



Strasbourg, 2 April 2004

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Website of the Conference: [www.coe.int/prosecutors/](http://www.coe.int/prosecutors/)

**Conference of General Prosecutors of Europe**  
5<sup>th</sup> Session

organised by the  
**Council of Europe**  
in co-operation with  
**the Prosecutor General of Celle, Lower Saxony**  
**(Germany)**

*Celle, 23 - 25 May 2004*

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**QUESTIONNAIRE**

**in preparation of the Conference**

***Conference of Prosecutors General of Europe  
Co-ordination Bureau***

*The Chair*

*to*

***Strasbourg, 23 March 2004***

***the Prosecutors General***

*Dear Sir/Madam,*

*I have the honour of requesting your assistance with a view to the preparation of our next Plenary Session, which will take place from 23 to 25 May 2004 in **CELLE (GERMANY, Lower Saxony)**.*

*The Programme of this Conference is enclosed, and the invitations should reach you shortly.*

*In order to enable the Bureau to prepare the Conference in the best possible way, I should be grateful if you would answer the enclosed questionnaire.*

*Thanking you in advance for your assistance,*

*Yours sincerely,*

*Marc ROBERT*

***Replies should be sent by 25 April 2004 to:***

***Ms Anita VAN de KAR, Secretary to the Conference of Prosecutors General of Europe,  
Directorate General of Legal Affairs, Council of Europe***

***Preferably by email to [anita.vandekar@coe.int](mailto:anita.vandekar@coe.int)  
or else by FAX +33-3-88 41 2052 or 2794.***

**1.- Progress of implementation of Recommendation (2000) 19 on the role of public prosecution in the criminal justice system.**

To take stock of implementation of Recommendation (2003) 19, which sets out guiding principles common to all prosecution services in Europe, it is important to know:

☞ what reforms and initiatives of whatever kind affecting your prosecution service took place in 2003 or early 2004, and whether they were based on Recommendation (2003) 19 as a whole or part of it

☞ what prosecution reforms or initiatives are planned.

**2.- The main theme of the Celle conference : “Discretionary powers of public prosecution”**

At the request of several prosecutors general, it has been decided that the main theme will be “*Discretionary powers of public prosecution: opportunity or legality principle-advantages and disadvantages*”.

As input to discussion, it would be appreciated if each prosecutor general could speedily answer the following questions:

☞ in considering whether or not to prosecute, does your prosecution service have discretionary powers either in law or practice, or is it governed by the legality principle in the meaning that it must prosecute when an offence has been committed and the suspect is known?

☞ if it has discretionary powers, what are the different types of decision it can take in the way of diversion measures or alternatives to prosecution?

☞ if prosecution is obligatory, is the judge empowered to refrain from prosecution in the case of some offences, and if so on what conditions?

☞ if prosecution is discretionary, what safeguards do defendants have against arbitrary decisions of the prosecution service? Are there any guidelines on the implementation of the discretionary prosecution? If these are public, you are kindly requested to provide a copy.

☞ briefly state the advantages and disadvantages of your system, together with any reforms that are under way.

### **3.- The prosecutors' duties outside the criminal sector**

In preparation for more detailed work, the Celle conference will provide the opportunity to conduct a first examination of the prosecutors' duties outside the criminal sector, which are not dealt with in Recommendation 2000 (19) and may relate to either administrative, civil, social and commercial law and/or to court functioning and management.

All contributions illustrating the position regarding your prosecution service, its advantages or disadvantages as well as any reforms under way will be very welcome.

### **4. Proposed new rules on Bureau membership**

The rules on election to the Co-ordination Bureau were agreed at the Bucharest conference in 2001. They provided for near total replacement of the Bureau every two years.

Experience has shown that replacing 5 out of 6 members of the Bureau at once creates problems since it prevents transfer of knowledge and working methods and thus interferes with stability and continuity.

The Bureau therefore suggests that the conference adopt the following rules, pending the possible adoption of definitive rules if the Bureau obtains an official status:

- . the number of Bureau members will stay the same (six);
- . two of the members will be ex-officio members, namely the prosecutors general of the countries organising the year's and the following year's plenary sessions; these two members to be members of the Bureau for two years so as to facilitate preparations for the plenaries;
- . the other four Bureau members will be elected for four years and half of them will be replaced every two years, so as to ensure both a degree of continuity and fresh blood, both of which are essential if the Bureau is to function as it should;
- . Bureau composition will continue to obey the principles of geographical representativeness and rotation of seats.

Applying these new rules would have the following effects:

- the Chair of the Bureau (France) and the prosecutors general of Slovenia and Slovakia would step down. They would be replaced respectively by the prosecutor general who has offered to organise the 2005 conference (term of office 2004-2005) and by **two new prosecutors general elected for four years by the Celle conference (terms of office 2004-2008)**;
- the prosecutor general of Celle, Lower Saxony (as organiser of the 2004 session) would remain until the 2005 conference;
- the other two Bureau members (Italy and the Netherlands) would stay in office until the 2006 conference.

**Each prosecutor general is invited send us any comments they have on these proposals.**

### **5.- Draft document on prosecution ethics**

This will be sent to you in due course.