

CO-OPERATION BETWEEN THE PROSECUTION SERVICES OF THE 46 MEMBER STATES OF THE COUNCIL OF EUROPE¹

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I. INTRODUCTION

1. Virtually all States face the same problems concerning prosecution systems, even if the extent of these problems may differ, and by pooling our ideas and co-operating together we can find appropriate solutions. Therefore your meeting is particularly welcome as it will make a very important contribution to the international discussion, in particular in the Arab region, on the strengthening of the role of public prosecutors.
2. Ensuring security and freedom, safeguarding the Rule of Law, protecting the public against criminal violations of their rights and freedoms, ensuring the respect for the rights and freedoms of accused persons, providing properly functioning bodies responsible for the investigation and prosecution of offences – these are the main tasks of the public prosecutor. From this it is clear that the public prosecutor plays an essential role in the criminal justice system of a democratic society.
3. Public prosecution systems in the European States are really different and consequently it would be very difficult to harmonise these structures. However, notwithstanding the variety of public prosecution models in Europe, it is clear that States are facing very similar difficulties and are looking for new and improved ways to modernise their systems.
4. The Council of Europe² does not necessarily seek harmonised solutions but rather solutions which work and which are based on common standards which take account of the different traditions, cultures and legal systems of our member States.
5. The work of the Council of Europe covers:
 - a. standard setting (by means of treaties³, such as the European Convention on Human Rights which deals with matters which may concern public prosecutors, and recommendations to governments, such as Recommendation Rec(2000)19 on

¹ For further information see www.coe.int/prosecutors

² The Council of Europe is a political organisation based in Strasbourg and composed of 46 European States which have agreed to comply with the principles of pluralistic democracy, the Rule of Law and the enjoyment by all persons within their jurisdiction of Human Rights and fundamental freedoms.

³ For information concerning the treaties of the Council of Europe see: <http://conventions.coe.int>

- the role of the public prosecution in the criminal justice system – hereinafter referred to as “the Recommendation”),
- b. monitoring or checking that States comply with the required standards (for example by the European Court of Human Rights, the Parliamentary Assembly,⁴ the Committee of Ministers and other bodies such as those dealing with corruption and money laundering),
 - c. the provision of technical co-operation (such as supporting member States, in particular the new member States, in their efforts to modernise their prosecution systems and thereby comply with the standards of the Organisation).

II. STANDARDS AND MONITORING

6. Many international instruments of the Council of Europe (treaties or recommendations) contain standards which concern public prosecutors. These standards deal with matters such as Human Rights, the simplification of criminal justice,⁵ the fight against corruption,⁶ and judicial co-operation.
7. The European Convention on Human Rights does not refer specifically to public prosecutors but it does contain numerous binding provisions which concern prosecutors and persons on the territories of the 46 member States. The European Court of Human Rights⁷ acts to prevent or deal with alleged violations of the provisions of the Convention such as:
 - i. the right to liberty under Article 5 (e.g. the detention must be lawful, the accused must be brought promptly before a court),
 - ii. the right to a fair trial under Article 6 (e.g. the case must be heard without undue delay before an impartial court),
 - iii. the right to respect for private and family life under Article 8 (e.g. not to infringe the right to privacy by the unlawful tapping of telephones).

⁴ See Parliamentary Assembly Recommendation 1604(2003) on the role of the public prosecutor’s office in a democratic society governed by the rule of law (which, *inter alia*, indicates that prosecutions should lie with a body separate and independent from the police and considers the question of the non-penal law responsibilities of prosecutors and the institutionalization of the Conferences of Prosecutors General of Europe).

⁵ Recommendation R(87)18 concerning the simplification of criminal justice deals with the principle of discretionary prosecution, decriminalization or summary procedures for minor offences and the simplification of ordinary judicial procedures.

⁶ Guiding Principle No 3 of Resolution (97)24 on the twenty guiding principles for the fight against corruption invites States: “to ensure that those in charge of the prevention, investigation, prosecution and adjudication of corruption offences enjoy the independence and autonomy appropriate to their functions, are free from improper influence and have effective means for gathering evidence, protecting the persons who help the authorities in combating corruption and preserving the confidentiality of investigations.”

⁷ The European Court of Human Rights is composed of one judge for each member State and any member State or individual may lodge an application with the Court alleging the violation of the Convention by one of the member States. For further information see www.echr.coe.int

8. The Council of Europe's Group of States against Corruption (GRECO) helps its members to fight corruption by holding evaluation rounds concerning their compliance with specific provisions of Council of Europe standards concerning corruption. Reports are drawn up containing recommendations to the evaluated country. Measures taken by the country to implement recommendations are subsequently assessed by GRECO in the context of a specific compliance procedure.
9. With regard to the prosecutorial services GRECO has, for example, recommended individual States:
 - i. to ensure the independence of the prosecution service in dealing with corruption,
 - ii. to allocate sufficient resources to prosecution services,
 - iii. to develop the criteria of recruitment, promotion and retirement of staff,
 - iv. to reconsider the structure, competence and functions,
 - v. to promote specialisation with regard to corruption,
 - vi. to enhance the use of special investigation techniques,
 - vii. to train prosecutors to deal with economic crime,
 - viii. to improve co-operation with other relevant authorities,
 - ix. to enhance public scrutiny of the prosecution and police.⁸
10. Public prosecutors play a key role in our States and their status and role have evolved considerably in recent years. As a result of this the Council of Europe decided to identify the major guiding principles – common to different types of systems – that should apply to modern prosecution systems.
11. The need for specific non-binding provisions concerning prosecutors was recognised and in 2000 the Council of Europe adopted the Recommendation containing a number of common principles specifically concerning public prosecutors in its member States and invited these States to base their legislation and practices on these principles.
12. This Recommendation⁹ contains principles concerning the following matters:
 - functions of the public prosecutor ;
 - the need for proper legal, organisational, working and budgetary conditions including training and the development of specialisation to enable prosecutors fulfil their professional duties and responsibilities;
 - the prevention of unjustified interference and ensuring co-operation between public prosecutors and the executive and legislative powers;
 - ensuring a proper relationship between public prosecutors and court judges and, in particular, respecting the independence of judges and providing the court with all relevant information;

⁸ For further information see www.greco.coe.int

⁹ See also the Explanatory Memorandum to the Recommendation.

- ensuring a proper relationship between public prosecutors and the police and, in particular, checking the lawfulness of police investigations;
- the duties of the public prosecutor towards individuals – these duties include:
 - i. acting fairly, impartially and objectively,
 - ii. not prosecuting when the charges are unfounded,
 - iii. not presenting evidence which has been improperly obtained,
 - iv. disclosing relevant information to the other parties,
 - v. ensuring proper protection for witnesses,
 - vi. taking proper account of the views of victims and keeping them informed);
- international co-operation.

In addition member States are invited to ensure that, in carrying out their duties, public prosecutors are bound by codes of conduct.

13. The Recommendation also contains a number of principles concerning international co-operation and in particular refers to:

- the desirability of direct contacts between public prosecutors of different countries;
- steps to be taken to further direct contacts (documentation, lists of contacts, regular meetings between public prosecutors from different countries, training sessions, liaison law officers in foreign countries, developing the use of electronic data transmission, international seminars on mutual aid and shared crime issues);
- promoting awareness among public prosecutors of the need for active participation in general and, in the case of some public prosecutors, specialisation in international co-operation;¹⁰
- improving the system concerning requests for mutual assistance.
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III. CO-OPERATION (CONFERENCES OF PROSECUTORS GENERAL OF EUROPE AND A POSSIBLE CONSULTATIVE COUNCIL OF EUROPEAN PROSECUTORS)

14. On the occasion of the finalisation of the draft Recommendation concerning prosecutors high level prosecutors were invited to a Conference in Strasbourg in 2000 (What public prosecution in Europe in the 21st century). Following the success of the Conference and the need expressed by the prosecutors, the Council of Europe has since then organised yearly Conferences of Prosecutors General of Europe to discuss the development of the prosecution services in different countries and, in particular, in relation to the principles contained in the Recommendation.

15. So far, in addition to the Conference in Strasbourg 4 Conferences of Prosecutors General have taken place: Bucharest (2001 – harmonisation and co-operation between prosecutors at a European level), Ljubljana (2002), Bratislava (2003) and Celle (Germany 2004).

¹⁰ A Conference for public prosecutors specialising in cases relating to organised crime took place in Caserta, Italy in 2000 and considered the question of protecting society from organized crime.

16. In relation to the different judicial institutions of which the public prosecution is a part Mr Pierre Lyon-Caen, who was the Advocate-General at the Court of Cassation in France, said, at the 1st Conference, that, although there were many different institutions, this was not important providing “the principles governing the functioning of the office and the guarantees accorded make it possible for the public prosecutor fully to assume his dual role, that of helping to guarantee individual freedoms and fighting crime effectively.”
17. The participants at the 4th Conference highlighted the need for co-operation among the public prosecutors’ offices in Europe and co-ordination with the legal network operating in the European Union. They emphasised “the need for political authorities to do their utmost to promote public trust in public prosecutors.”
18. The 6th Conference of Prosecutors General of Europe will take place in Budapest from 29 to 31 May 2005 and the main theme will be the relationship between public prosecutors and the police.¹¹ Other themes will include prosecutors’ roles outside the criminal field and guidelines of ethics and conduct for public prosecutors. In addition information will be provided by participants concerning the recent developments in the prosecution services in the different countries.
19. As far as the relationship between the public prosecutors and the police is concerned matters such as the following will be considered: the responsibility for a proper investigation of criminal acts, the influence of the prosecutor on the scope of the police investigation, the extent of the discretionary powers of the police not to report cases to the public prosecutor and complaints against the police concerning the investigation.
20. The Conference will also consider the role of the public prosecution services in Europe outside the criminal justice system. This is particularly important as, although in several European countries prosecutors have many important duties which do not concern criminal justice, the Recommendation does not deal with the role of prosecutors outside the criminal justice system. It is possible that principles will be prepared concerning the role of the public prosecutors outside the criminal justice system and that these principles will ensure that this role complies with the requirements of the Rule of Law and Human Rights, such as the equality of arms in judicial proceedings, no undue delay and the separation of powers.
21. Another theme which will be considered at the Conference will be the question of ethics and conduct¹² and draft European Guidelines for Public Prosecutors on ethics and conduct have been prepared for consideration and adoption by the participants

¹¹ Recommendation Rec (2001)10 on the European Code of police ethics contains a Code which, *inter alia*, deals with co-operation between the police and the public prosecutor (see paragraph 9).

¹² Recommendation No R(2000)10 on codes of conduct for public officials contains a model code of conduct for such officials. Although in some countries (owing to paragraph 4 of Article 1) public officials would be excluded, the explanatory memorandum to Article 1 indicates that ethical standards are still necessary and the code could serve as a basis.

at the Conference. Although these guidelines will not be binding they will contain widely accepted general principles for public prosecutors in the performance of their duties which can be used as guidance at a national level concerning ethical and similar questions. These draft guidelines deal with matters such as basic duties, professional conduct in general, professional conduct in the framework of criminal proceedings and private conduct. The Guidelines will take into account not only the Recommendation but also the European Convention on Human Rights and the case-law of the Court and certain other texts.¹³ The draft provides that prosecutors should further international co-operation to the largest extent possible.

22. The issue of establishing a paneuropean network of contact points for prosecutors has been discussed and, in order to ascertain whether the existing networks are sufficient, the replies to a questionnaire will be considered. The questionnaire seeks to identify the different international networks and their different roles and membership to see whether another network is really needed and to what extent the existing Council of Europe body can be considered to be a network itself.
23. During the 2nd Conference in 2001 the participants proposed – and proposed at all subsequent Conferences – the setting up of a specific body to deal with prosecutors.
24. As a result and owing to the importance of the work carried out by public prosecutors the Council of Europe is now actively considering the setting up of a Consultative Council of European Prosecutors to provide advice on issues relating to the prosecution service. The proposed Consultative Council would have the task to prepare a framework overall action plan for the work of the Consultative Council, to prepare opinions concerning public prosecution, to organise Conferences and to collect information.
25. We are expecting a decision to be taken on this matter by our member States before the summer. Assuming that the Consultative Council is set up it is expected to meet once a year and be assisted by a Bureau composed of members of the Council.

VI. CONCLUSION

26. In order to be effective standards concerning the role of prosecutors must be well-known, accepted, properly followed by all concerned and subject to control. In addition public prosecutors must have sufficient resources to enable them to carry out their tasks.
27. A similar approach by States to the modernisation of prosecution systems facilitates and strengthens international co-operation in the fight against crime even though our systems remain different. Therefore this meeting and your future work concerning public prosecutors in the Arab States is extremely important.

¹³ See Recommendation Rec (2000)10, Guidelines for the Role of Prosecutors adopted by the 8th United Nations Congress on the prevention of crime and the treatment of offenders (Hanava, 1990) and other relevant ethical or professional codes.

