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

**CCPE Opinion No. 18 (2023)
on Councils of Prosecutors
as key bodies of prosecutorial self-governance**

I. Introduction

1. In accordance with the mandate given to it by the Committee of Ministers, the Consultative Council of European Prosecutors (CCPE) has prepared this Opinion on Councils of Prosecutors as key bodies of prosecutorial self-governance.
2. The topic of the Opinion was chosen by the CCPE following the development of the CCPE standards on the independence and impartiality of prosecutors and the need to understand the institutional framework required to support these fundamental principles. The CCPE found it necessary to examine the present situation in member States as regards prosecutorial self-governance and to formulate a roadmap for the future based on best European practices.
3. The Opinion duly takes into account 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 and previous CCPE Opinions, in particular, Opinion No. 9 (2014) on European norms and principles concerning prosecutors, including the Rome Charter, Opinion No. 13 (2018) on the independence, accountability and ethics of prosecutors, Opinion No. 16 (2021) on the implications of the decisions of international courts and treaty bodies as regards the practical independence of prosecutors. Furthermore, the Opinion takes note, *inter alia*, of the responses of the CCPE members to the questionnaire on Councils of Prosecutors as key bodies of prosecutorial self-governance.
4. The Opinion also takes into account Opinions of the Consultative Council of European Judges (CCJE) No. 10 (2007) on Council for the Judiciary at the service of society and No. 24 (2021) on the evolution of Councils for the Judiciary and their role in independent and impartial judicial systems, as well as the relevant case law of the European Court of Human Rights (ECtHR) and of the Court of Justice of the European Union (CJEU), relevant instruments of the European Commission for Democracy through Law (Venice Commission), the Group of States against Corruption (GRECO) and other institutions of the Council of Europe.
5. The Opinion also uses relevant instruments of the institutions outside of the Council of Europe, in particular, the Compendium on Councils for the Judiciary (2021) of the European Network of Councils for the Judiciary (ENCJ), the Standards of professional responsibility and statement of the essential duties and rights of prosecutors of International Association of Prosecutors (IAP), the Report of the Special Rapporteur of the United Nations on the independence of judges and lawyers, the study of the Organisation for Economic Co-operation and Development (OECD) on the Independence of Prosecutors in Eastern Europe, Central Asia and Asia Pacific (2020) and the Report of the OSCE Office for Democratic Institutions and Human Rights (ODIHR) on Strengthening Functional Independence of Prosecutors in Eastern European Participating States (2020).
6. The CCPE wishes to thank the experts appointed by the Council of Europe, Mr João Manuel da Silva Miguel (Portugal) and Ms Anca Jurma (Romania), for their significant contributions in the process of drafting the text of the Opinion.

II. Scope and purpose of the Opinion

7. Councils of Prosecutors are becoming increasingly widespread in the legal systems of individual States.¹ However, justice systems vary throughout Europe. The different systems are rooted in different legal cultures and there is no uniform model for all member States. This diversity also has an impact on prosecutorial self-governance models, with or without Council of Prosecutors or other bodies dealing with such self-governance.
8. The replies² to the questionnaire on Councils of Prosecutors as key bodies of prosecutorial self-governance show that in the majority of member States, a collective body – irrespective of its official title – exists within the prosecution system to deal with prosecutorial career, including appointment/election, evaluation, promotion, transfer, discipline and other matters. Approximately half of these bodies deal with matters related to both judges and prosecutors while the other half deal only with prosecutors. In some member States, a Council of Prosecutors or other bodies dealing with prosecutorial self-governance do not exist.
9. The replies also show that there is great diversity among member States concerning the structure, organisation, composition, competence, functions and other aspects of Councils of Prosecutors or other bodies.
10. Moreover, prosecution services are structured and organised in a wide variety of ways in which Council of Prosecutors or other bodies are involved to various degrees.³
11. In some models, the prosecution service is totally independent of both the executive and judicial powers.
12. In other cases, the prosecution service is part of the judicial power. In such structures, there is often a high judicial council or a similar umbrella independent body that regulates the careers of both judges and prosecutors.⁴ There may also be the possibility of switching between the respective careers of judge and prosecutor, which in some cases is limited by law.
13. In yet another model, the prosecution service is organised as an autonomous body but is linked to the executive power to a greater or lesser extent. A Council of Prosecutors or a similar independent body may in some cases regulate the career of prosecutors.

¹ Venice Commission's Report on European Standards as regards the independence of the Judicial System: Part II – The Prosecution Service, 17-18.12.2010, CDL-AD(2010)040 §§ 64-68; see also the Venice Commission's Compilation of Opinions and Reports concerning prosecutors (CDL-PI(2022)023), 26 April 2022. See also the Report of the UN Special Rapporteur on the independence of judges and lawyers (Doc. A/HRC/38/38, 2 May 2018) where it is pointed out that the number of judicial councils, responsible either for judges or both for judges and prosecutors, increased greatly in recent decades, and it is estimated that, to date, over 70 percent of the countries in the world have some form of judicial council.

² Mentioned in the para 3 of the present Opinion.

³ Report of the UN Special Rapporteur on the independence of judges and lawyers, Gabriela Knaul (A/HRC/20/19), 7.6.2012, §29.

⁴ Also known as the passerelle system.

The Minister of Justice or another organ of the executive power sometimes retains a certain degree of control over recruitment of prosecutors and can decide on appointments autonomously or on the advice of the Council of Prosecutors. The Minister of Justice may also remain responsible for organisational matters and budget management of the prosecution system.

14. A variation of the same model used in other jurisdictions is that all policy, operational and administrative matters reside with the operational head of the prosecution service. However, some budgetary control may remain with the responsible minister, which may have an impact on the independence of the service.
15. In some cases, the prosecution service is part of the executive power, where appointments, career and disciplinary proceedings may be dealt with by the Ministry of Justice, and a prosecutorial council or similar body may approve or advise on these matters.
16. While recognising these differences in member States, the CCPE is of the view that what brings them together is the need to provide for the independence and autonomy of the prosecution services in order to secure their impartial and effective functioning and decision making.
17. The purpose of this Opinion is therefore to examine and highlight the key role of Councils of Prosecutors and other bodies dealing with the prosecutorial self-governance in safeguarding institutional independence and autonomy of the prosecution services and functional independence of individual prosecutors.
18. However, as also mentioned by the Venice Commission, it would be difficult to impose a single model for such prosecutorial councils in all member States of the Council of Europe, and their existence cannot be regarded as a uniform standard binding on all European States.⁵
19. The Opinion strives in particular to offer best practices to member States. This is with a view to improving both the existing systems and prosecutorial self-governance having due regard to different legal cultures and traditions and within the overall framework of reinforcing the independence, efficiency and quality of justice.

III. General mission of Councils of Prosecutors: to safeguard the independence of prosecutors and the rule of law

20. The European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) underpins the rule of law as a structural pillar of a democratic society. Access to justice is one of the core elements of the ECHR, which proclaims the right of everyone to an independent and impartial tribunal established by law.⁶

⁵ Venice Commission's Report on European Standards as regards the independence of the Judicial System: Part II – The Prosecution Service, 17-18.12.2010, Study N° 494 / 2008 - CDL-AD(2010)040 - §§ 68.

⁶ In Article 6 of the ECHR.

21. The European Court of Human Rights (ECtHR) consequently developed vast case law on the standards for the independence and impartiality of judges and efficient administration of justice. In this regard, Councils for the Judiciary and their structure, composition and functioning have been mentioned in the case law of the ECtHR.⁷
22. The Court of Justice of the European Union (CJEU) has also expressed itself on Councils for the Judiciary.⁸ It stated, for example, that the participation of such councils in the process for the appointment of judges may, in principle, contribute to making that process more objective. However, that is only the case, *inter alia*, if such body is itself sufficiently independent from the legislative and executive powers and of the authority to which it is required to deliver such an appointment proposal.⁹
23. Councils for the Judiciary are bodies tasked with safeguarding the independence of the judiciary and of individual judges, and thereby promoting the efficient functioning of the judicial system.¹⁰ To date, many European legal systems introduced Councils for the Judiciary.¹¹ As it was already mentioned, in some cases, these Councils are dealing with both judges and prosecutors.¹²
24. As regards specifically Councils of Prosecutors, while the ECtHR has not yet developed similar case law, it did emphasise the principle of prosecutorial independence in general.¹³ For example, the Court considered it necessary to reiterate that in a

⁷ ECtHR judgments *Oleksandr Volkov v. Ukraine*, 9 January 2013, §§ 109-117. *Ramos Nunes de Carvalho e Sá v. Portugal*, 6. 11. 2018, § 144; *Guðmundur Andri Ástráðsson v. Iceland* [GC], no. 26374/18, 1 12. 2020; *Xero Flor w Polsce v. Poland*, 7.5.2021 – 4907/18, §§ 243-251.

⁸ It should be noted that the European Charter of Fundamental Rights states that in so far as this Charter contains rights which correspond to rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, the meaning and scope of those rights shall be the same as those laid down by the said Convention. This provision shall not prevent Union law providing more extensive protection (Article 52(3)). The European Charter also provides for the right to a fair trial similar to that provided by the ECHR (Article 47 of the Charter).

⁹ CJEU judgment of 19 November 2019 C-585/18, C-624/18 and C-625/18. Also see CJEU *European Commission v. Poland*, 24.6.2019 – C 619/18, §§ 71-73; *A.K. v. Krajowa Rada Sadownicta*, 19.11.2019, C 585/18, C-624/18, C-625/18, §§ 120-122 ; *European Commission v. Poland*, 24.6.2019 – C 619/18, §§ 74-75; *A.K. v. Krajowa Rada Sadownicta*, 19.11.2019, C 585/18, C-624/18, C-625/18, §§ 123, 133-134; *VQ v. Land Hessen*, 9.7.2020 – C2727/19, § 54; *Repubblika Il-Prim Ministru v. WY*, 20.4.2021 – C-896/19; C-83/19 and others 18.5.2021.

¹⁰ Recommendation Rec(2010)12 of the Committee of Ministers of the Council of Europe on judges: independence, efficiency and responsibilities, paras 26-29; CCJE Opinions No. 1 (2001), para 45, and No. 10 (2007) and No. 24 (2021); Venice Commission's Report on the Independence of the Judicial System, Part I: the Independence of Judges (para 32), adopted by the Venice Commission at its 82nd Plenary Session (Venice, 12-13 March 2010).

¹¹ Comparative Overview on Judicial Councils in Europe by Professor Anne Sanders (2022) at <https://rm.coe.int/comparative-overview-on-judicial-councils-in-europe-en/1680a923bc>. See also the Report of the European Committee on Legal Co-operation (CDCJ) to the Secretary General of the Council of Europe on Review of the Implementation of the Council of Europe Plan of Action on Strengthening Judicial Independence and Impartiality, adopted by the CDCJ at its 98th plenary meeting (1-3 June 2022).

¹² Comparative Overview on Judicial Councils in Europe by Professor Anne Sanders (2022) at <https://rm.coe.int/comparative-overview-on-judicial-councils-in-europe-en/1680a923bc>.

¹³ CCPE Opinion No. 16 (2021) on implications of the decisions of international courts and treaty bodies as regards the practical independence of prosecutors, paras 16-36, for an analysis and list of relevant judgments of the ECtHR.

democratic society, both the courts and the investigation authorities must remain free from political pressure.¹⁴ Moreover, the Court observed that it was in the public interest to maintain confidence in the independence and political neutrality of the prosecuting authorities of a State.¹⁵

25. The CCPE emphasised that the independence and autonomy of the prosecution services constitute an indispensable corollary to the independence of the judiciary, and, therefore, the general tendency for such independence should be further encouraged.¹⁶ Prosecutors should be autonomous in their decision making and should perform their duties free from external pressure or interference, in accordance with the principles of separation of powers and accountability.¹⁷
26. The CCPE went on to directly recommend a status for prosecutors that ensures their external and internal independence and autonomy, preferably by provisions at the highest legal level and guaranteeing their application by an independent body such as a Council of Prosecutors, in particular for appointments/elections, careers and discipline,¹⁸ which should be regulated by clear and well understood processes and procedures.¹⁹
27. The Venice Commission noted that Councils of Prosecutors are important for reducing and ultimately eliminating the risks created by interference of other powers of the state (i.e. the executive and legislative powers) or, in other words, strengthening the independence of prosecutors. In the case of Councils responsible both for judges and prosecutors, it should be ensured that they cannot influence each other's appointment/election and disciplinary proceedings.²⁰
28. The Venice Commission further noted that Councils of Prosecutors, when they are independent of other state bodies, have the advantage of being able to provide valuable expert input in the appointment and disciplinary process and thus shield prosecutors from political influence. Depending on their method of appointment, they can provide democratic legitimacy for the prosecution system. Where they exist, in addition to

¹⁴ ECtHR judgment *Guja v. Moldova* no. 14277/04, 12 February 2008, § 86.

¹⁵ ECtHR judgment *Guja v. Moldova* no. 14277/04, 12 February 2008, § 90; see, *mutatis mutandis*, *Prager and Oberschlick v. Austria*, 26 April 1995, § 34, Series A no. 313.

¹⁶ CCPE Opinion No. 9 (2014) on European norms and principles concerning prosecutors, Rome Charter, point IV.

¹⁷ CCPE Opinion No. 9 (2014) on European norms and principles concerning prosecutors, Rome Charter, point V.

¹⁸ CCPE Opinion No. 13 (2018) on the independence, accountability and ethics of prosecutors, Recommendation iii. See also the Report of the European Committee on Legal Co-operation (CDCJ) to the Secretary General of the Council of Europe on Review of the Implementation of the Council of Europe Plan of Action on Strengthening Judicial Independence and Impartiality, adopted by the CDCJ at its 98th plenary meeting (1-3 June 2022), para 147.

¹⁹ CCPE Opinion No. 9 (2014) on European norms and principles concerning prosecutors, para 52.

²⁰ European Commission for Democracy through Law (Venice Commission), Report on European Standards as regards the independence of the Judicial System: Part II – The Prosecution Service, 17-18.12.2010, CDL-AD(2010)040, conclusion 20).

participating in the appointment of prosecutors, they often play a role in disciplinary matters.²¹

29. The Council of Europe's Group of States against Corruption (GRECO) also developed guidance on the self-governance of prosecutors when issuing recommendations on enhancing the independence of prosecutors as a prerequisite for promoting integrity in the prosecution service. Acknowledging that there is a diversity of systems with regard to the role and organisation of public prosecution in the criminal justice system, GRECO recommended countries where prosecutorial (or mixed, judicial and prosecutorial) councils exist, that they play a stronger role in the selection, appointment/election and career management of prosecutors, in disciplinary matters, as well as in case management and organisational programmes of prosecutorial offices.²²
30. The European Network of Councils for the Judiciary (ENCJ) considers that such Councils should act to strengthen and maintain the rule of law, in particular by providing support for judicial independence, accountability and the quality of the judiciary. The ENCJ also highlights that if these standards do not specifically address issues concerning prosecutors, considering the wide variety of organisation of prosecution services in Europe, this does not prevent them from also applying to prosecutors and safeguarding their independence.²³
31. The study of the Anti-Corruption Network for Eastern Europe and Central Asia (ACN) of the Organisation for Economic Co-operation and Development (OECD), while acknowledging the absence of any binding international standard in this field, encourages countries to develop national prosecutorial councils or other types of self-governing bodies. Such bodies, being conferred with powers concerning the appointment/election of prosecutors, disciplinary proceedings, and other crucial matters, are a relevant factor enhancing the independence of the prosecution service and protecting prosecutors from external interference and pressure.²⁴
32. In addition, the OECD's above-mentioned study highlights the existence in some countries of collegial bodies within the prosecution services that consider, propose or even adopt important decisions regarding prosecutors' activities.²⁵
33. The United Nations also recognises that prosecution services are constructed in a wide variety of ways, and if the prosecution service is organised as an autonomous agency,

²¹ Venice Commission's Report on European Standards as regards the independence of the Judicial System: Part II – The Prosecution Service, 17-18.12.2010, Study N° 494 / 2008 - CDL-AD(2010)040 - §§ 64-68.

²² GRECO, "Corruption prevention. Members or Parliament, Judges and Prosecutors. Conclusions and trends" page 28.

²³ The ENCJ Compendium on Councils for the Judiciary (2021).

²⁴ See OECD's Anti-Corruption Network for Eastern Europe and Central Asia (ACN) at <https://www.oecd.org/corruption/acn/The-Independence-of-Prosecutors-in-Eastern-Europe-Central-Asia-and-Asia-Pacific.pdf>, page 29.

²⁵ See OECD's Anti-Corruption Network for Eastern Europe and Central Asia (ACN) at <https://www.oecd.org/corruption/acn/The-Independence-of-Prosecutors-in-Eastern-Europe-Central-Asia-and-Asia-Pacific.pdf>, pages 38-39.

a prosecutorial council or a similar independent body may regulate the career of prosecutors.²⁶

34. Taking into account the vast variety of legal and prosecutorial systems in Europe, the CCPE notes that there may be other effective means to provide for prosecutorial independence and prosecutorial self-governance than by establishing Councils of Prosecutors or other bodies dealing with it. However, the existence of such Councils or other bodies has a clear institutional value, if compared with alternative means. These institutions produce durable effects and ensure the long-term sustainability of independent and autonomous prosecution systems.
35. Therefore, the institutional value of Councils of Prosecutors – whether as separate bodies or as a part of Councils for the Judiciary responsible for both judges and prosecutors – or other bodies dealing with prosecutorial self-governance should be emphasised.
36. Moreover, such Councils should not merely exist in legislation but should also be operational in practice. The existence of a legislative framework and international standards may not always be enough on its own for the development in practice of an independent and impartial prosecution system. For this reason, the prosecution service and other branches of government, politicians, media and civil society must all work together in a long-term effort to increase professionalism, transparency and ethics within the prosecution service and the judiciary to turn rules on paper into a culture of respect for judicial independence for the benefit of the society.²⁷
37. To summarise, Councils of Prosecutors are very well placed to:
 - Secure effective and impartial prosecution services and individual prosecutors through their independent decision making in accordance with rule of law principles;
 - Create in this way a favourable framework for prosecution services to be able to guarantee the lawfulness of proceedings and the right to a fair trial in line with rule of law principles; and
 - Ensure compliance of the work of prosecutors with international legally binding instruments, in particular the European Convention for the Protection of Human Rights and Fundamental Freedoms, as well as with soft law instruments.
38. When dealing with these and other functions as well as the role of Councils of Prosecutors, the principles of 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, as well as of the CCPE's related Opinions, should be followed as the basic safeguards for the prosecution system, its independence, impartiality and effectiveness.

²⁶ Report of the UN Special Rapporteur on the independence of judges and lawyers, Gabriela Knaul (A/HRC/20/19, 7.6.2012, § 29).

²⁷ Venice Commission, Urgent Interim Opinion on the draft new constitution, 11th of December 2020, Bulgaria, CDL-AD(2020)035 para 37; see also CCJE Opinion n. 24(2021) – CCJE(2021)11. Test for Europe's Judiciaries in: European Yearbook of Constitutional Law 2019, 287-310.

IV. Composition of Councils of Prosecutors: to enable effective functioning of an independent and transparent Council

1. Composition of Councils of Prosecutors

39. The structure and composition of Councils of Prosecutors are varied. Their roots and development are linked to the development of each legal system and its historical, cultural and social context.
40. In the same way as judicial councils and in order to guarantee the stability of Councils of Prosecutors and stress their importance, these bodies should necessarily be established by law and function based on law.
41. There is no one-size-fits-all model for Council of Prosecutors. The main principle should be the setting-up of a structure, with an appropriate composition, proportionate to the size of the prosecution service in order to optimise the fulfilment of its tasks. A margin of appreciation is left to member States in setting up such bodies, provided that this main principle is respected.
42. Where Councils of Prosecutors exist, two main models can be identified: one where prosecutorial members are the majority or the totality of the composition and the other where prosecutorial members are not the majority of the composition.
43. Both the CCPE and Venice Commission underlined that setting up a Council of Prosecutors is a very welcome step towards the depoliticisation of the prosecution service, and it is therefore very important that it is conceived as a pluralistic body. In order to ensure the neutrality of this body, the independence of such Council and its members should clearly be stipulated.²⁸
44. The Venice Commission also pointed out in particular that if such Councils are composed in a balanced way, e.g. by prosecutors, lawyers and civil society, and when they are independent of other state bodies, they have the advantage of being able to provide valuable expert input in the appointment and disciplinary process and thus to shield prosecutors from political influence.²⁹
45. The presence and participation of lay members is seen as a way of promoting and guaranteeing the real independence of the prosecution system by rendering the Council free from any political interference and serving to reinforce its autonomy. In addition, the membership of lay members reinforces the accountability and transparency of the profession of prosecutors and their openness to the general public.
46. In Councils with mixed composition, it would be preferable that prosecutor members constitute the majority, elected by their peers, according to rules previously adopted and a transparent procedure and by a method guaranteeing the widest representation at all

²⁸ 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.

²⁹ Venice Commission's Report on European Standards as Regards the Independence of the Judicial System: Part II – the Prosecution Service, CDL-AD(2010)040, para 65.

levels, gender-balanced, and as appropriate with a regional and national level representation, in all the panels of the Council. All the prosecutorial members must act as representatives of the entire prosecution service.

47. The composition of Councils of Prosecutors should, as appropriate, reflect the diversity in the prosecutorial systems and in the society in general. Lay members, when elected by Parliament, should be elected by a qualified majority to allow the opposition's participation. However, in the case of non-election in the first round, it can take place in the second round by a simple majority as anti-deadlock mechanism.
48. The Consultative Council of European Judges (CCJE) pointed out that prospective members of the Council for the Judiciary should not be active politicians, members of the Parliament or executive officials.³⁰ The CCPE is of the opinion that a similar approach should be pursued in relation to the members of Councils of Prosecutors.
49. *Ex officio* members may exist in a number that does not jeopardise the principles highlighted above.
50. A Council of Prosecutors can benefit from full-time membership, as needed, in order to fulfil its mission more effectively, as well as to strengthen its independence and public image. Guarantees should be in place to ensure that, after the end of their mandate, prosecutorial members can be reinstated in positions that correspond to their seniority and qualifications.

2. Qualifications of members of Councils of Prosecutors

51. Members of Councils of Prosecutors, whether prosecutors or not, are to be selected on the basis of predetermined, fair and clear criteria through a transparent procedure.
52. A set of rules considering the eligibility criteria should be established in advance. The candidates' competence, experience, integrity, independence, impartiality and other relevant factors should be outlined and taken into consideration.
53. Candidates for membership of the Councils of Prosecutors should in particular exhibit high ethical standards and should not be involved in politics for a reasonable period of time before and after their mandate in the Council.

3. Selection methods of members of Councils of Prosecutors

54. The members of a Council of Prosecutors must be selected in a way that supports the independence and effective functioning of the Council, the prosecution service, and as a direct effect the judiciary, removing or circumventing any perception of political influence or conflict of interest.

³⁰ CCJE Opinion No. 10 (2007) on Council for the Judiciary at the service of society, para 23; see also CCJE Opinion No. 24 (2021) on the evolution of Councils for the Judiciary and their role in independent and impartial judicial systems, para 8(B)(b).

55. The selection of members should be governed by predetermined rules, disseminated in advance. These rules should apply to whatever selection method is concerned: election, appointment or other.
56. Rules should be in place to ensure that the prosecutorial members are selected by their peers, representing all levels of the prosecution service and not only senior officials of prosecutorial bodies. Associations of prosecutors may be entitled to present candidates.
57. The selection process should be transparent and ensure that the candidates' qualifications, especially their impartiality and integrity, are ascertained. Vacancies should be advertised publicly, and equal opportunities guaranteed to support a diverse group of independent candidates.
58. The number of *ex officio* members should be limited, and membership of officials from the executive should be discouraged.
59. The election of prosecutorial members by parliaments or their selection by the executive should preferably be avoided. The election by parliaments of lay members may be acceptable. However, the selection process should be transparent and preferably be done by a qualified majority.³¹ In the case of non-election in the first round, it can take place in the second round by a simple majority as anti-deadlock mechanism.
60. An election or nomination of lay members by institutions such as the Bar or other professional associations, non-governmental organisations (NGOs), when in line with member States' legal traditions, may be appropriate.

4. Selection of the Chairs of Councils of Prosecutors

61. The Chair of a Council of Prosecutors can play a key role in the functioning of the Council and its external and internal image. Clear rules to that end should be adopted.
62. The Chair of a Council of Prosecutors should be elected/appointed in a manner that ensures his/her impartiality and independence from the legislative and executive powers and ensures the absence of undue influence from within the hierarchy of the prosecution service.
63. The Venice Commission pointed out that the election of the Chair of a Council by its members is welcome.³² Where the minister of justice is an *ex officio* member of the Council, having him/her chair the Council may raise doubts as to the independence of this body.³³ The CCPE is therefore of the opinion that the Chair should be one of prosecutorial members elected by all members – both prosecutorial and lay – by a qualified majority. The same rule should apply to the election of the chairmanship of other

³¹ 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 66.

³² Venice Commission's Opinion on the draft law on the Public Prosecutors' service of Moldova, CDL-AD(2008)019, para 62.

³³ 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, para 40.

similar bodies. However, in the case of non-election in the first round, it can take place in the second round by a simple majority as anti-deadlock mechanism.

64. In countries where, owing to their legal traditions, the Chair of the Council of Prosecutors can be appointed *ex officio*, the chairmanship of the Council should not be granted to an *ex officio* member representing the executive power (i.e. the Minister of Justice) in order to avoid any undue influence.

5. Status and duration of the mandate of members of Councils of Prosecutors

65. The mandate of all members of the Council of Prosecutors should be of the same duration. They should be selected for a fixed term of office and should enjoy adequate protection for their impartiality and independence.
66. Member's term of office should only end after the election of their successor. Reaffirming the importance of the security of tenure of all members of the Council as a condition for its independence, the removal from office of a member should be based on serious grounds clearly established by law, and in a procedure in which his/her rights to a fair trial are guaranteed.
67. In this regard, the CCPE agrees with the Venice Commission that the possibility to revoke a member of the Council of magistrates for having been the subject of one of the disciplinary sanctions provided by law for judges and prosecutors is questionable, as it allows the dismissal of the person even for the lightest disciplinary sanctions.³⁴ It may also be recalled in this context that the Venice Commission is of the opinion that decisions on suspension of a member should take into account the gravity of the accusations and the existence of at least a probable cause that a serious disciplinary offence has been committed.³⁵ The CCPE considers that a possibility for judicial appeal should be available.
68. The CCPE also agrees with what the Venice Commission stressed regarding the revocation of elected members of such Councils by a withdrawal of confidence, i.e. by vote of the general meetings of prosecutor's offices. The Venice Commission consistently objected to the introduction of such a mechanism, because it involves a subjective assessment and may prevent the elected representatives from taking their decisions independently. A vote of confidence is rather specific to political institutions and is not suitable for institutions such as judicial Councils, and even less for individual members of such Councils.³⁶

³⁴ 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 142.

³⁵ Venice Commission's Opinion on the Draft Law on the Judicial Council in North Macedonia, CDL-AD(2019)008, para 37; see also the Venice Commission's Opinion on the Draft Amendments to the Law on the High Judicial Council of Serbia, CDL-AD(2014)028, para 30.

³⁶ 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 143.

69. In case of incapacity or loss of the status under which a member was elected or appointed to it, this member may cease his/her tenure. In case of a decision by the Council itself or a special body within it, the member should benefit from a fair hearing, including the possibility of appeal, in the proceedings established by law.

V. Competence and powers of Councils of Prosecutors in order to strengthen the independence and impartiality of justice

70. Both the Venice Commission and GRECO confirmed that Councils of Prosecutors may deal with the appointment/election matters concerning prosecutors, as well as disciplinary proceedings, including removals. For example, the Venice Commission stressed that in such cases, the prosecutor concerned should have a right to be heard in adversarial proceedings and in systems where a Council of Prosecutors exists, this council, or a disciplinary committee within it, could handle disciplinary cases (with an appeal to a court against disciplinary sanctions still to be available).³⁷ GRECO also underlined that, ideally, such a Council could be given an important role in the handling of disciplinary matters.³⁸
71. The CCPE also mentioned in relation to the appointment/election of prosecutors that 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.³⁹
72. Councils of Prosecutors should have a wide range of competences to better protect and promote prosecutorial independence and the efficient administration of justice. Competence and powers of the Council should be provided for by law.
73. Thus, Councils of Prosecutors should have a role in regulating or developing the organisation of the prosecution system and offices. In addition to the appointment/election and disciplinary matters mentioned above, they can deal with evaluation, promotion and transfer of prosecutors.
74. Moreover, further competencies of Councils of Prosecutors in the governing of the prosecution service should be encouraged, such as:
- a. Training of prosecutors;
 - b. Control and/or management of the budget of the prosecution system in order to effectively manage it;
 - c. Providing for the transparency of the prosecution system and relations with media, including the protection, where needed, of the image of prosecutors;

³⁷ 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 52.

³⁸ GRECO's Fourth Evaluation Round Report on Hungary (2015), page 49.

³⁹ Opinion No. 9 (2014) of the CCPE on European norms and principles concerning prosecutors, Explanatory Note, para 54.

- d. Co-operation with other relevant bodies at national, European and international level;
 - e. Promoting the efficiency and quality of justice;
 - f. Providing opinions on legislative proposals regarding the organisation and functioning of the prosecution service, as well as for the justice system as a whole.
75. In cases where different functions of a Council of Prosecutors, such as appointment/election, disciplinary matters and training of prosecutors, are attributed to various branches or boards of such Council or to different independent bodies competent for specific aspects of prosecutorial administration, their composition should reflect the type of tasks and the way in which they should be carried out.
76. Extended financial powers of a Council of Prosecutors imply its accountability not only vis-à-vis the executive and legislative powers, but also vis-à-vis the courts and the public.

VI. Functioning and decision-making process of Councils of Prosecutors

77. The Consultative Council of European Judges (CCJE) stressed that every Council for the Judiciary must work in a transparent fashion, giving reasons for its decisions and procedures and be accountable in this way. Relations between Councils and other powers of the state, i.e. the executive and legislative powers, must be based on a culture of respect for the rule of law and understanding of their respective roles in a democratic state. Councils should actively engage in open, respectful dialogue with other powers of the state, associations of judges and civil society including bar associations, NGOs and the media.⁴⁰
78. The CCPE is of the opinion that this should also apply to Councils of Prosecutors. Their functioning and decision-making process should be governed by written and transparent rules preferably adopted by law. Such rules should provide, in particular, for the quorum, voting procedure, majority to adopt a decision. If needed, detailed regulations of a Council of Prosecutors should be adopted by the Council itself.
79. Decisions with an impact on the career of prosecutors should be reasoned, and those having binding force can be subject to a judicial review on the initiative of the prosecutor concerned.
80. In case of the reversal of a decision concerning the career of prosecutors, including transfers and disciplinary breaches, remedies should be available to them.

⁴⁰ Opinion No. 24 (2021) of the CCJE on the evolution of Councils for the Judiciary and their role in independent and impartial judicial system, Chapter IV, Conclusions and recommendations, paras 7, 20, 21.

81. As mentioned above, Councils of Prosecutors can benefit from full-time membership, which can assist Councils in operating as a professional and effective organisation, by strengthening their independence, avoiding conflicts of interest, improving its image and assisting in fulfilling its mission.
82. Irrespective of whether the members of a Council of Prosecutors serve as full-time or part-time members, they should be allocated enough working time and adequate financial and administrative resources in order to fulfil their functions.
83. Guarantees for avoiding unlawful influence or interference of outside actors into the work and decision making of Councils of Prosecutors and other bodies dealing with prosecutorial self-governance should be effectively provided.
84. To reinforce public confidence in the justice system, Councils of Prosecutors should act transparently and be accountable for their activities, through periodical reports or other appropriate means. In such reports, measures already taken or to be taken could be highlighted in order to improve the functioning of the justice system.
85. As already mentioned, in the case of umbrella Councils⁴¹ responsible both for judges and prosecutors, it should be ensured that they cannot influence each other's appointment/election and disciplinary proceedings.

VII. Other bodies dealing with prosecutorial self-governance

86. The variety of organisational models of prosecution services in member States results in a diversity of types of other bodies dealing with prosecutorial self-governance. In addition to Councils of Prosecutors, other bodies may include:
 - congresses or general assemblies of prosecutors, which have in general competence to elect members of the Council of Prosecutors or other bodies of the prosecution service, to adopt annual reports and policy documents. They are composed of all the prosecutors in the country;
 - committees of senior prosecutors or collegium of the prosecution service – bodies that are usually made up either by *ex officio* members, prosecutors with management positions, determined by the law, chaired by the Prosecutor General. These bodies assist the Prosecutor General in his/her strategical mission of organising the activities of the office;
 - qualification commissions, attestation commissions, ethical committees which are bodies with an advisory role on selecting, appointing or promoting prosecutors, on evaluation and discipline. In some cases, such commissions exist as bodies of the Council of Prosecutors, but in other cases, they are structures established by the Prosecutor General. These commissions are composed of prosecutors appointed or elected. In some cases, they also may include lay members.
87. Thus, there are different approaches applied with regard to the competence, powers and composition of these bodies, to the functions they fulfil, which may be not as extensive

⁴¹ Mentioned in para 12 of the present Opinion.

and/or complex as those of a Council of Prosecutors, in the way its members are appointed or elected, in the level of (or lack of) autonomy in relation with the Prosecutor General and in other aspects.

88. The CCPE recalls that international soft law instruments encourage as best practice the setting up of professional, non-political structures aiming at enhancing the institutional and functional independence of prosecution services. The CCPE therefore recognises the importance and value of other bodies dealing with prosecutorial self-governance, and accordingly considers that they should be composed and function in such a way so as to exclude political interference and act for reinforcing the independence and impartiality of prosecution services.

VIII. Recommendations

Whereas:

- there is a need to further explore and understand the institutional framework to support the standards developed by the CCPE on the independence and impartiality of prosecutors;
- Councils of Prosecutors are becoming increasingly widespread in member States, in light of the diversity of their legal systems, traditions and cultures;
- the establishment of Councils of Prosecutors has a clear institutional value in comparison to alternative settings in order to provide for prosecutorial independence and prosecutorial self-governance;
- in member States where they exist, there is great diversity in terms of structure, organisation, composition, competence, functions, and other aspects of Councils of Prosecutors or other bodies dealing with prosecutorial self-governance;
- the above-mentioned diversity calls for the development of common standards and guidelines for national authorities;

the CCPE agreed on the following recommendations:

1. The institutional value of Councils of Prosecutors, as self-governing bodies, for securing the effective and impartial functioning of the prosecution services and individual prosecutors through their independent decision-making should be taken into account. Such institutional value should be considered in member States where Councils of Prosecutors do not exist, in accordance with their domestic legislation, legal traditions and cultures. If established, the below recommendations should apply to them.
2. Although differences may exist in member States, Councils of Prosecutors should be established by law, and given appropriate competence, structure and composition, proportionate to the size of the prosecution service, and with adequate financial and administrative resources.

3. If Councils of Prosecutors are conceived with mixed composition, they should be composed in a balanced way, through the representation of lay members, including representatives of other legal professions, academics and civil society. In Councils with such mixed compositions, it would be preferable that prosecutor members constitute the majority, elected by their peers.
4. Members of Councils of Prosecutors, whether prosecutors or not, are to be elected according to previously adopted rules and predetermined, fair and clear criteria, through a transparent procedure.
5. Prospective members of Councils of Prosecutors should not be active politicians, members of the parliament or executive officials.
6. Guarantees should be in place ensuring that, after the end of their mandate, prosecutorial members serving as full-time members can be reinstated in positions that correspond to their seniority and qualifications.
7. The impartiality and independence of the Chairs, as well as of members of Councils of Prosecutors, from the executive and legislative powers, and the absence of undue influence from within the hierarchy of the prosecution service, should be ensured.
8. The mandate of all members of Councils of Prosecutors should be of the same duration and should only end after the election of the successor. They should be selected for a fixed term in office and should enjoy adequate protection for their impartiality and independence.
9. Decisions on the suspension of a member should take into account the gravity of the accusations and the existence of a sufficient degree of probability that a serious disciplinary offence has been committed. In addition, such decisions should be subject to appeal through judicial avenues.
10. Councils of Prosecutors should be provided by law with a wide range of competencies in career matters and have a role in regulating or developing the organisation of the prosecution system and offices, while promoting prosecutorial independence and efficient administration of justice.
11. The functioning and decision-making process of Councils of Prosecutors should be governed by written and transparent rules preferably adopted by law. Such rules should provide, in particular, for the quorum, voting procedure and majority to adopt a decision. If needed, detailed regulations of a Council of Prosecutors should be adopted by the Council itself.
12. Decisions of Councils of Prosecutors with an impact on the career of prosecutors should be reasoned, and those having binding force can be subject to a judicial review on the initiative of the prosecutor concerned.
13. To reinforce public confidence in the justice system, Councils of Prosecutors should act transparently and be accountable for their activities, through periodical reports or other appropriate means.