

Strasbourg, 21 May 2003

CPGE (2003) 07

Conference's website address: [www.coe.int/prosecutors](http://www.coe.int/prosecutors)

**Conference of Prosecutors General of Europe**  
4th session

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

*Bratislava, 1 – 3 June 2003*

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**THE PREPARATION OF A EUROPEAN CODE OF ETHICS  
FOR THE PROSECUTION SERVICE**

**Oral Presentation**  
by  
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In accordance with the conclusions adopted at the plenary session which you held in Ljubljana from 12 to 14 May 2002, the Bureau of your Conference recently entrusted me with the task of preparing a draft “code of ethics” which might – with due allowance for differences in their positions, resources and workloads – apply to public prosecutors everywhere in Europe.

The preparation and adoption of such a text, which corresponds to the “**code of conduct**” called for in the explanatory memorandum on Recommendation (2000) 19 and in Article 35 of that document, would make prosecution departments in Europe responsible for their own practice, and this seems consonant with the current trend towards giving them more autonomy, and indeed independence. It would also chime in with a general policy applying to all public servants, whose legitimacy and credibility can no longer – at a time when their actions are frequently criticised – be anchored solely in the traditional guarantees: the oath, the hierarchy and disciplinary measures.

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This laying down of rules, or at least **guiding principles**, would certainly help, internally, to unite the members of the prosecution service around common requirements and, externally, to meet the doubts of politicians and the public concerning their legitimacy, at a time when they are being given increased powers in the fight against crime.

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Some of these principles – confidentiality, professional secrecy, fairness, respect for the presumption of innocence, etc. – have a combined legal and ethical character which justifies one’s asking whether a code of this kind, distinct from codes of procedure or judicial codes, serves any useful purpose, and whether a special code for prosecutors, in addition to that applying solely to judges, is really needed.

Concerning the usefulness of a code distinct from codes of procedure or judicial codes, it is certainly true that the latter are general in their scope, and apply to both lawyers and litigants – but it is equally true that they cannot solve all the problems or answer all the questions, some of which may be more a matter of case-law or of ethical rules derived from practice.

As for the utility of a special code for the prosecution service, this is rooted in the diversity of European legal systems – in not all of which the judiciary is a unified service – and in the special character of the prosecution service’s role, which obliges it to respect specific principles.

At the same time, as your Conference phrased it last year, “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 [...] ethics”.

In drafting the code, it will thus be necessary to refer to the codes for judges, both those in force and those being prepared at present.

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As the explanatory memorandum on Recommendation (2000) 19 indicates, the text will have to embody a number of simple instructions on “ways of doing things”, the aim being to make clear distinctions between the acceptable and the unacceptable in the professional conduct of members of the prosecution service.

In accordance with the wishes which you also expressed in Ljubljana, it will not attempt to be either exhaustive or legally rigorous, but rather – like Recommendation (2000) 19 itself – to bring together guiding principles which each of the 45 states can adapt.

These guiding principles will respect the intrinsic rights of individuals, which naturally apply to all members of the prosecution service, but – since private behaviour can affect the image of that service, and the capacity of some of its members to remain within it – they will not be restricted to professional conduct.

The private sphere undoubtedly falls within the scope of the projected code, even though – and I say this again – members of the prosecution service have the rights enjoyed by any individual.

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This code “**of ethics**” or “**good conduct**”, which Recommendation (2000) 19 has progressively become, may well help to change habits and improve professional practices and conduct. These changes and improvements will only come, however, if the rules and principles embodied in the code are accepted by all the members of the prosecution service, and not seen simply as tools in the hands of their superiors.

It is desirable that they be accepted, and likely that they will be, but this will depend on each country’s imposing its own disciplinary sanctions for failure to respect them: once ethics and professional conduct have been considered in depth, any misconduct will – more than at present – have to be punished with a firmness calculated to increase the prosecution service’s public reputation for probity, and thus its legitimacy.

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These guiding principles will centre on four concepts:

- competence,
- impartiality,
- diligence,
- responsibility,

which will - correct me on this if I am wrong - allow us to bring together the major shared values (open, general, creating a sense of responsibility), which each of our countries can then take on board, at its own pace and in its own way.

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In co-operation with the Prosecutor General, Mr ROBERT, and under his supervision, I shall attempt to identify these values, rank them in order of importance and then submit them to your Bureau, with a view to giving you as full a draft as possible with minimum delay.

