

Antonio Mura

President of the Consultative Council of European Prosecutors (CCPE)
Deputy Prosecutor General at the Italian Supreme Court

Council of Europe Standards on Public Prosecutors

Moscow (Russia), 12th September 2013

1. On 6th October 2000, the Committee of Ministers of the Council of Europe adopted the Recommendation Rec(2000)19, devoted to the "*Role of Public Prosecution in the criminal justice system*".

In its preamble, the Recommendation No. 19:

- bears in mind the Council of Europe's purpose to promote the rule of law, which constitutes the basis of all genuine democracies;
- considers that the criminal justice system plays a key role in safeguarding the rule of law.

To that end –as the preamble to the Recommendation states– the efficiency of not only national criminal justice systems, but also international cooperation on criminal matters should be enhanced, whilst safeguarding the principles enshrined in the Convention for the Protection of Human Rights and Fundamental Freedoms.

According to the general definition given by Rec(2000)19, "Public prosecutors" are public authorities who, on behalf of society and in the public interest, ensure the application of the law where the breach of law carries a criminal sanction, taking into account both the rights of the individual and the necessary effectiveness of the criminal justice system.

The Explanatory Memorandum accompanying the Recommendation reiterates the fact that in the exercise of their functions public prosecutors are to be guided by public interest.

In such regard it is prescribed that they should act in compliance with "two equally important imperatives": the rights of individuals and the effectiveness of the criminal justice system as a whole.

This is a perspective projected towards a function "of justice" that is rather more advanced than any reductive concept of public prosecutors being "*avocats de l'accusation*".

Council of Europe member States are recommended to adopt "effective measures" to enable the members of the prosecution service to fulfil their professional duties and responsibilities under adequate legal and organisational conditions and with appropriate means, especially budgetary means, at their disposal.

Special attention is also given to the ways in which said operating conditions are to be determined, recommending that they shall be established in close cooperation with public prosecution service representatives.

The recruitment, promotion and transfer of members of the prosecution service should take place according to fair and impartial procedures, on the basis of objective criteria that have previously been announced.

The issue of supervision is dealt with in terms of the need for a duly ratified code of conduct for members of the public prosecution service and for a mechanism of internal reviews of performance.

States should ensure that in carrying out their duties members of the prosecution service are regulated by such a code and that its breach may lead to appropriate sanctions.

Recommendation Rec(2000)19 describes vocational training as both a duty and a right of all members of the public prosecution service, both at the beginning and throughout the entire course of their careers.

With regard to the internal organisation of prosecution service departments, the prevailing model at European level is definitely that of a hierarchical structure, which many countries prefer for reasons primarily connected with ensuring the effectiveness and consistency of prosecutions.

However, the requirements that such a hierarchical structure should meet –according to Rec(2000)19– are very specific and intended to assure impartiality in the conduct of criminal prosecutions and the independence of the prosecution service, with the sole objective of maximising the operation of the criminal justice system.

The suggestions made in Recommendation Rec(2000)19 were largely and significantly developed in the (more recent) Bordeaux Declaration. I'll speak of it later. Here I would like to highlight that the Explanatory Memorandum accompanying the Bordeaux Declaration describes the independence of the prosecution service as being an «*indispensable corollary to the independence of the judiciary*».

With regard to liability, it is recommended by Rec(2000)19 that public prosecutors shall be put on the same footing as anyone else only in so far as «... individual prosecutors must, like any other individuals, be held responsible for any offences they may commit». Moreover, it is considered «clear» that the responsibility carried by public prosecutors «is greater in systems where they enjoy full independence» and that these requirements «go hand in hand with the need for transparency».

Generally speaking, «all public prosecutors –because they act on behalf of society– must give account of their work at local or regional level, or indeed national level if the service is highly centralised», with «regular accounts ... made to the general public», that make it possible to gain a better perception of the prosecution service's operations. These accounts may include a report and/or statistics illustrating the work done, the sums of public money spent, the aims achieved and, if appropriate, the ways in which crime policy was implemented considering the discretionary powers vested in the service.

An important obligation placed on the prosecution service is thereby introduced in connection with the above-outlined requirements: that of periodically accounting publicly for its activities as a whole and, in particular, the way in which its priorities were carried out.

It is useful to note that the report is supposed to be on activities «as a whole». On its part, the Venice Commission, even more explicitly excluded that responsibility of the prosecution service (specifically that to Parliament, when required of the Prosecutor General) can regard «individual matters».

2. In recent years, further aspects of the public prosecution's activity have been highlighted at the Council of Europe level.

Since the year 2000:

- seven Opinions have been elaborated by the Consultative Council of European Prosecutors (the eight is being drafted and will be approved by the CCPE in October 2013), dealing also with topics not directly dealt with by Rec(2000)19, e.g. management of the means of prosecution services, relationship with prison administration, juvenile justice, relations with the media;
- ten documents have been approved by the Conferences of Prosecutors General of Europe (CPGE);
- the Venice Commission approved several documents concerning public prosecution, including the “Report on European Standards as regards the Independence of the Judicial System: Part II – The Prosecution Service”, adopted in December 2010;
- a new Recommendation has been adopted by the Committee of Ministers: Rec(2012)11, on the role of public prosecutors outside the criminal justice system;
- the case-law of the European Court of Human Rights put into focus relevant aspects of public prosecution.

3. As far as ethical standards for prosecutors are concerned (which is the subject of this plenary session), obviously a mandatory reference has to be made to the “*Budapest Guidelines*”: the European guidelines on ethics and conduct for public prosecutors, approved in the capital of Hungary at the 6th Conference of the Prosecutors General of Europe, in May 2005.

The Guidelines deal with the basic duties of public prosecutors, as well as with their professional and private conduct. Prosecutors are requested –at all times– to adhere to the highest professional standards of integrity and care, carrying out their functions fairly, impartially, objectively and independently, upholding the principle of fair trial. At the same time, they are requested to strive to be –and to be seen to be– impartial and consistent, and to conduct themselves –in their private life– in such a way as to further and retain public confidence in their profession.

Focusing now on the body that I have the honour to chair, it can be noted that the Committee of Ministers of the Council of Europe decided in July 2005 to institutionalise the yearly Conference of Prosecutors General of Europe (CPGE) through the creation of the Consultative Council of European Prosecutors (CCPE), which is composed of high-level prosecutors of all member States.

Its task is to prepare opinions for the Committee of Ministers on issues related to the prosecution service, to promote the implementation of Recommendation (2000)19, and to collect information about the functioning of prosecution services in Europe.

The CCPE ensures that the Committee of Ministers receives contributions sharing the ideas and experiences of the representatives of the prosecution services from all the 47 Member States. These representatives are chosen among those serving prosecutors having a thorough knowledge of the functioning of the prosecution system combined with utmost personal integrity.

Among the CCPE’s opinions (which can be consulted in the CCPE’s webpages: http://www.coe.int/t/dghl/cooperation/ccpe/default_en.asp), it has to be mentioned that approved and ratified together with the Consultative Council of European Judges (CCJE) in 2009: what is known as the “*Bordeaux Declaration*”, entitled “*Judges and Prosecutors in a Democratic Society*”. It defines the diverse aspects of the relationship between judges and public prosecutors and is considered of particular significance by reason of its joint preparation by the two aforementioned bodies.

The Declaration starts considering the highest level of professional skill as a “pre-requisite” for the trust which the public has in both judges and public prosecutors. Such trust is thus the element on which they principally base their legitimacy and role.

In order to attain the highest levels of performance in the administration of justice, the text defines as essential that all those performing an important role in the process share not just a common legal culture but also common ethical values. For this reason, it states that, «*where appropriate, joint training for judges, public prosecutors and lawyers on themes of common interest can contribute to the achievement of justice of the highest quality*».

4. Summing up:

- a) the purpose of the work of public prosecutors –«*public authorities who, on behalf of society and in the public interest, ensure the application of the law where the breach of the law carries a criminal sanction*»– is the public interest of the efficiency of the criminal justice system whilst safeguarding the rights of individuals;
- b) all the national systems within the Council of Europe enjoy full legitimacy: no single public prosecution model can be defined, even as a preference or guideline;
- c) a general tendency to increase the safeguards pertaining to public prosecution can, however, be identified at European level, in terms of the legal status of public prosecutors, their organisation and means (also with specific regard to setting the budget at the disposal of the prosecution service for its operations);
- d) a large number of national systems meet the standards outlined in Recommendation Rec(2000)19 and there is an increasing degree of sensibility towards certain important matters;
- e) there is a widespread predisposition towards an organisational model with a hierarchical structure. Nevertheless, it should never become a form of paralysing bureaucracy and it should be imbued with the efficiency of the criminal justice service;
- f) the various texts elaborated at the Council of Europe level offer clear indications and guidelines which express widely accepted general principles for public prosecutors: those principles –though not binding– set out standards of conduct and practice expected from all prosecutors, consistent with the highest requirements of integrity and aimed at maintaining the honour and dignity of their profession.