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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  
(2019 edition)**

**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>CJEU</b>	Court of Justice of the European Union
<b>CoE</b>	Council of Europe
<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>EU</b>	European Union
<b>GRECO</b>	Council of Europe Group of States against Corruption
<b>IAJ</b>	International Association of Judges
<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

## 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. Following this proposal of the Secretary General, the CCPE's 11<sup>th</sup> plenary meeting<sup>2</sup> decided to issue such a report on a regular basis. The first edition of the report was presented during the CCPE plenary meeting on 23-24 November 2017, then presented to the CoE Committee of Ministers and published on 7 February 2018<sup>3</sup>. It highlighted various challenges to the independence and impartiality of the prosecution services in member States in 2017 and before. The present report therefore covers the period from December 2017 to November 2019<sup>4</sup>.
3. The report provides a summary of information submitted by CCPE members and observers, as well as by prosecutorial services 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<sup>5</sup>, 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<sup>6</sup>. The report also takes into account United Nations documents, as well as those of international NGOs working on the subject of the independence and impartiality of prosecution services.
4. The CCPE Bureau wishes to signal certain limitations concerning the report. First of all, in accordance with the CCPE Terms of Reference for 2018-2019 and the corresponding decision of the CCPE plenary meeting in 2016<sup>7</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 the result of a comprehensive and systematic research. For the preparation of the report, given the limited time and resources

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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> Document CCJE-BU(2017)11.

<sup>4</sup> If a challenge is on-going, it may appear in consecutive reports.

<sup>5</sup> The facts dealt with in some ECtHR judgments may date back well beyond the reporting period. However, the conclusions reached in those judgments provide an up-to-date indication of the position of the ECtHR in respect of judicial independence and impartiality based on the facts examined in the cases concerned.

<sup>6</sup> In some limited cases, expressly mentioned in the report, the sources of information also include media reports.

<sup>7</sup> See the report of the 11<sup>th</sup> plenary meeting of the CCPE on 17-18 November 2016 (document CCPE(2016)4, para 6).

available, statistically representative surveys or similar exercises could not be conducted. Therefore, the present report expresses a few major concerns about, and challenges to, the independence and impartiality of the prosecution services and does not pretend to be exhaustive.

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. 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 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. In the report, the CCPE's country specific opinions are quoted at length. This is done not in order to point fingers at the authorities of a particular member State, but rather because the opinion has been an occasion for the CCPE to recall in the report some fundamental principles which are relevant for, and applicable to, all judicial systems.
9. 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, or no relevant information has been provided to the CCPE as regards those countries for this report.
10. 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.
11. The CoE has established an extensive framework of standards intended to guarantee the independence and impartiality of the prosecution services and of prosecutors as one of the pillars of the rule of law and of the independence of the judiciary. Numerous instruments have been adopted which set out the requirements for achieving these fundamental objectives.

12. 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 autonomy and proper exercise of prosecutorial duties and responsibilities.
13. 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(2012)11 on the role of public prosecutors outside 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 previous Opinions<sup>8</sup> referring to the fundamental principles of the prosecutorial profession, on the European Guidelines on Ethics and Conduct for Public Prosecutors – “The Budapest Guidelines” of 2005, and on the Venice Commission’s Report on European Standards as regards the Independence of the Judicial System: Part II – the Prosecution Service. 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.
14. The CCPE Bureau has taken note of the 2017 PACE Resolution on “New threats to the rule of law in Council of Europe member States: selected examples” in which the Assembly recognises the CCPE’s role in developing legal documents in the field of independence and impartiality of the judiciary - one of the main components of the right to a fair trial as protected by the ECHR<sup>9</sup>.

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

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

15. 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, in the framework of criminal procedure, are adversarial in nature and those which are inquisitorial<sup>10</sup>. Nevertheless, over the centuries, diverse 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

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<sup>8</sup> Including CCPE Opinion No. 3 (2008) on the role of prosecution services outside the criminal law field.

<sup>9</sup> See PACE Resolution 2188 (2017) entitled “New threats to the rule of law in Council of Europe member States: selected examples”, para 4.

<sup>10</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.

this borrowing across systems has led to a degree of convergence that is not always acknowledged<sup>11</sup>.

16. 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 and the independence of the judiciary. 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 therefore be subject to certain restrictions aiming to safeguard his or her impartiality and integrity<sup>12</sup>.
17. Therefore, since the independence and autonomy of the prosecution services constitute an indispensable corollary to the independence of the judiciary, a general tendency for such independence and autonomy of prosecutors and prosecution services should be further encouraged<sup>13</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>14</sup>.
18. 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 clearly established by law, and that the government exercises its powers in a transparent way and in accordance with international treaties and standards, national legislation and general principles of law<sup>15</sup>.
19. 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>16</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>17</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>18</sup>.

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<sup>11</sup> Ibid., para 9.

<sup>12</sup> Ibid., paras 16-17.

<sup>13</sup> See CCPE Opinion No. 9 (2014) on European norms and principles concerning prosecutors, Rome Charter, point IV.

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

<sup>15</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>16</sup> See ECtHR *Guja v. Moldova* (Grand Chamber), no. 14277/04, para 86.

<sup>17</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>18</sup> See ECtHR *Kolevi v. Bulgaria*, no. 1108/02, 05/02/2010, para 142.

20. The traditions and culture of a member State are also important factors that should not be disregarded<sup>19</sup>. A strong tradition of independence can protect prosecutors<sup>20</sup>. In some member states, especially in those with more recently drafted constitutions, the independence of prosecutors<sup>21</sup> and the prosecution services is guaranteed in the constitution<sup>22</sup>, in other member States, in statutory law<sup>23</sup>. In some countries, there are separate Councils for Prosecutors<sup>24</sup> with different competences, while in other countries, there is a joint Council for Judges and Prosecutors<sup>25</sup>.
21. Instructions by the executive concerning specific cases are generally undesirable. In this context, instructions not to prosecute in a specific case should, in principle, be prohibited. Should that not be the case, such instructions must remain exceptional and be subjected not only to a number of requirements but also to an appropriate specific control with a view in particular to guaranteeing transparency<sup>26</sup>.
22. 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 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>27</sup>.

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<sup>19</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>20</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>21</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>22</sup> As in Croatia, Greece, Hungary, Portugal, 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>23</sup> As in Estonia, Poland, Romania, Russian Federation and Ukraine: see, for instance, 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>24</sup> As in Albania, Croatia, Portugal: 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>25</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.

<sup>26</sup> See Rec(2000)19, para 13(f); see also CCPE Opinion No. 13 (2018) on the independence, accountability and ethics of prosecutors, Recommendation iv.

<sup>27</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.



23. 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>28</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>29</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>30</sup>.
24. States must moreover 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>31</sup>. Prosecutors should be in a position to prosecute, without obstruction, public officials for offences committed by them, particularly in cases of corruption, unlawful use of power and grave violations of human rights<sup>32</sup>.
25. 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 must also be independent in their cooperation with law enforcement authorities, courts and other bodies<sup>33</sup>.

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

26. 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, notably as regards recruitment, training, career development, salaries, discipline and transfer (which must be affected only according to the law or with their consent), removal from office<sup>34</sup>. For these reasons, it is necessary to secure proper tenure and appropriate arrangements for the promotion, discipline and dismissal of prosecutors<sup>35</sup>.

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<sup>28</sup> See CCPE Opinion No. 9 (2014) on European norms and principles concerning prosecutors, para 40.

<sup>29</sup> *Ibid.*, para 41.

<sup>30</sup> *Ibid.*, para 42.

<sup>31</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>32</sup> See Rec(2000)19, para 16.

<sup>33</sup> See CCPE Opinion No. 9 (2014) on European norms and principles concerning prosecutors, para 38-39.

<sup>34</sup> See CCPE Opinion No. 4 (2009) on relations between judges and prosecutors in a democratic society, Bordeaux Declaration, Explanatory Note, para 37.

<sup>35</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.

27. 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>36</sup> which should be regulated by clear and understood processes and procedures<sup>37</sup>.
28. In particular, member States should take measures to ensure that:
- a) the recruitment, promotion and 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, sexual orientation, 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>38</sup>.
29. 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>39</sup>.
30. 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 may re-appoint him or her<sup>40</sup>.
31. 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>41</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 and respect of the public, as well as of the members of the judicial and prosecutorial system and the legal profession. The Prosecutor General should be appointed either

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<sup>36</sup> See CCPE Opinion No. 13 (2018) on the independence, accountability and ethics of prosecutors, Recommendation iii.

<sup>37</sup> See CCPE Opinion No. 9 (2014) on European norms and principles concerning prosecutors, para 52.

<sup>38</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>39</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>40</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>41</sup> Ibid., paras 34-35; see also CCPE Opinion No. 9 (2014) on European norms and principles concerning prosecutors, para 55.

for a sufficiently long period or permanently to ensure stability of his/her mandate and make him/her independent of political changes<sup>42</sup>.

32. As noted above, in addition to external independence, member States should guarantee the internal independence of prosecutors. In this context, if instructions are given to prosecutors by their hierarchy, they should be given in writing, in a fully transparent manner and always with the objective of applying the law while respecting rights and freedoms, without restrictions disproportionate to the legitimate objective pursued<sup>43</sup>.

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

33. 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>44</sup>.
34. Thus, prosecutors should carry out their functions based on objectivity, and they should always treat people as equal before the law. They should neither favour anyone nor discriminate against anyone<sup>45</sup>, and should always fulfil their duties in a professional manner, irrespective of the connections and influence of the potential defendant and victim<sup>46</sup>.
35. 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>47</sup>.
36. In the context of preventing corruption, it is important to recall that the remuneration and treatment of prosecutors, as well as the provision of financial, human and other

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<sup>42</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>43</sup> See CCPE Opinion No. 13 (2018) on the independence, accountability and ethics of prosecutors, Recommendation vi.

<sup>44</sup> See CCPE Opinion No. 9 (2014) on European norms and principles concerning prosecutors, Rome Charter, point VI.

<sup>45</sup> See CCPE Opinion No. 9 (2014) on European norms and principles concerning prosecutors, para 92.

<sup>46</sup> The ECtHR case law shows where this has been in doubt, see, for example, *Enukidze and Girgvliani v. Georgia*, no. 25091/07, 26 April 2011; *Kavaklıoğlu and others v. Turkey*, no. 15397/02, 6 October 2015.

<sup>47</sup> See CCPE Opinion No. 9 (2014) on European norms and principles concerning prosecutors, para 93.

resources for prosecution services should correspond, in a way comparable to those of judges, to the eminent nature of the mission and the particular duties of prosecutors<sup>48</sup>.

37. 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 in such cases<sup>49</sup>.
38. 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 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>50</sup>.
39. 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 CCPE’s previous Opinions and in the European Guidelines on Ethics and Conduct for Public Prosecutors (The Budapest Guidelines)<sup>51</sup>.
40. 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>52</sup> and for ensuring respect for 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>53</sup>. They must observe discretion and reserve corresponding to their functions, so that their independence, objectivity and impartiality cannot be put into doubt<sup>54</sup>.
41. In order to promote public confidence, prosecutors must be independent but also feel accountable. In this regard, clear and published, and regularly updated guidelines and codes of professional ethics and conduct would assist in promoting transparency, consistency, accountability and fairness<sup>55</sup>.
42. As regards disciplinary measures, prosecutors are subject, where appropriate, to disciplinary proceedings which must be based on a law, in the event of serious breaches of duty (negligence, breach of the duty of secrecy, anti-corruption rules, etc.), for clear and determined reasons; the proceedings should be transparent, apply

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<sup>48</sup> See CCPE Opinion No. 13 (2018) on the independence, accountability and ethics of prosecutors, Recommendation xi.

<sup>49</sup> See CCPE Opinion No. 9 (2014) on European norms and principles concerning prosecutors, para 93.

<sup>50</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>51</sup> See CCPE Opinion No. 9 (2014) on European norms and principles concerning prosecutors, para 99.

<sup>52</sup> See CCPE Opinion No. 4 (2009) on relations between judges and prosecutors in a democratic society, Bordeaux Declaration, para 10.

<sup>53</sup> See CCPE Opinion No. 9 (2014) on European norms and principles concerning prosecutors, para 98.

<sup>54</sup> See CCPE Opinion No. 13 (2018) on the independence, accountability and ethics of prosecutors, Recommendation xiv.

<sup>55</sup> See CCPE Opinion No. 13 (2018) on the independence, accountability and ethics of prosecutors, para 46.

established criteria and be held before a body which is independent from the executive; concerned prosecutors should be heard and allowed to defend themselves with the help of their advisers, be protected from any political influence, and have the possibility to exercise the right of appeal before a court; any sanction must also be necessary, adequate and proportionate to the disciplinary offence<sup>56</sup>.

43. Unless they are found to have committed a disciplinary offence or to have clearly failed to do their work properly, prosecutors, similar to judges, may not be held personally responsible for their choices of public action<sup>57</sup>.

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

44. The CCPE has emphasised that the provision of adequate organisational, financial, material and human resources contributes to ensuring independence. Particularly in times of economic difficulties, sufficient resources should be assigned to provide a quality service<sup>58</sup>.
45. Where the management of resources is entrusted to the prosecution service, it has the duty to do so with the utmost rigour and in a transparent manner<sup>59</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>60</sup>.
46. 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>61</sup>.
47. 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>62</sup>. States

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<sup>56</sup> See CCPE Opinion No. 13 (2018) on the independence, accountability and ethics of prosecutors, para 47.

<sup>57</sup> See CCPE Opinion No. 13 (2018) on the independence, accountability and ethics of prosecutors, para 48.

<sup>58</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>59</sup> See CCPE Opinion No. 7 (2012) on the management of the means of prosecution services, para 51.

<sup>60</sup> See CCPE Opinion No. 9 (2014) on European norms and principles concerning prosecutors, para 117.

<sup>61</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.

<sup>62</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.

should take measures to ensure that prosecutors have reasonable conditions of service as regards matters such as remuneration, tenure, a pension commensurate with their crucial role, as well as an appropriate age of retirement<sup>63</sup>.

48. In particular, the conditions of service of prosecutors should reflect the importance and dignity of the office, and the respect attached to it<sup>64</sup>. Appropriate remuneration of prosecutors implies recognition of their important function and role, and can also reduce the risk of corruption<sup>65</sup>. Bonuses, where they exist, should be based on criteria which are completely objective and transparent<sup>66</sup>.
49. In 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>67</sup>. It undermines the foundations of a democratic society governed by the rule of law<sup>68</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>69</sup>.

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

50. 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 this, the media should be enabled to report on criminal and other legal proceedings<sup>70</sup>.
51. In addition, the CCPE has recognised<sup>71</sup> that prosecutors also have the right to freedom of expression<sup>72</sup>, while having to respect professional secrecy, the duty of confidentiality,

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<sup>63</sup> See Rec(2000)19, para 5d. See also CCPE Opinion No. 9 (2014) on European norms and principles concerning prosecutors, para 75.

<sup>64</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>65</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>66</sup> See CCPE Opinion No. 9 (2014) on European norms and principles concerning prosecutors, para 76.

<sup>67</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>68</sup> See CCJE Opinion No. 18(2015), para 51.

<sup>69</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>70</sup> See also below and CCPE Opinion No. 8 (2013) on relations between prosecutors and the media, para 30.

<sup>71</sup> See CCPE Opinion No. 8 (2013) on relations between prosecutors and the media, para 19.

<sup>72</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.

the duty of discretion<sup>73</sup> and objectivity. When prosecutors appear in the media in any capacity, they should pay attention to the risks that may arise to the perceived impartiality and integrity of the prosecution service<sup>74</sup>.

52. The CCPE has also noted<sup>75</sup> that it is widely recognised that freedom of the press should be guaranteed during legal proceedings<sup>76</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>77</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>78</sup>.
53. 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, victims, defendants’ family members), the requirement of data protection and the obligation of confidentiality<sup>79</sup>.
54. The right of the public to receive information should also be secured<sup>80</sup>. However, the way this is done may depend on, and may be influenced by, the specific circumstances of the particular legal proceedings and may be subject to restrictions as appropriate so as to ensure that basic principles are respected<sup>81</sup>.
55. 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

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<sup>73</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>74</sup> See CCPE Opinion No. 8 (2013) on relations between prosecutors and the media, para 19.

<sup>75</sup> *Ibid.*, para 20.

<sup>76</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 its 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>77</sup> See ECtHR *Observer et Guardian v. UK*, no. 13585/88, 26 November 1991.

<sup>78</sup> See ECtHR *Bladet Tromsø and Stensaas v. Norway* (Grand Chamber), no. 21980/93, 20 May 1999.

<sup>79</sup> See CCPE Opinion No. 8(2013) on relations between prosecutors and the media, para 21.

<sup>80</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.

<sup>81</sup> See CCPE Opinion No. 8 (2013) on relations between prosecutors and the media, para 22.

involved in the investigation or prosecution. It should not influence the outcome of legal proceedings<sup>82</sup>.

56. At the same time, the CCPE has noted that in some member States politicians have often made comments that showed little understanding of the role of independent judges and prosecutors<sup>83</sup>. 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 reduces 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>84</sup>.

### **III. Country specific issues concerning the independence and impartiality of the prosecution services<sup>85</sup>**

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

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57. The CCPE member in respect of **Austria** states that, within the hierarchical system, public prosecutors have to obey instructions even in specific cases (given by a group leader, the chief prosecutor of a public prosecution service, a senior public prosecutor or the Federal Minister of Justice). Due to the strict system of legal safeguards (instructions have to be given in written form and are always part of the file; the Federal Minister has to provide a report about his/her instructions to the Parliament; an independent committee (Weisungsrat) was established within the Procurator General’s Office, which acts as advisory body to the Federal Minister of Justice), this system does not affect the work of public prosecutors in an undue manner, but in the public perception this situation sometimes affects credibility and results in suspicions that the investigation of criminal cases could be subject to political influence. The establishment of the above-mentioned independent committee (Weisungsrat) was highly appreciated by the public and has led to a reduction in the criticism during the last years.

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<sup>82</sup> Ibid., para 23.

<sup>83</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>84</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>85</sup> Please note that all information which is referred to in this Chapter was submitted to the CCPE in May-August of 2019.



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58. The CCPE member in respect of **Bosnia and Herzegovina** states that, even though the State Prosecutor's Office is formally independent, it is widely blamed for taking into account, in its cases, political interests, especially in those cases in which political officials are involved. Politically motivated attacks aimed at the prosecution service or prosecutors, mostly in an indirect way (in writing or orally), are increasing. Therefore, it is necessary to emphasise constantly the independence of the prosecutorial system and strongly reject any attempt of political influence.

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59. The CCPE member in respect of the **Czech Republic** states that, even though the Public Prosecutor's Office belongs, according to the Constitution, to the executive power, it is not part of the public administration, because within its jurisdiction, it acts as an independent and impartial authority. The Public Prosecutor's Office is a special authority *sui generis*, which performs tasks set by the law and particular to that authority only.
60. The impartiality and independence of the Public Prosecutor's Office differs from judicial independence, which is set out in the Constitution. Impartiality and independence are the necessary conditions of the proper functioning of the system of the Public Prosecutor's Office.
61. At the organisational level, the system of the Public Prosecutor's Office is separated from the executive power and from the legislature. However, it falls within the remit of the Ministry of Justice, which is the central authority of administration of the Public Prosecutor's Office.
62. Currently the biggest problem is that the Prosecutor General is appointed and removed, according to the legislation, on a proposal by the Minister of Justice and with no reasoning provided by the Government. Such legislation is considered by prosecutors as endangering the organisational independence of the Public Prosecutor's Office.

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63. The CCPE member in respect of **Estonia** states that the Prosecutor's Office is a governmental authority, governed by the Ministry of Justice, which in performing its tasks is independent and operates based on laws and legislation. Although by its nature the Prosecutor's Office appears to constitute a constitutional institution, independent in making its decisions, the Office actually forms a part of the executive branch. With reference to the foregoing, it is a challenge for the Prosecutor's Office as a part of the executive power to maintain its organisational independence which presupposes that all parties and levels accept the Prosecutor's Office as an independent governmental authority.

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64. The CCPE member in respect of **Hungary** states that the prosecution service does not operate under the guidance of the government and is completely independent from it. According to the Fundamental Law of Hungary, the Prosecutor General is responsible exclusively to parliament. This responsibility - confirmed also by the Hungarian

Constitutional Court - means a solely professional relationship. Within this framework, members of Parliament may address questions orally or in writing to the Prosecutor General. The questions addressed orally have to be answered by the Prosecutor General in person during the plenary meetings of Parliament. The Prosecutor General issues an annual report on his/her tasks and activities during the previous year, and this report is followed by a debate in Parliament.

65. However, during these activities, there is a slight misunderstanding, especially in the field of the communication of the members of parliament. Politicians regard the prosecution service as a political actor and address their official communications in such a manner. In fact, the prosecution service is exclusively a professional organisation, and has to respect that role in its communication. Therefore, political communication and prosecutorial communication use different instruments and mechanisms, which often leads to a communication situation affecting the prosecution service unfavourably and also has a negative effect as regards the public evaluation of the prosecution service.

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66. The CCPE member in respect of the **Republic of Moldova** states that in 2016-2018, the Prosecutor's Office passed through a fundamental reform, which was in line with international standards. A working group was set up to develop this reform, chaired by representatives of civil society. New legislation introduced led to a change whereby the institution moved away from the control of the legislative and the executive powers, creating effective conditions for the independence of prosecutors when it comes to the selection of candidates, appointment and dismissal of the Prosecutor General, the procedural independence of the prosecutors, etc.
67. In the same context, relevant jurisprudence of the Constitutional Court has found that "the responsibility of the Prosecutor's Office before Parliament in individual cases regarding decisions on prosecution or non-prosecution is excluded"<sup>86</sup>.
68. In November 2018, the Law on the Prosecutor's Office<sup>87</sup> was amended, eliminating the provisions according to which the annual report of the Prosecutor General was heard in a plenary session of Parliament. However, situations remain when, as a result of political considerations, prosecutors are brought to the plenary session in order to be heard in respect of concrete investigations. The Prosecutor's Office did not respond to these requests and officially informed the Parliament's leadership of the inadmissibility of these requests.
69. These reactions of the Prosecutor's Office triggered dissatisfaction on the part of some politicians, who did not hesitate to launch initiatives aimed at the dismissal of the Prosecutor General, as well as steps to amend the legislation.
70. On 14 June 2019, the CCPE received a Statement signed by 612 prosecutors from a total number of reportedly 637 prosecutors employed in the Prosecutor's Service of the

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<sup>86</sup> Decision of the Constitutional Court No. 71 of 27.07.2017 on the inadmissibility of the referral No. 93a / 2017 on the constitutionality of some of the provisions of paragraph 3 of Article 11 of Law No 3 of 25 February 2016 on Prosecutor's Office (Prosecutor's General Annual Report).

<sup>87</sup> Article VIII of Law No. 265 of 23.11.2018 for the amendment of some legislative acts.

Republic of Moldova. The Statement was addressed to the CCPE, as well as to the Venice Commission, the International Association of Prosecutors, and the Network of Public Prosecutors or equivalent institutions at the Supreme Judicial Courts of the EU member States (the NADAL Network). It concerned the amendment in a very speedy and non-transparent manner of the Law on Prosecutor's Service of 25 February 2016 (in force as of 1 August 2016), affecting in particular the composition and operation of the Superior Council of Prosecutors and the appointment/dismissal of the Prosecutor General.

71. The Statement expressed the concern of prosecutors in the Republic of Moldova, united in the Prosecutors' Association of the Republic of Moldova, about the independence of the Prosecutor's Service and its subordination to politics. The Statement referred to persistent attempts by some politicians to amend the Law on the Prosecution Service apparently in order to place the Prosecutor's Service under political control.
72. The Statement expressed alarm that these initiatives were being brought forward in a situation of deep political crisis with decisions made in a rushed manner, without public debates, without objective expertise, and without analysing the impact of these initiatives on the fundamental principles governing the Prosecutor's Service. Concern was also expressed that these initiatives created a dangerous precedent, when any political party that takes over power may change the leadership of the Prosecutor's Service and its laws at its own discretion.
73. The media reported on 8 July 2019<sup>88</sup> that the President of the Republic of Moldova wrote on a social network that since the formation of the parliamentary majority and the government, the Prosecutor General had refused to leave his post and that the legislature had initiated a procedure for his removal from office.
74. Such statements from the head of the executive power may violate European standards for the independence of the prosecution service. They also risk undermining public trust in the administration of justice and the separation of powers and the rule of law.

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75. The situation of the judiciary in **Poland** has not changed since the publication of the CCPE Bureau's 2017 Report. MEDEL and the AEAJ point to the broad and intense attack suffered by the judiciary, and to extensive reforms of the justice system in order to place it under executive control. These and other reforms of the Polish judicial system were subject to many statements by MEDEL<sup>89</sup>.

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<sup>88</sup> See at <http://a-tv.md/eng/index.php?newsid=62707>

<sup>89</sup> See at <https://www.medelnet.eu/index.php/news/europe/383-medel-communique-on-the-situation-of-the-constitutional-court-in-poland> ;  
<https://www.medelnet.eu/index.php/news/europe/473-medel-sofia-statement> ;  
<https://www.medelnet.eu/index.php/news/europe/467-medel-statement-on-the-eu-commission-s-decision-of-bringing-poland-to-the-ecj> ;  
<https://www.medelnet.eu/index.php/news/europe/457-solidarity-with-the-judges-of-the-polish-supreme-court> ;

76. MEDEL has urged “the CCJE to clearly and expressly state it in its report that the Polish judiciary is currently under a major threat of being put under total control of the executive, thus leading to a total loss of independence”<sup>90</sup>.
77. As mentioned in the CCPE Bureau’s 2017 Report, the Law on the Prosecution Service of 28 January 2016 altered the structure of the prosecution service in a substantial manner. The legislator returned to the situation where the Minister of Justice is acting as Prosecutor General. At an organisational level, the prosecution service remained 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.
78. 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>91</sup>.
79. 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.
80. The Venice Commission published its Opinion in December 2017<sup>92</sup>. It referred *inter alia* to several CCPE Opinions<sup>93</sup>. The Venice Commission noted that “the major change introduced in the Polish prosecution system by the Act on the Public Prosecutor’s Office is the merger of the office of Public Prosecutor General and that of the Minister of Justice... The merger of both offices is accompanied by important competences of the Public Prosecutor General (i.e. the Minister of Justice) in the management of the prosecutorial system”<sup>94</sup>.
81. The Venice Commission particularly pointed out that “the amalgamation between the political office and the office of chief prosecutor” and the increase in the powers of the

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<https://www.medelnet.eu/index.php/news/europe/408-krakow-declaration> ;  
<https://www.medelnet.eu/index.php/news/europe/397-medel-statement-on-the-reform-of-the-supreme-court-in-poland-keep-the-rule-of-law-in-poland> ;  
<https://www.medelnet.eu/index.php/news/europe/367-medel-declaration-on-reforms-of-the-judiciary-in-poland>

<sup>90</sup> Contribution of MEDEL to the report on judicial independence and impartiality in the CoE member States (2019 edition), p. 3.

<sup>91</sup> See at <http://www.inpris.pl/en/whats-going-on-at-inpris/article/t/lex-super-omnia-resolution-of-27-may-2017>

<sup>92</sup> See the Venice Commission Opinion on the Act on the Public Prosecutor’s Office in Poland as amended adopted by the Venice Commission at its 113<sup>th</sup> Plenary Session (Venice, 8-9 December 2017) (CDL-AD(2017)028).

<sup>93</sup> See the Venice Commission Opinion on the Act on the Public Prosecutor’s Office in Poland as amended adopted by the Venice Commission at its 113<sup>th</sup> Plenary Session (Venice, 8-9 December 2017) (CDL-AD(2017)028), para 19.

<sup>94</sup> See the Venice Commission Opinion on the Act on the Public Prosecutor’s Office in Poland as amended adopted by the Venice Commission at its 113<sup>th</sup> Plenary Session (Venice, 8-9 December 2017) (CDL-AD(2017)028), para 20.

Prosecutor General included “new competences enabling the Minister of Justice to directly intervene in individual cases”<sup>95</sup>. Such amalgamation generated a number of “insurmountable problems as to the separation of the prosecution system from the political sphere”<sup>96</sup> and resulted in “the accumulation of too many powers for one person. This has direct negative consequences for the independence of the prosecutorial system from political sphere, but also for the independence of the judiciary and hence the separation of powers and the rule of law in Poland”<sup>97</sup>.

82. The Venice Commission therefore concluded that “the prosecutorial system should be depoliticised and that the offices of the Public Prosecutor General and that of the Minister of Justice ... separated”<sup>98</sup>.
83. As regards the National Council of Public Prosecutors, its “purely advisory role... is to be reconsidered and direct effect of the decisions of this Council, at least in some matters, should be recognised; its composition should include prosecutors from all levels but also other external actors, such as lawyers, legal academics or civil society representatives; the dismissal of a member of the Council by the electing body before the end of the term of office should only be possible on the basis of reasonable grounds that are clearly indicated in the Law”<sup>99</sup>.
84. The CoE Commissioner for Human Rights emphasised in 2019 that, since the publication of the Venice Commission’s Opinion, the situation has not improved<sup>100</sup>.

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85. The CCPE member in respect of **Portugal** states that the Public Prosecution Services’ (PPS) external autonomy and independence are laid down in the Portuguese Constitution and regarded as a guarantee of independence.
86. The PPS, with the exception of its central services, do not have budgetary autonomy. In first instance courts, the management of human and material resources, which are provided by the Ministry of Justice, falls within the responsibility of a Management Council of the county, composed of the Judge President, the Public Prosecutor Coordinator and a Judicial Administrator, a clerk in whose appointment and discharge the Judge President has a significant role to play. Decisions are taken by a majority

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<sup>95</sup> See the Venice Commission Opinion on the Act on the Public Prosecutor’s Office in Poland as amended adopted by the Venice Commission at its 113<sup>th</sup> Plenary Session (Venice, 8-9 December 2017) (CDL-AD(2017)028), para 109.

<sup>96</sup> See the Venice Commission Opinion on the Act on the Public Prosecutor’s Office in Poland as amended adopted by the Venice Commission at its 113<sup>th</sup> Plenary Session (Venice, 8-9 December 2017) (CDL-AD(2017)028), para 110.

<sup>97</sup> See the Venice Commission Opinion on the Act on the Public Prosecutor’s Office in Poland as amended adopted by the Venice Commission at its 113<sup>th</sup> Plenary Session (Venice, 8-9 December 2017) (CDL-AD(2017)028), para 115.

<sup>98</sup> See the Venice Commission Opinion on the Act on the Public Prosecutor’s Office in Poland as amended adopted by the Venice Commission at its 113<sup>th</sup> Plenary Session (Venice, 8-9 December 2017) (CDL-AD(2017)028), para 112.

<sup>99</sup> See the Venice Commission Opinion on the Act on the Public Prosecutor’s Office in Poland as amended adopted by the Venice Commission at its 113<sup>th</sup> Plenary Session (Venice, 8-9 December 2017) (CDL-AD(2017)028), para 114.

<sup>100</sup> See the Report of the CoE Commissioner for Human Rights following her visit to Poland from 11 to 15 March 2019, paras 34-37.

vote. It is often noted, in this regard, that the PPS, in the first instance courts, are frequently disregarded in the allocation of resources. Regarding the Appeal Courts, the respective budget is managed by the Judge President, who can take substantial decisions about human resources needs and, as a consequence, about the prosecutors who work at the courts of appeals. According to Law 68/2019 of August 27 (New Statute of the Public Prosecution Service), the Prosecutor General's Office will benefit, as per January 1 of 2020, from administrative and financial autonomy and run its own budget. The budget draft will be presented to the government through the Ministry of Justice and may be further negotiated with Parliament, having in mind the constitutional mission of the public prosecution and the priorities laid down in the Crime Policy Act passed by parliament on a triennial basis, thus allowing for the effective accountability of the PPS before the people's representatives.

87. Reinforcement of the PPS independence requires, on the other hand, effective accountability. Being more autonomous, having the power to make real decisions about the establishment of priorities and the allocation of means, the PPS will still have to redesign its articulation with other democratic institutions, mainly Parliament, by negotiating its budget and presenting before this body the results of its performance. This would also reinforce transparency.
88. Related to this issue is that of an absence of control, by the public prosecution over the IT involved in the management of criminal cases, which is under the authority of a department answering to the Ministry of Justice. The system was not designed to answer to the specific needs of criminal investigations, and there may be risks for possible interference, through this case management system, of the government in on-going criminal investigations.
89. The direction of criminal investigations is a prerogative of the PPS. However, in fact it is the Criminal Investigation Police (Polícia Judiciária (PJ)) that leads and executes most relevant investigation procedures. This is the case as regards more serious and complex crimes since they have at their disposal all the necessary, though often insufficient, technical and forensic means. As this police body has mainly investigative competences, to maximise its efficiency and promote external control, the PJ should work under the direct authority of the PPS, thus avoiding its dependence from the executive.

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90. As it was mentioned in the CCPE Bureau's 2017 report in relation to **Romania**, the CCPE was informed of a 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>101</sup>. The Memorandum stated that the Minister of Justice proposed a set of amendments to the "laws of justice", without impact studies and without prior consultation on key legislative issues. The draft was communicated to the

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<sup>101</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> ; and at <http://inquamphotos.com/photo/58152/BUCURESTI—TMB—SUSTINERE—MAGISTRATI—MEMORANDUM.html#.Wd4cilFx3IU> .

Superior Council of Magistracy which, during its meeting on 28 September 2017, 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 prosecutors' offices, where they rejected the amendments.

91. These amendments were subsequently adopted. The Romanian Judges Forum Association and the Movement for Defending the Status of Prosecutors, on 15 November 2018, requested that the CCJE and the CCPE express their positions as regards the independence of judges and prosecutors in Romania. The request referred to a battle going back to 2017 over the preservation of the independence of judges and prosecutors, as well as other issues. The request pointed to problems which had received widespread national and international attention, as regards the fight against corruption and, in particular, the dismissal, in July 2018, by the Minister of Justice of the Chief Prosecutor of the National Anticorruption Directorate<sup>102</sup>. MEDEL has also indicated that it has observed with much concern the revision of these three basic laws on the judiciary in Romania.
92. As to issues to be examined by the CCPE, the Romanian Movement for Defending the Status of Prosecutors pointed to the Amendments to the following Laws: 1) on the Superior Council for Magistracy which entered into force in October 2018; 2) on the Statute of Judges and Prosecutors which entered into force in October 2018; and 3) on Judicial Organization which entered into force in July 2018.
93. The request of the Romanian Movement for Defending the Status of Prosecutors described how these amendments were developed and proposed, in their view without any meaningful dialogue and involvement of the judiciary and the prosecution. The request also referred to the Opinion of the Venice Commission on the above-mentioned Amendments which confirmed that "the legislative process took place in a context marked by a tense political climate, strongly impacted by the results of the country's efforts to fight corruption"<sup>103</sup> and that "this context makes any legislative initiative, which has the potential of increasing the risk of political interference in the work of judges and prosecutors, particularly sensitive"<sup>104</sup>.
94. In its assessment, the CCPE Bureau took note of the Venice Commission's above-mentioned Opinion, as well as of the Progress Report issued by the European Commission, on 13 November 2018, in the framework of the Cooperation and Verification Mechanism (CVM), which *inter alia* called on Romania to suspend immediately the implementation of the above-mentioned amendments, and to revise them taking fully into account the recommendations under the CVM and those issued by the Venice Commission<sup>105</sup>.

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<sup>102</sup> Technically the Chief Prosecutor of the National Anticorruption Directorate was dismissed by the President of Romania who initially objected to the dismissal and went ahead with it only after a decision by the Constitutional Court of Romania that upheld the Justice Minister's decision and required the President to sign the dismissal.

<sup>103</sup> See the Venice Commission's Opinion on Amendments to Law No. 303/2004 on the Statute of Judges and Prosecutors, Law No. 304/2004 on Judicial Organization, and Law No. 317/2004 on the Superior Council for Magistracy in Romania, CDL-AD(2018)017, para 13.

<sup>104</sup> *Ibid.*, para 17.

<sup>105</sup> See at [http://europa.eu/rapid/press-release\\_IP-18-6365\\_en.htm](http://europa.eu/rapid/press-release_IP-18-6365_en.htm) .

95. As regards the revocation of a SCM member, the CCPE Bureau recommended to reconsider its grounds and in particular to remove the possibility to revoke elected members of the SCM through a no-confidence vote of the general meetings of prosecutors' offices, including by way of a petition. This was in line with the Venice Commission's observations on the matter<sup>106</sup>, as well as with those of the above-mentioned European Commission's Progress Report on Romania under the CVM<sup>107</sup>.
96. As regards the exclusion of the SCM members, who were civil society representatives, from all meetings of the SCM Sections – bodies entrusted with decision-making under the amendments – the CCPE Bureau concluded<sup>108</sup> that it ran contrary to the European standards, and recommended that it was not appropriate to have such a limited role of civil society representatives in the work of the SCM and that it should be reconsidered.
97. The CoE Commissioner for Human Rights referred in her Statement of 3 September 2019 to her report on Romania, published in February 2019, in which she described, *inter alia*, the reform of the judiciary as hastily conceived. The Commissioner underlined the importance of maintaining the independence of the judiciary and urged the authorities to give effect to the recommendations of the Venice Commission and GRECO<sup>109</sup>.

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98. The Prosecutors Association of **Serbia**, in its communication of 20 April 2018, requested the CCPE to assess the compatibility with European standards of the proposed amendments to the Constitution of Serbia which would affect the composition of the High Prosecutorial Council (HPC) and the work of prosecutors. The Association's points of concern included the procedure for the election and dismissal of the five members of the HPC, its composition, and independence of the HPC and of the Public Prosecutor's Office.
99. As regards the procedure for the election and dismissal of the five members of the HPC, the CCPE Bureau recommended to uphold the requirement of a qualified majority of three-fifths of Parliament at the second possible stage of the election process as well.
100. As regards the possibility of dismissal of the HPC members, the CCPE Bureau recommended that the same qualified majority necessary for their election (three-fifths) should apply also in the case of their dismissal, in order to avoid politicisation and political pressures from the ruling party.

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<sup>106</sup> See the Venice Commission's Opinion on Amendments to Law No. 303/2004 on the Statute of Judges and Prosecutors, Law No. 304/2004 on Judicial Organization, and Law No. 317/2004 on the Superior Council for Magistracy in Romania, CDL-AD(2018)017, paras 165 and 141-142.

<sup>107</sup> See the Report from the Commission to the European Parliament and the Council on Progress in Romania under the Cooperation and Verification Mechanism (Strasbourg, 13.11.2018 COM(2018) 851 final), Section 3.1 (Benchmark one: judicial independence and judicial reform. Justice laws and legal guarantees for judicial independence), page 3.

<sup>108</sup> See the full text of the CCPE Bureau's Opinion at <https://rm.coe.int/ccpe-bu-2019-3-opinion-romania-2019-final/168094848a>

<sup>109</sup> See at <https://www.coe.int/en/web/commissioner/-/the-independence-of-judges-and-the-judiciary-under-threat?inheritRedirect=true>



101. In addition, the amendments did not specify the possible grounds for dismissal. The CCPE Bureau accordingly mentioned that the mandate of the members of such Council should only end at the expiry of their term of office, on retirement, on resignation or death, or on their dismissal for disciplinary reasons<sup>110</sup>.
102. In the light of the standards developed by the CCPE and the Venice Commission<sup>111</sup>, the Bureau further recommended reconsidering the composition of the HPC and making sure that it is composed of a majority, at least slight, of prosecutors from all levels of the prosecution service, and that the other part includes lawyers, legal academics and members of civil society, with only one member from the executive power.
103. The amendments did not mention the independence of the HPC and of the prosecution service, referring instead to them as autonomous state bodies. The CCPE Bureau underlined<sup>112</sup> that autonomy was not always the same as independence, and independence was more than simple autonomy, and it recommended to clearly mention both the organisational independence of the HPC and of the prosecution service from the executive and legislative powers, as well as the functional independence of individual prosecutors.
104. The Venice Commission also issued an Opinion on these draft amendments criticising in particular the procedure for the election of the HPC and its composition<sup>113</sup>. Following this Opinion, the Serbian authorities introduced a number of positive changes to the amendments which were praised in a Secretariat Memorandum of the Venice Commission stating in particular that the new text submitted to the Venice Commission was in line with the earlier recommendations<sup>114</sup>.
105. The amendments have not yet been adopted; it is expected that they will be put forward for voting in a Constitutional referendum in 2020.

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106. The AEAJ and MEDEL state, as they did in 2017 and as reflected in the CCPE Bureau's 2017 Report, that in **Turkey**, the Council of Judges and Prosecutors (CJP) remained politically influenced. MEDEL also refers to the report of the Office of the

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<sup>110</sup> See Venice Commission's Opinion on the draft amendments to the Law on the State Prosecutorial Council of Serbia, CDL-AD(2014)029, paras 52-54 and 56.

<sup>111</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>112</sup> See the full text of the CCPE Bureau's Opinion at <https://rm.coe.int/opinion-on-serbia-june-2018-3/16808b7144>

<sup>113</sup> See the Venice Commission Opinion on the draft Amendments to the Constitutional Provisions on the Judiciary in Serbia, adopted by the Venice Commission at its 115<sup>th</sup> Plenary Session (Venice, 22-23 June 2018) (CDL-AD(2018)011), para 92(2).

<sup>114</sup> See the Venice Commission Secretariat Memorandum on the compatibility of the draft Amendments to the Constitutional Provisions on the Judiciary, as submitted by the Ministry of Justice of Serbia on 12 October 2018, with the Venice Commission's Opinion on the draft Amendments to the Constitutional Provisions on the Judiciary (CDL-AD(2018)011) taken note of by the Venice Commission at its 116<sup>th</sup> Plenary Session (Venice, 19-20 October 2018) (CDL-AD(2018)023), paras 12-13 and 26-27.

United Nations High Commissioner for Human Rights<sup>115</sup> on the impact of the state of emergency on human rights in Turkey, which referred to the CJP and stated that “because of the Council’s key role of overseeing the appointment, promotion and dismissal of judges and public prosecutors, the President’s control over it effectively extends to the whole judiciary branch. The United Nations Human Rights Committee has noted that a situation where the executive is able to control or direct the judiciary is incompatible with the notion of an independent tribunal”<sup>116</sup>.

107. Similar concerns raised by the CoE Commissioner for Human Rights and the Venice Commission as regards the CJP were reflected in the CCPE Bureau’s 2017 Report<sup>117</sup>. The Venice Commission stated in its Opinion on the draft Constitutional Amendments, since approved in a referendum and now in force, that it “finds that the proposed composition of the CJP is extremely problematic. Almost half of its members (4+2=6 out of 13) will be appointed by the President. It is important to stress once again in this respect that the President will no more be a *pouvoir neutre*, but will be engaged in party politics: his choice of the members of the CJP will not have to be politically neutral”<sup>118</sup>.

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

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108. The CCPE member in respect of **Austria** states that the appointment procedure for public prosecutors (especially to the higher rank positions) is not always carried out in a transparent manner, because the Federal Minister of Justice (who has to nominate the candidate to be appointed by the Federal President) is not bound by the recommendations of the committee of professionals. Especially the cases, where the choice of the Federal Minister of Justice differs from the recommendation of this committee, may be interpreted as having involved political or personal motives within the appointment procedure. Unsuccessful candidates regularly do not receive any information about the appointment procedure; they also do not have any remedy against decisions taken within the appointment procedure.

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<sup>115</sup> See at [https://www.ohchr.org/Documents/Countries/TR/2018-03-19\\_Second\\_OHCHR\\_Turkey\\_Report.pdf](https://www.ohchr.org/Documents/Countries/TR/2018-03-19_Second_OHCHR_Turkey_Report.pdf)

<sup>116</sup> See para 34 of the report of the Office of the United Nations High Commissioner for Human Rights on the impact of the state of emergency on human rights in Turkey, including an update on the South-East.

<sup>117</sup> See the statement of the CoE Commissioner for Human Rights on 7 June 2017 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)

<sup>118</sup> See the Venice Commission Opinion on the Amendments to the Constitution of Turkey adopted by the Grand National Assembly on 21 January 2017 and to be submitted to a national referendum on 16 April 2017, adopted by the Venice Commission at its 110<sup>th</sup> Plenary Session (Venice, 10-11 March 2017), para 119.

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109. The CCPE member in respect of **Bosnia and Herzegovina** states that the appointment of prosecutors and especially of the Prosecutor General by the formally independent High Judicial and Prosecutorial Council in practice is more or less under pressure of political parties in a political system which is not uncomplicated. Such influence should be countered by introducing stronger criteria for the appointment.

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110. The CCPE member in respect of the **Czech Republic** states that the Ministry of Justice appoints public prosecutors for an indefinite period upon a proposal of the Prosecutor General. A public prosecutor's position may be terminated only for reasons laid down by the law. More detailed conditions are set in the agreement on the selection and career progression of public prosecutors of 25 June 2018, which has been concluded between the Ministry of Justice and the chief public prosecutors.

111. The Government appoints the Prosecutor General for an undetermined period of time and removes him/her at the proposal of the Minister of Justice. The manner in which the Prosecutor General can be appointed or removed is currently seen as the biggest weakness of the legislation.

112. A proposal is under discussion at the level of the Ministry of Justice which would change the Act on Public Prosecutor's Office. The proposal sets out, in relation to the chief public prosecutors, the requirements for their appointment and tenure. It envisages 7 years of tenure, but there are some voices calling for 10 years as it is the case for judges. While the same person may enjoy no more than two consecutive terms, this does not apply to the Prosecutor General. The proposal regulates, unlike the current legislation, also the appointment procedure of the chief public prosecutors and basic conditions for the career progression of public prosecutors.

113. According to the proposal, the removal of the chief public prosecutor, including the Prosecutor General, would be possible only if the chief public prosecutor commits a disciplinary offence.

114. The changes set out in the proposal are very important for the public prosecutors' independence. If the proposal is adopted and enters into force, it would considerably strengthen the functional and organisational independence of the Public Prosecutor's Office.

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115. 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 GRECO's delegation that in practice immunity for prosecutors is systematically waived. Notwithstanding such a practice, the immunity of prosecutors should be reduced to functional immunity only.

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116. The CCPE member in respect of the **Republic of Moldova** states that, following the reforms in 2016-2018, and in line with international standards, the process of the selection and career of prosecutors is managed by the self-governing bodies: the Superior Council of Prosecutors and the subordinated Colleges. At the same time, the functional independence of prosecutors increased as a result of the reform of the institution. The levels of hierarchical control were reduced, and the hierarchically superior prosecutors may issue instructions only in written form.
117. Prosecutors' perception of the degree of functional independence was analysed in an anonymous survey conducted in 2018, in which 559 prosecutors out of reported total of 637 prosecutors in the country took part. According to the survey results, about 82 % of prosecutors indicated that they considered themselves independent in their decision-making. The other respondents, about 18 %, argued that their independence was affected by the existence of hierarchically superior control, methodological indications, guidelines from the General Prosecutor's Office, etc.
118. The positive results of the reforms in 2016-2018 are being put in question by recent developments, as already mentioned in the preceding chapter of the present report as regards the Republic of Moldova.

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119. As already mentioned in the context of the very difficult situation of the judiciary in **Poland**, the Venice Commission criticised the merger of the offices of the Prosecutor General and of the Minister of Justice<sup>119</sup> and recommended their separation<sup>120</sup>. It also noted that prosecutors are appointed by the Prosecutor General who, before the appointment, may (or may not) seek the opinion of a competent public prosecutor's office's board on the candidate. In other words, the Prosecutor General is not obliged to seek such an opinion. Consequently, there is a risk that the participation of the board of prosecutors in the appointment procedure in Poland is very limited, even inexistent<sup>121</sup>.
120. As the Venice Commission considered in its 2010 Report on the independence of the Judicial System (Part II), in view of the special qualities required for prosecutors, "it seems ill-advised to leave the process of their appointment entirely to the prosecutorial hierarchy alone. The Venice Commission has consistently recommended that, in order to prepare the appointment of qualified prosecutors, expert input should be sought. This could be done ideally within the framework of an independent body, such as a democratically legitimised prosecutorial council or a board of senior prosecutors"<sup>122</sup>.

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<sup>119</sup> See the Venice Commission Opinion on the Act on the Public Prosecutor's Office in Poland as amended adopted by the Venice Commission at its 113<sup>th</sup> Plenary Session (Venice, 8-9 December 2017) (CDL-AD(2017)028).

<sup>120</sup> See the Venice Commission Opinion on the Act on the Public Prosecutor's Office in Poland as amended adopted by the Venice Commission at its 113<sup>th</sup> Plenary Session (Venice, 8-9 December 2017) (CDL-AD(2017)028), para 112.

<sup>121</sup> See the Venice Commission Opinion on the Act on the Public Prosecutor's Office in Poland as amended adopted by the Venice Commission at its 113<sup>th</sup> Plenary Session (Venice, 8-9 December 2017) (CDL-AD(2017)028), paras 81 and 83.

<sup>122</sup> See the Venice Commission Opinion on the Act on the Public Prosecutor's Office in Poland as amended adopted by the Venice Commission at its 113<sup>th</sup> Plenary Session (Venice, 8-9 December 2017) (CDL-AD(2017)028), para 82.

121. The Venice Commission has concluded in respect of Poland that, if the current system in Poland were maintained, then it is recommended that the Act on the Public Prosecutor's Office be amended so as to introduce at least the obligation for the Prosecutor General "to provide a reasoned decision to override such advice from the advisory expert body and the fact that the advice was overridden should be disclosed"<sup>123</sup>.
122. The CoE Commissioner for Human Rights emphasised in 2019 that, since the publication of the Venice Commission's Opinion, the situation has not improved<sup>124</sup>.

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123. The CCPE member in respect of **Portugal** states that presently, the appointment and dismissal of the Prosecutor General fall within the powers of the President of Portugal, following a government proposal. To prevent political interference, or the appearance of such interference, the power to propose to the President the candidates for the position of the Prosecutor General could be given to Parliament, maybe by a two-thirds majority, thereby promoting transparency and public scrutiny of a process which is currently characterised by some opacity. Since its revision in 1997, the Constitution states that the Prosecutor General's term of office is 6 years, but it does not clarify whether it is renewable or not. Regardless of the opinion on this particular juridical question, open to debate, while the doubt persists, the option whether or not to renew the term of office of the Prosecutor General has a political context that would be better avoided. A possible solution might be to establish a longer term, maybe somewhere between 7 or 9 years, however not renewable.
124. All prosecutors, other than the Prosecutor General, are appointed for life by the High Council of the Prosecution Services (HCPPS) and can only be removed from office following a disciplinary procedure, also within the authority of the HCPPS.
125. As regards functional independence, each prosecutor may direct and decide the cases he/she has under his/her processing, and Portuguese prosecutors enjoy considerable independence from their hierarchical superiors. The main problem that still remains, since the 2014 judicial reforms, is a lack of coherence between the new organisation of the judicial system and the Statute of the Public Prosecution Services. This is the case especially in relation to the different hierarchical degrees and their respective powers, specifically those conferred upon the Prosecutor Coordinator of the County. Such powers allow him/her to reassign files from one prosecutor to another, or to transfer – within the new, large, counties – a prosecutor from one duty station to another. Even when one takes into account that this is only possible for service reasons (or to distribute the workload more equally) and with the consent of the HCPPS, it should nevertheless be emphasised how the lines used to draw the prosecutors' internal autonomy have become more blurred since 2014. In the new Statute of the Public Prosecution Services (Law 68/2019 of 27 August 2019), there are provisions to address these concerns.

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<sup>123</sup> See the Venice Commission Opinion on the Act on the Public Prosecutor's Office in Poland as amended adopted by the Venice Commission at its 113<sup>th</sup> Plenary Session (Venice, 8-9 December 2017) (CDL-AD(2017)028), para 84.

<sup>124</sup> See the Report of the CoE Commissioner for Human Rights following her visit to Poland from 11 to 15 March 2019, paras 34-37.

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126. As mentioned, the CCPE was requested by the Movement for Defending the Status of Prosecutors of **Romania** to express its position as regards the independence of the judiciary in Romania in the context of the Amendments to the justice laws. The questions the CCPE was asked to examine concerned appointing/dismissing high-ranking prosecutors.
127. In Romania, the Prosecutor General and the Chief Prosecutors of the National Anticorruption Directorate (DNA) and Department for Investigating Organised Crime and Terrorism (DIICOT), as well as their deputies, were appointed by the President of Romania upon the proposal of the Minister of Justice, and after receiving the opinion of the SCM. The President may refuse an appointment, providing reasons for such a refusal. The law in force before the adoption of the Amendments did not mention how many times the President could refuse.
128. The Amendments to the Law on the Statute of Judges and Prosecutors prescribed that the President may refuse only once. In this way, when the Minister of Justice proposed the second candidate, the President would be bound to make the appointment, even in case of a negative opinion of the SCM.
129. The Bureau of the CCPE agreed with the Venice Commission that the decision of the Constitutional Court “gives the Minister of Justice the crucial power in removing high-ranking prosecutors, while confining the President in a rather ceremonial role, limited to certifying the legality of the relevant procedure. The weight of SCM is also considerably weakened”<sup>125</sup>.
130. The CCPE Bureau also noted that the European Commission's above-mentioned Progress Report on Romania under the CVM mentioned that the Amendments had weakened the role of the President of Romania and the SCM role in the appointment process for senior prosecutors, while strengthening the role of the Minister of Justice<sup>126</sup>.
131. The CCPE Bureau consequently recommended<sup>127</sup> reconsidering the system for the appointment/dismissal of the Prosecutor General and other high-ranking prosecutors, including the Amendments, as well as the related provisions of the current Constitution of Romania, in order to provide for a neutral and objective appointment/dismissal process in line with European standards<sup>128</sup>.

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<sup>125</sup> Ibid., para 58.

<sup>126</sup> See the Report from the Commission to the European Parliament and the Council on Progress in Romania under the Cooperation and Verification Mechanism (Strasbourg, 13.11.2018 COM(2018) 851 final), Section 3.1 (Benchmark one: judicial independence and judicial reform. Justice laws and legal guarantees for judicial independence), page 7.

<sup>127</sup> See the full text of the CCPE Bureau's Opinion at <https://rm.coe.int/ccpe-bu-2019-3-opinion-romania-2019-final/168094848a>

<sup>128</sup> See the Venice Commission's Opinion on Amendments to Law No. 303/2004 on the Statute of Judges and Prosecutors, Law No. 304/2004 on Judicial Organization, and Law No. 317/2004 on the Superior Council for Magistracy in Romania, CDL-AD(2018)017, para 165.

132. As mentioned, the CoE Commissioner for Human Rights underlined in a Statement of 3 September 2019 her concerns as regards Romania and urged the authorities to give effect to the recommendations of the Venice Commission and GRECO<sup>129</sup>.

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133. As mentioned, the Prosecutors' Association of **Serbia** requested the CCPE to assess the compatibility with European standards of the proposed amendments to the Constitution of Serbia which would affect the election and dismissal of the Supreme Public Prosecutor and public prosecutors, their term of office, as well as the term of office and dismissal of deputy public prosecutors.

134. Taking into account its standards<sup>130</sup>, the CCPE Bureau recommended that the qualified three-fifths majority, required for the election of the HPC members, must also be required in the case of election or dismissal of the Supreme Public Prosecutor and public prosecutors, in order to avoid politicisation and political pressure from the ruling party.

135. Recalling its standards as regards the grounds for dismissal of public prosecutors<sup>131</sup>, as well as the Venice Commission's provisions<sup>132</sup>, the CCPE Bureau recommended to integrate into the amendments provisions stating that such grounds would have to be prescribed by law and that the decision should be taken by an independent body after establishing sufficient grounds for dismissal, with a possibility of fair hearing.

136. The CCPE Bureau advocated for introducing a seven-year term of office for the Supreme Public Prosecutor, without the possibility of re-election<sup>133</sup>. As regards the term of office for public prosecutors, the CCPE Bureau endorsed the position of the Venice Commission<sup>134</sup> and proposed to consider their appointment on a permanent basis.

137. As regards incompetent performance as a ground for dismissal for deputy public prosecutors, the CCPE Bureau recommended<sup>135</sup> either deleting this ground, or specifying that only very serious and repetitive incompetence cases established

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<sup>129</sup> See at <https://www.coe.int/en/web/commissioner/-/the-independence-of-judges-and-the-judiciary-under-threat?inheritRedirect=true>

<sup>130</sup> See Opinion No.9(2014) of the CCPE on European norms and principles concerning prosecutors, Explanatory Note, paras 51 and 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>131</sup> See Opinion No. 9(2014) of the CCPE on European norms and principles concerning prosecutors, Explanatory Note, para 52.

<sup>132</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, paras 39-40.

<sup>133</sup> See CCPE Opinion No. 9(2014) on European norms and principles concerning prosecutors, Explanatory Note, para 56; see also 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 37.; see also UN 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>134</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 50.

<sup>135</sup> See the full text of the CCPE Bureau's Opinion at <https://rm.coe.int/opinion-on-serbia-june-2018-3/16808b7144>

through due disciplinary procedure, with a possibility of judicial appeal, may lead to dismissal.

138. As mentioned, the Venice Commission also issued an Opinion on these draft amendments criticising in particular the procedure for the election of the Supreme Public Prosecutor and public prosecutors, their terms of office and grounds for dismissal<sup>136</sup>.
139. Following the Opinion of the Venice Commission, the Serbian authorities introduced a number of positive changes to the amendments which were praised in a Secretariat Memorandum of the Venice Commission stating in particular that the new text submitted to the Venice Commission was in line with the earlier recommendations<sup>137</sup>.
140. The amendments have not yet been adopted; it is expected that they will be put forward for voting in a Constitutional referendum in 2020.

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141. The AEAJ and MEDEL state that as regards **Turkey**, the problems reported by them in 2017 and reflected in the CCPE Bureau's 2017 Report, are still present. The AEAJ refers in particular to the reports and documents of the Platform for an independent judiciary in Turkey, of which the AEAJ is a member, raising issues related to dismissing prosecutors from office and transferring them to remote courts, as well as investigations and arrests of prosecutors within the framework of the state of emergency measures which were put in place following the attempted "coup d'état" in 2016<sup>138</sup> and have since been lifted.
142. Earlier, the ECtHR found, in a case concerning the dismissal of a judge pursuant to a legislative decree adopted during the state of emergency, that a new remedy was available, provided for in Legislative Decree no. 6851, enabling the applicant to challenge her dismissal before the Supreme Administrative Court<sup>139</sup>. This remedy is also available to prosecutors who have been subject to dismissal. The decision of the Supreme Administrative Court could then be challenged before the Constitutional Court. The ECtHR also stated that its conclusion did not in any way prejudice a possible re-examination of the question of the effectiveness of the remedy in question,

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<sup>136</sup> See the Venice Commission Opinion on the draft Amendments to the Constitutional Provisions on the Judiciary in Serbia, adopted by the Venice Commission at its 115<sup>th</sup> Plenary Session (Venice, 22-23 June 2018) (CDL-AD(2018)011), paras 80-83.

<sup>137</sup> See the Venice Commission Secretariat Memorandum on the compatibility of the draft Amendments to the Constitutional Provisions on the Judiciary, as submitted by the Ministry of Justice of Serbia on 12 October 2018, with the Venice Commission's Opinion on the draft Amendments to the Constitutional Provisions on the Judiciary (CDL-AD(2018)011) taken note of by the Venice Commission at its 116<sup>th</sup> Plenary Session (Venice, 19-20 October 2018) (CDL-AD(2018)023), paras 16-17 and 20-21.

<sup>138</sup> See at <http://www.aej.org/blog> ; [https://www.aej.org/media/files/2019-01-23-22-Platform\\_Universal%20Declaration%20of%20Human%20Rights%20and%20its%20recognition%20in%20Turkey.pdf](https://www.aej.org/media/files/2019-01-23-22-Platform_Universal%20Declaration%20of%20Human%20Rights%20and%20its%20recognition%20in%20Turkey.pdf) ; <http://www.aej.org/media/files/2017-07-20-74-Situation%20of%20Turkish%20Judiciary%20-%20Platform%20Report.pdf>

<sup>139</sup> The highest administrative court in Turkey is the Turkish Council of State.



and particularly the ability of the national courts to establish consistent case law compatible with the ECHR requirements<sup>140</sup>.

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

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143. The CCPE member in respect of **Austria** states that public prosecutors follow a code of ethics and are subject to a disciplinary regime. They always have to act in an impartial manner. Private postings and comments of public prosecutors (as well as judges) on social media related to current criminal cases, scandals or other publicly discussed incidents may run contrary to the principle of impartiality and strict neutrality.

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144. The CCPE member in respect of **Bosnia and Herzegovina** states that disciplinary sanctions against officials of the State Prosecutor's Office for violations of ethical rules so far do not act sufficiently as a preventive and deterrent measure. Time is needed to raise the awareness of the importance of ethical standards in the prosecutorial system.

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145. As mentioned in the CCPE Bureau's 2017 Report, 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 judges and prosecutors to declare their membership in professional organisations;
- the provision calling for removal of judges and prosecutors from office following a public criminal charge against them concerning a premeditated crime.

146. The Bulgarian Judges Association indicated that the amendments imposed restrictions on the freedom of association and had a chilling effect on judicial and prosecutorial independence. It also indicated that the amendments were adopted in haste, without any public discussion, or discussion with the Bulgarian judiciary. The Bill was submitted to Parliament on 4 July 2017 and was adopted in the first reading on 27 July 2017<sup>141</sup>.

147. The CCJE member in respect of Bulgaria provided an update of the situation in 2019. As regards the first problem - concerning the freedom of association of judges and prosecutors - there are no further developments. However, as regards the second issue - the suspension or removal of judges and prosecutors from office - by Constitutional Court decision of 21 February 2019, issued upon the request of the Supreme Court of Cassation, the provision prescribing automatic suspension and removal was declared contrary to the Constitution, and it is no longer applicable.

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<sup>140</sup> See ECtHR *Çatal v. Turkey*, application 2873/17, 10 March 2017.

<sup>141</sup> See the letter of the Bulgarian Judges Association of 5 October 2017 to the CCJE members.

148. The CCPE member in respect of Bulgaria states that a topical challenge for prosecutors' independence and objectivity remains to overcome local ties in the judiciary bodies, especially in smaller regions. To a certain extent, this is due to the still overly broad structure of the Prosecutor's Office (despite some steps already taken in this respect), as well as to the strict rules on local and subject-matter jurisdiction and competence. Experience, including that of the last two years, also includes cases where recourse to instruments intended for that purpose (objections, oppositions, raising conflicts of jurisdiction) was made in such a manner as to hamper effectiveness and redistribute responsibilities.
149. In very specific and current terms, and without questioning the need to provide more transparency on the part of holders of senior public positions and judiciary positions vis-à-vis society, the background to the calls for independence can be found in the so-called "property scandals" in 2018 and 2019. Where necessary, the Prosecutor's Office responds to alerts and orders investigations of the property and of the circumstances of its acquisition by representatives of all state powers, including the judiciary, to which the Prosecutor's Office itself belongs. It is difficult to respond adequately only through the means of the Prosecutor's Office to the widespread public suspicion of irregularities. This unfortunately creates an environment where the Office is seen as politicised.
150. Magistrates are obliged to disclose membership in professional organisations, income, the property of members of their families and their partners. This is complicated to do and requires a certain amount of detail and annual repetition of the same facts. Moreover, it is not accompanied by reliable and adequate verification mechanisms.

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151. The CCPE member in respect of the **Czech Republic** states that the rules related to the ethics and professionalism of public prosecutors are laid down in the Act on Public Prosecutor's Office and particularly in the Code of Conduct of the Public Prosecutor<sup>142</sup>. The Code of Conduct contains the principles which every public prosecutor should comply with in his/her performance. The Code of Conduct came into force on 1 May 2019. The definition of a disciplinary offence is set out in the Act on Public Prosecutor's Office. It is problematic that currently there is no right of appeal within the framework of disciplinary proceedings against public prosecutors.

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152. The CCPE member in respect of **Estonia** states that the Prosecutor's Office has developed strategic goals and values which, as an addition to the legislation, support prosecutors in every way in their daily work. Furthermore, a code of ethics, an Ethics Board, and a mechanism for reporting undue influence in the same way as assaults against prosecutors are in place. The biggest challenge lies in ways to employ in practice the ethical principles as actual tools in making professional decisions. Another challenge is posed by aligning the ethical values of different parties to the proceedings as the ethical beliefs of the parties may not coincide.

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<sup>142</sup> Available from:

[http://www.nsz.cz/images/stories/PDF/predpisy/Etický\\_kodex\\_statního\\_zastupce.pdf](http://www.nsz.cz/images/stories/PDF/predpisy/Etický_kodex_statního_zastupce.pdf)

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153. The CCPE member in respect of **Hungary** states that currently, the disciplinary proceeding within the Hungarian prosecution service are not handled outside the immediate hierarchical structure. However, it is believed that the current disciplinary proceedings are safeguarded by adequate guarantees as the law allows an objection on the grounds of bias to be filed against the person exercising disciplinary powers or the disciplinary commissioner if he/she cannot be expected to participate in the disciplinary proceeding impartially, and there is a right to appeal against a disciplinary decision before a court.

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154. As already mentioned in the context of the very problematic situation of the judiciary in **Poland**, the Venice Commission criticised the merger of the offices of the Prosecutor General and of the Minister of Justice<sup>143</sup>, recommended their separation<sup>144</sup> and, in addition, also recommended that:

- “Any instruction reversing the acts of a subordinate prosecutor should be reasoned;
- the Law should clearly establish that the parties to the case have access to the instructions given by a superior public prosecutor;
- the subordinate public prosecutor should have the possibility to contest the validity of the instruction on the basis of its illegal character or its improper grounds before a court or an independent body;
- the limited circumstances under which the Public Prosecutor General may request operational activities directly linked to on-going preparatory proceedings and to get acquainted with materials collected in the course of such activities, should be clearly indicated”<sup>145</sup>.

155. The Venice Commission noted that, “if the current system of merger of offices were maintained, then the competence of the Public Prosecutor General (i.e. the Minister of Justice) to intervene in individual cases should be excluded and his/her competences should be limited to giving general regulations and guidelines to the subordinate prosecutors in order to prevent any risk of political manipulation of individual cases by an active politician”<sup>146</sup>.

156. As regards disciplinary liability, the Venice Commission pointed out that “the provision excluding the disciplinary liability for decisions taken exclusively in public interest

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<sup>143</sup> See the Venice Commission Opinion on the Act on the Public Prosecutor’s Office in Poland as amended adopted by the Venice Commission at its 113<sup>th</sup> Plenary Session (Venice, 8-9 December 2017) (CDL-AD(2017)028).

<sup>144</sup> See the Venice Commission Opinion on the Act on the Public Prosecutor’s Office in Poland as amended adopted by the Venice Commission at its 113<sup>th</sup> Plenary Session (Venice, 8-9 December 2017) (CDL-AD(2017)028), para 112.

<sup>145</sup> See the Venice Commission Opinion on the Act on the Public Prosecutor’s Office in Poland as amended adopted by the Venice Commission at its 113<sup>th</sup> Plenary Session (Venice, 8-9 December 2017) (CDL-AD(2017)028), para 112.

<sup>146</sup> See the Venice Commission Opinion on the Act on the Public Prosecutor’s Office in Poland as amended adopted by the Venice Commission at its 113<sup>th</sup> Plenary Session (Venice, 8-9 December 2017) (CDL-AD(2017)028), para 114.

should be repealed”<sup>147</sup> because “abuses cannot be excluded since a decision taken exclusively in the public interest, but without any grounds and even in breach of the provisions of the law, would not lead to disciplinary sanctions. This is not an appropriate guarantee to protect human rights and freedoms against infringement”<sup>148</sup>.

157. The CoE Commissioner for Human Rights emphasised in 2019 that, since the publication of the Venice Commission’s Opinion, the situation has not improved<sup>149</sup>.

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158. The CCPE member in respect of **Portugal** states that, as regards the individual accountability of prosecutors, in case of intent or serious fault, prosecutors may be held responsible for damages unduly suffered as a consequence of their decisions, but never directly by the interested person, only through a complaint against the state.

159. Ethical principles concerning prosecutors are set out in the Statute of the Public Prosecution and in the general law regarding public workers, as well as the respective sanctions in case of a breach of duty. Some have underlined the importance of clearly defining the rules by which prosecutors should abide, not only when performing their mission, but also in their private lives, contrary to the more general provisions that exist today. Others are of the opinion that prosecutors should declare their assets and interests to the Constitutional Court and not be authorised to perform activities outside the prosecution services. Following the publication of Law 52/2019 of 31 July 2019, the assets and interests of prosecutors are in the future to be declared to the High Prosecutorial Council.

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160. As mentioned, the CCPE was requested by the Movement for Defending the Status of Prosecutors of **Romania** to express its position as regards the independence of the judiciary in Romania in the context of the Amendments to the justice laws. The questions the CCPE was asked to examine concerned notably the material liability of prosecutors and the establishment of a separate prosecutor office structure for the investigation of offences committed by prosecutors.

161. The Amendments to the Law on the Statute of Judges and Prosecutors prescribed that action for recovery brought by the state against a magistrate (including prosecutors)<sup>150</sup> having committed a judicial error in bad faith or as a result of gross negligence was no longer optional but obligatory, with increased role of the Ministry of Public Finance, a

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<sup>147</sup> See the Venice Commission Opinion on the Act on the Public Prosecutor’s Office in Poland as amended adopted by the Venice Commission at its 113<sup>th</sup> Plenary Session (Venice, 8-9 December 2017) (CDL-AD(2017)028), para 114.

<sup>148</sup> See the Venice Commission Opinion on the Act on the Public Prosecutor’s Office in Poland as amended adopted by the Venice Commission at its 113<sup>th</sup> Plenary Session (Venice, 8-9 December 2017) (CDL-AD(2017)028), para 89.

<sup>149</sup> See the Report of the CoE Commissioner for Human Rights following her visit to Poland from 11 to 15 March 2019, paras 34-37.

<sup>150</sup> According to the constitutional provisions, prosecutors are, in the Romanian system, part of the judicial authority, see the Venice Commission’s Opinion on Amendments to Law No. 303/2004 on the Statute of Judges and Prosecutors, Law No. 304/2004 on Judicial Organization, and Law No. 317/2004 on the Superior Council for Magistracy in Romania, CDL-AD(2018)017, para 18.

risk of two parallel procedures - action for recovery and disciplinary procedure, the increased role of the Judicial Inspection<sup>151</sup> in the recovery process and the large powers of the Chief Inspector, and the exclusion of the High Judicial Council (SCM) from the procedure.

162. Therefore, the CCPE Bureau, having been concerned about excluding the SCM from the procedure relating to such liability, as well as about any decisive role, at the initial stage, of the Ministry of Public Finance, recommended that this involvement be fully reconsidered and also that the action for recovery take place only after a disciplinary procedure against the prosecutor in question has been duly concluded with a finding of guilt.
163. The Amendments to the Law on the Judicial Organization prescribed the establishment, within the Prosecutor's Office attached to the High Court of Cassation and Justice, of a Section for the investigation of criminal offences in the judiciary. This Section would have exclusive competence for the prosecution of criminal offences committed by judges and prosecutors, including SCM members, even when other persons, in addition to judges and prosecutors, were under investigation.
164. The CCPE Bureau expressed doubts, however, that specialisation would help in dealing with persons of a certain profession – i.e. prosecutors and judges - as opposed to certain types of crime. Such a separate structure may be considered as a breach of the principle of equality before the law. Furthermore, it raised concerns as regards the public image of the prosecution service and it would damage, possibly severely, public confidence in the prosecution service in particular, and in the judiciary in general. The CCPE Bureau accordingly recommended<sup>152</sup> abandoning its establishment.
165. As mentioned, the CoE Commissioner for Human Rights underlined in a Statement of 3 September 2019 her concerns about Romania and urged the authorities to give effect to the recommendations of the Venice Commission and GRECO. She drew attention, among other issues, to the establishment of this separate structure for the investigation of offences committed within the judiciary<sup>153</sup>.
166. The media reported that on 17 September 2019, the Minister of Justice announced that the inter-ministerial working group coordinated by the Justice Ministry had reached the preliminary conclusion that the existence of the Special Section for Investigating Magistrates was not justified anymore, at least in the existing form. The ruling party had dismissed the Minister from her position, but she remains in office in the absence of the President's approval of the successor proposed by the Prime Minister<sup>154</sup>.

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<sup>151</sup> Proposals had also been put forward in Romania to transfer the judicial inspection unit to the Ministry of Justice (see Reuters/International 19 October 2017). The judicial inspection unit was part of the SCM which was responsible for sanctioning professional misconduct and disciplinary offences by judges, while the investigation of such cases was carried out by the judicial inspection unit. The proposed changes therefore raised concern as regards their implications for the full independence of the judiciary in Romania and its effective self-governance.

<sup>152</sup> See the full text of the CCPE Bureau's Opinion at <https://rm.coe.int/ccpe-bu-2019-3-opinion-romania-2019-final/168094848a>

<sup>153</sup> See at <https://www.coe.int/en/web/commissioner/-/the-independence-of-judges-and-the-judiciary-under-threat?inheritRedirect=true>

<sup>154</sup> See at <https://www.romaniajournal.ro/society-people/special-section-for-investigating-magistrates-might-be-disbanded/>

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167. The CCPE member in respect of **Slovenia** states that, with reference to the accountability of state prosecutors, the provisions in the State Prosecutors' Office Act are the basis for sanctions in case of breaching of duty. State prosecutors must be held liable for any misconduct in the performance of their duties. Although there are no critical issues in this field, and training activities were carried out over the past two years, it still appears that state prosecutors are not placing enough emphasis on the awareness of actions that could be considered as problematic in terms of ethics and integrity.

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168. The CCPE member in respect of **Turkey** states that due to the high quantity of cases and intense variety in files, the workload has negative effects on prosecutors in the existing system. In order to find a solution to the problem in question, the following measures have been taken: establishment of courts and prosecution offices of appeal and enhancement of their functionality, recruitment of new prosecutors, re-establishment of the Turkish Justice Academy to increase the trainings aimed at candidate prosecutors and in-service trainings, improvement of alternative dispute resolution methods, especially mediation and reconciliation, extending the remit of the Human Rights Compensation Commission, establishment of the Department of Human Rights within the Ministry of Justice, and establishment of the Inquiry Commission on the State of Emergency Measures, which is also regarded by ECtHR as an effective domestic remedy.

169. On the other hand, several regulations have been made in order to prevent the late finalisation of cases that evoke public discussions and criticisms towards prosecutors, to ensure that prosecutors are impartial and independent and appear to be so, to protect the presumption of innocence in legal proceedings, to ensure trust in judiciary and to provide a fairer system for the promotion of prosecutors. Within this framework, the term "impartiality" has been added to the "judicial independence" principle in the Constitution, the state of emergency was abolished as from 18 July 2018, and a new practice has been initiated for target timeframes in the judiciary.

170. The practice as regards target timeframes in the judiciary is a case management system that envisages a time period for judicial proceedings, aiming to produce solutions with a view to accelerate the completion of the trials and prosecutions, thereby effectively shortening them. Within this context, by decision of 20 February 2019, the Council of Judges and Prosecutors (CJP) established that the target timeframes for trial and prosecution would also be taken into consideration when evaluating the work of judges and prosecutors.

171. The Declaration of Judicial Ethics was adopted at the General Assembly meeting of the CJP on 6 March 2019. It was announced to the public with a press meeting on 11 March 2019, and was communicated to all serving judges and prosecutors. It has essentially been based upon the fundamental principles of respect for human rights, independence, impartiality and integrity. Adherence to ethical principles is one of the main criteria for the appointment and promotion of judges and prosecutors.

172. Various regulations have been adopted with a view to protecting the presumption of innocence and the individual's right not to be labelled as a criminal. Article 158 of the Code of Criminal Procedure was supplemented by a provision setting out that "a non-investigation decision shall be taken when it has been clearly understood, without any need for an investigation, that the act which has been reported or complained about does not constitute a crime, or when the report or complaint received has a general and abstract characteristic. In such a situation, the person about whom a complaint has been received cannot be called a "suspect". With this regulation, individuals have been legally protected from abstract and unfounded accusations.
173. A new regulation has also been made regarding the promotion of prosecutors. The General Assembly of the CJP decided that the quality of prosecutions would be taken into consideration while determining the number of prosecutions that would be assigned to prosecutors, which is a criterion regarding their promotion. In addition, the CJP has been working on changes to the legislation regarding the geographic guarantee of prosecutors within certain conditions.
174. The preparation of the Judicial Reform Strategy Document covering a period of four years, setting out goals and recommendations as regards the problematic areas of the judiciary in Turkey, is in its final phase, and will soon be presented publicly.

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

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175. The CCPE member in respect of **Austria** states that, due to a general policy of cutbacks during the last years, the non-prosecutorial personnel of public prosecution offices has already been reduced significantly. This affects considerably the proper functioning of public prosecution offices.
176. The reduction in public service personnel is always on the agenda of the government. These plans would also apply to public prosecution offices, even though the current issues and new fields of crime (cybercrime, terrorism, hate crimes) would rather require a (significant) increase in personnel. In contrast to the situation of the staff, public prosecutors have not been affected by such measures so far. Nevertheless, without additional personnel, it will not be possible to set a strategic focus on specific fields of crime as planned.

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177. The CCPE member in respect of **Bosnia and Herzegovina** states that the budget of the State Prosecutor's Office is part of the state budget of the country. Its adoption by the parliament of Bosnia and Herzegovina is the result of the usual budgetary discussions in its committees. However, the position of the Prosecutor General in this process is not sufficiently represented. In the interest of the prosecution service, it would be wise to hand over the initiative of budget affairs for the judicial system as a whole to the High Judicial and Prosecutorial Council.

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178. The CCPE member in respect of the **Czech Republic** states that the Ministry of Justice, as the central authority of the administration of the Public Prosecutor's Office, has the key position as regards financial and economic matters. The Public Prosecutor's Offices are organisational units of the state. Except District Public Prosecutor's Offices, Public Prosecutor's Offices are accounting units. Regional Public Prosecutor's Offices exercise the administration on behalf of the District Public Prosecutor's Offices. Management of the property in the Public Prosecutor's Office, which is the property of the state, follows the rules set out in a special act. Public prosecutors have a duty to manage the property which has been entrusted to them responsibly.
179. There is a discussion in the Czech Republic that the Public Prosecutor's Office, which is part of the executive power and within the remit of the Ministry of Justice, should have an independent budget chapter. This would help to fulfil Article 4 of Rec(2000)19. This Article determines that states should take effective measures to guarantee that public prosecutors are able to fulfil their professional duties and responsibilities under adequate legal and organisational conditions, as well as adequate conditions as to the means, in particular budgetary means, at their disposal. Such conditions should be established in close co-operation with representatives of public prosecutors. The separation of the budget chapter of the Public Prosecutor's Office has not been done yet. The provision of adequate organisational, financial, material and human resources contributes to ensuring independence. The CCPE's Opinion No. 9 (2014) on European norms and principles concerning prosecutors (also known as the "Rome Charter") indicates that prosecution services should be enabled to estimate their needs, negotiate their budgets and decide how to use the allocated funds in a transparent manner, in order to achieve their objectives in a speedy and qualified way.

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180. The CCPE member in respect of **Estonia** states that in terms of economic issues, the most significant challenge for the Prosecutor's Office is posed by finding the right balance in combating serious crime between social expectations on the one hand, and the means and resources available to the Prosecutor's Office on the other. There is some uncertainty as to how new generation crimes (cybercrime, crimes committed on social media etc.) should be fought in circumstances where resources are limited and competence is scarce. There is a lack of capacity to handle certain criminal offences, as a result of which the limited resources must be channelled into matters bringing about the greatest positive influence for the entire society. Criminal proceedings as a whole must be smart and they must provide society with answers to questions of overall importance.

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181. The CCPE member in respect of **Finland** states that the prosecution service is underfunded. The main reason for this is the growing complexity of criminal cases leading to more work than in the past. Another reason is the internationalisation of criminal activity and, as a result of that, the need for increasing international co-operation. The new instruments, mostly introduced by the European Union, have led to prosecutors being given more tasks and greater responsibility. While welcoming the



prosecutors' more active role, and making best efforts in the area of international co-operation, it can be noted that the additional workload has not been compensated by additional resources.

182. The lack of resources, and strong working pressure not only within the prosecution system but also within the police, has led to a worrying tendency to decide to discontinue the investigation of crimes considered to be less important. The Prosecutor General has now taken action to address this issue, and has brought the need for additional resources to the government's attention, as well as to that of the public.

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183. 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.

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184. The CCPE member in respect of **Latvia** refers to the critical condition of the buildings allocated to the prosecution office. According to the opinion of construction experts, the building where the Prosecutor General's Office, the Riga Judicial Region Prosecution Office, the Specialised Prosecution Office for Organised Crime and Other Branches, and the Administrative Director's Service are situated, is in urgent need of renovation, precluding the persons assigned to this building from working there. Unfortunately, the responsible state institutions have been unable to come up with a solution.

185. The remuneration of all prosecutors was significantly increased from 1 January 2019. This decision by the legislator was made in compliance with the judgment of the Constitutional Court, in which an obligation to ensure competitive remuneration for the state institutions belonging to the judiciary had been established.

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186. 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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187. The CCPE member in respect of **Portugal** states that the public prosecution offices are struggling with a severe lack of human resources, and that around 200 additional public prosecutors are needed to fill even the minimum needs.

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

188. 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.
189. 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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190. The CCPE member in respect of **Austria** states that the work of public prosecutors is always the subject of reports and public discussions, which also include criticisms. As public prosecutors always have to pay attention to the rights of suspects, witnesses or victims, they are sometimes not allowed to give a full answer or to react in to such critical reports. This leads to an imbalance compared to other parties involved in criminal proceedings.

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191. The CCPE member in respect of **Bosnia and Herzegovina** states that the Prosecutor General, with the assistance of his/her press spokesperson, informs the public about cases of general interest on a factual and objective basis, but that is often met with demands from journalists who are more interested in breaking news and stories and unconfirmed speculations rather than in accurate reports.
192. The State Prosecutor's Office often finds itself in a position of defending itself and is blamed for not being impartial, especially in cases which touch upon questions of sensitive ethical standards or in which controversial politicians are involved. These cases present significant challenges for the press spokespersons.

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193. The CCPE member in respect of **Bulgaria** states that advocating the independence of the Prosecutor's Office and prosecutors is also linked with the level of public trust enjoyed by the institution and its representatives. Maintaining a sufficiently high level of public trust in the judiciary, and in particular the Prosecutor's Office, is a serious current problem in Bulgaria. It has been worsened by internal political tensions during the last two years, combined with attempts to involve the judiciary in political battles, and in particular with the media's abuse of influence. Some media influence public opinion as regards expectations towards the Prosecutor's Office and the evaluation of prosecutors' actions, without following the principles of objectivity and observation of journalists' ethical standards. Aggressive editorial policy serves the economic and political interests of circles with financial control over the respective publishers.

194. On the other hand, the eagerness to meet the sometimes aggressively expressed public and journalists' interest with a proactive media strategy by the institution entails the risk that information might be presented in such manner, at such stages and in such volumes, as to hinder investigation or put its objectivity into question. Finding a balanced institutional response for a highly emotionally charged media and public environment is nowadays a typical difficult strategic task which cannot be solved only through the Prosecutor's Office's efforts.

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195. The CCPE member in respect of the **Czech Republic** states that the Act on Free Access to Information sets out, for public prosecutors, a duty to provide information. Authorities involved in criminal proceedings, however, do not provide information on on-going criminal proceedings if that information would endanger the purpose of criminal proceedings, in particular the guarantee of the right to a fair trial.

196. Providing of information about criminal proceedings is regulated by the Code of Criminal Procedure. It sets out, *inter alia*, that authorities involved in criminal proceedings inform the public about their activities by providing information to the media. The Code of Criminal Procedure sets out the other conditions for providing such information.

197. According to the instructions of the Prosecutor General, the chief public prosecutors are responsible for informing the public about the activities of the Public Prosecutor's Office. The Prosecutor General's Office has organised workshops for the chief public prosecutors of the District and Regional Public Prosecutor's Offices, focusing on the problems of communication with the media and highlighting helpful methodological guidelines.

198. Currently, even though there are in principle no problems as regards the communications with the media, criticism of public prosecutors happens quite often in cases where a so-called "aggressive" defence is applied.

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199. The CCPE member in respect of **Estonia** states that the Prosecutor's Office constitutes an institution making independent decisions as regards the extent to which information is disclosed in relation to particular criminal proceedings. Adherence to this principle is important both for ensuring a strategic view of criminal proceedings and protecting the presumption of innocence. By virtue of this, the Prosecutor's Office must remain as open as possible, and it must at all times protect the fairness of the trial and ensure that the interests of all parties to a proceeding are protected. Consequently, social discussion between the parties to a proceeding, with the media, and in society at large, is important. However, finding a balance between the presumption of innocence and heightened public interest may prove problematic. Individuals may be condemned by the media based on false information shaped by public opinion before the relevant judgment ever takes effect. For this reason, a real challenge for the Prosecutor's Office lies in handling the fast-paced information society with the aim of finding the right balance between heightened public interest and the presumption of innocence.

200. Problems also occur in situations where media assaults jeopardise prosecutors' liberty to adopt decisions. Therefore, ensuring functional independence in particular should be

included among the tasks of the management of the Prosecutor's Office, on the one hand enabling prosecutors to do their job and, on the other hand, securing protective support for the prosecutors against external influence.

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201. The CCPE member in respect of **Finland** states that, even though prosecutors are seldom criticised in the traditional media for carrying out their duties, the authorities involved in criminal proceedings (police, prosecutors, judges) are however being increasingly targeted by various actors of social media. A governmental working group has been established to review the legislation in order to intervene in this kind of activity.

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202. The CCPE member in respect of **Georgia** states that there is often a lack of understanding by media representatives as regards the limitations which the Prosecutor's Office faces during the public disclosure of information about on-going criminal investigations. The purpose of such limitations is to protect the interests of the investigation, and of juveniles and victims, to observe the requirement of data protection and the obligation of confidentiality etc. Respecting the freedom of the media and its duty to impart information on matters of public interest, the Prosecutor's Office always informs the media about on-going investigations to the maximum extent possible, bearing in mind the existing limitations.

203. However, the lack of the above-mentioned understanding, combined with the strong desire of the media to obtain as much information as possible, often results in unjustified criticism of the Prosecutor's Office by the media representatives, which is problematic and represents a matter of concern for the Prosecutor's Office.

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204. The CCPE member in respect of **Hungary** states that the prosecution service strives to establish good press relations, as well as to inform the public in a credible, factual and objective manner. However, despite such a proactive communications policy, false and inaccurate information is frequently communicated in the printed and online media about the prosecution service or its head or about concrete cases. Attacks lacking any factual basis, and political pressure on the prosecution service through the media, also occur.

205. In the age of very rapid communications and social media, fake news serving the deliberate misinformation of the public can cause instant damage as they mislead not only the readers but also other organisations. This negatively influences the assessment of the independence and the role of the prosecution service in society. For the above-mentioned reasons, one of the most important tasks of the prosecution service is to continuously keep track of the news and to react instantly to factually false claims. Crisis communications always require an immediate action, therefore the prosecution service refutes false news through press releases. It occasionally asks for press rectification or shares factual comments on social media in order to provide the public with accurate information.

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206. The CCPE member in respect of **Italy** states that relations with the media should be maintained by the chief prosecutor, either personally or through another prosecutor, chosen on the basis of their communicative experience and attitude, for communications as regards the entire activity of the office, specific areas or individual cases.
207. The prosecution service usually provides public information on relevant cases only at the initial stage, in particular in cases involving pre-trial detention. Private parties may maintain frequent contacts with the media throughout the proceedings (investigation, trial, appeal). This can sometimes lead to somewhat “unbalanced” public information. On the other hand, a thorny question could be represented by excessive presence of public prosecutors on the media stage, which could lead to overexposure opinion.
208. In July 2018, the Supreme Judicial Council (CSM) adopted guidelines for the organisation of prosecution offices and courts with a view to correct institutional communications. The resolution addresses the topic in detail, starting from general principles. In this respect, the CoE recommendations and several CCPE and CCJE Opinions have been highlighted in the guidelines, as relevant reference texts.

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209. The CCPE member in respect of the **Republic of Moldova** states that in the dialogue of prosecutors with the media and civil society, there are a number of concerns when materials and undocumented journalistic research appear in the media, that refer to on-going investigations, and when denigrating articles and false information about investigations, attacks on prosecutors and their families, media campaigns and public pressure as regards high-profile cases occur.
210. Moreover, attacks in the media are increasingly being used by lawyers, who are launching discussions of concrete issues on television, giving details of cases, presenting erroneous and biased data, procedural and judicial acts, making unfounded criticisms of prosecutors' actions and final judgments, taking actions aimed at manipulating and misinforming the public and influencing acts of justice.
211. In such situations, prosecutors remain vulnerable to media attacks. This requires revising legislation and enhancing the role of the Superior Council of Prosecutors in defending prosecutors against such actions. At the same time, prosecutors are trained in communications with the media representatives and in how to present information of public interest without prejudice to investigations or violation of the parties' rights in the process.

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212. The AEAJ states that in **Poland**, not only the media, but also members of the executive power express public criticism of the judiciary in a way that undermines the independence of, and public confidence in, the judiciary. This situation may have repercussions also on the relations between the media and prosecutors, and in addition, the media may be instrumentalised by the executive authorities<sup>155</sup> to adopt a negative attitude towards judges or prosecutors.

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<sup>155</sup> Especially in view of the merged offices of the Prosecutor General and the Minister of Justice, as already mentioned in the present report.

213. In the course of a round-table discussion organised on the situation of the judiciary in Poland in Warsaw on 4 September 2019 by the OSCE's Office for Democratic Institutions and Human Rights (ODIHR), the participants, including national judges and experts, as well as international experts, pointed to the current hate campaign carried out in Poland, frequently with the use of information about the private life of judges, distorted and presented to the public in the most negative way. All participants underlined that such an atmosphere severely undermines the public trust in the administration of justice and hits at the very basics of the rule of law.

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214. The CCPE member in respect of **Portugal** states that the public prosecution services should make efforts to communicate better with the public and with civil society, always bearing in mind the duties of discretion, confidentiality and objectivity, the rights of all parties involved in legal proceedings, and the integrity of investigations. In Portugal, media communication is done on a local and, more often, national basis. The Prosecutor General's Office has a specialised media unit, which prepares and issues press releases and answers media's requests for information on the most mediatic cases involving prosecutors and prosecution services, particularly serious criminal cases.

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215. As mentioned, the CCPE was requested by the Movement for Defending the Status of Prosecutors of **Romania** to express its position as regards the independence of the judiciary in Romania in the context of the Amendments to the justice laws, and concerning in particular the freedom of expression of prosecutors, repeated and unprecedented attacks against them directed by political actors and the right of prosecutors to stand against any policies or actions affecting their independence.

216. The Amendments to the Law on the Statute of Judges and Prosecutors prescribed that judges and prosecutors were obliged, in the exercise of their duties, to refrain from any defamatory acts or expressions, in any way, against the legislative and executive powers.

217. The CCPE Bureau noted that prosecutors have, as a bottom line, the same right to freedom of expression<sup>156</sup> under the ECHR as everybody else. At the same time, they "should exercise their freedom of expression and association in a manner that is compatible with their office and that does not affect or appear to affect judicial and prosecutorial independence or impartiality"<sup>157</sup>.

218. The CCPE has adopted a separate Opinion on relations between prosecutors and the media, in which it points to a number of limitations applicable in communications with the media<sup>158</sup>. However, the Amendments in Romania speak about prosecutors

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<sup>156</sup> See CCPE Opinion No. 9 (2014) on European norms and principles concerning prosecutors, Rome Charter, para IX.

<sup>157</sup> See CCPE Opinion No. 9 (2014) on European norms and principles concerning prosecutors, Explanatory Note, para 82; see also CCPE Opinion No. 13 (2018), para 17.

<sup>158</sup> See CCPE Opinion No. 8 (2013) on relations between prosecutors and the media, Recommendation II.

refraining from defamation in the exercise of their duties. In the opinion of the CCPE Bureau, putting limitations on prosecutors in the exercise of their duties may result in arbitrary and abusive interpretations and it carries the risk of undue restrictions and obstructing prosecutors in the course of their work.

219. The CCPE Bureau, having noted also the criticism of this provision by the Venice Commission<sup>159</sup> and the European Commission's Progress Report on Romania under the CVM<sup>160</sup>, recommended that this provision be removed.
220. Both the Venice Commission and the CVM report have also mentioned "reports of pressure on and intimidation of judges and prosecutors, including by some high-ranking politicians and through media campaigns"<sup>161</sup> and that "judges and prosecutors have continued to face personal attacks in the media"<sup>162</sup>.
221. This subject was always considered by the CCPE to be of utmost importance. It has pointed out that "when an individual prosecutor is subject to an unfair attack through media, he/she is entrusted with the right of having the contested information rectified or other legal remedies according to the national law"<sup>163</sup>.
222. Having further recalled the CCPE standards<sup>164</sup>, the CCPE Bureau consequently condemned any statements, comments or remarks in Romania which overstepped the boundaries of legitimate criticism and aimed at attacking, intimidating or otherwise pressuring prosecutors or demonstrating disrespect towards them, using improper arguments or otherwise degrading the prosecutorial system or individual prosecutors.
223. As mentioned earlier, the CoE Commissioner for Human Rights underlined in a Statement of 3 September 2019 her concerns about Romania and urged the authorities to give effect to the recommendations of the Venice Commission and GRECO. She drew attention *inter alia* to the restrictions on magistrates' freedom of expression<sup>165</sup>.

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224. The CCPE member in respect of **Slovenia** states that decisions in some important criminal cases, which do not match public expectations, are often unjustifiably used by

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<sup>159</sup> See the Venice Commission's Opinion on Amendments to Law No. 303/2004 on the Statute of Judges and Prosecutors, Law No. 304/2004 on Judicial Organization, and Law No. 317/2004 on the Superior Council for Magistracy in Romania, CDL-AD(2018)017, para 124.

<sup>160</sup> See the Report from the Commission to the European Parliament and the Council on Progress in Romania under the Cooperation and Verification Mechanism (Strasbourg, 13.11.2018 COM(2018) 851 final), Section 3.1 (Benchmark one: judicial independence and judicial reform. Justice laws and legal guarantees for judicial independence), page 3.

<sup>161</sup> See the Venice Commission's Opinion on Amendments to Law No. 303/2004 on the Statute of Judges and Prosecutors, Law No. 304/2004 on Judicial Organization, and Law No. 317/2004 on the Superior Council for Magistracy in Romania, CDL-AD(2018)017, paras 15 and 157.

<sup>162</sup> See the Report from the Commission to the European Parliament and the Council on Progress in Romania under the Cooperation and Verification Mechanism (Strasbourg, 13.11.2018 COM(2018) 851 final), Section 2 (General Situation), page 2.

<sup>163</sup> See CCPE Opinion No. 8 (2013) on relations between prosecutors and the media, para 45.

<sup>164</sup> See CCJE Opinion No. 18 (2015) on the position of the judiciary and its relation with the other powers of state in a modern democracy, para 52.

<sup>165</sup> See at <https://www.coe.int/en/web/commissioner/-/the-independence-of-judges-and-the-judiciary-under-threat?inheritRedirect=true>

the media and by some political parties to undermine the authority of the prosecution service. This has a very negative impact on public opinion and raises serious concerns in particular in relation to the appearance of independence and impartiality of state prosecutors. Although the prosecution service as a whole is striving to improve the performance of state prosecutors, the negative effect of such conduct is not easy to overcome. The constant threat by politicians that the unlimited term of office of state prosecutors should be abolished also puts pressure on the independent performance of the prosecution service.



## IV. Conclusions

225. It is clear from the reports and requests that have been received by the CCPE during the reporting period that, in a way similar to the previous report of the CCPE Bureau in 2017, there have been continuing concerns about the proper implementation of relevant standards of the CoE in a number of member States. The developments and situations observed in such countries have the potential to jeopardise the independence of the judiciary, including that of the prosecution services. In addition to affecting the actual, effective independence, these developments pose a risk as regards the way in which the independence is perceived by the general public, a fact which affects directly public trust in, and respect for, the judiciary and the administration of justice.
226. As shown in this report, in some cases and in some countries, the concerns are very serious and the developments observed pose a threat to the very foundation of the rule of law. The CCPE Bureau is deeply concerned, in this respect, by steps taken by the executive or legislative authorities of such countries against the independence and autonomy of their prosecution services. It is committed to continue following and examining closely their situation in member States and to make available its advice and expertise where it is considered useful. The CCPE will continue to examine alleged infringements concerning the independence and impartiality of the prosecution services, in full respect of its mandate.
227. In doing so, the CCPE relies on the standards mentioned in paragraph 13 above, while taking account also of the CoE Plan of Action on strengthening judicial independence and impartiality<sup>166</sup>, the preparation of which the CCPE supported, and which sets out the key principles and steps to be observed to guarantee and reinforce the independence and impartiality of the prosecution services.
228. The CoE is at the origin of a solid set of standards on the organisation of the prosecution services, including the fundamental principle of independence and its implications in practice in relation to the prosecution services and individual prosecutors. Although the CoE body of standards on prosecutors is currently less extensive than that on judges, sufficient guidance is nevertheless available concerning the standards for member States to rely on when developing policy and legislation and formulating their reform agendas. In this connection, the CCPE Bureau can only reiterate the statement, made earlier, that “the independence and autonomy of the prosecution services constitute an indispensable corollary to the independence of the judiciary”<sup>167</sup>.
229. The CCPE Bureau would like to encourage the competent authorities of member States to take note of this report and to comply with the relevant standards of the CoE. The CCPE welcomes the opportunity to present this report and to draw the attention of the Committee of Ministers to these issues and the information provided by the CCPE members and other parties. It also draws attention to the Opinions and Statements of the CCPE Bureau made in the context of specific situations affecting the prosecution

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<sup>166</sup> Adopted by the CoE Committee of Ministers in 2016, document CM(2016)36 final.

<sup>167</sup> See CCPE Opinion No. 9 (2014) on European norms and principles concerning prosecutors, Rome Charter, point IV.

service or prosecutors in member States'. These documents serve to emphasise once again the importance of the CoE's work to improve adherence to the rule of law and ensure its respect throughout Europe.

230. The CCPE Bureau invites its members, observers, relevant national authorities, prosecutorial services and associations of prosecutors to continue submitting information and comments on further developments related to the issues described in this report<sup>168</sup>.

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<sup>168</sup> Information and comments on further developments which take place after the reporting period of the present report are meant here.

## Appendix:

### Comments by member States

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#### Austria

The Austrian Federal Ministry of Justice thanks for the report mentioned above and would like to comment on the paragraphs 57, 108, 143, 175, et seq. and 190 as follows:

Concerning the topic of the right to issue instructions and the perception thereof by the public (**Paragraph 57** of the report) we would like to draw the attention to the fact, that the former Minister of Justice Dr Clemens Jabloner has established a reform group chaired by the Procurator General. Its purpose is to improve the process, regarding the reports of the public prosecutors on the intended procedural steps and the examination thereof, as well as with regard to the meetings, where the status of a case is being discussed among the public prosecutors involved. The reform group consisted of members of the minister cabinet, the criminal law departments of the Federal Ministry of Justice, the Superior Prosecution Offices, the Central Public Prosecution Office for Combating Economic Crimes and Corruption, the Public Prosecution's Office Vienna as well as two smaller public prosecution offices.

Furthermore, the Association of Austrian Public Prosecutors and members of the jurisprudence were represented.

The final report of 11 December 2019 has been published on the homepage of the Ministry of Justice and is thus accessible for everybody.

The proposed improvements should result in more clarity when giving and formulating instructions for taking measures and should end up in more transparent and clearly structured minutes of the meetings with the public prosecutors. These proposals will be taken up by the decree to be issued by the Federal Ministry of Justice regulating the reporting of public prosecutors.

In their government programme, the new Federal Government have committed themselves to „strengthen public prosecution services by enabling them to independently conduct investigations within the constitutional framework”, e.g. by dropping avoidable reporting and by taking measures to make the duration of the internal reporting procedure more transparent within the investigation process. To this extent, the criminal law departments of the Federal Ministry of Justice will discuss these topics with the heads of the Superior Prosecution Offices and will implement results thereof as soon as possible.

When criticism is raised in **Paragraph 108**, that the Federal Minister of Justice is not bound by the proposals provided by the competent staff commission when appointing public prosecutors, the following should be considered:

The relevant constitutional provisions do actually not oblige the Federal Minister of Justice, i.e. in a way which removes any decision-making discretion, to follow the appointment

proposals made by the staff commission for public prosecutors (incidentally, this is the same with the judicial staff panels). On the contrary, such an obligation would be openly contradictory to any context of democratic legitimation and responsibility. The decisive role of the highest administrative powers in the appointment procedure is thus based on their democratic legitimation. This also must apply to the judiciary.

Nevertheless, the (self-)discretionary scope of the judiciary is sufficiently taken into account, when appointing judicial organs through appointment proposal provided by independent staff panels or staff commissions, which are free from any instructions. Actually, the attention has to be drawn to the fact that in practice, although such proposals are not legally binding, only candidates are being appointed who had been included in the short list drawn up by the staff panels or staff commissions. These were also the findings of the Austrian Convention established to review the Austrian Constitution or, for that matter, of its sub-working group established in 2004 dealing with the judiciary. Even then, no majority was ultimately found among the representatives of jurisprudence and judicial practice to bring such a (relative) obligation to follow the appointment proposals of the staff panels by the Federal Minister of Justice into statute.

The criticism that the appointment procedure – in particular how such appointment proposals come about and what they contain – is not transparent must be met with the legal requirements, ruling appointment proposals of the staff commissions (Sections 180, et seq. Service Act for Judges and Public Prosecutors (hereinafter: RStDG). Section 180 RStDG provides that the staff commission shall examine the applications received and shall gain an impression about the overall personality of each candidate. Concerning the criteria upon which the proposal must be based, the provision refers to the legal requirements staff panels must follow for tenured judges' positions (Section 33 in conjunction with Section 54, paragraph 1 RStDG). According to the catalogue of criteria, numerous factors concerning professional and personal competencies must be considered, as well as the successes of previous service appointments. In the case of equal suitability, the decisive factors shall be related to the practice time spent within the judiciary.

Immediately upon providing such a proposal, the following data shall be published on the Internet homepage of the Federal Ministry of Justice:

1. a breakdown by gender of the number of applicants considered suitable for exercising the tendered function or for fulfilling the tasks of the tendered position, and
2. the names of the members of the staff commission, who participated in drawing up the short list.

As soon as a person has been appointed to the tendered function or to the tendered position, the name of such person shall also be published on the Internet homepage. The publication must remain accessible at least one month.

The publication rule shall contribute to make the application process transparent and objective. By not publishing the names of the applicants not being appointed or of not disclosing the reasoning behind the decision, the data protection interests of applicants are being complied with. Furthermore, section 189 RStDG provides for the benefit of the candidates that the evaluation of the applications shall be treated confidentially; nonetheless, the naming and ranking of an applicant shall not be prohibited. In the end, the staff commission may also communicate and explain its proposal and the reasoning behind it to the candidates – always protecting the interests of all the other applicants.

Actually, a legislative proposal is being prepared which should rule the case, that the Federal Minister of Justice exceptionally wishes to deviate from the proposal of the staff commission and intends to appoint an applicant (or – where applicable - to submit as a proposal to the Federal President), who was not ranked first by the staff commission. This shall further strengthen the transparency of the applicant selection process.

The draft bill provides for a so-called “Reversal Process”, inasmuch as the Federal Minister of Justice shall communicate to the competent staff commission in writing the disregard for the appointment proposal. In this case, the staff commission may surrender a supplementary opinion in written form. In those cases, in which the Federal Minister of Justice must submit a proposal to the Federal President, the reasoning of the Minister of Justice, resulting in another ranking of the candidates must be stated in writing and the opinion of the staff commission must be enclosed.

Even if such “Reversal Process” has not yet been legally enshrined, it is already being applied in practice. This said, whenever the Federal Minister of Justice intends to deviate from the appointment proposal of the staff commission, there shall be a sufficiently transparent justification of the appointment decision of the Minister of Justice.

In connection with the usage of social media (**paragraph 143** of the report), attention is to be drawn to the compliance guidelines published in 2019. In chapter 4.4, reference is made to the usage of social media with the focus on the fact that employees of the judiciary must exercise particular caution when using social media. The general rule that no contents shall be disseminated which are likely to damage the reputation of the workplace, of the service authority or the professional image (such as contents which could suggest bias or discrimination) also applies to social media.

In this context, the attention has also to be drawn to Section 30, paragraph 3 of the Public Prosecution Services Act, ruling the specific legal status of public prosecutors (in comparison with other civil servants, being bound by instructions): If a public prosecutor is convinced of the unlawfulness or lack of justifiability of any action he is instructed to undertake, or if other exceptional reasons exist, the head of the authority shall release her/him upon written and properly justified request from further dealing with the matter, unless it is a matter which cannot be delayed because of imminent danger.

This provision shall make sure that a public prosecutor can deal with a case in a completely unbiased manner and subjectively persuaded that she/he need not act against her/his personal conviction.

Inasmuch as **Paragraphs 175**, et seq. deal with the staff situation in the area of public prosecution services, it must be mentioned that the former Minister of Justice Dr Clemens Jabloner in his report on the perception of the situation of the Austrian judiciary, titled “Findings and Measures for a Modern and High-Quality Judiciary” dated 11 November 2019 explicitly pointed to the tight staff situation in the Austrian justice system. In their government programme 2020 - 2024 the current Federal Government have committed to “an adequately provided judiciary” and “to provide the judiciary with the necessary resources to enable it to conduct proceedings expeditiously and in a high-quality manner, not only for the purpose of maintaining proper operations but also for the purpose of improving processes and implementing upcoming reforms”.

Concerning the limited discretionary scope of reacting to public media coverage mentioned in **Paragraph 190**, it should be pointed out, that the option created by Section 35a of the Public Prosecution Services Act to publish decisions by public prosecutors terminating investigation proceedings, if such terminations rally particular public interest or contain legal justifications which could be essential for similar proceedings, has contributed essentially to generate transparency and better comprehensibility of termination decisions by the public. This option is increasingly used due to the positive experiences made.

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## **Bulgaria**

**Under § 145 of Chapter III „Country specific issues concerning the independence and impartiality of the prosecution services“, section C „Impartiality of prosecutors, conditions of service, codes of ethics and professional conduct and disciplinary measures“:**

**The latest Act on amending and supplementing the Judiciary Act, adopted by the National Assembly on 23.01.2020, refined the 2016 regulation in the following more significant directions:**

➤ **Changes in the regulation of suspension from office of judges, prosecutors and investigators:**

The aim is to bring the regulation of suspension from office of judges, prosecutors and investigators in line with the Constitutional Court's Decision No 2 of 2019, and with the recommendations of the Venice Commission in this respect, set out in Opinion No 855/2016 of 9 October 2017.

According to the aforementioned decision of the Constitutional Court, “to deprive the respective SJC chambers of the opportunity to assess whether or not the magistrate to be suspended from office, by being obliged to comply with the law prescribed in Art. 230, para. 1 of the JA, is incompatible with the principle of the independence of the judiciary”, which is why this text as well as part of the provision of para. 2 were declared unconstitutional. According to the Constitutional Court, it is appropriate and constitutional to grant the SJC the opportunity to assess whether the specific protection of the prestige of the judiciary should be put into effect, or not in any particular case.

In Opinion No. 855/2016, the Venice Commission recommended that, in the suspension of a judge, the SJC should assess whether the evidence presented was sufficiently convincing (without necessarily being "beyond a reasonable doubt") and whether they required suspension... (§46). With regard to the suspension deadline, it is recommended that the SJC be able to fix short time limits for the investigation.

In view of the above, the new revision of Art. 230 provides, in all cases, that an assessment should be made by the respective chamber to allow suspension from office and must be given an opportunity to hear or deposit a written opinion from the respective magistrate, thereby introducing an element of competitiveness. It is envisaged that the term for suspension in the pre-trial phase of the criminal proceedings shall not be longer than that under Art. 234, para. 8 of the Code of Criminal Procedure, and in the changed circumstances both during the pre-trial and the court proceedings, the suspended magistrate may request the reinstatement of the position. There is a special rule envisaged for automatic suspension only when the magistrate is subject to pre-trial detention or house arrest measures, and if

such measures are amended, the continuation of the suspension is again subject to review by the respective chamber. Suspension from office is subject to judicial control in all cases and both the suspended magistrate and the prosecutor's office have the right to appeal.

- **The obligation of magistrates to declare membership in professional organizations is no longer required.**

#### **Under § 148 on the independence of prosecutors:**

The amendments to the JA (promulgated SG No. 62 of 09.08.2016) created additional guarantees for the individual independence of prosecutors and investigators in the exercise of their powers. Substantial changes were made to the regulation of the structure and the hierarchy in the Prosecutor's Office system in accordance with the constitutional framework laid down in Art. 126, para. 1 and 2 of the Constitution of the Republic of Bulgaria. The rules under which the prosecutor's office is centralized have been abolished and all prosecutors and investigators are subordinate to the Prosecutor General. Provisions have been created that distinguish the functions of the prosecutor general and the administrative heads of the administrative and organizational management from their magistrate functions.

The legal system of guarantees for non-interference with prosecutors' internal convictions has been supplemented. It was expressly stated that the provision of verbal orders and instructions in connection with the handling of cases and files was inadmissible. A top prosecutor can only give written instructions, which must be motivated, to be about the implementation of the law, without prejudice to the decision of the deciding prosecutor. The prosecutor who has received the instructions may object to a prosecutor from the higher prosecutor's office of the prosecutor who has given the instructions.

#### **Concerning the recommendations in PACE Resolution 2188 (2017) to the Bulgarian authorities:**

*1. Continue the reform of the SJC, the judiciary and the prosecution service in line with the Council of Europe recommendations:*

(Please take into account the information with regard to §§ 145 and 148 of the Report)

*2. Strengthen efforts to combat corruption and in particular, establish an anti-corruption agency:*

Bulgaria has undergone important institutional changes over the years, especially with the establishment in 2012 of a specialized criminal court and prosecutors' office for organized crime and an independent Commission for the withdrawal of illegally acquired property (KONPI) with a mandate to confiscate illegally acquired property and without a sentence. The Anti-corruption and Forfeiture of Assets Act (AFAA) (promulgated, SG No. 7/2018) on the basis of KONPI, a new single independent anti-corruption body was established - Commission for Combating Corruption and the Withdrawal of Illegally Acquired Property (KPKONPI) as an independent specialized permanent acting state body for the implementation of anti-corruption policy and forfeiture of illegally acquired property.

The focus of the AFAA is the reform of the institutional framework in the field of prevention and combating corruption, aimed at greater efficiency and better coordination between existing bodies and units in public administration. In the Commission for Combating Corruption and the Withdrawal of Illegally Acquired Property fall the Commission for

Prevention and Detection of Conflict of Interest, the Center for Prevention and Combating Corruption and Organized Crime at the Council of Ministers, the respective unit of the National Audit Office, related to the activity under the repealed Act on Public Disclosure of the Assets of Persons Holding Senior Government and Other positions, as well as the respective specialized Directorate of the State Agency for National Security (SANS) for combating corruption among high-ranking officials.

The Commission's leading role in the seizure of illegally acquired property is recognized. This aims to create the necessary link between the functions of preventing corruption, verifying property declarations, identifying conflicts of interest and forfeiture of illegally acquired property, enhancing anti-corruption activities by collecting, analyzing and verifying information on and on the occasion of information on acts of corruption of high-ranking officials.

This combination of functions is important as conflicts of interest and corruption are often at the root of inexplicable enrichment for the individuals concerned. This creates the opportunity to preserve and further develop the results achieved so far and the established good practices in the field of civil forfeiture.

The Commission is a collective body consisting of five members - a President, a Vice-President and three other members. Each of them must be a Bulgarian citizen and possess high moral and professional qualities. The President must have at least 10 years of legal experience, the Vice President must have at least 5 years of professional experience in the field, and the other members must have at least 5 years of professional experience. The President of the Commission is elected by the National Assembly (NA) at the suggestion of the Members of Parliament. The Vice President and the other members of the Commission are elected by the National Assembly at the suggestion of the President of the Commission. The independence of the Commission is ensured through the proposed principles and procedures for its structuring, while guaranteeing transparency, accountability and publicity in its activities. Parliamentary scrutiny and effective interaction with the institutions of other authorities provide legal guarantees for the independence of the newly created body.

The National Assembly exercises control over the activities of the Commission and its members are obliged, upon invitation, to appear in the NA and provide the requested information. The Commission will report annually to the NA on its activities. This guarantees public control on the Commission's activities. The law aims to protect the interests of the community by:

- effective counteraction to corruption;
- ensuring that public office holders perform their powers or duties with honesty and integrity, in compliance with the Constitution and laws of the country;
- preventing the possibility of unlawful acquisition of assets and disposition thereof;

The Anti-corruption and Forfeiture of Assets Act (AFAA) codifies and optimizes the anti-corruption regulations:

- The will to create a unified anti-corruption body integrating the efforts and expertise of the existing units is reflected;
- A unified approach, coordination and effective inter-institutional and international synergies are created in the fight against high-level corruption;
- A mechanism for optimal restructuring related to the closure and transformation of existing institutions is in place;
- A clear sequence of procedures is envisaged for taking measures to counteract corruption, to identify and seize illicitly acquired property;
- A new level of interconnection of the existing information databases is guaranteed as a basis for combating corruption;
- A significant step is being taken to identify and analyze the networks of dependency that link corruption to organized crime.



3. Findings from the recent EC reports on the Cooperation and Verification Mechanism (CVM).

- On 13 November 2018, the Commission published its annual report on Bulgaria's progress in meeting CVM indicators. The Commission has indicated that the progress made in meeting all the CVM indicators is significant. For the first time, it was found that Indicator 1 (Judicial Independence), Indicator 2 (Legal Framework) and Indicator 6 (Organized Crime) were found to be provisionally closed and Indicators 3 (Continuation of Judicial Reform), 4 (Corruption at high level) and 5 (Local and Border corruption) significant progress has been made, with recommendations very close to implementation.

The most significant individual achievement indicated was the elaboration and adoption of a comprehensive legal framework to counteract corruption at high levels of power. The high degree of continuity with regard to both the legislative framework and the smooth merging of the individual structures in the new commission were explicitly emphasized. A transparent procedure for selecting the management of the new body was indicated.

The EC's positive assessment is also based on the transparent elections for SJC members in 2017 and the professional work of the newly-elected SJC, the election of heads of the judiciary, the new powers of the SJC Inspectorate, the changes in the Criminal Procedure Code regarding the inclusion of high-level corruption cases in the jurisdiction of the Specialized Criminal Court and the adoption of the Anti-corruption and Forfeiture of Assets Act (AFAA). The report clearly defined the possibility of closing down CVM next year if the pace and irreversibility of the reforms under way were maintained.

- On 22 October 2019 the EC report was published on the progress achieved during the previous year in implementation of the last 17 recommendations made by the Commission in its January 2017 report. It is noted with pleasure Bulgaria's consistent work to implement these recommendations. For the first time since the establishing of this Mechanism for Bulgaria in 2007, there is a real chance for our country for it to drop out. The Commission is of the opinion that Bulgaria's progress towards CVM is sufficient to fulfill the country's commitments made at the time of its accession to the EU. Bulgaria needs to continue to work consistently to translate the commitments reflected in the report into specific legislation and to ensure its lasting implementation. Bulgaria needs to monitor the ongoing implementation of the reforms through a newly created council, which will function after the Commission's monitoring is completed, and the conclusions reached will be used in future dialogue with the Commission within the comprehensive rule of law mechanism. Both internal monitoring and the EU-wide mechanism should support the sustainability and irreversibility of reforms, even after the end of CVM for Bulgaria.

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## Romania

### ***III. Country specific issues concerning the independence and impartiality of the prosecution services***

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

Also, on this report, similar remarks are made regarding the following points:

##### **1. On the point 95, regarding the **dismissal of the elected members of the Superior Council of Magistracy**, we would like to mention that:**

By Law no. 234/2018, point 61, the art. 55 of *Law no. 317/2004 regarding the Superior Council of Magistracy (SCM)* **was modified** being provided, among the cases of revocation, the situation in which the person concerned have its confidence withdrawn by the

majority of judges or prosecutors, as the case, which actually works in the courts or prosecutor's offices that it represents (paragraph (1) letter c))

The text of the law was replaced by **Article III point 4 of the Emergency Ordinance no. 92/2018**, thus the currently art. 55 of Law no. 317/2004 regulates the following cases of revocation from the position of elected member of the Superior Council of Magistracy:

- a) *the person concerned no longer fulfils the legal conditions to be elected member of the Superior Council of Magistracy;*
- b) *a disciplinary sanction from those provided by law for judges and prosecutors was applied to the person concerned, and the measure remained final;*
- c) *the corresponding section of the Superior Council of Magistracy concluded, on the basis of the report prepared by the Judicial Inspection, that the person concerned did not fulfil the tasks provided by the law or has improperly, repeatedly, and unjustifiably fulfilled those duties.*

**2. On the point 96** regarding the limited role played by civil society representatives within the SCM, because of their exclusion from all the meetings of the Sections, we would like to mention that:

According to art. 19 of Law no. 317/2004 regarding the Superior Council of Magistracy, within the SCM **are elected 2 representatives of civil society.**

The representatives of the civil society do not attend to the meetings of the judges sections, respectively for prosecutors, **but they participate, with the right to vote, to the plenary meetings of the Superior Council of Magistracy** (art. 28 paragraph 3 of Law no. 317/2004).

Also, for the information purpose about the activity of the courts and prosecutor's offices, the members of the SCM carry out trips to the headquarters of the courts and prosecutor's offices and organize meetings with the judges, prosecutors and **representatives of the civil society** (art. 31 paragraph 2 of Law no. 317/2004).

Regarding the role of the representatives of the civil society within the SCM, we are mentioning the following specific duties:

- a) ensures constant **information of civil society organizations** on the work of the Superior Council of Magistracy;
- b) performs the **consultation of the civil society organizations** on their proposals and suggestions regarding the necessary steps at the Superior Council of Magistracy, in order to improve the activity of the judicial institutions (*as a public service in the service of the society*), preparing in this regard a quarterly report (*analysis and synthesis of the proposals*) which is send to the plenary or the sections, as the case may be, for analysis and decision;
- c) monitors the compliance of the Superior Council of Magistracy obligations on transparency, ensuring public access to information and solving petitions, in relation to civil society and draws up an annual report that it publishes on the SCM's website.

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

**3. On the point 161**, regarding the mandatory action for recovery, by the Ministry of Public Finance, against the judge or the prosecutor in the case of the judicial errors, we would like to mention that:

- According to art. 96 paragraph 8 of Law 303/2004, "*The State, through the Ministry of Public Finance, will exercise the action for recovery against the judge or the prosecutor if, following the advisory report of the Judicial Inspection provided in par. (7) and of his own*

assessment, **considers that** the judicial error was caused as a result of the exercise of judge or prosecutor's function in bad faith or as a result of gross negligence”.

Therefore, given the current form of the law, the exercise of the action in regress by the MPF **is not mandatory, but optional.**

**4. On the point 163-164** regarding the **abolition of the Section for the Investigation of Crimes in Justice/SIIJ**, we would like to mention that, on 24 December 2019, the Romanian Government approved an Memorandum on “*Evaluation of the legal framework regarding the organization and operation of the Criminal Justice Investigation Section and proposals*”, initiated by the Ministry of Justice.

Thus, in the relations with the authorities and public institutions, respectively with the European Union or international institutions on this subject, the solution could be the abolition of the SIIJ or, as the case may be, the radical rethinking of its functioning and organization, according to GRECO recommendations, the Venice Commission and the European Commission.

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## Turkey

**Regarding paragraphs 106 and 141 of the report, we would like to submit the following information to the attention of CCPE Bureau:**

In pursuance of its founding purpose and mission, CCPE takes into consideration the opinions of diverse international organizations while carrying out evaluations regarding member States. At this point, it has been many times expressed to the senior management officials of AEAJ and MEDEL, whose opinions and criticisms are incorporated in this report, that it would be more accurate and lawful to include in their evaluations the legal information acquired as a result of mutual dialogue rather than coming to a conclusion through one sided and wrong information about what is happening in Turkish judiciary (in different platforms). It has even been reminded that if they come to Turkey, they could ask their questions to related institutions and individuals.

It has been said to the President of MEDEL that his evaluations would absolutely change upon meeting with founding members and executives of YARSAV (an ex-member of MEDEL) who are currently on active duty within Turkish judiciary. Then it has been expressed that concrete evidence could be presented about how YARSAV was seized by FETÖ/PDY terrorist organization and the fact that Murat Arslan was never independent and impartial (that he was neither judge nor prosecutor) and that he administered YARSAV in line with the orders of FETÖ/PDY terrorist organization.

There is no reasonable justification for the erroneous demeanour of this organization's executives who did not respond to all these invitations and to the possibility of accessing official information and who transferred money to those dismissed on the grounds of being connected and in contact with the abovementioned terrorist organization in order to help them flee from justice. This being the case, excepting the esteemed members of AEAJ and MEDEL mentioned in the report, it is necessary to indicate that the evaluations of senior management about Turkish judiciary go beyond prejudice and that they are intentional.

**Regarding paragraph 142 of the report:**

By 22.11.2019, 151 cases filed before the Council of State by those dismissed from profession on grounds of being connected and in contact with FETÖ/PDY terrorist organization were finalised. We would like to submit to your information that the following issues were touched on in these judgements of dismissal of cases.

The Council of State expressed the following on the allegation of violation of complainant's procedural guarantees;

Decree Law No. 667 was issued within the framework of State of Emergency and it is as proportional as the situation requires. As a matter of fact, it is regulated in Article 15 of European Convention of Human Rights that the obligations involving certain procedural guarantees may be suspended.

On the other hand, according to ECHR case law, procedural deficiencies occurred at lower stages of decision making and judgement process can be compensated at later stages.

Within this framework, fair trial is guaranteed through facilitating measures such as evaluation of term of litigation and requests for legal assistance, ensuring easy participation in trials, evaluation of all information and files presented by administration and granting a certain time period for sending and responding, extending responding period if requested.

On merits;

Having mentioned judicial independence and impartiality included in our Constitution and laws, the obligation of loyalty to Democratic Constitutional Order and the Bangalore Principles of Judicial Conduct that is acknowledged by the Plenary of Council of Judges and Prosecutors,

The Council of State decided that it is lawful that the complainant who is found to be a ByLock user and about whom there are witness statements and whose membership mode to YARSAV is determined as a supportive factor of being connected and in contact with the organisation, is dismissed from profession pursuant to Decree Law No. 667 on the grounds of being connected and in contact with FETÖ/PDY terrorist organisation.

The Council of State decided to dismiss the case on the grounds that this situation does not constitute a violation when evaluated from the perspective of fundamental rights in line with the principles of lawfulness, bearing a legitimate purpose, being necessary in a democratic society and proportionality.

**Regarding paragraph 107 of the report;**

Judicial councils or prosecutorial offices of CCPE member states are not uniform as a course of their nature. What is important is that the officials of judicial councils or prosecutorial offices have sufficient guarantees assuring that they make their decisions with their independent and impartial identity regardless of their election method. Within this framework, we present to your attention that all members of the Council of Judges and Prosecutors are provided with Constitutional guarantees that are sufficient for making independent and impartial decisions. In addition, we would like to emphasize that the change in the structure of our Council is the result of a constitutional referendum. Still 9 (out of 13) members of CJP

are judges and prosecutors. The percentage of judges and prosecutors in the Council is greater than that of many European Countries.