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**CONSULTATIVE COUNCIL OF EUROPEAN PROSECUTORS  
(CCPE)**

**Opinion of the CCPE Bureau**

**following a request by the Superior Council of Prosecutors of the  
Republic of Moldova concerning the independence of prosecutors  
in the context of legislative changes  
as regards the prosecution service**

## Introduction

1. The CCPE was contacted, on 5 November 2019, by the President of the Superior Council of Prosecutors (hereafter the SCP) of the Republic of Moldova who requested that the CCPE express its position on the independence of prosecutors in the context of legislative changes as regards the prosecution service, in particular Law No. 128 of 16 September 2019 amending the Law on the Prosecutor's Office (hereafter the Law of September 2019).
2. As a result of adoption of this Law, significant changes were introduced to the mechanism of selection and dismissal of the Prosecutor General, as well as to the composition of the SCP. These changes were raised by the SCP when addressing the CCPE.
3. Following examination of the above-mentioned Law in the light of the Council of Europe's standards and, in particular, the Opinions of the CCPE on the matters relevant to the issues raised by the SCP, the CCPE Bureau prepared the present Opinion which examines the law and its implications vis-à-vis these standards.
4. The CCPE Bureau has taken into account the Venice Commission's Amicus Curiae Brief for the Constitutional Court of the Republic of Moldova concerning the Law of September 2019<sup>1</sup>.

## OPINION

### **Change in the procedure of selection of the Prosecutor General**

5. The Law of September 2019 introduced a pre-selection procedure by a commission established by the Ministry of Justice. This commission proposes to the SCP a list of candidates for the position of Prosecutor General. The commission must be composed of the Minister of Justice, one former prosecutor or one former judge, one international expert, a reputable expert or tenured professor in law, one representative of civil society, and one additional reputable national expert appointed by the President of the Parliament.
6. The change in the Law of September 2019 provided that the commission must pre-select two or more candidates for the position of Prosecutor General, based on their professional background and skills, integrity and other abilities/personal traits, and submit the list to the SCP. The SCP may return the list to the commission, providing reasons for that, if at least one candidate manifestly does not comply with the eligibility criteria. The commission then resumes the pre-selection of candidates and submits to the SCP the same or another list of candidates. The commission can reject the return by the SCP of the list of candidates if the SCP does not invoke reasons based on the eligibility criteria, or if the list is returned repeatedly.
7. The CCPE Bureau wishes to note first of all that the crucial role of pre-selection of candidates seems to be transferred from the SCP to this commission. This appears to

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<sup>1</sup> See the Venice Commission's Amicus Curiae Brief for the Constitutional Court of the Republic of Moldova on the Amendments to the Law on the Prosecutor's Office, CDL-AD(2019)034.

create a potential risk that candidates may be included or left out without the SCP being able to influence that situation.

8. In addition to being excluded from the pre-selection phase, the new procedure provided that the SCP cannot refuse to accept the list proposed by the commission except if one of the candidates manifestly does not comply with the eligibility criteria. The CCPE Bureau notes that this is a rather formal ground and it may potentially be subject to restrictive interpretation. This in turn may create a risk that the commission will not only appoint initially the candidates, but *de facto* be enabled to reject later the decisions of the SCP on such candidates and to take forward its own list of candidates.
9. It seems unclear how the new provision stipulating that the commission can reject the return by the SCP of the list of candidates, if the latter is returned repeatedly, will be applied. There may be a risk – again – that the commission will be able in fact to reject the decisions of the SCP and take forward its own list of candidates. The CCPE Bureau thinks that the SCP must in principle be able to request a new list of candidates.
10. The CCPE Bureau wishes to recall that the manner in which the Prosecutor General is appointed, as well as dismissed, plays a significant role in the system guaranteeing the correct functioning of the prosecutor's office<sup>2</sup>. The establishment of a Prosecutorial Council, which would play a key role in the appointment of the Chief Prosecutor, can be considered as one of the most effective modern instruments to achieve this goal<sup>3</sup>.
11. Moreover, as regards the appointment of public prosecutors in general, as the CCPE has emphasised, member States should take measures to ensure that the recruitment, promotion and transfer of prosecutors are carried out according to fair and impartial procedures, based on transparent and objective criteria, such as competence and experience, and excluding discrimination on any ground. Recruitment bodies should be selected on the basis of competence and skills and should discharge their functions impartially and based on objective criteria<sup>4</sup>. 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>5</sup>.
12. Nonetheless, the CCPE Bureau wishes also to make reference to the Venice Commission's Amicus Curiae Brief for the Constitutional Court of the Republic of Moldova concerning the Law of September 2019 where the Venice Commission pointed out that "there is no international standard requiring a country to have a prosecutorial council (even though this model is sometimes recommended to ensure the autonomy of

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<sup>2</sup> See Opinion No.9 (2014) of the CCPE on European norms and principles concerning prosecutors, Explanatory Note, para 55; see also the Venice Commission's Report on European Standards as Regards the Independence of the Judicial System: Part II – the Prosecution Service, CDL-AD(2010)040, paras 34-35.

<sup>3</sup> See Joint Opinion of the Venice Commission, Consultative Council of European Prosecutors (CCPE) and OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR), on the draft Amendments to the Law on the Prosecutor's Office of Georgia, CDL-AD(2015)039, paras 19, 20 and 27.

<sup>4</sup> See Opinion No. 9 (2014) of the CCPE on European norms and principles concerning prosecutors, Explanatory Note, para 51.

<sup>5</sup> See Opinion No. 9 (2014) of the CCPE on European norms and principles concerning prosecutors, Explanatory Note, para 52.

the prosecution service). From this perspective, it is immaterial whether the prosecutorial council appoints the PG single-handedly or other bodies are involved in this process”<sup>6</sup>.

13. The CCPE Bureau agrees with the Venice Commission that, at present, there may not be a generally accepted requirement for a country to have a prosecutorial council, however, as the Venice Commission also rightly pointed out, this model is recommended to ensure the autonomy of the prosecution services.
14. Indeed, the CCPE has expressly recommended, based on its perspective of serving prosecutors throughout Europe, that “member States should guarantee a status for prosecutors that ensures their external and internal independence, preferably by provisions at the highest legal level and guaranteeing their application by an independent body such as a Prosecutorial Council, in particular for appointments, careers and discipline”<sup>7</sup>.
15. In the opinion of the CCPE Bureau, such soft law standards, even though lacking legally obligatory force, still play an important role in shaping the development of best European practices and setting out an enabling environment for prosecutors to fulfil their duties impartially and effectively. Such standards may allow, in particular, interpreting hard law provisions and preventing potential cases of their possible application to the detriment of the independence of prosecutors, and of the judiciary at large.
16. In this regard, the United Nations Human Rights Committee has recently been giving an increasing attention to the independence of prosecutors, as a means to ensure full judicial independence.
17. For instance, the independence and autonomy of the prosecution is a key component for ensuring impartial investigations and prosecutions in respect of complaints relating to police officers and the practice of acts of torture<sup>8</sup>, corruption<sup>9</sup> or to the protection of human rights<sup>10</sup>.
18. Therefore, any undue interference on prosecutorial work by other branches of the state power (President, executive or legislature) should be avoided, particularly in matters relating to the selection, appointment, reappointment, promotion and dismissal of prosecutors, including the Prosecutor General through the use of nominating committees<sup>11</sup>.

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<sup>6</sup> See the Venice Commission’s Amicus Curiae Brief for the Constitutional Court of the Republic of Moldova on the Amendments to the Law on the Prosecutor’s Office, CDL-AD(2019)034, para 20.

<sup>7</sup> See Opinion No. 13 (2018) of the CCPE on independence, accountability and ethics of prosecutors, Recommendation iii.

<sup>8</sup> See Concluding Observations on Dominican Republic, 2017, §§ 27-28; Concluding Observations on Jordan, 2017, §§ 16-17, Concluding Observations on Switzerland, 2017, §§ 28-29.

<sup>9</sup> See Concluding Observations on Dominican Republic, 2017, §§ 29-30.

<sup>10</sup> See Concluding Observations on Honduras, 2017, § 25.

<sup>11</sup> See Concluding Observations on Belarus, 2018, §§ 39-40; Concluding Observations on Equatorial Guinea, 2019, §§ 48-49; Concluding Observations on Guatemala, 2018, §§ 30-31; Concluding Observations on Lao People’s Democratic Republic, 2018, §§ 29-30; Concluding Observations on Lebanon, 2018, §§ 41-42; Concluding Observations on Niger, 2019, §§ 40-41; Concluding Observations on Romania, 2017, §§ 39-40; Concluding Observations on Swaziland, 2017, §§ 38-39; Concluding Observations on Tajikistan, 2019, §§ 37-38; Concluding Observations on Viet Nam, 2019, §§ 33-34.

19. Furthermore, undue interference may be exercised not only on individual prosecutors, but also on prosecution services and even on the Prosecutorial Council<sup>12</sup>, for instance, to terminate criminal proceedings<sup>13</sup>.
20. The UN Human Rights Committee has thus been highlighting the need for guaranteeing both the independence and impartiality of the judiciary and the autonomy of the Office of the Prosecutor<sup>14</sup>.
21. The Venice Commission mentioned that “the mere involvement of an expert body such as the MoJ Committee<sup>15</sup> before the SCP does not necessarily bring an unacceptable element of politicisation”<sup>16</sup>. The CCPE Bureau agrees with the Venice Commission that an element of politicisation may not *prima facie* result from the simple fact of the involvement of the commission.
22. At the same time, the CCPE Bureau wishes to recall that the commission is established by the executive body – the Ministry of Justice – and the extent of the potential influence of this body on the work of the commission is unclear. If this commission is given guarantees – which at present does not seem clear – of being free of executive influence, then the risk of politicisation is, of course, reduced.
23. The CCPE Bureau also wishes to point out that, as mentioned above, the extent of involvement of this commission and, in particular, its competence to shortlist the applicants and to take this list forward create a substantial risk of diminishing the role of the SCP in favour of this commission, to the detriment of prosecutorial self-governance. The risk that the SCP may potentially be prevented from putting forward its candidates may have negative repercussions on the process of selection of the Prosecutor General.

### **Change in the composition of the SCP**

24. The Law of September 2019 changed the composition of the SCP. Previously, it consisted of 12 members: 4 *ex officio* members (the Prosecutor General, the chief prosecutor of Gagauzia region, the President of the Superior Council of Magistracy and the Minister of Justice); 5 prosecutors elected by the General Assembly of Prosecutors; 3 representatives of civil society appointed through competition (one by the President of the Republic, one by Parliament and one by the Academy of Sciences of Moldova).
25. The Law of September 2019 increased the total number of members from 12 to 15. The number of *ex officio* members was changed from 4 to 6 (the two additional *ex officio* members are the President of the Bar Association and the Ombudsman). One additional member representing civil society to be appointed by the Government was also added.
26. The CCPE Bureau notes that the absolute majority of prosecutors in the previous composition of the SCP (7 prosecutor-members out of the total of 12 members) has been

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<sup>12</sup> See Concluding Observations on Serbia, 2017, §§ 34-35.

<sup>13</sup> See Concluding Observations on Cameroon, 2017, §§ 37-38.

<sup>14</sup> See Concluding Observations on Paraguay, 2019, §§ 34-35.

<sup>15</sup> The Law of September 2019 uses the term “commission” (English translation provided to the CCPE).

<sup>16</sup> See the Venice Commission’s Amicus Curiae Brief for the Constitutional Court of the Republic of Moldova on the Amendments to the Law on the Prosecutor’s Office, CDL-AD(2019)034, para 21.

converted into a relative majority<sup>17</sup> (7 prosecutor-members out of the total of 15 members).

27. The CCPE Bureau has already alluded to the importance of Prosecutorial Councils as bodies guaranteeing external and internal independence of prosecutors (cf. above). The question of the composition of such bodies is inextricably linked with this essential function.
28. The CCPE has underlined that the independent status of prosecutors is a basic requirement of the rule of law<sup>18</sup>, and it must be guaranteed by law, at the highest possible level, in a manner similar to that of judges<sup>19</sup>. The independence and autonomy of the prosecution services constitute an indispensable corollary to the independence of the judiciary. Therefore, the general tendency to enhance the independence and effective autonomy of the prosecution services should be encouraged<sup>20</sup>.
29. The European Court of Human Rights (hereafter ECtHR) has also considered it necessary to emphasise that “in a democratic society both the courts and the investigation authorities must remain free from political pressure”<sup>21</sup>.
30. In this light, the composition of the Prosecutorial Councils becomes all the more important. Both the CCPE and Venice Commission have underlined that setting up a Prosecutorial Council is a very welcome step towards depoliticisation of a Prosecutor’s Office and therefore, it is very important that it is conceived as a pluralistic body, which includes prosecutors, members of civil society and a government official<sup>22</sup>.
31. According to the CCPE, “provisions should preferably be established by law and applied under the control of an independent professional authority (for instance, composed of a majority of judges and prosecutors elected by their peers) such as a Council for the judiciary or for prosecutors, competent for the appointment, promotion and discipline of prosecutors. This is particularly relevant if prosecutors are to be recognised as judicial authorities within the meaning of Article 5 of the European Convention on Human Rights or to be given an indisputable role and authority in matters of individual rights and freedoms”<sup>23</sup>.
32. The Venice Commission has also pointed out in particular that if such councils are composed in a balanced way, e.g. by prosecutors, lawyers and civil society, and when

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<sup>17</sup> In relation to other professional groups represented in the SCP.

<sup>18</sup> See Opinion No. 4 (2009) of the CCPE on the relations between judges and prosecutors in a democratic society, Bordeaux Declaration, paras 3, 8; Opinion No. 9(2014) of the CCPE on European norms and principles concerning prosecutors, Rome Charter, Sections IV, V; Opinion No. 13 (2018) of the CCPE on independence, accountability and ethics of prosecutors, paras 15, 16, 31.

<sup>19</sup> See Opinion No. 4 (2009) of the CCPE on the relations between judges and prosecutors in a democratic society, Bordeaux Declaration, Explanatory Note, paras 10, 26, 27, 34; Opinion No. 9 (2014) of the CCPE on European norms and principles concerning prosecutors, Rome Charter, Explanatory Note, para 33.

<sup>20</sup> See Opinion No. 9 (2014) of the CCPE on European norms and principles concerning prosecutors, Rome Charter, Section IV.

<sup>21</sup> See ECtHR *Guja v. Moldova* (Grand Chamber), no. 14277/04, para 86.

<sup>22</sup> See Joint Opinion of the Venice Commission, Consultative Council of European Prosecutors (CCPE) and OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR), on the draft Amendments to the Law on the Prosecutor’s Office of Georgia, CDL-AD(2015)039, paras 33-34.

<sup>23</sup> See Opinion No. 13 (2018) of the CCPE on independence, accountability and ethics of prosecutors, para 24.

they are independent from other state bodies, such councils have the advantage of being able to provide valuable expert input into the appointment and disciplinary process and thus to shield prosecutors, at least to some extent, from political influence<sup>24</sup>. The Venice Commission noted that the balance proposed for the Council, in which prosecutors have a slight majority but which contains a significant minority of eminent lawyers, seems appropriate<sup>25</sup>.

33. In this way, the CCPE Bureau notes the converging views of the CCPE and the Venice Commission as regards the desirability of prosecutor-members being the majority in Prosecutorial Councils (with the CCPE indicating, in this respect, that these members should be elected by their peers).
34. At the same time, the CCPE Bureau observes that the Venice Commission has also found that “where such Council exists, which appears more and more widespread, there is no requirement that it should necessarily include a majority of prosecutors”<sup>26</sup>. The Venice Commission accepts both an absolute and relative majority of prosecutor-members in such a Council, provided that in both cases the latter is shielded from political influence.
35. Reverting to the situation in the Republic of Moldova, the Venice Commission has concluded that “the composition of the SCP remains sufficiently pluralistic, the prosecutors still representing a relative majority there”<sup>27</sup> (i.e. 7 prosecutor-members out of the total of 15 members) and that “the balance of power proposed in the September 2019 amendments appears to be in line with the previous recommendations of the Venice Commission”<sup>28</sup>.
36. In formulating its opinion on this subject, the CCPE Bureau wishes to recall that the CCPE is the voice of serving prosecutors throughout Europe, and it expresses their viewpoints in a practical context of ensuring their ability to work effectively and impartially, for which independence is a necessary pre-requisite.
37. The CCPE Bureau recognises that there may not be, as yet, a generally accepted requirement for a majority of prosecutor-members in Prosecutorial Councils. At the same time, it nevertheless wishes to reiterate the CCPE recommendation mentioned above in its Opinion No. 13 (2018) on the independence, accountability and ethics of prosecutors, i.e. that a majority - absolute and not relative - in such Councils should be prosecutors elected by their peers. The CCPE considers this essential to provide for the practical implementation of the principle of prosecutorial independence.
38. The CCPE Bureau would stress that such soft law standards, even though lacking legally obligatory force, still play an important role in shaping the development of best European practices and setting out an enabling environment for prosecutors to fulfil their duties impartially and effectively.

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<sup>24</sup> See Venice Commission’s Report on European Standards as Regards the Independence of the Judicial System: Part II – the Prosecution Service, CDL-AD(2010)040, para 65.

<sup>25</sup> See Venice Commission’s Interim Opinion on the Draft Law on the State Prosecution Office of Montenegro, CDL-AD(2014)042, para 38.

<sup>26</sup> See the Venice Commission’s Amicus Curiae Brief for the Constitutional Court of the Republic of Moldova on the Amendments to the Law on the Prosecutor’s Office, CDL-AD(2019)034, para 34.

<sup>27</sup> See the Venice Commission’s Amicus Curiae Brief for the Constitutional Court of the Republic of Moldova on the Amendments to the Law on the Prosecutor’s Office, CDL-AD(2019)034, para 32.

<sup>28</sup> See the Venice Commission’s Amicus Curiae Brief for the Constitutional Court of the Republic of Moldova on the Amendments to the Law on the Prosecutor’s Office, CDL-AD(2019)034, para 35.

39. In this regard, the UN Human Rights Committee has addressed the issue of the composition of High Councils for the Judiciary or the Prosecution and the election of judges and prosecutors by their peers in some of its more recent concluding observations<sup>29</sup>, particularly regarding the participation of either the President or the Minister of Justice in such Councils<sup>30</sup>.

### **Changes to the dismissal procedure of the Prosecutor General**

40. The Law of September 2019 introduced a special procedure for removing the Prosecutor General on broadly defined grounds, including “illegal interference in the activity of another prosecutor or in case of illegal intervention, of any kind, besides the authorities, institutions or officials for solving any question, or in case of committing actions that seriously affect the image of the Prosecutor's Office or the independence of prosecutors”<sup>31</sup>.
41. According to the Law of September 2019, a commission may be set up to evaluate the activity of the Prosecutor General, having a composition similar to that provided for the above-mentioned commission<sup>32</sup> which pre-selects candidates for the position of the Prosecutor General. This similar commission (hereafter evaluation commission) prepares a reasoned report and proposes to the SCP to release the Prosecutor General from his/her position if, following the evaluation, the existence of the above-mentioned reasons is established<sup>33</sup>.
42. The SCP may reject only once the proposal of the evaluation commission if it was “in violation of the legal provisions or if the arguments invoked by the evaluation commission in the report are not conclusive for the dismissal of the Prosecutor General. In both cases, the SCP will present a detailed argument in favour of rejecting the report”<sup>34</sup>. The Law of September 2019 does not give any further details on the process.
43. The Venice Commission mentioned in this regard that “any redistribution of decision-making powers which substantially affects the constitutional mandate of a given body requires a constitutional amendment”<sup>35</sup>. However, “that does not mean that the law cannot regulate procedures and make institutional arrangements within the boundaries set by the Constitution. In the Republic of Moldova, the Constitution does not regulate in detail the organisation and the functioning of the SCP. This means that the Law on the Prosecutors' Office may in principle leave space for other bodies, panels, committees, etc. which contribute to the work of the SCP or to which the SCP may delegate a part of its powers”<sup>36</sup>.

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<sup>29</sup> See Concluding Observations on Bulgaria, 2018, §§ 43-44, Concluding Observations on Cameroon, 2017, §§ 37-38, Concluding Observations on Czech Republic, 2019, §§ 32-33, Concluding Observations on El Salvador, 2018, §§ 35-36, Concluding Observations on Kazakhstan, 2016, §§ 37-38.

<sup>30</sup> See Concluding Observations on Madagascar, 2017, §§ 45-46.

<sup>31</sup> Article I (6) of the Law of September 2019.

<sup>32</sup> I.e. composed of the Minister of Justice, one former prosecutor or one former judge, one international expert, a reputable expert or tenured professor in law, one representative of the civil society, and one additional reputable national expert appointed by the President of the Parliament.

<sup>33</sup> Article I (6) of the Law of September 2019.

<sup>34</sup> Article I (6) of the Law of September 2019.

<sup>35</sup> See the Venice Commission's Amicus Curiae Brief for the Constitutional Court of the Republic of Moldova on the Amendments to the Law on the Prosecutor's Office, CDL-AD(2019)034, para 26.

<sup>36</sup> See the Venice Commission's Amicus Curiae Brief for the Constitutional Court of the Republic of Moldova on the Amendments to the Law on the Prosecutor's Office, CDL-AD(2019)034, para 27.



44. Therefore, the Venice Commission, while noting that it is for the Constitutional Court of the Republic of Moldova to decide on the constitutionality of these changes, concluded that “a special body involved in the process of selection of candidates to the prosecutorial positions can be constitutional if it does not usurp the substantive decision-making power of the SCP. As regards the process of removal of the PG from office, the issue of “dilution” of the constitutional powers of the SPC appears very relevant here as well”<sup>37</sup>.
45. While the Venice Commission assessed this issue from the point of view of its constitutionality in the Republic of Moldova as it was requested by the Constitutional Court, the CCPE Bureau wishes to highlight international standards in this respect.
46. As already mentioned, 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>38</sup>, and the establishment of a Prosecutorial Council can be considered as one of the most effective modern instruments to achieve this goal<sup>39</sup>. The appointment and termination of service of prosecutors should be regulated by law at the highest possible level and by clear and understood processes and procedures<sup>40</sup>.
47. The law on the prosecutor’s office should clearly define the conditions and grounds of the Prosecutor General’s pre-term dismissal. The Venice Commission prefers going even further by providing the grounds for a possible dismissal in the Constitution itself. Moreover, there should be a mandatory requirement that before any decision is taken, an expert body has to give an opinion whether there are sufficient grounds for dismissal. In any case, the Prosecutor General should benefit from a fair hearing in dismissal proceedings, including before the parliament<sup>41</sup>.
48. The CCPE Bureau doubts that the special procedure introduced by the Law of September 2019, as well as the grounds for removal of the Prosecutor General, are fully in line with what is outlined above.
49. First of all, the evaluation commission is established by the executive body – the Ministry of Justice – and the extent of the potential influence of this body on the work of the commission is unclear. If the evaluation commission is given guarantees – which at present does not appear certain – of being free of any executive influence, then the risk of politicisation is, of course, reduced.
50. However, it is also a question of possible scenarios of the whole procedure and whether the SCP can be excluded from it, since the SCP may reject only once the proposal of the evaluation commission for the removal of the Prosecutor General. It seems unclear

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<sup>37</sup> See the Venice Commission’s Amicus Curiae Brief for the Constitutional Court of the Republic of Moldova on the Amendments to the Law on the Prosecutor’s Office, CDL-AD(2019)034, para 27.

<sup>38</sup> See Opinion No.9(2014) of the CCPE on European norms and principles concerning prosecutors, Explanatory Note, para 55; see Venice Commission’s Report on European Standards as Regards the Independence of the Judicial System: Part II – the Prosecution Service, CDL-AD(2010)040, paras 34-35.

<sup>39</sup> See Joint Opinion of the Venice Commission, Consultative Council of European Prosecutors (CCPE) and OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR), on the draft Amendments to the Law on the Prosecutor’s Office of Georgia, CDL-AD(2015)039, paras 19, 20 and 27.

<sup>40</sup> See Opinion No. 9 (2014) of the CCPE on European norms and principles concerning prosecutors, Explanatory Note, para 52.

<sup>41</sup> See the Venice Commission’s Report on European Standards as Regards the Independence of the Judicial System: Part II – the Prosecution Service, CDL-AD(2010)040, paras 39-40.

what happens then, following such a rejection by the SCP. Also, the Prosecutor General must have the possibility of appeal against a decision of removal, and he/she should benefit from a fair hearing in the removal proceedings.

51. Last but not least, the grounds themselves for removal are defined in broad terms, for example, “illegal interference in the activity of another prosecutor”. The Prosecutor General, by the very nature of this position, manages the work of the whole prosecution system and of individual prosecutors. Such management of course requires a certain degree of interaction with a lot of other prosecutors at different levels. Whether this interaction may amount, in some cases, to “illegal interference” depends on a vast variety of aspects, and it could potentially be interpreted too broadly.
52. If such a provision is to remain in the legislation of the Republic of Moldova, the CCPE Bureau would recommend identifying clearly, and also at legislative level, the exact elements of the “illegal interference” and of other grounds for removal mentioned above.

### **Conclusions**

53. The CCPE Bureau recalls that the CCPE is the voice of serving prosecutors throughout Europe, and it expresses their viewpoints in a practical context of ensuring their ability to work effectively and impartially, for which independence is a necessary pre-requisite.
54. In this context, the CCPE Bureau wishes to express some doubts as regards the changes introduced by the Law of September 2019 to the mechanism of selection and dismissal of the Prosecutor General of the Republic of Moldova, as well as to the composition of the SCP.
55. These doubts are first of all related to the question of whether the commissions to be established by the Ministry of Justice for the pre-selection of candidates for the position of Prosecutor General and for the procedure of removal of the latter will have sufficient guarantees of non-interference by the executive power in their work.
56. Secondly, the question persists as regards the risk of substantially diminishing the SCP role in the selection and dismissal of the Prosecutor General, and whether the latter will be guaranteed all necessary procedural safeguards in the removal proceedings.
57. As regards particularly the grounds of dismissal of the Prosecutor General, they are, in the opinion of the CCPE Bureau, rather broadly formulated. This creates a risk of arbitrary and potentially abusive interpretations which could be overcome by a firmer formulation of the provision concerned.
58. The CCPE Bureau also wishes to point out that its soft law standards, even though lacking legally obligatory force, play an important role in shaping the development of best European practices and setting out an enabling environment for prosecutors to fulfil their duties impartially and effectively.