered that the protection of all persons deprived of their liberty against ill-treatment by any official or any other person was a particularly important duty, subject to the limits of their powers, of public prosecutors.
6. The Working Group therefore underlined the essential role played by public prosecutors in the case of complaints alleging ill-treatment of persons deprived of their liberty and considered that public prosecutors have the duty, subject to the limits of their powers, to ensure that these complaints are bravely, thoroughly, fairly and impartially investigated as soon as possible.
7. As regards the education and training of public prosecutors, the Working Group agreed that this training should ensure that full account is taken of the duties of public prosecutors towards persons deprived of their liberty and in particular of the case-law of the European Court of Human Rights and the other standards and requirements indicated in paragraph 4 above.
8. The Working Group invited the Consultative Council of European Prosecutors (CCPE) to consider in detail the duties of public prosecutors towards persons deprived of their liberty, especially concerning the contribution which public prosecutors could make to the prevention of arbitrary deprivation of liberty and ill-treatment during detention and the training which could be given for this purpose. The Working Group invited the CCPE to give priority to this issue.