

6 July 2006

CO-OPERATION PROGRAMME TO STRENGTHEN THE RULE OF LAW

**CONFERENCE OF PROSECUTORS GENERAL OF EUROPE (CPGE)
7TH SESSION**

*organised by the Council of Europe
in co-operation with the Prosecutor General of the Russian Federation*

Moscow, 5 and 6 July 2006

CONCLUSIONS

a) Introduction

1. The prosecutors general and other prosecutors of Europe held their 7th 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 27th 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 7th Conference and the hospitable welcome extended to all the participants.

APPENDIX - CONCLUSIONS OF THE WORKING GROUPS

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.