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## **BUREAU OF THE CONSULTATIVE COUNCIL OF EUROPEAN PROSECUTORS (CCPE-BU)**

**Report on the independence and impartiality  
of the prosecution services  
in the Council of Europe member States in 2017**

**Prepared by the Bureau of the CCPE  
following the proposal of the Secretary General of the Council of  
Europe**

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## List of abbreviations

<b>AEAJ</b>	Association of European Administrative Judges
<b>CCBE</b>	Council of Bars and Law Societies of Europe
<b>CCJE</b>	Consultative Council of European Judges of the Council of Europe
<b>CCPE</b>	Consultative Council of European Prosecutors of the Council of Europe
<b>EAJ</b>	European Association of Judges
<b>ECHR</b>	European Convention for the Protection of Human Rights and Fundamental Freedoms
<b>ECtHR</b>	European Court of Human Rights
<b>ENCJ</b>	European Network of Councils for the Judiciary
<b>GRECO</b>	Council of Europe Group of States against Corruption
<b>IAP</b>	International Association of Prosecutors
<b>MEDEL</b>	Association « Magistrats européens pour la démocratie et les libertés »
<b>PACE</b>	Parliamentary Assembly of the Council of Europe
<b>Rec(2000)19</b>	Recommendation Rec(2000)19 of the Committee of Ministers of the Council of Europe on the role of public prosecution in the criminal justice system
<b>Rec(2010)12</b>	Recommendation Rec(2010)12 of the Committee of Ministers of the Council of Europe on judges: independence, efficiency and responsibilities
<b>Venice Commission</b>	European Commission for Democracy through Law of the Council of Europe

*“Nothing is possible without individuals, nothing is durable without institutions”  
Jean Monnet*

## **I. Introduction: scope, purpose and limitations of the report**

1. The report has been prepared by the CCPE Bureau following the proposal by the Secretary General of the CoE to “develop the methodology and establish a regular in-house evaluation mechanism on the independence and impartiality of the judiciaries of the CoE member States”<sup>1</sup>.
2. Since the proposal of the Secretary General was to establish an evaluation mechanism which would be regular, the CCPE’s 11<sup>th</sup> plenary meeting<sup>2</sup> decided to issue such a report on a regular basis. The present report is therefore the first in the forthcoming series of reports, and it highlights concerns about and challenges to the independence and impartiality of the prosecution services in member States in 2017<sup>3</sup>.
3. The report provides a summary of information submitted by CCPE members and observers, as well as by prosecutorial bodies and associations, concerning alleged infringements in member States of standards governing the independence and impartiality of the prosecution services. The report is also based on information contained in the judgments of the European Court of Human Rights, opinions of the Venice Commission, reports of the Human Rights Commissioner and of the Parliamentary Assembly, and documents of other relevant bodies of the Council of Europe.
4. The CCPE Bureau wishes to signal certain limitations concerning the report. First of all, in accordance with the CCPE Terms of Reference for 2016-2017 and the corresponding decision of the CCPE plenary meeting in 2016<sup>4</sup>, the report does not contain ratings or rankings of member States’ performance, and it does not constitute a monitoring process or mechanism.
5. Secondly, the report does not claim to be a comprehensive and systematic research. For the preparation of the report, given the limited time and resources available, statistically representative surveys or similar exercises could not be conducted. Therefore, the reported concerns about challenges to the independence and impartiality of the prosecution services are not based on thorough and exhaustive research.

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<sup>1</sup> See the 2016 Report by the Secretary General of the Council of Europe “STATE OF DEMOCRACY, HUMAN RIGHTS AND THE RULE OF LAW. A security imperative for Europe”, page 7 (under proposed actions and recommendations).

<sup>2</sup> Held in Strasbourg on 17-18 November 2016.

<sup>3</sup> It should be noted that some of the current problems have roots in the previous years, therefore they are described in the present report, and in addition, since this is the first regular report, some other challenges to the independence and impartiality of the prosecution services originating before 2017 are also referred to.

<sup>4</sup> See the report on the 11<sup>th</sup> plenary meeting of the CCPE on 17-18 November 2016 in Strasbourg (document CCPE(2016)4, para 6).

6. Thirdly, the CCPE Bureau emphasises that it is not in a position to verify and confirm the factual basis of the events which are reported to have taken place. The Bureau has, however, taken great care to mention only information it considered credible and important. The report, therefore, must not be understood as a compilation of facts established by full and complete evidence.
7. In addition, the CCPE Bureau wishes to specify that the purpose of the report is not to point to persons or institutions that may bear responsibility for the alleged infringements. Listing the reported challenges and information concerning specific member States is not meant to criticise them; such listing is done in order to illuminate the overall picture. The overriding aim of the report is to show, where possible, where concerns about and challenges to the independence and impartiality of the prosecution services may be found, in which ways they may occur and what their effects on the justice system can be. Public trust in prosecutors may be undermined not only in cases of real, existing and convincingly established infringements, but also where there are sufficient reasons to cast doubt on prosecutorial independence and impartiality.
8. It should also be noted that if some countries, out of the 47 member States of the CoE, are not mentioned in the present report, this should not be interpreted in a positive or negative sense as regards the independence and impartiality of the prosecution services in those countries; it only means that no information has been provided to the CCPE as regards those countries for this report.
9. In accordance with the proposal of the Secretary General to focus on the independence and impartiality of the judiciary, the categories of alleged infringements are those related to:
  - a) organisational independence of the prosecution services from the executive and legislative powers;
  - b) functional independence: appointment and security of tenure of prosecutors;
  - c) impartiality of prosecutors, codes of ethics and professional conduct and disciplinary measures;
  - d) the economic basis for the smooth functioning of the system of prosecutor offices;
  - e) prosecutors and the media: public discussion and criticism of prosecutors.
10. The CoE has established an extensive framework of standards intended to guarantee the independence and impartiality of the prosecution services as one of the pillars for the rule of law. Numerous instruments have been adopted which set out the requirements for achieving these fundamental objectives.
11. The CCPE Bureau underlines the importance of examining any alleged infringements in the context of the ECHR and the case law of the ECtHR. In doing so, the CCPE Bureau emphasises that the right to a fair trial is secured through an independent and efficient judiciary and the proper exercise of prosecutorial duties and responsibilities.
12. In examining the alleged infringements, the CCPE Bureau has taken into consideration the following Recommendations of the Committee of Ministers of the CoE: Rec(2000)19 on the role of public prosecution in the criminal justice system, Rec(2000)10 on codes of conduct for public officials, Rec(2003)13 on the provision of information through the media in relation to criminal proceedings. The CCPE Bureau has also relied on its Opinions referring to the fundamental principles of the

prosecutorial profession, and on the European Guidelines on Ethics and Conduct for Public Prosecutors – “The Budapest Guidelines” of 2005. Further, the CCPE Bureau has taken into account the UN Guidelines on the Role of Prosecutors of 1990, as well as the Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors adopted by the International Association of Prosecutors in 1999.

## **II. Overview of relevant European standards**

### **A. Organisational independence of the prosecution services from executive and legislative powers**

13. Systems of criminal justice vary throughout Europe. The different systems are rooted in different legal cultures and there is no uniform model for all states. There are, for example, important differences between systems which are adversarial in nature and those which are inquisitorial<sup>5</sup>. Nevertheless, over the centuries, European criminal justice systems have borrowed extensively from each other so that today there are probably no pure systems which have not imported other important elements from outside... It is probably true to say that this borrowing across systems has led to a degree of convergence that is not always acknowledged<sup>6</sup>.
14. The most important convergence and what really brings all these systems together is the requirement of the independence of the prosecution services as a pre-requisite for the rule of law. Because of the serious consequences for the individual of a criminal trial, even one which results in an acquittal, the prosecutor must act fairly in deciding whether to prosecute and for what charges. A prosecutor, like a judge, may not act in a matter where he or she has a personal interest, and may be subject to certain restrictions aiming to safeguard his or her impartiality and integrity<sup>7</sup>.
15. Therefore, the independence and autonomy of the prosecution services constitute an indispensable corollary to the independence of the judiciary and they should be enhanced<sup>8</sup>. Such independence must be guaranteed by law, at the highest possible level, in a manner similar to that of judges. In countries, where the public prosecution is independent of the government, the state must take effective measures to guarantee that the nature and the scope of this independence are established by law<sup>9</sup>.
16. In countries, where the public prosecution is part of or subordinate to the government, or enjoys a different status to the one described above, the state must ensure that the nature and the scope of the latter's powers with respect to the public prosecution is also established by law, and that the government exercises its powers in a transparent

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<sup>5</sup> See Report on European Standards as regards the Independence of the Judicial System: Part II – the Prosecution Service, adopted by the Venice Commission at its 85th plenary session (Venice, 17-18 December 2010), para 7.

<sup>6</sup> Ibid., para 9.

<sup>7</sup> Ibid., paras 16-17.

<sup>8</sup> See CCPE Opinion No. 9(2014) on European norms and principles concerning prosecutors, Rome Charter, point IV.

<sup>9</sup> See Rec(2000)19, para 14. See also CCPE Opinion No. 9(2014) on European norms and principles concerning prosecutors, para 33.

way and in accordance with international treaties, national legislation and general principles of law<sup>10</sup>.

17. The ECtHR has considered it necessary to emphasise that “in a democratic society both the courts and the investigation authorities must remain free from political pressure”<sup>11</sup>. It follows that prosecutors should be autonomous in their decision making and, while cooperating with other institutions, should perform their respective duties free from external pressures or interferences from the executive power or the parliament, having regard to the principles of separation of powers and accountability<sup>12</sup>. The ECtHR has also referred to the issue of independence of prosecutors in the context of “general safeguards such as guarantees ensuring functional independence of prosecutors from their hierarchy and judicial control of the acts of the prosecution service”<sup>13</sup>.
18. States must ensure that prosecutors are able to perform their functions without intimidation, hindrance, harassment, improper interference or unjustified exposure to civil, penal or other liability<sup>14</sup>. Prosecutors should be in a position to prosecute, without obstruction, public officials for offences committed by them, particularly corruption, unlawful use of power and grave violations of human rights<sup>15</sup>.
19. Prosecutors must be independent not only from the executive and legislative authorities but also from other actors and institutions, including those in the areas of economy, finance and media. Prosecutors are also independent with regard to their cooperation with law enforcement authorities, courts and other bodies<sup>16</sup>.

### **B. Functional independence: appointment and security of tenure of prosecutors**

20. The CCPE has emphasised that the proximity and complementary nature of the missions of judges and prosecutors create similar requirements and guarantees in terms of their status and conditions of service, namely regarding recruitment, training, career development, salaries, discipline and transfer (which must be affected only according to the law or with their consent)<sup>17</sup>. For these reasons, it is necessary to

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<sup>10</sup> See Rec(2000)19, para 13, items a & b. For further safeguards, see also items from c to f. See also CCPE Opinion No.9(2014) on European norms and principles concerning prosecutors, para 33.

<sup>11</sup> See ECtHR *Guja v. Moldova* (Grand Chamber), no. 14277/04, para 86.

<sup>12</sup> See ECtHR *Kolevi v. Bulgaria*, no. 1108/02, 05/02/2010, paras 148-149; *Vasilescu v. Romania*, no. 53/1997/837/1043, 22/05/1998, paras 40-41; *Pantea v. Romania*, no. 33343/96, 03/09/2003, para 238; *Moulin v. France*, no. 37104/06, 23/02/2011, para 57.

<sup>13</sup> See ECtHR *Kolevi v. Bulgaria*, no. 1108/02, 05/02/2010, para 142.

<sup>14</sup> See Guidelines on the Role of Prosecutors adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990, para 4.

<sup>15</sup> See Rec(2000)19, para 16.

<sup>16</sup> See CCPE Opinion No. 9(2014) on European norms and principles concerning prosecutors, para 38-39.

<sup>17</sup> See CCPE Opinion No. 4(2009) on relations between judges and prosecutors in a democratic society, Bordeaux Declaration, Explanatory Note, para 37.

secure proper tenure and appropriate arrangements for the promotion, discipline and dismissal of prosecutors<sup>18</sup>.

21. The CCPE has pointed out that the appointment and termination of service of prosecutors should be regulated by the law at the highest possible level and by clear and understood processes and procedures<sup>19</sup>.
22. In particular, member States should take measures to ensure that:
  - a) the recruitment, the promotion and the transfer of prosecutors are carried out according to fair and impartial procedures and excluding discrimination on any ground such as gender, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth, or other status;
  - b) the careers of prosecutors, their professional evaluation, their promotions and their mobility are governed by transparent and objective criteria, such as competence and experience; recruitment bodies should be selected on the basis of competence and skills and should discharge their functions impartially and based on objective criteria;
  - c) the mobility of prosecutors is governed also by the needs of the service<sup>20</sup>.
23. Striving for impartiality, which in one form or another must govern the recruitment and career prospects of prosecutors, may result in arrangements for a competitive system of entry to the profession and the establishment of High Councils either for the whole judiciary, or just for prosecutors<sup>21</sup>.
24. Prosecutors should be appointed until retirement. Appointments for limited periods with the possibility of re-appointment bear the risk that the prosecutor will make his or her decisions not on the basis of the law but with the idea to please those who will re-appoint him or her<sup>22</sup>.
25. The manner in which the Prosecutor General is appointed and dismissed plays a significant role in the system guaranteeing the correct functioning of the prosecutor's office<sup>23</sup>. If governments have some control over the appointment of the Prosecutor General, it is important that the method of selection is such as to gain the confidence

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<sup>18</sup> See Report on European Standards as regards the Independence of the Judicial System: Part II – the Prosecution Service, adopted by the Venice Commission at its 85th plenary session (Venice, 17-18 December 2010), para 18; see also CCPE Opinion No. 9(2014) on European norms and principles concerning prosecutors, para 53.

<sup>19</sup> See CCPE Opinion No. 9(2014) on European norms and principles concerning prosecutors, para 52.

<sup>20</sup> See Rec(2000)19, para 5, items a, b and c; see also CCPE Opinion No. 9(2014) on European norms and principles concerning prosecutors, para 51.

<sup>21</sup> See Rec(2000)19, para 5, items a, b and c; see also CCPE Opinion No. 9(2014) on European norms and principles concerning prosecutors, para 54.

<sup>22</sup> See Report on European Standards as regards the Independence of the Judicial System: Part II – the Prosecution Service, adopted by the Venice Commission at its 85th plenary session (Venice, 17-18 December 2010), para 50.

<sup>23</sup> Ibid., paras 34-35; see also CCPE Opinion No. 9(2014) on European norms and principles concerning prosecutors, para 55.

and respect of the public as well as of the members of the judicial and prosecutorial system and legal profession. The Prosecutor General should be appointed either for an adequately long period or permanently to ensure stability of his/her mandate and make him/her independent of political changes<sup>24</sup>.

### **C. Impartiality of prosecutors, codes of ethics and professional conduct and disciplinary measures**

26. The CCPE has underlined that “prosecutors should adhere to the highest ethical and professional standards, always behaving impartially and with objectivity. They should thus strive to be, and be seen as, independent and impartial, should abstain from political activities incompatible with the principle of impartiality, and should not act in cases where their personal interests or their relations with the persons interested in the case could hamper their full impartiality”<sup>25</sup>.
27. Thus, prosecutors should carry out their functions based on objectivity, and they should treat people as equal before the law. They should neither favour anyone nor discriminate against anyone<sup>26</sup>, and should always fulfil their duties, irrespective of the connections and influence of the potential defendant and victim<sup>27</sup>.
28. The CCPE has also noted that prosecutors should be aware of the dangers of corruption and should never ask for, accept or receive benefits or any advantage in the exercise of their functions. Through their impartiality, prosecutors must ensure the confidence of the public in the prosecution services<sup>28</sup>.
29. In particular, prosecutors should avoid secondary occupations and other tasks in which their impartiality might be endangered. They must be able to identify situations that pose a conflict of interest and, if necessary, recuse themselves from handling their tasks in such cases<sup>29</sup>.
30. In order to ensure the impartiality of prosecutors, it is important to take into account not only the external independence of the prosecution services from other state powers, but also individual prosecutors’ ability to take objective decisions free from undue pressures within the prosecutorial system. The CCPE has agreed with the Venice Commission that “it is essential to develop appropriate guarantees of non-interference in the prosecutor’s activities. Non-interference means ensuring that the prosecutor’s

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<sup>24</sup> See Report on European Standards as regards the Independence of the Judicial System: Part II – the Prosecution Service, adopted by the Venice Commission at its 85th plenary session (Venice, 17-18 December 2010), para 37; see also CCPE Opinion No. 9(2014) on European norms and principles concerning prosecutors, para 56; see also Human Rights Council, Report of the Special Rapporteur on the independence of judges and lawyers, Gabriela Knaul, A/HRC/20/19, 7 June 2012, para 65.

<sup>25</sup> See CCPE Opinion No. 9(2014) on European norms and principles concerning prosecutors, Rome Charter, point VI.

<sup>26</sup> See CCPE Opinion No. 9(2014) on European norms and principles concerning prosecutors, para 92.

<sup>27</sup> The ECtHR case law shows where this has been in doubt, see, for example, *Enukidze and Girvliani v. Georgia*, no. 25091/07, 26 April 2011; *Kavaklıoğlu and others v. Turkey*, no. 15397/02, 6 October 2015.

<sup>28</sup> See CCPE Opinion No. 9(2014) on European norms and principles concerning prosecutors, para 93.

<sup>29</sup> *Ibid.*, para 93.

activities, in particular in trial procedures, are free of external pressure as well as from undue or illegal internal pressures from within the prosecution system”<sup>30</sup>.

31. In this regard, the CCPE has noted that “a hierarchical structure is a common aspect of most public prosecution services, given the nature of the tasks they perform. Relationships between the different layers of the hierarchy must be governed by clear, unambiguous and well-balanced regulations, and an adequate system of checks and balances must be provided for”<sup>31</sup>. In a State governed by the rule of law, when the structure of the prosecution service is hierarchical, effectiveness of prosecution is, regarding public prosecutors, strongly linked with transparent lines of authority, accountability and responsibility<sup>32</sup>. In a hierarchical system, the superior prosecutor must be able to exercise appropriate control over the decisions of the office, subject to proper safeguards for the rights of individual prosecutors<sup>33</sup>.
32. However, the traditions and culture of a member State are also important factors that should not be disregarded<sup>34</sup>. A strong tradition of independence can protect prosecutors<sup>35</sup>. In some member states, especially in those with more recently drafted constitutions, the independence of prosecutors<sup>36</sup> and the prosecution is guaranteed in the constitution<sup>37</sup>, in other member States, in statutory law<sup>38</sup>. In some countries, there are separate Councils for Prosecutors<sup>39</sup> with different competences, while in other countries, there is a joint Council for Judges and Prosecutors<sup>40</sup>.
33. The CCPE has further underlined that “prosecutors must earn the trust of the public by demonstrating in all circumstances an exemplary behaviour. They must treat people

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<sup>30</sup> Ibid., para 42; see also Report on European Standards as regards the Independence of the Judicial System: Part II – the Prosecution Service, adopted by the Venice Commission at its 85th plenary session (Venice, 17-18 December 2010), paras 31-32.

<sup>31</sup> See CCPE Opinion No. 9(2014) on European norms and principles concerning prosecutors, para 40.

<sup>32</sup> Ibid., para 41.

<sup>33</sup> Ibid., para 42.

<sup>34</sup> See the Joint Report of the CCJE/CCPE Bureaus on challenges for judicial independence and impartiality in the member states of the Council of Europe, 2016, document SG/Inf(2016)3rev, para 16. The report shows the importance both of the legal framework as well as of traditions for the independence of prosecutors.

<sup>35</sup> As in Norway: see the Joint Report of the CCJE/CCPE Bureaus on challenges for judicial independence and impartiality in the member states of the Council of Europe, 2016, document SG/Inf(2016)3rev, footnote 47.

<sup>36</sup> As in Albania: see the Joint Report of the CCJE/CCPE Bureaus on challenges for judicial independence and impartiality in the member states of the Council of Europe, 2016, document SG/Inf(2016)3rev, footnote 48.

<sup>37</sup> As in Croatia, Greece, Hungary, Slovenia: see the Joint Report of the CCJE/CCPE Bureaus on challenges for judicial independence and impartiality in the member states of the Council of Europe, 2016, document SG/Inf(2016)3rev, footnote 49.

<sup>38</sup> As in Estonia, Poland, Romania, Ukraine: see the Joint Report of the CCJE/CCPE Bureaus on challenges for judicial independence and impartiality in the member states of the Council of Europe, 2016, document SG/Inf(2016)3rev, footnote 50.

<sup>39</sup> As in Albania, Croatia: see the Joint Report of the CCJE/CCPE Bureaus on challenges for judicial independence and impartiality in the member states of the Council of Europe, 2016, document SG/Inf(2016)3rev, footnote 51.

<sup>40</sup> As in Belgium, Bosnia and Herzegovina, Bulgaria, France, Italy, Romania, Spain, Turkey: see the Joint Report of the CCJE/CCPE Bureaus on challenges for judicial independence and impartiality in the member states of the Council of Europe, 2016, document SG/Inf(2016)3rev, footnote 52.

fairly, equally, respectfully and politely, and they must at all times adhere to the highest professional standards and maintain the honour and dignity of their profession, always conducting themselves with integrity and care”<sup>41</sup>.

34. “The sharing of common legal principles and ethical values by all prosecutors involved in the legal process is essential for the proper administration of justice<sup>42</sup> and for the respect of the highest professional standards. Prosecutors must be able to identify ethical problems in their work and to refer to clear principles to solve them”<sup>43</sup>.
35. “Codes of professional ethics and of conduct should be adopted and made public, based on international standards developed by the United Nations, as well as those set out in the European Guidelines on Ethics and Conduct for Public Prosecutors (The Budapest Guidelines) adopted by the Conference of Prosecutors General of Europe on 31 May 2005”<sup>44</sup>.

#### **D. The economic basis for the smooth functioning of the system of prosecutor offices**

36. The CCPE has emphasised that the provision of adequate organisational, financial, material and human resources contributes to ensuring independence. Particularly in times of economic difficulty, sufficient resources should be assigned to provide a quality service<sup>45</sup>.
37. Where the management of resources is entrusted to the prosecution service, it has the duty to do it with the utmost rigour and in a transparent manner<sup>46</sup>. For this purpose, as well as in order to maximise the results with the given means, there should be relevant measures in place; prosecutors should also receive adequate training and be supported by qualified specialists<sup>47</sup>.
38. In any case, whether the prosecution services have management autonomy or not, they should have the possibility to estimate their needs, negotiate their budgets and decide how to use the funds allocated in a transparent manner, in order to achieve the objectives of speedy and quality justice<sup>48</sup>.

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<sup>41</sup> Conference of Prosecutors General of Europe, 6th session, European Guidelines on Ethics and Conduct for Public Prosecutors – “The Budapest Guidelines”, CPGE(2005)05, 31 May 2005, item II; see also CCPE Opinion No. 9(2014) on European norms and principles concerning prosecutors, para 97.

<sup>42</sup> See CCPE Opinion No. 4(2009) on relations between judges and prosecutors in a democratic society, Bordeaux Declaration, para 10.

<sup>43</sup> See CCPE Opinion No. 9(2014) on European norms and principles concerning prosecutors, para 98.

<sup>44</sup> Ibid., para 99.

<sup>45</sup> See CCPE Opinion No. 4(2009) on the relations between judges and prosecutors in a democratic society, Bordeaux Declaration, para 4. See also CCPE Opinion No. 7(2012) on the management of the means of prosecution services, recommendation (i). See also CCPE Opinion No. 9(2014) on European norms and principles concerning prosecutors, para 116.

<sup>46</sup> See CCPE Opinion No. 7(2012) on the management of the means of prosecution services, para 51.

<sup>47</sup> See CCPE Opinion No. 9(2014) on European norms and principles concerning prosecutors, para 117.

<sup>48</sup> See CCPE Opinion No. 7(2012) on the management of the means of prosecution services, recommendation (ii). See also CCPE Opinion No. 9(2014) on European norms and principles concerning prosecutors, para 118.

39. The CCPE has also noted that prosecutors should have the necessary and appropriate means to exercise their missions which are fundamental for the rule of law<sup>49</sup>. States should take measures to ensure that prosecutors have reasonable conditions of service as regards matters such as remuneration, tenure, pension commensurate with their crucial role, as well as an appropriate age of retirement<sup>50</sup>.
40. In particular, the conditions of service of prosecutors should reflect the importance and dignity of the office, and the respect attached to it<sup>51</sup>. The appropriate remuneration of prosecutors implies recognition of their important function and role and can also reduce the risk of corruption<sup>52</sup>. Bonuses, where they exist, should be based on criteria which are completely objective and transparent<sup>53</sup>.
41. In recent years, many member States have suffered economic crises resulting in severe cuts in the budgets of judicial systems, including prosecution, frozen salaries and increased workloads for prosecutors. In the case of a severe economic downturn, prosecutors, like all other members of society, have to live within the economic position of the society they serve. However, chronic underfunding should be regarded by society as a whole as unacceptable<sup>54</sup>. It undermines the foundations of a democratic society governed by the rule of law<sup>55</sup>. The general principles and standards of the CoE place a duty on member States to make financial resources available that match the needs of different judicial systems, including the prosecution services<sup>56</sup>.

#### **E. Prosecutors and media: public discussion and criticism of prosecutors**

42. The CCPE has emphasised that transparency in the exercise of prosecutors' functions is a key component of the rule of law and one of the important guarantees of a fair trial. Justice must be done and must be seen to be done. In order to ensure that, the media should be enabled to report on criminal and other legal proceedings<sup>57</sup>.

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<sup>49</sup> See CCPE Opinion No. 7(2012) on the management of the means of prosecution services, para 36. See also CCPE Opinion No. 5(2010) on the public prosecutor and the juvenile justice, Declaration of Yerevan, para 19. See also CCPE Opinion No.9(2014) on European norms and principles concerning prosecutors, para 74.

<sup>50</sup> See Rec(2000)19, para 5d. See also CCPE Opinion No. 9(2014) on European norms and principles concerning prosecutors, para 75.

<sup>51</sup> See Rec(2000)19, para 5, item d. See also CCPE Opinion No. 9(2014) on European norms and principles concerning prosecutors, para 76.

<sup>52</sup> See Report on European Standards as regards the Independence of the Judicial System: Part II – the Prosecution Service, adopted by the Venice Commission at its 85th plenary session (Venice, 17-18 December 2010), para 69. See also Human Rights Council, Report of the Special Rapporteur on the independence of judges and lawyers, Gabriela Knaul, A/HRC/20/19, 7 June 2012, para 71. See also CCPE Opinion No. 9(2014) on European norms and principles concerning prosecutors, para 76.

<sup>53</sup> See CCPE Opinion No. 9(2014) on European norms and principles concerning prosecutors, para 76.

<sup>54</sup> See the Joint Report of the CCJE/CCPE Bureaus on challenges for judicial independence and impartiality in the member states of the Council of Europe, 2016, document SG/Inf(2016)3rev, para 24.

<sup>55</sup> See CCJE Opinion No. 18(2015), para 51.

<sup>56</sup> See Rec(2010)12, para 32. See also CCJE Opinion No. 2(2001), para 4; Opinion No. 10(2007), para 37; Opinion No. 17(2014), para 35.

<sup>57</sup> See CCPE Opinion No. 8(2013) on relations between prosecutors and the media, para 30.

43. In addition, the CCPE has recognised<sup>58</sup> that prosecutors also have the right to freedom of expression<sup>59</sup>, while having to respect the professional secrecy, the duty of confidentiality, the duty of discretion<sup>60</sup> and objectivity. When prosecutors appear in the media in any capacity, they should pay attention to the risks that may arise to the impartiality and integrity of the prosecution service<sup>61</sup>.
44. The CCPE has also noted<sup>62</sup> that it is widely recognised that the freedom of the press should be guaranteed during legal proceedings<sup>63</sup>. According to the case law of the ECtHR under Article 10 of the ECHR, the press has a duty to impart information or ideas on matters of public interest<sup>64</sup> which includes the right of the public to receive them, enabling the press to play its role as a “public watchdog” (according to the terminology of the ECtHR). In doing so, the press will be protected all the more if it contributes to the discussion of issues that have a legitimate public interest<sup>65</sup>.
45. During their communications with the media, prosecutors should seek to ensure that the freedom of expression and the freedom of the press do not violate the lawful rights and interests of individuals (including vulnerable persons such as minors and juveniles, victims, defendants’ family members), the requirement of data protection and the obligation of confidentiality<sup>66</sup>.
46. The right of the public to receive information should also be secured<sup>67</sup>. However, the way this is done may depend on, and may be influenced by, the specific circumstances

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<sup>58</sup> See CCPE Opinion No. 8(2013) on relations between prosecutors and the media, para 19.

<sup>59</sup> The ECtHR reiterates that the protection of Article 10 extends to the workplace in general and to public servants in particular (*Guja v. Moldova* (Grand Chamber), no 14277/04, § 52, 12 February 2008). In the case of *Harabin v. Slovakia* (no 58688/11, § 149, 20 November 2012), the ECtHR establishes that belonging to the judiciary (in that case, the applicant was the President of the Supreme Court), does not deprive the applicant of the protection of Article 10.

<sup>60</sup> The ECtHR is “mindful that employees have a duty of loyalty, reserve and discretion to their employer. This is particularly so in the case of civil servants since the very nature of civil service requires that a civil servant is bound by a duty of loyalty and discretion (*Guja v. Moldova* (Grand Chamber), no. 14277/04, § 70, 12 February 2008). Disclosure by civil servants of information obtained in the course of work, even on matters of public interest, should therefore be examined in the light of their duty of loyalty and discretion (*Kudeshkina v. Russia*, no. 29492/05, § 85, 26 February 2009; see also *Guja v. Moldova* (Grand Chamber), no. 14277/04, §§ 72-78, 12 February 2008). More specifically, in the case of *Ozpinar v. Turkey*, 20999/04, 19 October 2010, the ECtHR reiterates that it is legitimate for a State to impose on public servants, on account of their status, a duty of reserve in respect of Article 10 or a duty of discretion in the expression of their religious beliefs in public (*Kurtulmuş v. Turkey* (dec.), no 65500/01, 24 January 2006). These principles apply, *mutatis mutandis*, to Article 8 of the ECHR. In this regard, the ECtHR observes that the ethical obligations of judges might encroach upon their private life when their conduct – even though private in nature - tarnished the image or the reputation of the judiciary.

<sup>61</sup> See CCPE Opinion No. 8(2013) on relations between prosecutors and the media, para 19.

<sup>62</sup> *Ibid.*, para 20.

<sup>63</sup> See ECtHR *The Sunday Times v. United Kingdom* (No. 1) (no. 6538/74, § 65, 26 April 1979), in which the ECtHR has established that “the general principles stemming from Article 10 case-law “are equally applicable to the field of the administration of justice, which serves the interests of the community at large and requires the co-operation of an enlightened public”.

<sup>64</sup> See ECtHR *Observer et Guardian v. UK*, no. 13585/88, 26 November 1991.

<sup>65</sup> See ECtHR *Bladet Tromsø and Stensaas v. Norway* (Grand Chamber), no. 21980/93, 20 May 1999.

<sup>66</sup> See CCPE Opinion No. 8(2013) on relations between prosecutors and the media, para 21.

<sup>67</sup> See the ECtHR *Arrigo and Vella v. Malta* (dec.), no. 6569/04, 10 May 2005; see also *Yordanova and Toshev v. Bulgaria*, no. 5126/05, § 53, 2 October 2012.

of the particular legal proceedings and may be subject to restrictions as appropriate to ensure that basic principles are respected<sup>68</sup>.

47. Prosecutors should seek to ensure that information provided to the media does not undermine the integrity of investigations and prosecution or the purpose of the investigations. Nor should it breach the rights of third parties, nor influence those involved in the investigation or prosecution. It should not influence the outcome of legal proceedings<sup>69</sup>.
48. At the same time, as the CCPE has noted that in some member States politicians have made comments that showed little understanding of the role of independent judges and prosecutors<sup>70</sup>. Therefore, when an individual prosecutor is subject to an unfair attack through the media, he/she should be given the right to have the contested information rectified or enjoy other legal remedies, according to the national law. Nevertheless, in such cases, as well as when false information is spread about persons or events involved in the proceedings which he/she deals with, any reaction should preferably come from the head or a spokesperson of the prosecution office and, in major cases, by the Prosecutor General or the highest authority in charge of the service or the highest state authority. Such an institutional reaction minimises the need for the prosecutor concerned to make use of his/her right of response guaranteed to every person, and the risk of excessive “personalisation” of the conflict<sup>71</sup>.

### **III. Country specific issues concerning the independence and impartiality of the prosecution services<sup>72</sup>**

#### **A. Organisational independence of the prosecution services from executive and legislative powers**

49. The CCPE member in respect of **Bosnia and Herzegovina** refers to the quite complicated judicial structure of Bosnia and Herzegovina, in which the offices of prosecutors act as particular state bodies at different levels. Those levels in the Federation of Bosnia and Herzegovina are the “Kantons” and the “Federation”, in the “Rupublika Srpska” the “Districts” and the “Republika”. The “Brcko-District” has its own prosecutor’s office. On the highest level of the state “Bosnia and Herzegovina”, the State Prosecutor’s Office acts as a special body too. All these offices perform their duty independent of each other and on one’s own responsibility according to the Constitution and the laws of Bosnia and Herzegovina.

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50. The CCPE member in respect of **Greece** states that justice is independent of the legislative and executive. The prosecutors, according to the Constitution, are members

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<sup>68</sup> See CCPE Opinion No. 8(2013) on relations between prosecutors and the media, para 22.

<sup>69</sup> Ibid., para 23.

<sup>70</sup> See the Joint Report of the CCJE/CCPE Bureaus on challenges for judicial independence and impartiality in the member states of the Council of Europe, 2016, document SG/Inf(2016)3rev, para 27.

<sup>71</sup> See CCPE Opinion No. 8(2013) on relations between prosecutors and the media, para 45. See also CCPE Opinion No. 9(2014) on European norms and principles concerning prosecutors, para 111.

<sup>72</sup> Please note that all information which is referred to in this Chapter was submitted to the CCPE in April-August of 2017.

of the judiciary. In this context, the prosecution services constitute judicial authorities independent from courts and the executive. Within the performance of their duties, prosecutors are fully independent, acting under no obligation other than the law and their conscience. However, sometimes, the legislator adopts new legislation with an impact on ongoing or final criminal cases, such as suspension of the criminal proceedings or enforcement of penalties. These legislative acts can be seen as an indirect intervention by the legislature.

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51. The CCPE member in respect of **Luxembourg** states that the independence, although it exists for many years, is not currently rooted in either the Constitution, or in the Code of Criminal Procedure or in the law of 7 March 1980 on the organisation of the judiciary.
52. Thus, Article 70 of the amended Law on Judicial Organisation provides that the functions of the prosecution services must be exercised, under the authority of the Minister of Justice, by the Prosecutor General of State, and under his/her supervision and guidance, by the prosecutors of his/her service, state prosecutors and their deputies. In addition, the deputy prosecutors perform their functions also under the supervision and guidance of state prosecutors.
53. Article 19 of the Code of Criminal Procedure stipulates that the Minister of Justice may inform the Prosecutor General of State of any offenses against criminal law of which he/she is aware, require him/her to prosecute or to resort to such competent jurisdiction as the Minister considers appropriate. In fact, if the Minister of Justice can order the prosecution service to institute a criminal prosecution, he/she cannot give obligatory orders to refrain from a prosecution. It should be noted that in the last thirty years, there was only one prosecution order following the decision of the prosecutor to dismiss the case according to the principle of “opportunité des poursuites”.
54. It is therefore evident that, within the framework of the present constitutional proposal for revision of the Constitution, it is intended to anchor the independence of the prosecution service together with that of the territorial prosecutors in a particular paragraph of a new article.
55. The aim is to adapt the texts to the long-standing practice that no Minister of Justice intervenes in a pending case, since the prosecution service is not under the supervision of the Minister. At the same time, it is proposed to delete the related articles from both the Code of Criminal Procedure and the amended Law on Judicial Organisation. On 3 March 2017, the governmental council voted in favour of separating these provisions from the overall revision of the Constitution in order to advance the process and, in particular, to create a Supreme Council of Justice.

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56. The CCPE member in respect of **Poland** states that, given that the prosecution service is not part of the system of constitutional bodies, it appears to be an institution whose place in the judicial set-up has not been clearly defined by Polish legislation.
57. The Law on the Prosecution Service of 28 January 2016 alters the structure of the prosecution service in a substantial manner. The legislator has returned to the situation

where the Minister of Justice is acting as Prosecutor General. At an organisational level, the prosecution service remains separate from the Ministry of Justice and its relations with the executive branch are carried out by the so-called "double hat" formula, the Minister of Justice - Prosecutor General.

58. In April 2016, the CoE Secretary General visited Poland and met, among others, with the Minister of Justice/Prosecutor General Mr Zbigniew Ziobro, and discussed the merger of the Ministry of Justice and the Prosecutor General's Office. The Minister of Justice/Prosecutor General indicated that the change was made in accordance with Rec(2000)19, and that there were different models in Europe. The Secretary General underlined in this respect the importance of providing guarantees against political interference in individual cases<sup>73</sup>.
59. On 27 May 2017, the General Assembly of members of the Association of Polish prosecutors – Lex Super Omnia - adopted a resolution on the assessment of the functioning of the prosecution under the Law on Prosecution of 28 January 2016 that entered into force on 4 March 2016. The resolution criticised the legislative process that had led to adopting the act, its content, and the effect that the law was having on the functioning of the Polish public prosecution<sup>74</sup>.
60. The Association expressed its opposition to involving the prosecution in actions that violate the Constitution and undermine the principle of separation of powers, such as initiating or accepting by the Minister of Justice/Prosecutor General proposals for laws that are contrary to the Constitution, ignoring the statutory duty to ensure the participation of the public prosecutor in proceedings before the Constitutional Tribunal, or refusing to prosecute the refusal of publication of the judgments of the Constitutional Tribunal<sup>75</sup>.
61. On 4 May 2017, the Monitoring Committee of the CoE Parliamentary Assembly requested the Opinion of the Venice Commission on the amended Act on the Public Prosecutor's Office of Poland. On 25-26 October 2017, a delegation of the Venice Commission met the Polish authorities and other stakeholders in the framework of the preparation of this Opinion. The draft Opinion is on the agenda of the December 2017 plenary session of the Venice Commission.

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62. As regards **Romania**, the CCPE was informed of a recent Memorandum for the Rejection of the Amendments to the "Laws of Justice" signed by 3600 Romanian magistrates – including judges and prosecutors - and addressed to the Government of Romania, the Prime Minister and the Minister of Justice<sup>76</sup>.

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<sup>73</sup> See Speaking Notes of the Secretary General to the 1253rd meeting of the Ministers' Deputies (13 April 2016), page 3.

<sup>74</sup> See at <http://www.inpris.pl/en/whats-going-on-at-inpris/article/t/lex-super-omnia-resolution-of-27-may-2017>

<sup>75</sup> Ibid.

<sup>76</sup> Communication sent to the CoE on 9 October 2017: see also at <http://www.forumuljudecatorilor.ro/index.php/archives/2821> ; at <https://www.agerpres.ro/english/2017/10/11/civil-society-representatives-stage-thank-you-flashmob-for-magistrates-opposing-judicial-overhaul-laws-13-36-09> ;

63. The Memorandum states that the Minister of Justice proposed a set of amendments to the “laws of justice” (Law 303/2004, Law 304/2004 and Law 317 / 2004), without impact studies and without prior consultation on key legislative issues. The draft was communicated to the Superior Council of Magistracy.
64. In its meeting on 28 September 2017, the Plenum of the Superior Council of Magistracy issued an unfavourable opinion on the set of amendments, taking into account the votes cast in General Assemblies of judges and prosecutors, held in courts and prosecutor’s offices, where they rejected the amendments.
65. The Memorandum calls for the withdrawal of the amendments and for dialogue with magistrates, the Superior Council of Magistracy, and professional associations of judges and prosecutors, in order to improve the legislative framework.

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66. The CCPE Bureau adopted, on 22 July 2016, a statement following the attempted “coup d’état” in **Turkey**. It underlined that a democratically elected authority cannot be reversed by a military coup. The Bureau indicated that it had been reported that, following these events, hundreds of prosecutors had been immediately imprisoned. The Bureau noted that proceedings against individuals, including prosecutors, who are suspected of involvement in the attempted coup, must comply strictly with the rule of law, and always be respectful of individual fundamental rights in accordance with the ECHR. The Bureau of the CCPE called on the Turkish authorities to respect the rule of law in all circumstances<sup>77</sup>.
67. However, the situation does not appear to have improved, and this is reflected by the observation of the AEAJ which stated that the High Council of Judges and Prosecutors (HSYK) was no longer an independent body, but under broad political influence. The AEAJ referred to the suspension by the ENCJ of the observer status of the HSYK with the ENCJ in December 2016<sup>78</sup>. In its decision, the ENCJ referred to what it saw as the lack of the independence of the HSYK from the executive and legislature.
68. The CoE Commissioner for Human Rights stated on 7 June 2017 that “following the recently adopted constitutional amendments, which changed the system for its formation, Turkey’s new Council of Judges and Prosecutors (HSYK) is sworn in today. With four members appointed directly by the President of Turkey and seven members elected by Parliament without a procedure guaranteeing the involvement of all political parties and interests, I am concerned that the new composition of the HSYK does not offer adequate safeguards for the independence of the judiciary and considerably increases the risk of it being subjected to political influence. To avert such risk, European standards foresee that at least half of the members of judicial councils that are in charge of overseeing the professional conduct of judges and prosecutors (including appointments, promotions, transfers, disciplinary measures and dismissals of judges and public prosecutors) should be elected by the judiciary from within the

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and at <http://inquamphotos.com/photo/58152/BUCURESTI—TMB—SUSTINERE—MAGISTRATI—MEMORANDUM.html#.Wd4cilFx3IU>.

<sup>77</sup> See at <https://www.coe.int/en/web/ccpe/-/following-the-events-that-have-taken-place-in-turkey-in-the-recent-days-the-bureau-of-the-consultative-council-of-european-prosecutors-ccpe-expresses->

<sup>78</sup> See the report of the AEAJ of 21 August 2017 for the CCJE members.

profession. Against this background, I will follow the work of the HSYK and the extent to which it ensures in practice adherence to the rule of law and the independence of the judiciary, without which there can be no effective protection of human rights in Turkey”<sup>79</sup>.

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69. The CCPE member in respect of **Ukraine** states that, after the Law “On the Prosecutor’s Office” entered into force, district prosecutors’ offices were transformed into local prosecutor’s offices. The territorial jurisdiction of these was determined by an annex to the Law. Concerns as regards the organisational independence of prosecutors’ offices from the executive branch include inconsistency of the territorial jurisdiction of local prosecutors’ offices with the administrative-territorial division of the state, as a result of which one local prosecutor’s office may be located in the territory of several towns and districts, which significantly complicates the interaction of a prosecutor with courts, law enforcement bodies, and public and local authorities, these being most often located in another territory.
70. The possibility of the participation of the Prosecutor General’s Office in the legislative process is also of interest. The Prosecutor General’s Office is not vested with the right of legislative initiative by Article 93 of the Constitution of Ukraine; however, the participation in the preparation and discussion of draft bills regarding activities carried out by the prosecutor’s office is often necessary. Therefore, it would be appropriate to provide for the discussion of such draft bills, for example, in the Committees of the Verkhovna Rada (Parliament) of Ukraine, with the participation of a representative of the prosecutor’s office.

### **B. Functional independence: appointment and security of tenure of prosecutors**

71. The CCPE member in respect of **Hungary** states that, according to GRECO, the immunity of prosecutors should be limited to activities relating to their participation in the administration of justice (“functional immunity”). The Prosecutor General and prosecutors enjoy the same level of immunity as members of parliament. Such wide immunity would appear to go too far. The Prosecutor General informed the GRECO delegation that in practice, immunity for prosecutors is systematically waived. Notwithstanding such a practice, the immunity of prosecutors should be reduced to a functional immunity only.

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72. The CCPE member in respect of **Iceland** states that one of the main concerns of the prosecution service is the tenure of prosecutors. In particular, GRECO has

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<sup>79</sup> See at [http://www.coe.int/en/web/commissioner/country-monitoring/turkey/-/asset\\_publisher/IK6iqfNE1t0Z/content/turkey-new-council-of-judges-and-prosecutors-does-not-offer-adequate-safeguards-for-the-independence-of-the-judiciary?inheritRedirect=false&redirect=http%3A%2F%2Fwww.coe.int%2Fen%2Fweb%2Fcommissioner%2Fcountry-monitoring%2Fturkey%3Fp\\_p\\_id%3D101\\_INSTANCE\\_IK6iqfNE1t0Z%26p\\_p\\_lifecycle%3D0%26p\\_p\\_state%3Dnormal%26p\\_p\\_mode%3Dview%26p\\_p\\_col\\_id%3Dcolumn-1%26p\\_p\\_col\\_pos%3D1%26p\\_p\\_col\\_count%3D2](http://www.coe.int/en/web/commissioner/country-monitoring/turkey/-/asset_publisher/IK6iqfNE1t0Z/content/turkey-new-council-of-judges-and-prosecutors-does-not-offer-adequate-safeguards-for-the-independence-of-the-judiciary?inheritRedirect=false&redirect=http%3A%2F%2Fwww.coe.int%2Fen%2Fweb%2Fcommissioner%2Fcountry-monitoring%2Fturkey%3Fp_p_id%3D101_INSTANCE_IK6iqfNE1t0Z%26p_p_lifecycle%3D0%26p_p_state%3Dnormal%26p_p_mode%3Dview%26p_p_col_id%3Dcolumn-1%26p_p_col_pos%3D1%26p_p_col_count%3D2)

recommended in its IVth Evaluation Round that measures be taken to ensure security of tenure for all prosecutors<sup>80</sup>. The recommendation has not yet been implemented<sup>81</sup>.

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73. Following the adoption by the CCPE Bureau, on 22 July 2016, of a statement following the attempted “coup d’état” in **Turkey** and proceedings against individuals, including prosecutors, who are suspected of involvement in the attempted coup<sup>82</sup>, the situation does not appear to have improved.
74. The Venice Commission has concluded that “the decision-making process which led to the dismissals of public servants<sup>83</sup> was deficient in the sense that the dismissals were not based on individualised reasoning, which made any meaningful *ex post* judicial review of such decisions virtually impossible”<sup>84</sup>. “Collective dismissals “by lists” attached to the decree laws (and similar measures) appear to have arbitrarily deprived thousands of people of judicial review of their dismissals. The Venice Commission is particularly concerned by the apparent absence of access to justice for those public servants who have been dismissed directly by the decree laws”<sup>85</sup>.
75. As the Venice Commission pointed out, “another example is the decision of the HCJP<sup>86</sup> of 31 August 2016, no. 2016/428. By this decision, the HCJP ordered dismissals of several thousands of judges and prosecutors and listed their names in the appendix. This decision was adopted on the basis of the extraordinary powers given to the HCJP by Article 3 (1) of Decree Law no. 667”<sup>87</sup>.
76. Most recently, the PACE, at its autumn session of 2017, “reiterates its deepest concern about the scope of measures taken under the state of emergency” and calls on the Turkish authorities “to put an immediate end to the collective dismissal of judges and prosecutors, as well as other civil servants, through decree laws and ensure that those who have already been dismissed will have their cases reviewed by a “tribunal” fulfilling the requirements of Article 6 of the ECHR”<sup>88</sup>.
77. Judges and prosecutors in Turkey who were dismissed following the failed coup attempt in 2016 are able to seek redress before the Turkish Council of State. The European Court of Human Rights, while stressing that this conclusion did not prejudice a possible re-examination of the question of the effectiveness of the remedy in question and the ability of the national courts to establish consistent case law compatible with Convention requirements, has since found that the remedy before the Council of State

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<sup>80</sup> See at <https://www.coe.int/en/web/greco/evaluations/iceland> .

<sup>81</sup> See at <https://rm.coe.int/16806c67c5>, at <https://rm.coe.int/16806c67c7> and at <https://rm.coe.int/16806c67c9> .

<sup>82</sup> For more information, see para 68 of this report.

<sup>83</sup> Including prosecutors: see Venice Commission, Opinion on Emergency Decree Laws CDL-AD(2016)037, footnote 59.

<sup>84</sup> *Ibid.*, para 140.

<sup>85</sup> *Ibid.*, paras 227-228.

<sup>86</sup> High Council of Judges and Prosecutors of Turkey.

<sup>87</sup> See Venice Commission, Opinion on Emergency Decree Laws CDL-AD(2016)037, para 137.

<sup>88</sup> See the PACE Resolution 2188 (2017) Provisional version “New threats to the rule of law in Council of Europe member States: selected examples”, paras 12 and 12.4.

is a priori accessible and that there was no evidence to suggest that it was not capable of providing appropriate redress<sup>89</sup>.

78. The AEAJ has drawn attention to the ongoing situation of judiciary in Turkey and alleged that mass dismissals (more than 4000 judges and prosecutors) and mass arrests (approximately 2450 judges and prosecutors) have been made. The AEAJ states that dismissal decisions are not based on a fair trial, nor issued in an individualised way and do not comply with basic requirements of a judicial decision. The AEAJ notes that the arrest decisions against judges and prosecutors lack fundamental rights granted under Articles 5 and 6 of the ECHR and that the emergency legislation is excessive<sup>90</sup>.

### **C. Impartiality of prosecutors, codes of ethics and professional conduct and disciplinary measures**

79. The **Albanian** government continued judicial reforms as a part of the requirements of the European Union following the attainment of EU candidate status by Albania. On 30 August 2016, the Law on the Transitional Re-Evaluation of Judges and Prosecutors (the so-called Vetting Law) was adopted with the stated aim of strengthening the judicial system, improving its image and fighting corruption. The law put in place a vetting process consisting of several background checks of judges and prosecutors to determine whether they had any links to individuals involved in organised crime and to re-evaluate their professional qualifications.
80. The opposition voiced its disagreement with the adoption of this law. A request to suspend the law was made to the Constitutional Court of Albania on the grounds that it was unconstitutional and contrary to the ECHR. On 28 October 2016, the Constitutional Court requested an *amicus curiae* brief from the Venice Commission on the conformity of the law with international standards, including the ECHR.
81. The Venice Commission pointed out<sup>91</sup> that, as regards the involvement of the organs allegedly under the control of the executive power in the process of re-evaluation of judges and prosecutors from the point of view of judicial independence, an analysis of the text of the law showed that, despite the involvement of such bodies in the investigation process and the initial search for evidence, the evaluation and assessment of any information or evidence gathered by them rested with the Independent Commission and the Appeal Chamber. These both possessed the characteristics of judicial bodies and had the power to verify themselves the evidence gathered by the executive organs. On this basis, it could be concluded that the system put in place by the law did not as such seem to amount to an interference with the judicial powers<sup>92</sup>.
82. As to whether the lack of possibility for judges and prosecutors undergoing the vetting process to challenge the decisions given by the re-evaluation institutions before domestic courts was in breach of the Article 6 of the ECHR, the Venice Commission considered that the answer to this question depended on the qualification of the Appeal

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<sup>89</sup> See ECtHR *Çatal v. Turkey* (application 2873/17), 10 March 2017.

<sup>90</sup> See the report of the AEAJ of 21 August 2017 for the CCJE members.

<sup>91</sup> Adopted by the Venice Commission at its 109<sup>th</sup> Plenary Session (Venice, 9-10 December 2016), CDL-AD(2016)036-e.

<sup>92</sup> *Ibid.*, para 62.

Chamber in the Constitution and the Vetting Law. For the Venice Commission, those legal texts provided sufficient elements to conclude that the Appeal Chamber could be considered as a specialised jurisdiction which presents judicial guarantees to the persons affected by the vetting procedure. The rights and safeguards contained in the legislative and constitutional scheme seemed extensive<sup>93</sup>.

83. As to whether the provisions of the law concerning the background assessment were contrary to the Article 8 of the ECHR, it had to be taken into consideration that the background assessment had the purpose to verify the declarations of judges and prosecutors being assessed with a view to determining whether they had had inappropriate contacts with persons involved in organised crime. As such, this was a legitimate aim in view of the second paragraph of Article 8. For the Venice Commission, the essential consideration was that the working group, which had a main role in the background assessment and was composed primarily of security personnel, functioned under the supervision and control of the re-evaluation bodies and that all the relevant material before the working group should be available to them. The Venice Commission was of the opinion that while the background assessment was undoubtedly obtrusive, it may not necessarily be seen as an unjustifiable interference with the private or family life of judges and prosecutors contrary to the Article 8 of the ECHR<sup>94</sup>.

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84. The **Bulgarian** Judges Association complained about certain amendments of 11 August 2017 of the Bulgarian Judicial System Act, Art 230 (1) concerning:
- the provision requiring the judges and prosecutors to declare their membership in professional organisations;
  - the provision calling for removal of judges and prosecutors from their office following a public criminal charge against them concerning premeditated crime.
85. The Bulgarian Judges Association indicated that the amendments imposed restrictions on the freedom of association and had a chilling effect on judicial independence. Furthermore, according to the Bulgarian Judges Association, the provision concerning removal of judges following a public criminal charge against them, opened a wide avenue for arbitrary and unsanctionable interventions from the prosecution authorities in order to remove judges from the bench, including judges in pending criminal cases to which the same prosecution authority was a party. No judicial remedies would be available to judges who have been removed from office.
86. The Bulgarian Judges Association also indicated that the amendments were adopted in haste, without any public discussion, or with the Bulgarian judiciary. The Bill was submitted to the Parliament on 4 July 2017 and was adopted in the first reading on 27 July 2017<sup>95</sup>.

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<sup>93</sup> Ibid., para 63.

<sup>94</sup> Ibid., para 64.

<sup>95</sup> See the letter of the Bulgarian Judges Association of 5 October 2017 to the CCJE members.

87. The CCPE member in respect of **Hungary** states that, according to GRECO, disciplinary proceedings in respect of prosecutors should be handled outside the immediate hierarchical structure of the prosecution service and in a way that provides for enhanced accountability and transparency. GRECO recommended to the prosecution service that appropriate training and counselling on ethics and integrity matters be made available to all prosecutors on a regular basis, in particular for the implementation and development of the Code of Ethics and Standards of Professional Conduct for Prosecutors.

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88. The CCPE member in respect of **Turkey** refers to a project on strengthening judicial ethics, co-financed by Turkey, the European Union and the CoE, and implemented by the CoE, that the partners of the project include the Council of Judges and Prosecutors (main beneficiary) and the Presidency of the Turkish Justice Academy (co-beneficiary). Other stakeholders include the Ministry of Justice, Supreme Court, the Union of Turkish Bar Associations and NGOs. The purpose of the project has been to analyse the situation related to judicial ethics and prepare codes of judicial ethics; to raise Turkish judges and prosecutors' awareness of judicial ethics; to increase the capacity of the Council of Judges and Prosecutors<sup>96</sup> to apply the codes of ethics; and to raise public awareness of judicial ethics and of the existence of the complaint mechanisms<sup>97</sup>. Project activities implemented have included workshops, regional consultation meetings and Working Group meetings. A full code of ethics has been drawn up and is ready for dissemination.

#### **D. The economic basis for the smooth functioning of the system of prosecutor offices**

89. The CCPE member in respect of **Bosnia and Herzegovina** states that each prosecutor's office at the different levels of the state receives its budget as part of the budget of Bosnia and Herzegovina, the Federation of Bosnia and Herzegovina respectively and other entities. Every office has to submit its request for its annual budget to the High Judicial and Prosecutorial Council before the debate in the responsible committee of the different parliaments starts. At the end of the fiscal year, the Chief Prosecutor has to send the settlement of accounts to the parliaments. At the moment, there is no concrete indication of a lack of financing for the system but care must be taken in respect of the need for modernising the equipment, ensuring a level that is comparable with that of other European countries.

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90. The CCPE member in respect of **Bulgaria** states that the Prosecution Office depends for its functioning on the judiciary budget, which is a self-contained part of the state budget. Even though the autonomy of the budget is guaranteed by statute, it is

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<sup>96</sup> Following the recently adopted, in 2017, constitutional amendments, this body is currently called Council of Judges and Prosecutors.

<sup>97</sup> EU/CoE Joint Programme entitled "Strengthening Judicial Ethics in Turkey", 19 December 2015 – 18 December 2017.

objectively insufficient for the timely compliance with the specific requirements of the law to periodically adjust the minimum basic monthly remuneration in the judicial system: the double amount of the average monthly salary drawn by employees in the public-financed sector according to data of the National Statistical Institute is applicable to junior magistrates (Art. 218 (2) of the Judicial System Act).

91. This impedes the timely adjustment of the remuneration of the holders of more senior positions in the judicial system, which, too, cannot be kept at the previous levels, if the law is applied in a timely and accurate fashion when setting the remuneration of junior magistrates.
92. The Bulgarian Judges Association reported that members of the Bulgarian Parliament introduced a draft bill in July 2017 amending the Bulgarian Judicial System Act. According to the Bill, it would be illegal for professional organisations of judges and prosecutors to fund their activities in ways other than by membership fees and membership donations. It would also be illegal for professional organisations of judges and prosecutors to receive funding from foreign states or foreign persons for research and teaching activities. These proposed provisions were withdrawn due to protests from Bulgarian and international organisations.

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93. The CCPE member in respect of **Estonia** states that a topical and currently on-going discussion concerning existing problems and concerns within Estonia's Prosecutor's Office involves the salary levels and grades of prosecutors as guarantees of independence. The Ministry of Justice has proposed draft legislation which would tie prosecutors' salaries to those of Estonian judges. Citing similar practices within the legal traditions elsewhere in Europe, it has been argued that it is of great importance to create a more unified and balanced public sector where persons of higher legal education can enjoy free professional mobility. The Ministry of Justice has highlighted how the significant increase in the importance and gravity of a public prosecutor's position over the last decade has not been matched by a similar rise in salary rates. This discrepancy and lack of competitive salary levels can cause a disproportionate efflux of qualified work force from the Prosecutor's Office to, among other organisations, the Estonian court system.
94. It is also significant that the salaries corresponding to the salary grades of prosecutors are currently established by a regulation of the government. The plan under discussion is to stipulate these instead in the Act on salaries of higher state servants, thus in this way somewhat de-politicising the salary levels of prosecutors. This, too, is a move carried in the spirit of strengthening the impartiality of prosecutors and the functioning of the system of the Prosecutor's Office.

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95. The CCPE member in respect of **Finland** states that the Ministry of Justice is in charge of the financial resources of the prosecution service. The independence of the latter is guaranteed both in the individual assessments of charges and in the guidance of prosecutors from outside actors. However, the Ministry of Justice determines the general objectives and the resources to be spent on them.

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96. The CCPE member in respect of **Greece** states that the judiciary does not have its own budget. The salaries and all expenses are covered by the budget of the Ministry of Justice, Transparency and Human Rights. The prosecution services not only need adequate resources to discharge their functions properly, they should also be given responsibility for their own budget. Inadequate resources may render the prosecution services less effective and have a direct impact on the quality of their work. In determining the resources to be allocated to the prosecution services, prior consultations with them should be held. Currently, no such consultations take place. Another factor which may undermine the judicial independence and impartiality is the lack of participation of prosecutors in the preparation of prosecution budget. In as much as other branches of power or State institutions wield an important influence in the allocation and administration of the resources given to the prosecution services, there is a real possibility of influencing the outcomes of particularly sensitive cases, which would entail an attack on the independence of the prosecution service. To this end, it would be desirable to follow the example of States that have created, within the system of the prosecution offices, bodies in charge of administering resources, thereby reinforcing the autonomy of those offices.

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97. The CCPE member in respect of **Hungary** states that the law on the status of the Prosecutor General, prosecutors and other prosecution employees and the prosecution career provides for prosecutors a level of remuneration in accordance with the dignity of the profession. Problems may occur when changes in remuneration become necessary. In that case, lengthy and complex negotiations are held with the competent ministries. The budget of the Prosecution Service is voted on in due course by the Parliament.

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98. The CCPE member in respect of **Iceland** states that one of the main concerns of the prosecution service is the lack of funding that hinders cases being dealt with within acceptable time frame.

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99. The CCPE member in respect of **Latvia** states that the Prosecution Office has encountered difficulties related to the poor technical condition of one building where Prosecution Office units are deployed. The State Office for Construction Supervision prohibited the use of part of those premises. As prosecutors and Prosecution Office employees of seven units were deployed in this building, the situation required an urgent solution, regardless of the fact that the Prosecution Office is faced with a shortage of premises. A temporary solution was found through the possibility to place prosecutors and Prosecution Office employees of one unit in another building.

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100. The CCPE member in respect of **Poland** states that the separation of organisational units of the prosecution service from the Ministry of Justice is reflected in the fact that their budgets are separate, but not autonomous. The Prosecutor General manages the budgetary component of the prosecution service's organisational units.

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101. The CCPE member in respect of **Romania** states that the Ministry of Justice drew up a draft for a framework law as regards the remuneration of civil servants paid from public funds.
102. Both professional associations and the Superior Council of Magistracy expressed concern as regards certain suggestions that there should be a differentiated remuneration for judges and prosecutors, which resulted in consultations being initiated, and viewpoints and observations issued and sent both to the Ministry of Justice and the Ministry of Labour and Social Justice.

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103. The CCPE member in respect of **Ukraine** states that a threat to independence also arises from inadequate financing of prosecutors' remuneration and insufficient material support for the needs of the Prosecutor's Office. Prosecutors' salaries, rather than being paid in accordance with the requirements of Article 81 of the Law of Ukraine "On Prosecutor's Office", are still being paid in accordance with the Decree of the Cabinet of Ministers of Ukraine No. 505 "On the Adjustment of Structure and Conditions of Labour Payment for Officers of Prosecution Bodies" of 31.05.2012 and subsequent changes and amendments.
104. In the absence of proper motivation for officers, as well as excessive workloads for prosecutors, there is also a problem of staff turnover, as a result of which the number of vacancies is rising and the prospect of their timely filling is complicated.

#### **E. Prosecutors and media: public discussion and criticism of prosecutors**

105. The CCPE member in respect of **Andorra** states that there are no legal provisions regarding the type and means of communication with the media. At present, there is no communication department within the prosecution service: when it is necessary to formulate a press note, it is always issued through the Superior Council of the Magistracy.
106. However, it is being explored what is the best way to communicate with the media, whether through the Superior Council of Magistracy, or each judicial body having its own communication office, taking into account the size of the country and the proximity of the litigant to the institution.

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107. The CCPE member in respect of **Bosnia and Herzegovina** states that, in the framework of implementing their functions, prosecutors' offices are obliged to

communicate with the public. They do it by their own initiative or on demand by the Presidency of Bosnia and Herzegovina, the parliaments of the two entities and the District of Brcko and the Council of Ministers of Bosnia and Herzegovina. In the same way, they inform the media about events, probable lack of information or funding or other topics within their responsibility. But in a small country with a limited number of prosecutors, it is not easy to identify the red line between the curiosity of the public to follow persons who deal with sensitive crimes and the protection of the identity of the prosecutor because of security reasons. In the long run, the ethics of journalists must often be appealed to. No ideal solution has been found as of yet.

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108. The CCPE member in respect of **Bulgaria** states that the prosecution service provides information of public interest through the media in various forms: press releases, news conferences, interviews, open days, prosecutors delivering lectures to pupils and students, and other forms.
109. The editorial policy of certain publications and electronic media is determined by the persons who control them financially. Some media outlet owners are linked to business interests and can be subject to investigation. For this reason, the work of the prosecution service often receives unfavourable coverage and there appears to be insufficient effort made to report objectively or in depth.

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110. The CCPE member in respect of **Italy** states that some aspects of the relationship between prosecutors and the media are regulated by law. According to these provisions, relations with the media shall be maintained by the chief prosecutor, either personally or through another prosecutor from his/her office and information concerning the activities of the prosecution service provided by that office. Disciplinary sanctions are set forth for the infringement of some rules.
111. The prosecution service usually provides public information on relevant cases only at the initial stage, such as at the time of a provisional arrest. Private parties may keep frequent contacts with the media throughout the proceedings (investigation, trial, appeal) and this may lead to unbalanced information being published.
112. A thorny question is represented by the excessive presence of some public prosecutors on the media stage, which can lead to overexposure in the eyes of the public.

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113. The CCPE member in respect of **Lithuania** states that there are certain challenges in cases of particular media attention in high-profile investigations where prosecutors need to be highly professional when communicating with the media so as not to undermine the course of investigation, and where relevant actions must be coordinated with other pre-trial investigation authorities. It is to be noted that while communicating with the media and presenting comments to media representatives, the prosecutors exhibit good professional skills, high ethical standards and respect the presumption of

innocence, as well as other principles of criminal procedure so as not to undermine the course of investigation or be prejudicial to the involved persons.

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114. The CCPE member in respect of **Slovenia** states that the public image of prosecutors in the country is rather negative. They are often faced with high levels of criticism expressed in the media and targeting their professional practice. Politicians seek to present a negative image of judicial branch to gain political points rather than providing the necessary support to the judiciary and creating an environment conducive to impartial, objective and efficient work.

## IV. Conclusions

- It is clear from the reports and requests that have been received by the CCPE during the reporting period that there have been continuing concerns about the proper implementation of relevant standards of the Council of Europe in a number of member States. The CCPE therefore calls on member States to continue to follow and examine closely the situation of the prosecution services in the Council of Europe member States, and confirms its intention to make available its advice and expertise where it is considered useful. In accordance with its mandate, the CCPE will continue to examine alleged infringements concerning the independence and impartiality of the prosecution services. It encourages the competent authorities of the member States to comply fully with the relevant standards of the Council of Europe and to take note of this report in that connection.
- The CCPE Bureau reiterates the statement made in the Rome Charter: “The independence and autonomy of the prosecution services constitute an indispensable corollary to the independence of the judiciary”<sup>98</sup>.
- The CCPE Bureau expresses concern that there appear to have been situations which have the potential to jeopardise such independence and autonomy, with the consequence that the trust that society must have in the judicial system, including the prosecution, is at risk of being undermined.
- The CCPE Bureau draws the attention of the Committee of Ministers to these issues, as well as to the information provided by the CCPE members and other parties concerned. It also draws attention to the comments of the CCPE Bureau made in the context of its Opinions and other relevant standards.
- The CCPE Bureau invites its members, observers, relevant national authorities, judicial bodies and associations of judges to submit further information and comments on the issues described in this report, with a view to preparing the next edition of the report.

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<sup>98</sup> See CCPE Opinion No. 9(2014) on European norms and principles concerning prosecutors, Rome Charter, point IV.

**Appendix:**  
**Comments from member States**

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**Turkey**

**Comments of the Council of Judges and Prosecutors of Turkey  
to the related parts of the CCPE Bureau report**

**1. Regarding paragraphs 66 and 73 of the CCPE Bureau Report**

First and foremost, it should be noted that independent courts are authorized and mandated to reach a conclusion in the trial process for these judges and prosecutors charged with membership in a terrorist organization. This letter aims at presenting information on the proceedings undertaken within the framework of disciplinary law.

The Council of Judges and Prosecutors of Turkey (*referred hereinafter as CJP*), which took office after the elections in 2014, carefully handled the disciplinary investigations initiated based on the claims that some members of the judiciary responsible for some investigation and prosecution files such as 17-25 December, Selam-Tevhid, irregular wiretapping, Ergenekon, the Sledgehammer, Fenerbahçe matchfixing and ODA TV, which were and had previously been in the public eye, had conducted some irregular and unlawful judicial proceedings acting in line with Fethullah Terrorist Organization/Parallel State Structure (*referred hereinafter as FETO/PDY*) instructions. Consequently, the CJP took decisions for inquiry and investigation of the related judges and public prosecutors.

In this respect, inquiries carried out by CJP Inspection Board revealed that some members of the judiciary had acted in the benefit of the FETO and executed the instructions of Fethullah Gülen, the leader of this organization, in the course of trials during the abovementioned sensational cases and had established judgements which constituted an offense; thus, relying on the letters dated 24.03.2015 and 07.04.2015 and the appended document prepared by the Bureau for Investigating Crimes against the Constitutional Order under Ankara Chief Public Prosecutor's Office; based on the report against some judges and public prosecutors, which claimed that they set up a parallel judicial power as links of the structure called the Parallel State Structure Terrorist Organization inside the judiciary, which had its organization and hierarchical structure within the judicial power of the Republic of Turkey; acted as an organized structure alternative to the judiciary of the State; targeted at individuals who were not its members or it could not use or who had different opinions making them the focus of operations through judgements; executed the decisions taken by high-ranking administrators of the organization based on the intelligence collected on the

police and judiciary; victimized many people through the use of judiciary by not judging whether they were perpetrators or innocent people; prosecuting people relying on exaggerated, excessively detailed data aimed at disguising the facts in intentional, biased and ill-founded case files; and manipulated public perception, the Third Chamber of CJP opened its file number 2015/3488 and decided on 14.04.2015 that this claim and various issues that might arise during the inquiry shall be taken up by an inspector of the Council.

The inquiry carried out by the CJP Inspection Board on the related file led to many judges and public prosecutors, who were affiliated with and connected to the FETÖ/PDY. Taking into consideration the gravity of the situation, the CJP decided to extend the scope of action for identifying more members of the judiciary, who were affiliated with and connected to the abovementioned terrorist organization and as a result, names of many other members of the judiciary were discovered.

*As indicated by Mr. Mehmet Yılmaz, the Acting President of the CJP, in a newspaper interview, in his words as "Before the coup attempt, we had already had the files about the members of this organization. Even if we hadn't had the coup attempt, we would take necessary action about the related judges and prosecutors by the end of 2016. Back then, there were still discussions about whether Fethullah Gülen gang was an armed terrorist organization, despite the decisions of National Security Council and decisions of the Council of Ministers. On the very date of July 15 this organization went out on the streets with the weapons. It was clear and obvious that it was an armed terrorist organization.", based on the investigations filed after the coup attempt by Ankara Chief Public Prosecutor's Office against 2745 judges and public prosecutors on being affiliated with and connected to this terrorist organization, the CJP decided for suspension of these judges and prosecutors.*

Due to reports, complaints or facts established concerning allegations of membership in this organization, 1479 complaint files had been opened before the coup attempt on July 15, and these files concerned 2146 judges and prosecutors. Furthermore, before July 15, permission had been granted to conduct inquiries and investigations in 342 files concerning 989 judges and prosecutors. Therefore, claims asserting that disciplinary sanctions were imposed on many judges and prosecutors in an overnight without implementing the complaints and disciplinary investigations procedure do not reflect the truth.

Before July 15, Erzurum Assize Court had already listed this organization as a criminal organization. After this organization had attempted an armed coup on the night of July 15, Ankara Chief Public Prosecutor's Office initiated many investigations referring to this organization as an armed terrorist organization, and during the trial process after the admission of these indictments, many judges and prosecutors, about whom charges were pressed for membership in the organization, resorted to effective remorse and made confessions.

Based on confessions that surfaced during criminal proceedings and solid facts such as using the Bylock software, and evidence obtained during disciplinary investigations before July 15, it was indisputable that the judges and prosecutors were affiliated with and connected to FETÖ/PDY terrorist organization which committed crimes within a strict hierarchy. Those judges and prosecutors were initially suspended and then dismissed considering that they violated principles of independence and impartiality, which are indispensable principles of the profession.

As a matter of fact, immediately after the coup attempt, taking into consideration the

investigation initiated ex-officio by Ankara Chief Public Prosecutor's Office relying on article 161/6 of the Code of Criminal Procedure and custodial orders taken against the judges and prosecutors, who were found to be members to FETO based on administrative and criminal investigations conducted since 2014, the Third Chamber of CJP, pursuant to its decision dated 16/07/2016, granted permission for investigation to be carried out by an Inspector of the CJP, and making an assessment of the preliminary report prepared by the Inspector. Then, the Second Chamber of CJP decided for suspension of the related judges and prosecutors as per article 77 of the Law no 2802 so as to prevent any damage to ascendancy and honour of the judicial power. After Statutory Decree no 667 entered into force, CJP Plenary unanimously decided for dismissals of the judges and prosecutors, whose membership in, belonging and connection to and affiliation with the organization was established.

Suspension by its nature is a measure that must be imposed urgently. This measure was urgently imposed on judges and prosecutors against whom there was strong suspicion and the aforementioned evidence suggesting their membership to FETO terrorist organization, to prevent them from jeopardising the constitutional order. European Court of Human Rights's (*referred hereinafter as ECtHR*) judgement in Micallef vs. Malta emphasizes that failure to implement all safeguards provided in article 6 of the European Convention on Human Rights (*referred hereinafter as ECHR*) under extraordinary circumstances requiring urgent action does not constitute a violation.

Regarding this extraordinary process, considering both suspensions and dismissals from the perspective of safeguards provided by article 6 of the ECHR, it should be especially underlined that these decisions were taken by the CJP as an independent and impartial body, and in their applications for reexamination against the decision taken applicants were given the opportunity to present their defense in writing, committees were established within the CJP to handle several motions submitted by judges and prosecutors in this process, these committees examined all claims and presented them to the Plenary of CJP, separate disciplinary files were prepared for every judge and prosecutor dismissed (These files included information on the process of their admission into profession, powers they unlawfully exercised in courts or administrative offices, complaints, reports, inquiry and investigation files about them and related decisions taken, research conducted in the field, decisions taken by judges and prosecutors incumbent on FETO related files in these files, records of encrypted communication software used by members of this organization, information and documents provided by Ankara Chief Public Prosecutor's Office, their statements and confessors' statements. Statements of the related individuals were not taken by police officers, but by the prosecutor and statements were communicated to the CJP immediately.) and the disciplinary procedure was implemented, the disciplinary procedure had been initiated before Statutory Decree no 667 was promulgated, and after this Statutory Decree entered into force keeping these judges and prosecutors in office was not deemed appropriate as per the Statutory Decree; however, the disciplinary process is ongoing; and furthermore, as per the domestic legislation it is predictable that a person who does not comply with the principles of independence and impartiality shall not exercise duties as a judge or prosecutor; therefore proceedings undertaken does not fall short in respect of the principle of legal certainty.

Applications to the ECtHR for interim measures against suspensions were found inadmissible and rejected.

It must be highlighted that judges and prosecutors were not dismissed by means of

name lists appended to Statutory Decrees. The dismissals were decided by the Plenary of the CJP. The purpose was to avoid acts of legislative and executive organs over the members of the judiciary and allow for domestic remedies to be applicable. Moreover, dismissed judges and prosecutors were thereby given the opportunity to apply for re-examination against decisions of the Plenary and exercise their right of defense in relation to claims against them submitting several motions and evidence. To this end, committees were set up within the CJP, which diligently examined claims presented by the related individuals in their motions. (Those whose re-examination applications were accepted are returned to their previous office or other offices.)

During suspension/dismissal procedures the principle of individuality of the crime was respected. In this framework, independent decisions were taken for judge-prosecutor spouses. There are 7 couples in which one of the spouses remained in office while the other was dismissed.

The explanations made above in detail clearly indicate that the CJP complies strictly with the rule of law and always be respectful of individual fundamental rights in accordance with the ECHR in all circumstances in the proceedings.

Given these explanations, we are baffled that the Bureau's Report still claims that the situation does not does not appear to have improved.

## **2. Regarding paragraphs 67 and 68 of the CCPE Bureau Report**

We consider that the attitude of the ENCJ, which ignored our explanations based on the information and the documents at our disposal, and arrived at a conclusion with a decision which lacked any justification, is not only unlawful, but also political.

The change in the judicial system in Turkey is the result of a constitutional amendment. These amendments were implemented following an entirely democratic process: The citizens of Turkey exercised their free will in a constitutional referendum on April 16, 2017. Please note that the regulations underlying formation of judicial institutions across Europe are not uniform and do vary from country to country based on their circumstances. We also would like to emphasize that the new CJP includes 9 (out of 13 total members) judges and prosecutors. The percentage of judges and prosecutors in the current council is greater than that of many European countries. The concerns raised about the independence and impartiality of the CJP are the product of biased judgements.

## **3. Regarding paragraphs 74, 75, 76, 77 and 78 of the CCPE Bureau Report**

We are deeply concerned that neither AEAJ nor EAJ are willing to base their assessments on objective information that are available to them from our official authorities. They instead choose to make their assessments based on the information they receive from unknown and unreliable sources.

Within the boundaries of the state emergency conditions and the application of the Statutory Decree no 667, information and documents indicating that each of the concerned individuals is affiliated with or connected to the FETO/PDY terrorist organization have been compiled in an individual file-similar to files created for disciplinary offences. These individual

files enabled the proceedings to be carried out in an individualized manner based on concrete evidence.

Although the dismissal decision has been justified in a verdict that involves all the files, circumstances of each dismissed judge or prosecutor have been individually assessed during the examination and determination process. Information and documents pertaining to each of the concerned individuals, their concrete relations with the FETO/PDY terrorist organization, and their actions have been individually elaborated. That is, each and every dismissal decision was subjected to an individualized evaluation process.

Considering the very requirements of the judicial profession, any judge's or prosecutor's affiliation or connection with the FETO/PDY, a terrorist organization operating under a strict hierarchy, would be a sufficient violation in and of itself that would result in dismissal from duty. Nevertheless, the investigations did not just stop with proving these individuals' connections or affiliations with the FETO/PDY but also identified, documented, carefully considered, and evaluated each individual's actions separately. Again, that the overall verdict did not include each individual's concrete actions and the relations with the FETO/PDY did not mean that these were not taken into account. Finally, please note that this extremely careful investigation process did not contradict with either the ECtHR caselaw or the national administrative law in any way.

Clearly, there are judicial remedies for dismissal decisions, and all public officials including judges and prosecutors can file cases before independent courts, submit their allegations, and have their arguments heard in trials. Judges and prosecutors, who were dismissed according to the power given to the CJP by Article 3 (1) of Decree Law no 667 can seek domestic remedies before the Council of State. (referred hereinafter as CoS)

Moreover, the ECtHR has so far found around 25.000 applications inadmissible since the domestic remedies have not been exhausted. Upon the said decision of the ECtHR, the cases filed by dismissed judges and prosecutors before the CoS are still pending. The remedy before the CoS is priori accessible and it is capable of providing appropriate redress as it is indicated by the ECtHR.

#### **4. Regarding paragraph 88 of the CCPE Bureau Report**

The code of ethics were prepared, finalized, and discussed in the Plenary of the CJP.

The code of ethics for the judiciary in Turkey will be a reference document first and foremost for the judges and prosecutors in Turkey. The codes prepared thanks to the invaluable efforts of all parties, but especially our judges, prosecutors, and inspectors, will soon become an integral part of our legislation. This will be followed by the preparation of booklets explaining and exemplifying the situations covered by the codes. Taken together, these documents will be a major guide of ethical and professional conduct for judges and prosecutors.

There is absolutely no reason for the European Union, which keeps making unjustified and ungrounded arguments about an independent and impartial judiciary in Turkey, to ignore the aforementioned efforts, and to discontinue supporting the Project on Strengthening Judicial Ethics in Turkey.