



*European Commission – PAMECA
Criminal Justice Department
Dr RS Aitala, Principal Expert
Head of Department*

Amman, 13 November 2007

Session III – European regional standards governing the role of public prosecution in criminal justice systems

(speaking points)

Around Europe there are a number of different legal arrangements related to the role of public prosecution, for what concerns both the institutional position and relations with other public functions and the responsibility within criminal proceedings. At the level of the EU there are not clear-cut standards common to all member states, despite the issue has a relevance under many respects such as the respect of human rights in criminal proceedings, the effectiveness of the fight against crime and the Copenhagen criteria (set of conditions that are evaluated in view of the accession of new members to the Union).

Differently the Council of Europe (CoE) has dealt with public prosecution in several occasions; its Council of Ministers has set Recommendation 19 of 2000 over the issue. The CoE is an international organisation founded in 1949 seeking to develop in Europe common and democratic principles. It brings together 47 members and it has currently 5 observers.

Recommendation 19/2000 aims at (i) safeguarding the principles of the ECHR and promoting the rule of law; and (ii) enhancing international cooperation in criminal matters by setting some common standards in the role of prosecution.

It is a document somehow loose and sometimes vague and ambiguous but it need to be duly considered that it tries to set a difficult compromise between different legal cultures, historical experiences and political approaches.

Below I have summarised the points of the document about which I will make comments and would encourage your interventions. The entire document is available at www.coe.int/t/dg1/legalcooperation/ccpe.

(i) States should take measures to ensure that:

- a. the recruitment, the promotion and the transfer of public prosecutors are carried out according to fair and impartial procedures embodying safeguards against any approach which favours the interests of specific groups, and excluding discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth, or other status;
- b. the careers of public prosecutors, their promotions and their mobility are governed by known and objective criteria, such as competence and experience;
- c. the mobility of public prosecutors is governed also by the needs of the service;
- d. public prosecutors have reasonable conditions of service such as remuneration, tenure and pension commensurate with their crucial role as well as an appropriate age of retirement and that these conditions are governed by law;
- e. disciplinary proceedings against public prosecutors are governed by law and should guarantee a fair and objective evaluation and decision which should be subject to independent and impartial review;
- f. public prosecutors have access to a satisfactory grievance procedure, including where appropriate access to a tribunal, if their legal status is affected;
- g. public prosecutors, together with their families, are physically protected by the authorities when their personal safety is threatened as a result of the proper discharge of their functions.

(ii) In order to respond better to developing forms of criminality, in particular organised crime, specialisation should be seen as a priority, in terms of the organisation of public prosecutors, as well as in terms of training and in terms of careers. Recourse to teams of specialists, including multi-disciplinary teams, designed to assist public prosecutors in carrying out their functions should also be developed.

(iii) With respect to the organisation and the internal operation of the Public Prosecution, in particular the assignment and re-assignment of cases, this should meet requirements of impartiality and independence and maximise the proper operation of the criminal justice system, in particular the level of legal qualification and specialisation devoted to each matter.

(iv) Where the public prosecution is part of or subordinate to the government, states should take effective measures to guarantee that:

- a. the nature and the scope of the powers of the government with respect to the public prosecution are established by law;
- b. government exercises its powers in a transparent way and in accordance with international treaties, national legislation and general principles of law;
- c. where government gives instructions of a general nature, such instructions must be in writing and published in an adequate way;
- d. where the government has the power to give instructions to prosecute a specific case, such instructions must carry with them adequate guarantees

that transparency and equity are respected in accordance with national law,

the government being under a duty, for example:

- to seek prior written advice from either the competent public prosecutor or the body that is carrying out the public prosecution;
- duly to explain its written instructions, especially when they deviate from the public prosecutor's advices and to transmit them through the hierarchical channels;
- to see to it that, before the trial, the advice and the instructions become part of the file so that the other parties may take cognisance of it and make comments;

e. public prosecutors remain free to submit to the court any legal arguments of their choice, even where they are under a duty to reflect in writing the instructions received;

f. instructions not to prosecute in a specific case should, in principle, be prohibited. Should that not be the case, such instructions must remain exceptional and be subjected not only to the requirements indicated in paragraphs d. and e. above but also to an appropriate specific control with a view in particular to guaranteeing transparency.

(v) In countries where the public prosecution is independent of the government, the state should take effective measures to guarantee that the nature and the scope of the independence of the public prosecution is established by law.

In order to promote the fairness and effectiveness of crime policy, public prosecutors should co-operate with government agencies and institutions in so far as this is in accordance with the law.

Public prosecutors should, in any case, be in a position to prosecute without obstruction public officials for offences committed by them, particularly corruption, unlawful use of power, grave violations of human rights and other crimes recognised by international law.

(vi) Public prosecutors should seek to safeguard the principle of equality of arms, in particular by disclosing to the other parties - save where otherwise provided in the law - any information which they possess which may affect the justice of the proceedings.