



**Recommendation 1604 (2003)<sup>1</sup>**

## **Role of the public prosecutor's office in a democratic society governed by the rule of law**

Parliamentary Assembly

1. The Parliamentary Assembly recognises and appreciates the essential role of the public prosecutor in ensuring security and liberty throughout European societies: by safeguarding the rule of law, by protecting against criminal violations of their rights and freedoms, by ensuring respect for the rights and freedoms of those suspected of or charged with the commission of criminal offences, and by overseeing the proper functioning of the bodies responsible for the investigation and prosecution of offences.
2. The Assembly considers that the obligation on states to secure the rights and freedoms of the European Convention on Human Rights (ECHR) to all within their jurisdiction has consequences which apply equally to public prosecutors and to those concerned by criminal prosecutions. Furthermore, respect for democracy and the rule of law require an effective separation of state powers, in particular between the public prosecutor (whether as an administrative agent of the executive or of the legislature) on the one hand, and the judiciary on the other.
3. The Assembly takes note of Committee of Ministers Recommendation Rec(2000)19 on the role of public prosecution in the criminal justice system, and considers that this instrument constitutes a detailed reference text for guidance of the current operations and future reforms of public prosecutor's offices throughout Council of Europe member states. The Assembly notes in particular this recommendation's recognition of the need to intensify the fight against both national and international crime and its call for international co-operation on criminal matters to be enhanced, all in full respect of the principles of the ECHR. The Assembly recommends that member states endeavour to give full and immediate effect to this instrument.
4. The Assembly agrees that in an ever-more interconnected and mobile Europe, whose citizens are increasingly exposed (directly or indirectly) to other countries' legal systems and cultures, it is important to achieve some degree of harmonisation between the criminal justice systems of member states, so as to maintain their effectiveness in the face of new challenges from transnational organised crime, as well as public respect for the rule of law and confidence in the foreseeability of its application. Although particular national practices and traditions must be acknowledged, where certain aspects of the role of various national public prosecutor's offices give rise to concern, these may appropriately be addressed on a European level within the framework of the Council of Europe.
5. In this respect, the Assembly welcomes the creation of the Conference of Prosecutors General of Europe, which is ideally placed to play an important and dynamic central role in bringing together the different cultures and experiences of public prosecution from all the Council of Europe member states. As a pool of expertise and as a broad, specialised forum for discussion, this body has enormous potential for making and considering proposals, offering advice, comparing national circumstances and identifying best practices, to the great advantage of the Council of Europe's activities in the field. The Assembly therefore considers that this body merits establishment on a permanent basis, on a level with the Consultative Council of European Judges (CCJE), and that it should be granted appropriate resources.

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1. (see [Doc. 9796](#), report of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Arabadjiev). Text adopted by the Standing Committee, acting on behalf of the Assembly, on 27 May 2003



6. On the basis of their replies to a questionnaire, the Assembly finds that the following particularities apparent in the national practices of member states give rise to concern as to their compatibility with the Council of Europe's basic principles:

- 6.1. the police having responsibility for prosecutions;
- 6.2. the public prosecutor being responsible for, or an intermediary in, initial challenges to decisions to detain;
- 6.3. an appeal by the prosecutor against a judicial decision to release a detained person having suspensive effect;
- 6.4. the decision to prosecute following automatically from the establishment of evidential grounds; and
- 6.5. varied non-penal law responsibilities of public prosecutors.

7. In relation to these concerns, the Assembly makes the following recommendations to the governments of member states:

- 7.1. that responsibility for prosecutions should lie with a body separate from and independent of the police;
- 7.2. that there be prompt, direct and automatic referral of detentions to the competent court, thereby ensuring full compliance with Article 5, paragraph 3 of the ECHR;
- 7.3. that the prosecution appeal should not have suspensive effect, either generally or automatically, the only exception being where a court has found that objectively determinable factors strongly indicating continued preventive or precautionary detention are clearly established (for instance where the lower court has ordered release only on condition of a lesser form of compulsion, and there is a subsequent distinct judicial decision to suspend the order of release);
- 7.4. that the interests of justice in effective and efficient disposal of cases, along with the interests of both the defendant and any injured party, are best served by a system allowing discretion in the decision to prosecute. In this respect, the Assembly refers to Committee of Ministers Recommendation No. R (87) 18 concerning the simplification of criminal justice, whilst considering that the principle of discretionary prosecution should be adopted universally; and
- 7.5. as to non-penal law responsibilities, it is essential:
  - a. that any role for prosecutors in the general protection of human rights does not give rise to any conflict of interest or act as a deterrent to individuals seeking state protection of their rights;
  - b. that an effective separation of state power between branches of government is respected in the allocation of additional functions to prosecutors, with complete independence of the public prosecution from intervention on the level of individual cases by any branch of government; and
  - c. that the powers and responsibilities of prosecutors are limited to the prosecution of criminal offences and a general role in defending public interest through the criminal justice system, with separate, appropriately located and effective bodies established to discharge any other functions;
- 7.6. furthermore; that Committee of Ministers Recommendations No. R (87) 18 and Rec(2000)19 should be implemented promptly, fully and effectively.

8. The Assembly therefore recommends that the Committee of Ministers:

- 8.1. continue its efforts to ensure the full and effective implementation of its Recommendations No. R (87) 18 and Rec(2000)19 throughout the member states;
- 8.2. support the important activities of the Conference of Prosecutors General of Europe, in particular by establishing this body on a permanent basis, on a level with the CCJE and with appropriate resources;
- 8.3. instruct its relevant organs – with the involvement of the Conference of Prosecutors General of Europe – to undertake a detailed study, with a view to preparing a recommendation to member states on those aspects of the role of the public prosecutor not addressed in Recommendation Rec(2000)19, with particular consideration given to the Assembly's recommendations mentioned in paragraph 7, subparagraphs i to v above; this study should also consider proposing the universal adoption of the principle of discretionary prosecution.