"Public prosecutor's offices or equivalent institutions at the Supreme Judicial Courts of the Member States of the European Union and strengthening of the European Judicial Area"

Minutes from the Conference
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in Paris

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Speech by Mr Vincent Lamanda, First President of the Court of Cassation

Ms Dati, Keeper of the Seals,

We know you are committed to a Judicial Europe. This is best demonstrated by your initiatives, during the French Presidency of the EU. I am particularly honoured to welcome you to the Court of Cassation for this conference.

Ladies and Gentlemen, Public Prosecutors,

I am delighted and honoured to welcome you to our Court. Your participation to today's events shows there is much to expect from this founding conference, and this meets the challenges posed by European integration.

"*Ubi societas, ibi jus*". This Roman saying is famous. It does not however mean there is one legal system for the whole world. It suggests, rather, that as soon as a society has sufficient substance, it adopts a legal system.

For the past 50 years, a European legal system has been in the making. Community law and the law of the European Convention of Human Rights lead to an approximation of laws, as well as to a convergence in the functioning of our institutions.

Public prosecutors have to ensure respect for the rule of law and the principle of legality. Its role in this trend of convergence is therefore crucial.

Portalis indicated in his Preliminary Discourse on the French Civil Code : "*there are times during which we are trapped in ignorance for lack of books. At other times, education is challenging because we have too many.*"

In spite of all our databases, texts books, internet, it is today difficult to have a good understanding of the various judicial systems in Europe. Translation and language are a barrier, the variety of legal sources another. The main difficulty however stems from the cultural gap between legal practitioners. Knowing the legal system of a country entails not only knowing its laws but also

understanding how the men and women applying those laws think and work.

In this respect, the creation of the Network of Public Prosecutors at Supreme Judicial Courts or equivalent institutions is crucial as it will contribute to the exchange of ideas, experiences, and thoughts and it will promote judicial cooperation.

Jean-Louis Nadal's initiative accordingly commands respect.

By their words and deeds, public prosecutors strongly contribute to the evolution of the case law and ensures it is in harmony with an ever changing reality.

We are thus particularly happy that your Conference takes place here in this historical room, where early on, the judiciary has striven for uniformity in the application of law and for conciliation between the principles of legal certainty and Justice.

This moral and spiritual heritage and respect for the fundamental values of the rule of law are prominent values we all share in the European judicial area. Just as much as the Network of the Presidents of the European Supreme Courts; whose General Secretary is a member of our Court, your Network will contribute to a general adherence to these values beyond any legal, language or national borders,. It will thus contribute to strengthening the European Judicial Area.

Justice was autarkic for long. Today, it must open itself to Europe in order to face the challenges of our time. This is necessary to guarantee greater respect for the rule of law and for legality.

By setting a common ground for a sustainable dialogue between public prosecution of the Member States, our institutions all demonstrate their vitality.

There was a justice before nations existed. Time has come for a justice with and beyond nations. Welcome to Paris and to our Court. I wish you the best for your work.

Speech by Ms Rachida Dati, French Minister for Justice, Keeper of the Seals

Dear Sir, First President of the Court of Cassation, Dear Sir, General Prosecutor, Dear Members of the Court of Cassation, Ladies and Gentlemen,

It is a great honour to be here today for the creation of the Network of European Public Prosecutors. The creation of such institutions always signals a growing interest for exchanges of experiences and methodologies across Europe. It demonstrates a will to build new practices from a common ground.

The French Presidency of the European Union gave us the opportunity to strengthen other networks: we have extended the powers of the European Judicial Network in criminal matters, and opened the European Judicial Network in civil and commercial matters to legal professionals.

With the help of all European ministers for justice, I have also laid out the foundations for a common training of all judges and justice personnel in Europe.

These achievements show a desire, on the part of the European judiciaries, to open up to civil society and to develop and strengthen judge-to-judge cooperation as well as more general cooperation between all interested professionals. Experts will not achieve European unity by themselves. Rather, the foundations of Europe must first and foremost rest upon a wider commitment by all legal professionals. This is essential for the European Judicial Area to strive and become reality for our citizens.

The concrete realisations of the European Judicial Area thus far have been the European arrest warrant, or joint investigation teams.

The creation of your network gives today a new impulse to the European Judicial Area. I am particularly happy that prominent judges of our country are leading the way to a constant dialogue between our judiciaries that promotes shared values such as freedom, the rule of law or protection of human rights.

Your work on the dialogue between judges and lawyers shows that our institutions are opened to the outside world.

It demonstrates that a common reflection, on the basis of our various national legal systems and experiences, is possible.

A few week ago, within this very Court room, the President of the French Republic announced a deep overhaul of the French Code of criminal procedure. Ever since Napoleon the 1st, a special judge has been in charge of criminal investigations, the “juge d'instruction” (investigating judge). His duty is to investigate and to assess both incriminating and exculpatory evidence. Such a judge exists in some Member States but not in all.

I know that today, you have planned to consider the future of public prosecution. You could consider this from the perspective of the reform on this investigating judge, and its impact on public prosecution. Your contribution will be extremely useful.

The creation of your network and your scientific work evidence the openness of our legal systems, in a globalised environment. The evolution of our Supreme Courts' case-law can no longer be confined within national borders: the action of public prosecution must adapt to the case law of the European Court of Justice and of the European Court of Human Rights.

These two courts' case-law has been particularly important and has been thoroughly analysed. I am specifically thinking about the case law of the European Court of Human Rights on the status of public prosecution and the concept of judicial authority. The Court will shortly deliver an eagerly awaited decision on the matter.

Dialogue remains key to building and strengthening the rule of law in Europe, and to achieve democratic standards beyond criticism. This is the message I delivered last week at the 50th Anniversary of the European Court of Human Rights in Strasbourg: we only progressed thanks to its constant vigilance to protect our values.

Our citizens expect that Europe does not become a source of complexity or confusion.

To avoid that danger, coherence in our judicial application of EC law is crucial. Your work on this matter will be of great importance. More generally, all courts and public prosecution should strive to ensure such coherence. Your Network's role in this regard will be of the utmost importance.

The questionnaire you have elaborated shows the great diversity in legal practices and workings of public prosecution. It should be commended for confronting our legal traditions. I hope your

debates will be fruitful.

Dear Sir, First President, Dear Sir, General Prosecutor, Ladies and Gentlemen,

Your presence today shows your enthusiasm for the development of a judicial European area. Your commitment to this network is a token of the success that the Network will most likely encounter. Let me hope it will become a common achievement and a useful tool.

The French Presidency of the EU showed us how a common approach and a sense of compromise can benefit us all. I trust this network will share similar objectives.

Introduction to the conference by Jean Louis Nadal,

Dear Madam Dati, Dear Mr Lamanda, Ladies and Gentlemen, Dear friends,

It is with great pleasure that I welcome you today in the Grand Chamber of the Court of Cassation for the founding conference of the Network of European public prosecutors or equivalent institutions at the supreme judicial courts of the Member States of the European Union.

I would like to thank in particular Madam Dati, Minister for justice, for opening this conference. Your presence today is an example of your commitment to the creation of a European Judicial Area. It encourages us to continue our work.

I would also like to thank the First President of the Court de Cassation, Mr Lamanda, for his unconditional support to our project.

Finally, allow me to give a particular tribute to Mr Jacques Barrot and to the European Commission for their support.

After more than a year of work, meetings and working sessions, the network for European Public Prosecutors at the Supreme Judicial Courts will finally become a reality.

This network is not a French achievement. It is a European achievement. It belongs to each and all of you who have agreed to take a part in its creation.

Today, you are all here, 26 General Prosecutors or equivalent institutions of the Supreme judicial Court. Your presence shows the common interest for our common heritage that we have a duty to reinforce, strengthen and develop.

The role of the European Network of Public Prosecutors is to create a true network of European experts, and to facilitate the application of European and EC rules as well as to strengthen the European Judicial Area.

Our overarching objective is indeed the strengthening of the rule of law, and the regulation of economic and social relationships by legal standards.

That is the aim that guided the creation of this Network.

I came to realise, after 4 years as a Public Prosecutor at the Court of Cassation and after many bilateral meetings, that we all share the same issues, the same questions: what is the role of a Public Prosecutor at the Supreme Court? How does it operate? How can we work towards a better application of European and EC rules and promote the wider public's acceptance of justice?

It was necessary to share our thoughts on these issues.

This is why the primary goal of this Network is to promote the exchange of ideas and experiences on all aspects of the role, the organisation and functioning of public prosecution offices. It also seeks to promote the application of European rules by the Supreme Courts in order to reinforce the European Judicial Area.

The Network accordingly focuses on questions specific to public prosecution at the Supreme Courts. In particular, it should be distinguished from the action of the Network of the Presidents of the Supreme Judicial Courts of the Member States of the EU. We seek to add on to the contribution and expertise the President's network brings to the European Commission in the elaboration of EC rules.

Allow me to emphasise that our network does not seek to discuss substantive issues of criminal prosecution. I would like to insist on this point; in particular since some of you had expressed a fear that our network's activities could overlap with that of other pre-existing networks.

I have also promised the European Commission that our network will take part in the work of the Forum Justice, the exchange forum that it has created.

It is clear that we will have to liberate synergies by working together with these other institutions, in particular for issues we all share. The Conference of Presidents and Public Prosecutors of the Member States of the EU should be an adequate framework to discuss all this.

At the end of the day, the Status of our Network will be signed. As you know, these Status reflect the work of a meeting of 14 of us in Paris last October 3rd of last year. I would like to thank each and every one of them for the great quality of the work accomplished, as well as for their support to our application for subsidies from the European Commission.

I had the honour to present the project of the Network when we met in Vienna on October 17th. I would like to extend my thanks to Public prosecutor Werner PÜRSTL for the great quality of our debates at that time.

The Status are now finalised. They will be signed this afternoon and we will then proceed to the election of our President. Tonight, the French Presidency of the Network will thus end, and a new Presidency begins.

Time has come to discuss the scientific aspects of today's conference: Public prosecution and the strengthening of the European Judicial Area.

My dear friends, today's conference will cover 3 themes, and is based on the answers you submitted to the questionnaire that was drafted by the work group last October. I would like to take this opportunity to thanks all of you for your detailed answers.

The first theme deals with the influence of the norms of European and EC law on the organisation and functioning of public prosecution. A report has been drafted on this theme by Ms Laura Codruta Kovesi, Public Prosecutor of the High Court of Cassation and Justice of the Republic of Romania.

The second theme covers the role and mission of public prosecution in implementing EC and European norms. We have divided this theme in two parts. Mr Klopp, State Public Prosecutor of Luxembourg will deal with the first part, and I will deal with the second part.

The third theme covers the future and perspectives of public prosecution. Mr Candido Conde Pompidou Touron will report on this last part.

Without entering into the substance of our discussions to come, I would like to begin by a brief comment on our answers to the questionnaire. These answers show that public prosecutors offices are structured differently in each Member State. That should be a first notion for our consideration. Broadly, 3 types of institutions can be distinguished.

Firstly, some public prosecutors have wide competences to supervise all subordinated prosecutors, to prosecute crimes and to apply criminal law in the widest sense possible. The public prosecutor can issue instructions for subordinated prosecutors and has generally a status marked by independence from other constitutional powers.

Secondly, some general prosecutors have a rather more specific role, limited to promoting respect for the rule of law and for the general interest in the case law of the Supreme Court. Those prosecutors also ensure coherence in the Supreme Court's case law. The Prosecutors of Austria, Belgium, France, or the Netherlands are so organised. They accordingly lack any prerogative to prosecute but rather focus on the promotion of the fair and just application of law.

Thirdly, some general prosecutors act as legal counsel to their governments.

My second comment will focus on the idea that, in spite of our differences, we all share common values, in particular due to the emergence of European principles of fair trial. In the light of this, it will be interesting to observe how the case law of the European Court of Human Rights has led to changes in the procedure followed by public prosecution at the Supreme Court in Austria, Belgium, Portugal, in the Netherlands or finally, in France.

Thirdly, it will be interesting to note how public prosecution contributes to the application of EC law and to the direct effect and primacy of EC law. That in turn ensures efficiency and coherence in applying EC law. Again, this is something we all share.

The same can be said when applying the law of the Convention for the Protection of Human Rights: how can we, public prosecutors, ensure its uniform application?

Finally, I would like to point out that the answers to the questionnaire have underlined that all public prosecutors have addressed the issue that we labelled as “opening to the outside world”. This has been done either as part of the appeal procedures at the Supreme Court, or more generally, in the functioning of public prosecution, by opening to actors of civil society or other various institutions.

All this prefigures intense debates in the course of our conference today. Time has come for dialogue between all Public Prosecutors at the Supreme Court of the Member States of the EU.

Allow me to conclude my intervention by referring to Jean Monnet and his speech at the founding session of the High Authority of the European Coal & Steel Community: “*We are only at the beginning of the effort which Europe must accomplish in order to finally achieve unity, prosperity and peace. Our obligations require us to get to work without delay. We can afford no further delay in the building of Europe*”.

Influence of community and European standards on the organization and functioning of prosecutor's offices attached to High Courts of Justice – Report from Ms. Laura Codruta Kovesi, Public Prosecutor of the High Court of Cassation and Justice (Romania)

The purpose of this report is to offer an overall image of the organization and functioning of public prosecution services in Member States, with special focus on the public prosecutor's offices or the equivalent institutions at the Supreme Court, based on the information supplied in the questionnaires sent to the Conference organizers by 25 States.

The relevance of this approach should be viewed within the context of the challenges raised by the integration concept for the criminal justice systems, and the analysis of the answers provided in the questionnaires offered me an opportunity to reflect on the role of the prosecutor and the possible evolutions of this institution within the European space, and to formulate some conclusions.

The fact that criminality is increasingly becoming a transnational phenomenon is common place, as is the fact that the efficiency of the law-enforcing institutions is rather limited within a space characterized by the free circulation of persons, goods, and capitals, and, implicitly, of crime, but not also of the prosecutors' authorities and of the criminal law provisions and norms. On the other hand, prosecutors will increasingly have to defend the Unions general interest and enforce its criminal policy, and not just the related values of their own national societies.

It is obvious that, within such a context, the traditional forms of international judicial cooperation among institutions whose organization and mandatory procedure regulations are different are no longer sufficient, and that new solutions have to be explored.

This is the kind of approach proposed by the work-group preparing the chapter on the common space of freedom, security, and justice of the European Constitution draft, maintaining that the Union's traditional three-pillar organization structure should be dropped, taking into account that combating crime is the field where the Community has the best chance to prove most visibly its relevance for its citizens.

Even if the European Constitution draft provides the establishment of the Institution of the European Prosecutor only for the investigation of crimes against the financial interests of the Community, I think the natural evolution of the afore mentioned space will inevitably lead to an ever deeper integration of the prosecution systems, of the prosecutors' responsibilities, and of the substance and procedure criminal law.

The steps towards achieving this project are still timid and we will only be able to appraise properly its viability and the difficulties involved when we are perfectly familiar with those elements that are common to our own national systems as well as those who distinguish them. Only such knowledge would enable increased mutual confidence between judicial systems, an essential prerequisite for a mutual decision recognition system to operate.

All public prosecution services in the Member States observe certain principles, of the kind provided by international documents, be they mandatory or recommendations, such as The Copenhagen Criteria, the European Convention on Human Rights, the Naples Declaration of Principles of 1993 concerning the role of prosecutors (MEDEL), The Guidelines regarding the role of prosecutors adopted by the UN Conference of 1990 on crime prevention, or the Recommendation No. 19/2000 of the Committee of Ministers of the Council of Europe on the role of prosecutors in the criminal judicial system. The most important such principles include the observance of the rule of law and human rights, securing the efficiency of the criminal justice system and safeguarding the independence of prosecutors from unlawful external interventions, as well as creating democratic control mechanisms for the activities carried out by the public prosecution services.

In all the analysed cases, the specific function of the public prosecution services was to institute criminal proceedings, namely to carry out the criminal action and to sustain the accusations before the courts, representing the general interests of the society. Prosecutors enjoy significant guarantees as regards their independence in exerting such responsibilities, determined by the need to secure an accountability system, checks and balances. Also, in order to provide a most efficient protection of the public interest, there is generalized unitary organization and hierarchical structure.

In the following I will try to detail these conclusions, starting from the answers to the questionnaire questions grouped in three large themes regarding the position, the organization, and the responsibilities of the public prosecution services, the form and the position of the public prosecutor's office or the equivalent institution at the Supreme Court and their relationship with the

jurisdictional offices, as well as the methodology used to review cases.

1. The composition and the position of the public prosecutor's office within governmental institutions

The most significant difference among public prosecutor's offices derives from the position granted to them compared to the three constitutional authorities classically consecrated, aimed at identifying a balance between two apparently opposed principles such as the independence of prosecutors and their accountability.

On the one hand, the need to ensure fairness as regards the procedures that can be instituted by prosecutors, so as to guarantee the protection of the fundamental rights of individuals and their equality in front of the criminal law, as well as the often exclusive competence of the prosecutor to decide whether a person should or should not be prosecuted, have determined the need to establish a statute of independence that should eliminate any possible internal or external influences, lacking transparency and beyond legal limits, on the prosecutors' activity.

On the other hand, since the evolution of crime and the analysis of the effective operation of the criminal justice have proved that compulsory prosecuting represents an ideal not easily achieved in practice, most states apply, to a certain extent, discretionary prosecuting, which I will detail in a further section of this paper. Under these circumstances, through the way in which they establish their priorities, prosecutors are largely responsible for the concept and application of the state's criminal policy, which entails a relationship with the political authorities that are in turn responsible for establishing the public policies under the rule of law.

The pre-eminence assigned by each state to one of the above principles has determined the choice of the legislative solution and the position held by prosecutor's offices among public institutions.

Thus, we have systems that are part of the judicial authorities (as is the case in Italy, France or Bulgaria), that are subordinated to the executive authority (as in Denmark, Estonia, Poland), or systems enjoying a *sui generis* constitutional position outside such authorities (as in Czechia, Spain, Hungary). This apparently fundamental distinction is in practice alleviated, on the one hand through safeguards providing large autonomy to prosecutors in their decision-making process, even when they are subordinated to the executive power, and, on the other, through democratic control procedures involving a certain relationship with the political authorities, including the case when

the public ministry is part of the judicial authority.

In most cases, the public prosecution services are subordinated to the minister of justice, both in those states where prosecutors enjoy a similar statute with that of judges (France, Luxembourg). His competences are usually strictly regulated by the law and vary from formal authority to the direct management of the institution.

Thus, the minister of justice may have very limited competences such as formulating proposals regarding the person who should become prosecutor general (Romania) or participating in the sessions of the Judicial Council without the right to vote (Bulgaria), or may have the role to manage the proper functioning of the service, which may involve drawing the budget, appointing prosecutors and managing their careers, or requesting information, without however being able to instruct the general prosecutor or the other prosecutors (Czechia, Malta).

In those cases when the minister of justice may intervene in the prosecutors' activity, the legal provisions ensure the transparency of such actions, their compliance with the law, and their subjection to democratic control, so as to avoid abusive or unjustified political interventions. Such interventions may consist in instructions of a general nature meant to provide a uniform interpretation of the law or the identification of the priorities aiming to achieve a coherent application of the criminal policy (Sweden), or instructions regarding individual cases, mainly the order to institute criminal proceedings (Poland, France, Luxembourg), or, more seldom, to discontinue already undergoing proceedings (Holland, Germany). In practice, the instructions ordered in individual cases are extremely rare and are subject to a strict examination on the part of the civil society.

Another situation, such as in Poland, is that where the minister of justice also fulfils the responsibilities of the prosecutor general, having the possibility to issue mandatory orders for the prosecutors, both of a general nature and in individual cases.

In the countries where the legal tradition has been under the influence of the common law, the public prosecution services are either subordinated to or directly managed by the attorney general (England, Ireland, Cyprus, Malta), a public official with specific responsibilities, acting as the main legal advisor to the government, usually appointed by the representatives of the executive authority, able to issue mandatory instructions, including the discontinuing of legal proceedings, irrespective of their stage.

Some legislations have chosen to eliminate any connection between the public prosecution services and the executive (Finland), either by establishing answerability to parliament (Hungary), or by placing the supervision of the prosecutors' activity and the management of their careers under the competence of an autonomous body formed mainly of elected magistrates (Italy, Bulgaria, Romania) in order to secure a level of independence closer to that of judges. I should point out that, in these states, such an approach is usually accompanied by the adoption of the legality or compulsory of prosecution, in order to ensure the equality of the citizens in front of the law and to avoid any possible contradiction between the prosecutors' capacity to adopt the criminal policy and the lack of political accountability.

Public prosecutor's offices have, in most cases, a unitary and indivisible organization, meaning that prosecutors can substitute each other in carrying out their responsibilities, as well as a hierarchical structure, both inside the same unit and among units at various hierarchical levels. Also, for functional reasons, the organization of the prosecutor's offices is in most cases parallel to that of the courts in point of hierarchy and territorial competence, especially in those countries whose legal tradition has been under the influence of the continental law. These principles reflect the specific of the prosecutors' activity and the need to ensure the efficiency of the system, the uniform implementation of the criminal policies, and the coherent protection of the general interest of the society.

Holland is an exception to this rule, since in this country there is no hierarchical subordination among the various units, but just a subordination of the prosecutors to the unit manager within the same office.

In the case of the Crown Prosecution Service in England, there is a specific situation, in the sense that its territorial organization reflects that of the police and not of the courts, a situation also found in Denmark where the manager of the local prosecution office is at the same time the chief of the local police office. In Cyprus, on the other hand, there is a single prosecution office due to the small size of the jurisdiction.

In some countries (England, Bulgaria, Sweden, Romania), there are specialized units for specific crimes such as organized crime or corruption, that are outside the ordinary hierarchical structure and enjoy large autonomy or are independent from the other units.

The chief prosecutor of an office may exert limited control over the activity of the prosecutors

subordinated to him, as is the case in Italy, or may have extensive competence and be able to exert influence over their activity through mandatory instructions of a general nature regarding the way in which cases should be solved (as in Czechia), or through orders relating to specific situations such as assigning a case to another prosecutor (as in Slovenia, Latvia) or invalidating the acts deemed illegal (as in Bulgaria, Denmark, Romania, Hungary). A generally accepted principle is that the hierarchically superior prosecutor shall not influence the conclusions sustained orally by the prosecutors before the courts.

2. The form and the position of the public prosecutor's office or of the equivalent institution at the Supreme Court of Justice and their relationships with the other jurisdictional offices.

According to the organization principles presented in the previous section, in most European countries there is a public prosecutor's office functioning at the Supreme Court of Justice of the respective country, whose responsibility is always to represent the general interests of the society before it, by taking part in the trial sessions of the supreme court and presenting conclusions regarding the solutions that may be adopted in the pending cases or, exceptionally, formulating accusations in the cases where the jurisdiction lies with this court.

Also, the above-mentioned unit may have the exclusive responsibility to notify the supreme court for extraordinary appeals usually aiming at solving some important point of law, in order to ensure uniform jurisprudence (as in France, Poland, Romania), or to filter the appeals filed with the supreme court by prosecutor's offices or by other parties to the trial (as in Germany, Sweden), a responsibility usually entailing its competence in both criminal and civil matters.

In the countries where the organization of public prosecutor's offices is not parallel to that of courts (England, Ireland, Denmark), there is a central institution with equivalent competences, without any formal connection however with the Supreme Court of Justice.

By virtue of their position within the hierarchy, the public prosecutor's office or the equivalent institution functioning at the Supreme Court of Justice also has, in many countries, the role to manage the public prosecution services as a whole (Bulgaria, Denmark, Poland, Luxembourg, Portugal, Slovenia, England, Hungary), both functionally and administratively.

The concept of hierarchical subordination is different in this case, the supervision and control responsibilities being carried out through means that may differ from one country to another. The

most frequent are issuing mandatory orders of a general (Czechia, Sweden) or individual (Luxembourg) nature, directly or through lower ranking units, invalidating the decisions deemed illegal (Bulgaria, Czechia), drawing any acts within the competence of the subordinated prosecutors (Romania), taking over cases and assigning them to other prosecutors (Latvia), or withdrawing the appeals filed by prosecutor's offices (Hungary).

The public prosecutor's offices at the Supreme Court may also have responsibilities regarding the prosecutors' careers, with power of decision over their appointment, promotion or dismissal from office (Portugal), or may manage the entire budget of the public prosecution services (Romania).

In other countries (Holland, Austria, France, Italy), the public prosecution services are coordinated at regional or state level, in federal countries, so the role of these offices is limited to representing the interests of the society before the supreme court, with no supervision responsibilities over the other prosecution offices, or with very limited such responsibilities, namely receiving reports, requesting information or formulating observations and recommendations.

The public prosecutor's offices at the Supreme Court of Justice are usually managed by a person whose position may be called prosecutor general (in Belgium, France, Czechia, Hungary, Bulgaria, Romania, Luxembourg, Latvia), director of public prosecutions (in Denmark, England, Ireland), or federal prosecutor (in Germany). In Poland, the institution is managed by the minister of justice, while in Cyprus and Malta by an attorney general.

The appointment to and revocation from such offices reflect the comparative position of the public prosecution services in relation to the other authorities, this responsibility lying either with the executive – in the person of the president of the country (Poland, Portugal, Romania), the king (Holland), the attorney general (England, Ireland), or the government (Czechia, Greece, France), either with the parliament (Hungary), or the council managing the judicial system (Italy, Bulgaria).

The prosecutor general may be a member by right of the Superior Council of the Magistracy in those countries where there is such an institution (Bulgaria, France, Italy, Romania), and may have responsibilities as regards the exertion of disciplinary actions against magistrates (Belgium, France, Italy).

3. The methodology used to review cases

Depending on the concrete competences of the prosecutor's office at the Supreme Court of Justice, the answers to this question referred either to the role of prosecutors in the entire criminal process, including pre-trial investigations and the actual trial, or to the way procedures are carried out before the supreme court.

As regards the investigative stage, the first element distinguishing the systems in the Member States is the degree of control exercised by prosecutors over the police.

The general rule is that prosecutors coordinate the criminal investigation activity carried out by the police, the actual means of achieving this varying from the direct control over the police unit by the chief of the local prosecution office, as in Denmark, to the establishment of certain supervision and control instruments, as provided by the legislation of most Member States, the possibility of issuing mandatory orders, of taking over cases to investigate them directly, or of assigning exclusive competences to prosecutors for certain trial measures.

The exception to this rule occurs in those countries where the legal tradition is under the influence of the common law (England, Ireland, Cyprus), where the prosecutors have a limited participation in the investigative stage, with the possibility to provide just counselling to the police. The reason for this is to ensure objectivity on the part of the prosecutors, placing them in a position closer to that of a judge who examines a case based exclusively on the evidence produced in order to avoid any emotional implication when the prosecutor has to determine whether the right conditions for a person's prosecution have been fulfilled.

Another essential criterion distinguishing the public prosecution services at this stage of the criminal process is the establishment of the principle of compulsory prosecuting or that of discretionary prosecuting, such principles being usually connected to the way in which the prosecutor's political accountability is regulated.

The principle of compulsory prosecuting, traditional in the continental law, can guarantee the equality of all citizens in front of the criminal law and provides the premise for the prosecutor's independence, but the great number of cases and the insufficient resources actually prevent the investigation of all crimes. Under the circumstances, prosecutors have in most countries to a certain extent the possibility to decide, bearing in mind the public interest, whether a person should or should not be prosecuted, as a measure aimed at decreasing the number of cases reaching the court.

In those countries where the principle of discretionary prosecuting is expressly regulated (England, France, Cyprus, Belgium), the prosecutor may sometimes enjoy a large margin of decision concerning the application of this institution, whereas in other situations the possibility of discontinuing the proceedings in this manner may be limited to certain categories of crimes and may be subject to a final check or a formal consent by the court. It is also possible to regulate the accompanying of the decision to drop the case by the application of financial sanctions or by the condition to fulfil certain obligations (Germany, Holland). To limit subjectivity in determining the public interest, the minister of justice or the prosecutor general in such countries usually issue guidelines providing the selection criteria.

Even in those countries that have adopted the principle of compulsory prosecuting, prosecutors have a certain degree of decision in the selection of the cases to be prosecuted, either through the way in which certain technical legal provisions are interpreted or the way in which the priority of actions is set.

Usually, the discretionary principle applies exclusively to the prosecutor and, consequently, the police usually have to submit the case to the former upon conclusion of the investigations. However, in exceptional cases, the police may drop certain, generally not important cases, without the prosecutor's consent (Holland, England), either based on insufficient evidence or for opportunity reasons.

As regards the procedures carried out before the court, the prosecutor's responsibilities are generally similar in all Member States, involving the participation in the trial session and the representation of the general interests of the society, the formulation of conclusions based on the evidence produced and his own convictions, as well as challenging the decisions deemed illegal.

The most significant differences at this stage regard the possibility for some of the above-mentioned responsibilities to be exercised by other process subjects.

Thus, if in most cases the formulation and the sustaining of the indictment is the exclusive responsibility of the prosecutor, in countries as in England it is legally possible for this responsibility to be carried out by a private prosecution, the prosecutors having the possibility to intervene to take over or discontinue the criminal action. On the other hand, according to some legislations (Holland, Romania), the prosecutor's decision to drop the case can be challenged in court by being interested parties, the latter having the competence to order the institution of

procedures.

In turn, the responsibility to represent the interests of the society before the court in minor cases may be devolved to the representatives of the judicial police (France) and, in more complex cases, it can be carried out through lawyers especially employed by the state for this purpose (England).

In the cases solved by the Supreme Court, the prosecutors' activity follows generally the same principles and their responsibilities are equivalent. There may be slight variations depending on its specific activity, namely its essential role of unifying the jurisprudence, usually involving the extraordinary character of the appeals filed with it, examining the cases based only on points of law, and solving fact issues only as an exception and only in certain Member States.

The general conclusion to be derived from these questionnaires is that, despite essential differences regarding the organization and the competences of various institutions originating in different legal traditions, there are however sufficient functional similarities and convergent tendencies to allow a deeper integration. Considering that the answers provided by the Member States do not concern the same fields and have been formulated in different manners, the comparative analyses need to go deeper and be also focused on the effective functioning of such institutions and on the way in which the mentioned principles are actually applied in the legislation, to be able to offer a complete answer to this question, one that should provide a proper basis for future developments.

Thank you for your attention. I hope I will see all of you in March in Bucharest for the meeting of public prosecutions

Debate

Mr. Jean-Louis Nadal, Prosecutor General at the Court of Cassation, emphasised in particular the part of the report by Ms. Laura Codruta Kovesi, Public prosecutor at the High Court of Justice and Cassation in Romania, that dealt with the question of the links between public prosecution and the executive power, and wondered whether strengthening the European Judicial Area would require considering the status of independence or subordination of public prosecutors.

Mr. Régis de Gouttes, First Avocate General at the Court of Cassation, pointed out that the method of appointment of Public Prosecutor would certainly be of interest as far as independence is concerned, as well as the possibility for Prosecutors at the Supreme Court to give instructions to subordinated prosecutors.

Mr. Jean-François Leclercq, General Prosecutor, then explained that in Belgium, the "DUTROUX" case had given rise to a substantial reform of the Public Prosecution. Whereas the Public prosecutor used to be "co-opted", they are now appointed following an intervention by the Superior Council of the Judiciary.

Mr Vitaliano Esposito, State Prosecutor, described the process for appointment of the Public Prosecutor. He insisted on respect for the criteria set out in the Recommendation Rec (2000) 19 on the role of public prosecution in the criminal justice system.

Mr Candido Conde-Pumpido Touron, State Public Prosecutor, explained that in Spain; all 3 constitutional powers intervene in the appointment of the General Prosecutor. He also pointed to the fact that the prosecutor could neither be removed nor his mandate extended further contributed to independence.

Whereas Ms Elish Angiolini, Attorney General for Scotland, wondered whether the 4 years duration of the mandate of the General Prosecutor for the Kingdom of Spain could be a bit short, Mr Candido Conde-Pumpido Touron explained that in practice it worked fine.

Mr Jean-François Leclercq also emphasised that with regards to the amount of work, he thought his total time in office of 7 years, could be considered a bit too long.

Mr Esposito emphasised that a 70 years age limit could solve the problem, although in some cases it would be counter-productive.

Mr Nils Rekke, Director of the Public Prosecution Authority, explained that in Sweden, the Governement chooses the Public prosecutor. Although it could seem as undermining the

Prosecutor's independence, this was satisfactory in practice as the Public Prosecutor were not appointed on the basis of political criteria. The duration of the Public Prosecutor's office was also not limited in time.

Mr Jean Louis Nadal concluded the debates by explaining that in France, a recent reform had changed the method for appointing Prosecutor Generals to reinforce the status of the public prosecution. From now on, the Prosecutor General at the Supreme Court as well as the Prosecutors General at the Courts of Appeal will be appointed after the Superior Council of the Judiciary has delivered a reasoned opinion. Jean-Louis Nadal insisted that only professionalism should be taken into account when appointing public prosecutors, aside from any political considerations.

Role and mission of the public prosecutor's offices in implementing community and European standards - Report by M. Jean-Pierre Klopp, State Public Prosecutor (Luxembourg)

The European Judicial Area is characterised by a series of principles:

- cooperation between judicial institutions under a series of supranational mechanisms;
- mutual recognition of judicial decisions;
- the creation of cross border procedures to the benefit of the European citizen.

The application of those mechanisms requires the existence, at the state level, of a set of shared legal rules. All Member States should abide by those rules.

Those rules derive from two main supranational sources. The first one is the legal order of the European communities, including its treaties and secondary legislation, and the second one is the European Convention for the Protection of Human Rights, which preceded the European Communities.

The Supreme Courts, and thus the Public Prosecutors at the Supreme Court, participate actively in the proper application of those norms.

At a European level, the European Court of Human Rights and the European Court of Justice are in charge of overseeing the uniform application of the Convention on Human Rights for the former, of EC law for the latter. The competences and procedures differ in those two courts, and this has repercussions on the relationships between those 2 supranational courts and the national Supreme Courts.

The European Court of Justice relies on cooperation with the Supreme Courts, because the national judge is the ordinary judge of EC law. The mechanism of the preliminary question to interpret or to assess the legality of acts of institutions of the Community is the main vector for such cooperation.

The European Court of Human Rights rather controls or sanctions national judges, including the Supreme Courts, whenever an individual claims his rights guaranteed under the Convention have been breached. This is an experience we all share.

Accordingly, this theme should be examined in two parts. We will firstly deal with the role of public prosecution in the application of EC law, and secondly with the application of the law on the Convention of Human Rights.

2.1 Coherence in the case law applying EC rules

All national answers to the questionnaire have emphasised the importance of the principle of direct application of EC law in the national legal orders and the need that such application be effective and coherent. However, only a few answers to the questionnaire do mention the principle of primacy of EC law, although such principle works in conjunction with the principle of direct effect and uniform application of EC law.

The Supreme Courts guarantee primacy, direct effect and uniform application of EC law in their legal order, and Public Prosecutors have an essential role in this process.

1/ The Public Prosecutor plays an active role in the procedure for preliminary references to the ECJ.

Public Prosecutors deliver an opinion on the issues of EC law raised by the parties in their appeal to the Supreme Courts. In that context, Public Prosecutor have to adopt a position on the necessity to refer a question to the ECJ, or on the parties' request that a question be referred. The Prosecutor can propose to amend the question's wording or to ask further questions.

In cases where the parties failed to see an issue of EC law, the Prosecutor can raise such issues *sua sponte*, and propose that a question be referred to the ECJ. It appears from the answers to the questionnaire that in many legal orders, this is considered to be an issue of public interest, which provides a legal basis for the public prosecutor to act on its own motion. This is of particular importance when the inferior judge has failed to identify an issue of EC law, or has erred in applying EC law.

In all legal systems inspired by Roman law, the public prosecutor acts in procedures concerning all types of claims. In others, it only acts when criminal law applies. In some systems, it can act of its own motion, in others, it is bound by the parties' own determination. In some states, the Public Prosecutor at the Supreme Court has a right to appeal a decision by a lower court that ran contrary to EC law.

2/ the public prosecutor has a role in the uniform application of EC law even when no preliminary ruling is referred to the ECJ

The procedures are similar to those aforementioned.

An important source of law in this respect is the case law of the ECJ. This is true in particular for Supreme Courts that are relieved from the obligation to refer a question when the ECJ's case law already provides for an answer.

Respect for the ECJ's answers to questions referred by national courts is only one manner to take into account ECJ's case law. Some national contributions to our questionnaire emphasised the role of inferior courts, and the importance of the instructions given to them in the application of EC law.

The Public Prosecutors' mission to control the work of the prosecutors of inferior courts may be exercised in various manners, from circulating news bulletins, to giving specific instructions on the handling of a case, or by challenging the legality of the acts performed by such prosecutors. This can go all the way up to an appeal at the Supreme Court.

It should also be noted that in some Member States, the Public Prosecution has a role in advising the government on how to amend national legislation, in particular to ensure it is compatible with EC law.

2.2 Coherence in the case law applying the European Convention on Human Rights

All answers from the Member States underline the importance of the ECHR as a standard for the protection of human rights.

In some Member States, the case-law of the Court of Human Rights led to a complete overhaul of the position and organisation of public prosecution. In other Member States, the Court of Human Rights has challenged the procedure of appeal to the Supreme Court.

Despite differences in the constitutional arrangements in the Member States, the Convention benefits from primacy over national law. The national judge has a duty to respect the Convention when delivering decisions grounded in national law. They also have to disapply any provision of national law which runs contrary to the Convention. This is described as a control of “conventionality”.

The public prosecutor's mission in this respect is crucial as well.

1/ When delivering an opinion to the Supreme Court, the public prosecutor takes a stand on the parties' arguments on the conventionality of a norm of national law. Where this is possible, he may also raise an issue *sua sponte* when the parties have failed to do so. This applies both for substantive rights and procedural rights that the Convention guarantees.

As evidenced in some contributions, arguments based on the European Convention on Human rights represent a large majority of appeals lodged at the Supreme Court, and the numbers are growing. For arguments based on the procedural norms of the Convention, many appellants would rather rely directly on the Convention rather than on national law.

2/ The public prosecutor also ensures respect for the Convention when exercising its control over prosecutors from subordinated courts. This is done by giving specific instructions to prosecutors or by lodging an appeal of a decision that runs contrary to the Convention. This is all the more important in criminal law since it is the body of law most subjected to the application of the European Convention on Human Rights.

Finally, in some other states, the implementation of the European convention can also be carried out by the public prosecutor representing its Member State in case at the European Court, or by advising the government in legislative matters.

Debate

Mr Jean Louis Nadal explained that beyond any institutional or procedural national peculiarities, the principle of direct effect in national legal orders was respected in an effective and uniform fashion.

Mr Régis de Gouttes wondered how prosecutors in all Member States kept up to date with EC and ECHR case law; how Prosecutors could intervene to influence the drafting of questions referred to the ECJ, and whether Supreme Court gave opinions, *in abstracto*, on the application of EC law.

Mr Vitaliano Esposito explained that a special unit had been set up to circulate all information on EC and ECHR law, that public prosecutors would not hesitate to raise issues of EC law, in particular when necessary to protect individual freedom,

Mr Jean-François Leclercq described the organisation of public prosecution in Belgium to circulate EC law information consisting of frequent meetings and in the circulation of summaries by a specially appointed Advocate general.

Mr Nils Rekke insisted on the Prosecutor's role in training younger prosecutors in EC law and explained that he had to take a stand on important points about the compatibility of Swedish law with EC law.

Mr Touron explained that in Spain, a Constitutional court secured the protection of individual freedoms. Decisions by the Court of Cassation may also be reviewed this Constitutional Court. He mentioned that he also acted as public prosecutor at this constitutional court.

Mr Jean-Lous Nadal explained that pursuant to the constitutional reform adopted on 23 July 2008, a party could now raise the question of the constitutionality of a law in courts proceedings, and the judge could refer the question to the Constitutional Council.

Ms Elish Angiolini explained that it was her duty to ensure respect for ECHR and EC law by all prosecutors in Scotland.

Mr Jean-François Leclercq explained that direct effect of EC law should be seen in the light of its primacy, in particular with regards to national constitutional norms where political factors also came into play . He suggested that the Network should to look into this topic.

Mr Vitaliano Esposito emphasised that most countries had to adapt their constitution to EC and ECHR law and that this was irreversible.

Mr Régis de Gouttes emphasised that every time the Supreme Court declared an internal legislation inapplicable for breach of EC law, to some extent, that created a conflict between the legislator and the judiciary.

Organisation and functioning of Public Prosecution – Report by Jean-Louis Nadal, General Prosecutor at the Court of Cassation

I will now address the second part of our second theme, covering aspects of organisation and functioning of public prosecution when applying EC and European rules, and in the perspective of the strengthening of the European Judicial Area.

We touched upon the question of a coherent application of EC and European law this morning.

I will now address the other issues raised by the questionnaire under this heading: how does public prosecution open up to the outside world, how does it gather information from all sources, what are the relationships with lawyers, and finally, what is the pedagogical role of public prosecution?

I would like to begin by stating that because each of our institutions for public prosecution are so peculiar, our answers were diverse.

I will try and convey this diversity and the various opinions expressed.

However, irrespective of the organisation of public prosecution, all answers to the questionnaire have insisted upon the need to adopt an attitude opened to the outside world. Public prosecution accordingly constitutes an interface between civil society and the courts.

This question has been analysed from two angles. Firstly, it has been envisaged from a procedural standpoint: when dealing with an appeal at the Supreme Court, that is how can the prosecutor bring into the judicial debates ideas or facts drawn from civil society? Secondly, it has been envisaged as the role of public prosecutors in explaining the decisions adopted to the general public. This links strongly with the pedagogical role of public prosecution.

Beyond those differences, it is clear that we all share a similar idea: public prosecution should be opened to the outside world.

A similar train of thoughts guided the answers to the question on the relationship with lawyers. All answers insisted on the notion that participation by attorneys to the judicial process at the Supreme Court was likely to ensure efficiency of justice, and consequently, of the European judicial area.

1. The role of public prosecution in opening the judicial process to the outside world

Answers to the questionnaire, notably by France and Belgium have explained how public prosecution can open up the judicial process at the Supreme Court to the outside world.

Indeed, judges from the bench have to stick to the arguments raised by the parties in their appeal. On the contrary, public prosecutors are free, and even have a duty, to bring into the judicial process ideas or opinions which have not been previously raised. They can gather such elements from experts, professionals, public administrations, or other institutions such as public service independent authorities. This gives them an opportunity to take into account interests or opinions of stakeholders not parties to the process but ultimately affected by the solution the Supreme Court will adopt. This process allows reaching beyond the strictly legal arguments of the parties to address the underlying social and economic questions.

This procedure has been followed by the General Prosecutor of the French Supreme Court in a number of cases. Specifically, public service authorities such as the Children Protection Authority, or various ministries or associations have been consulted.

The principle of adversarial process should be strictly respected with regard to all elements gathered in the course of this process.

In a similar fashion, Luxembourg's answers elaborates upon the possibility for the Advocates General to bring in the judicial debate elements of comparative law, whereas this would be difficult for judges on the bench.

After this process has been followed, the advocate general has an opportunity to set out the conclusions he draws from the various consultations undertaken while delivering his opinion to the Court.

However, not all cases appealed to the Supreme Court are suitable for such a process. Choosing the appropriate cases will thus be a delicate task.

On first thought, it could be considered that this method of opening up the judicial process to the outside world would be limited to Member States in which public prosecution at the Supreme Court does not involve criminal prosecution as such.

However, the English answer to the questionnaire indicates that the Director of Public Prosecution can adopt a similar process whenever a case raises a question affecting civil society's interest. It seems this has been done in particular in cases of prosecution of violence against women and for racially motivated crimes.

2. Explaining the decisions of the public prosecutors and the pedagogical role of prosecution

A great number of Member States have considered the question of opening up to the outside world from the standpoint of explaining the decisions of public prosecution to the wider public. The answers thus deal mainly with the issue of the communication between the public and the public prosecution.

Let's first note that some answers have also covered the issue of communication with the victims of a crime. This issue is different, but it is closely connected to our topic. Malta and Poland for instance have mentioned that public prosecutors have a role to play in the information given to victims. In Portugal, public prosecution also seems to have a particular role in welcoming the general public to the courts.

A few recurring aspects are mentioned in the answers to the questionnaires.

A lot of Member States have insisted on how necessary the publication of the decisions by the Supreme Court is.

In Belgium, a lexicon of the Supreme Court's jargon is published by the public prosecutor to help understanding the decisions delivered. In Germany, the decisions are published, together with some comments. In Spain, a spokesperson has recently been appointed for the first time. His role is to explain to the general public the substance of decisions adopted. The situation is similar in Denmark. In France, at the Court of Cassation, a special department carries out the task of publishing those cases that truly reveal the doctrine of the Court on specific issues.

Beyond mere publication of decisions, where the situation is similar in all Member States, the answers to the questionnaire insisted on the specific role of public prosecution.

Public prosecution can thus play a role in the circulation of the decisions. Thus, in Italy, the prosecutor's office gathers all important decisions in a record to inform all inferior courts. The

opinion of the Advocate General are published on the internet. The Polish prosecutor has a similar role but to the benefit of only the prosecutors' offices in the lower courts.

In France, the pedagogical role of the prosecutor's office at the Supreme Court is also to inform prosecutor's offices of lower courts of specific points of law raised in the court's case law.

Regarding the circulation of European and EC law more specifically, the initiatives of Italy and Cyprus are to be commanded: both Member States have set up a special department within their offices which are specialised in EC and human rights protection law.

Some Member States have also emphasised that this role requires cooperation with other institutions, and in particular with the executive and legislative powers.

In Latvia, the Public Prosecutor has to report to the President and to the government on all points of law that have national repercussions. In Slovenia, communication by the public prosecutor's office is in particular institutional.

Beyond any specific effort, it should be pointed out that the opinions of public prosecutors are by themselves pedagogical.

In France, the opinions of the Advocates General of the public prosecutor's office, when they develop an in-depth analysis of a legal problem, are a precious source of information, in particular with regard to the application of EC or European law.

Decisions delivered by the Court of Cassation are usually very concise and brief. On the contrary, the opinions of the Advocate General expand upon the underlying legal issues weighting in the decision process. This is true whether the Court's decision follows the Advocate General's opinion or not. Accordingly, the opinions usually shed light on the meaning and scope of the Court's decisions applying EC or European law.

In Belgium, the opinion of the prosecutor sets a case within its general factual and legal context, and recalls the Court's case law on specific legal issues. The situation in Luxembourg is similar.

The Portuguese answer also emphasis the pedagogical role of the Advocate General.

Answers to the questionnaire also show that Advocates General usually engage into a dialogue with

the wider judicial community, in particular through academic discussions.

For instance, the Director of Public Prosecution has published on its website a public consultation on the Code for Crown Prosecutors, to provide guidance on the general principles applicable in the course of prosecution. That consultation seeks to gather a wide range of views on the proposed changes.

Concerning the more specific question of the dialogue with attorneys, the answers from the Member States cover two main aspects: the role of attorneys in the criminal procedure (whether during the investigations or the trial) and institutional cooperation between the attorneys (generally represented by a professional association) and public prosecutors.

Regarding this last point, and in general, it should be noted that almost all answers underlined how important this cooperation with attorneys proves to be with due regard to efficiency of the judicial process.

Some answers, such as France's, have shown that attorneys can intervene in the judicial process to help understand the specific legal issues raised by any given case.

To conclude, despite many differences; all answers to the questionnaire have consistently emphasised the specific role of public prosecution of liaising between the judicial word and the public at large.

This should be taken into account in the course of all debates at the European level.

It is likely that all public prosecutors will thus have a role to play in giving substance to the notion of European general interests that should reflect the emergence of a collective consciousness.

That should in turn ease the acceptance, by our fellow citizens, of European and Community rules.

I thank you. The floor is yours.

Debate

Mr Vitaliano Esposito noted that the opening to the outside world envisaged by Mr Jean-Louis Nadal was inspired by the institution of the ombudsman and was typical of a system in between Common Law and Continental Law. He also emphasised that he could draw inspiration from the organisation of the Prosecutor's office at the French Court of Cassation and the "principle of collegiality" such as they are set out in the answer to the questionnaire.

Mr Jean-Louis Nadal explained how the French public prosecution had been reformed after the case-law of the European Court of Human Right challenged the public prosecution system as it then stood. However, public prosecution can find a new legitimacy in the perspective of opening the Court to the outside world. Public prosecution can become the interface between the Court and civil society at large. This should be done by producing an impact study of the decision by adducing economical and societal elements. Accordingly, public prosecution as a duty to acts as intermediary between civil society and the Court and to draw inspiration directly from civil society.

Mr Jean-François Leclercq emphasised that in Belgium, they had wondered whether to simplify the language used in decisions to help the general public with understanding those decisions. In the end, they had decided on creating a thesaurus to better explain the legal parlance. This was also done in cooperation with the judges from the bench and the attorneys at law.

Mr Jean-Louis Nadal also found attorneys at law had an important role in helping the public understand the decisions of the Court of cassation. He also emphasises that public prosecutors' opinion could also help understand judicial decisions. .

Regarding the question of how citizens understand and interact with the judiciary, Ms Elish Angiolini explained that the Scottish experience suggests that TVs in court room contribute to raising interest and awareness for the judicial institutions.

Mr. Jean Louis Nadal and Louis Di Guardia explained that in France, hearings could be filmed under strict conditions defined by law n°85-699 of 11 July 1985 for the creation of the audiovisual archives of the judiciary.

Mr Nils Rekke argued that making the jargon easier to understand from the general public would also help to open up courts to the public. Swedish young judges are trained to use simpler terms.

Ms Cécile Petit, First Advocate General at the French Court of cassation, explained that judges should first explain in a pedagogical fashion before opening court rooms to TVs.

The future of public prosecution - Mr. Candido Conde – Pumpidou Touron, State Public Prosecutor (Spain)

Ladies and Gentlemen,

Allow me to first state that I am acting as the Public Prosecutor for the Kingdom of Spain, that is as the highest public prosecution authority in Spain. I am enthusiastic to see our institution join this new Network of Public Prosecutors at the Supreme Courts of the EU Member States.

I am particularly enthusiastic since I am both the highest official of Spanish public prosecution and the acting prosecutor at the Supreme Court, although this role is in practice devolved to the Deputy Prosecutor at the Supreme Court since a reform of our status in 2007. Accordingly, it will be up to him to represent Spain in the course of the work of the Network that is created today. However, due to the importance of today's conference, I wanted to explain our role in general and to emphasis why today's event was so necessary and important.

Assuming both of these roles, I have indeed come to realise that a prosecutor benefits from the creation of international networks and from exchanges of information at all levels for the performance of his duties. A consolidation of all networks into one network, on an international level, is a necessary requirement to face globalised crime. That is in particular true when we strive to fight crime without deviating from the rule of law and other fundamental norms that are at the root of our civilisation.

That being said, from a global standpoint, those networks contribute to cultural cross-influences, and to the emergence of two main trends.

Firstly, judicial cooperation in a globalised world contributes to a convergence of the continental and common law legal systems.

Secondly, there has been a general adoption of the principle of adversarial proceedings, which is seen as the paradigm of the compatibility of criminal procedural law with the Declaration of independence of the United States and the French Declaration of Human Rights of 1789.

This evolution has spread throughout Europe and in Latin America. It has reached a new peak with

the recent declaration of the President of the French Republic on the investigating judge, in particular since it was French procedural law that had created this investigating judge.

M Sarkozy declared that: “confusion between investigating and jurisdictional powers of the investigating judge can no longer be tolerated”. Accordingly, he announced a complete overhaul of the French Code of criminal procedure on this point to ensure strict adherence to the principle of adversarial proceedings. A legislative reform is currently being considered in Spain with a similar objective.

And this problem raises the particular question of the role of public prosecutors as guardians of the rule of law.

Under the Spanish Constitution, prosecutors have a role in guaranteeing the legality of public prosecution. This role is now crucial in the light of the principle of adversarial proceedings. This role truly defines public prosecution and ensures that public prosecution's own assessment of legality and justice remains free of any outside influences or private interests.

The constitutional importance of public prosecution is also embodied in one of its fundamental role. Independence of the judiciary is essential to the very existence of the rule of law. This translates into freedom for judges, within the boundaries of the principle of legality, to interpret and apply criminal law. There can be hierarchical control on this freedom. Prosecution thus has the ability to contribute to the constant evolution of the judicial and legal system. Law must on the contrary adapt to the speed of real life.

The downside to this would be that the independence of the judiciary and its constant evolution would spin off into a lack of legal certainty and security. Legal certainty requires a minimum of foreseeability. Concrete and effective equality of citizens before the law also means that there can be only limited differences in the way courts handle different cases.

For this reasons, all judicial systems have created tools to contribute to the unification of case law. Supreme Courts are usually responsible for this.

However, not all legal problems reach the top of the legal pyramid.

This means the role of public prosecution becomes crucial. The unity of the institution, the ability to coordinate and to request all members to act pursuant to certain standards or norms, determined

uniformly for all allow to balance out the possible downside of the otherwise necessary judicial independence.

Our role in this regards adds value by itself to the judicial process, at all stages where we are active, including in last resort, which has also in itself a role of unification.

This is why we were interested in the creation of the Network from the start, and I am happy that it is today becoming reality. This is why I would like to thank all of you. I would also like, if you allow me, to thank in the name of all of us our host and my friend Jean-Louis Nadal who, thanks to his tireless efforts and restless will, brought the Network to life.

Because it is specific, we have faith in the Network's future. Beyond the specific institutional role of public prosecution at the Supreme Court, or the position of its members in each Member State's hierarchy, the function of Public prosecution of unification of the judicial practice confers it a special place and will be essential to the future of our institutions.

In a close future, we will need to move forward with this task of unification of the judicial practice that becomes particularly important nowadays. The more independence judges have, the more the role of public prosecution becomes crucial. And I think that European law cannot remain indifferent to this trend.

On the contrary, I am truly convinced that a European public prosecution geared towards this process of unification of law is a crucial part of our future together. Our ability to learn to use tools such as mutual recognition or coordination instrument will be key to accessing to this future.