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Outcomes of the Workshop on the Code of Ethics for Prosecutors

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The views expressed in this document are those of the authors and do not necessarily reflect official positions of the Council of Europe.

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Introduction

Purpose of the meeting

The purpose of the workshop was to raise awareness of chief/senior managing prosecutors in the correct interpretation and application of the key articles of the Code of Ethics for Prosecutors; to discuss possible future developments for the Code in the criminal justice reform context; and to ensure common understanding of importance of the Code as an enforceable document.

Initial planning and division of tasks

At the preliminary discussions about the training/workshop event, an agreement was reached to conduct the workshop in a more interactive manner, relying mostly on discussions rather than delivering simple training on issues related to prosecutor's ethics. Ultimately, a mix of training/discussion was chosen as an optimal format and the issues were divided among the experts: the international expert, Mr. **Sam Makkan**, provided an introduction to international instruments related to the conduct of prosecutors and assisted local experts in international/UK experience with regard to issues discussed at the workshop; the local expert, Mr. **Malkhaz Ghughunishvili**, focused on current problems and practical implementation of the existing Code, as well as suggested improvements/developments in the context of the exercise of prosecution powers in criminal proceedings, the role of the Prosecution Council and a more detailed format of the Code of Ethics; the second local expert, Mr. **Giorgi Jokhadze**, addressed issues pertinent to ongoing reforms of the criminal justice system (new "adversarial" Code of Criminal Procedure, "public prosecution" schemes, discretionary prosecution), as well as discussed related internal instructions/guidelines that build upon provisions of the Code in greater detail.

1 Output 1: International experience

The major reason for focusing on international instruments and practices for the conduct of prosecutors is two-fold. One is to send the message that, besides the national Code of Ethics, the prosecutors of other countries do agree to some common, global standards of ethical behaviour that reflect general consensus on human rights and the rule of law; and secondly, to enhance understanding and correct interpretation of those articles of the Georgian Code of Ethics that directly reflect international standards, by providing comparative analysis of the two. Such a solution is natural since many provisions of the Code of Ethics are directly influenced by international standards on the conduct of prosecutors (the UN Guidelines on the Role of Prosecutors, in particular) and use the same language at times.

As a result, prosecutors have a better understanding of the international standards applicable to the prosecutor's conduct, which in turn enables them to reference these standards in proposing changes to the current Code of Ethics (some of those are deliberately left out of the current version of the Code).

2 Output 2: Correct interpretation and application of key provisions of the Code

Since prosecutors at the workshop represented the senior management of the respective prosecutor's offices and departments and, therefore, are at the "frontline" of implementing standards reflected in the Code of Ethics for Prosecutors, an important issue was to ensure the correct understanding of the Code that has been in force for almost 2 years. Besides general explanations as to the ideas behind many articles, discussions pursued two major directions of the Code: professional conduct at work (independence, collegiality, legal assistance, inappropriate conduct on official duty, just to name a few) and professional relations with the wider public (conduct in court, public statements, drunk driving, etc.). Specific cases were referenced as an illustration of the application of these provisions, aiming to enhance prosecutors' understanding of the restrictions that these provisions impose on them. References and extensive explanations were also given on other internal instructions and guidelines of the Prosecution Service (Bail Instruction, Human Rights Investigation, Court Appearance, etc.), which serve to expand and elaborate on rather brief provisions of the Code and are enforceable through daily case control schemes.

As a result, senior prosecutors have a better understanding of the legal and institutional framework that governs their daily performance, are able to correctly interpret the limits of their authority and have better defined expectations related to the enforceability of the Code and internal instructions.

3 Output 3: Proposed amendments and developments for the Code of Ethics

The last session aimed at further expanding the regulatory scope of the Code by proposing stronger and more detailed standards for prosecutorial conduct. These included both challenges under the current legislation (whether to introduce a detailed model of responsibility for misuse of prosecution powers in the criminal procedure, or whether to shift the current sole exercise of disciplinary authority by the Inspector General's Office to the publicly-represented Prosecution Council) and the challenges that will inevitably arise under the new Code of Criminal Procedure and current reform processes (whether there should be detailed ethical constraints on the prosecutor's discretionary powers to charge, whether to move to models of "public prosecution" currently implemented in several regions of Georgia as a pilot project, or to alter the structure and format of the Code altogether to reflect a more adversarial system of the new Code of Criminal Procedure). Although discussions on these matters have provoked few and mostly

negative responses from the prosecutors, who would understandably resist additional ethical “checks” on their current authority, a common consensus is that the Code is in need of further development.

As a result, even despite prosecutors’ opposition to immediate developments of the Code of Ethics that will further structure and strengthen their ethical standards, they have been encouraged to think about these possibilities and there is a common understanding that ethical standards for prosecutors will be inevitably higher with a transition to the more adversarial context.

4 Conclusion

The general outcomes of the workshop generally fell within initial expectations, as long as prosecutors have generally a better understanding of the Code of Ethics and were reminded of its enforceability, however, participants were not particularly active in discussions and were generally against amending the Code in its current version. Nevertheless, there is a general consensus that the Code should evolve towards higher standards of prosecutorial conduct, especially in the light of the ongoing reform towards a more adversarial system of criminal justice.