



Role of Prosecutors in the protection of individual rights and public interest in light of requirements of the European Convention on Human Rights

Opening session

Speech by the Vice President of the Venice Commission of the Council of Europe

Ms Claire Bazy Malaurie

Mr Prosecutor General, ladies and gentlemen,

In this opening session of this important conference on the role of prosecutors, as a representative of the VC, I would like to confirm the interest and, moreover, the importance the Commission continues to attach to the work done for and with Russia. The VC participates whenever it is possible in the international congresses and conferences organized by Russia, especially in the periodical legal forums in Saint Petersburg during which many constitutional rules are discussed and of course in the forums about comparative law.

That is why I have a special reason to welcome the presence beside me today of Ms Khabrieva, who is also a member of the VC, in respect of Russia.

This opening session gives me an opportunity to tell how the VC works. Members of the Venice commission, of course, cannot actively participate in the drafting of opinions on the country they belong to, but they provide major inputs for all other opinions, as well as for general studies or guidelines. Each member brings the intellectual and academic contribution that nurtures the VC's positions, and also provides for essential legal follow-ups about the work done.

I must insist on that point. All our opinions are the product of a collegial discussion, from the group of rapporteurs to the plenary session, each member of them having a national background, that is to say a different cultural and professional experience, but each one is bound to the values enshrined in the European convention on human rights. The best example of the kind of comprehensive work it allows is the Rule of law checklist adopted in March 2016, following the report on the rule of law in 2011.

From 1991, when the Commission was created, this model left room for adaptation to various systems and approaches, and it nevertheless allowed to assert continuity on the main issues. Of course, the standards we refer to are not different from those used by the European Court of human rights, and you find quotations of case law in our opinions. But in this case, it is as examples of application of common standards, when countries could have their own way in implementing them because a more or less wide margin of appreciation is necessary, or because their legal system is differently organized. That is also why you can find in our opinions other examples, coming from various countries, because we try to find out mechanisms or solutions that could serve as references because of legal and sometimes cultural similarities. The compilation of Venice commission opinions and reports concerning prosecutors published in 2015 gives examples of the approach of an issue by the VC.

The item which will be discussed during this conference is one of those where various models exist in Europe and where the discussion shows the necessity not to recommend a model but to bring out the indispensable legal safeguards for citizens or legal persons.

We are not judges, as says the word “opinion” which is used for the documents issued by the VC. Our conclusions could sound critical and sometimes, the opinion could set out more negative aspects than positive ones, but their implementation is left to the national authorities involved. Anyhow, in assuming responsibility for using sometimes stern terms, the VC tries to be pedagogical. Our opinions leave more and more room for the explanations given by our interlocutors, in order to make sure our points and their points have been thoroughly considered.

Going back to the subject of this conference, we can note that our opinion on the Prosecutor’s office in Russia, published in 2005, was not reiterated, but since the role of the Prosecutor General appears as part of our opinions on more general issues. Our last opinions on the recent constitutional amendments deserve a special mention in this respect, because they gave us the opportunity to renew our knowledge and understanding of Russian institutions, notably the relations of the Prosecutor’s office with the constitutional court.

But I leave more comments on this point to our round table tomorrow.

Thank you for your attention.

