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

Opinion of the CCPE Bureau

following a letter of the Prosecutor General of Lithuania

concerning legislative developments resulting

in a disproportionately large gap

in the remuneration of prosecutors and judges

INTRODUCTION

1. The CCPE received, on 5 July 2023, a letter from the Prosecutor General of Lithuania regarding a civil service reform related to changes in the pay system in the public sector in Lithuania. As part of this reform, draft amendments to the Law on the Civil Service and other relevant laws were prepared. The changes to the pay system were planned to be carried out in several phases starting with reforming the remuneration system for judges and some public officials due to enter into force on 1 July 2023. Meanwhile, the change in the remuneration system for prosecutors was separated from that of judges and was planned to take place only in the second phase scheduled to enter into force on 1 January 2024. However, it was not determined whether and to what extent the prosecutors' salaries would be increased.
2. As a result, a new pay system for judges entered into force as of 1 July 2023, whereas the provisions on the prosecutors' pay were not amended. Since 1 July 2023, the gap between the salaries of judges and prosecutors became disproportionately large, and a judge is now paid almost twice as much as a prosecutor at relevant organisational level, as the above-mentioned letter stresses.
3. The letter also mentions that a proposal by the President of the Republic of Lithuania to increase the salaries of prosecutors as of 1 October 2023 was submitted to the Seimas (Parliament) aiming to reduce the disproportionally large pay gap between prosecutors and judges.

OPINION OF THE CCPE BUREAU

4. In considering these important issues, the CCPE Bureau took into account CCPE's Opinions (including a Joint Opinion with the Consultative Council of European Judges (CCJE)), as well as relevant instruments of the Committee of Ministers of the Council of Europe, European Commission for Democracy through Law (Venice Commission), Group of States against Corruption (GRECO), United Nations (UN), Human Rights Committee (treaty body under the UN International Covenant on Civil and Political Rights (ICCPR)), European Network of the Councils for the Judiciary (ENCJ), International Association of Prosecutors (IAP) and Organisation for Economic Co-operation and Development (OECD).

Standards of the CCPE (including a Joint Opinion with the Consultative Council of European Judges (CCJE))

5. In 2009, the CCPE and the CCJE adopted their Joint Opinion (No. 4 (2009) for the CCPE and No. 12 (2009) for the CCJE) on relations between judges and prosecutors in a democratic society. This Opinion included the Bordeaux Declaration and an Explanatory Note.

6. It was emphasised in the Bordeaux Declaration that for an independent status of public prosecutors, some minimal requirements are necessary, in particular that their recruitment, career development, security of tenure including transfer, which shall be effected only according to the law or by their consent, as well as **remuneration** be safeguarded through guarantees provided by the law¹.
7. The same Opinion went on to underline that the proximity and complementary nature of **the missions of judges and prosecutors create similar requirements and guarantees in terms of their status and conditions of service**, namely regarding recruitment, training, career development, discipline, transfer (which shall be effected only according to the law or by their consent), **remuneration**, termination of functions and freedom to create professional associations².
8. The CCPE went on to further stress in its Opinion No. 9 (2014) on European norms and principles concerning prosecutors, including the Rome Charter, that the independence and autonomy of the prosecution services constitute an indispensable corollary to the independence of the judiciary³, and that States should take measures to ensure that prosecutors have reasonable conditions of service such as **remuneration**, tenure and pension commensurate with their crucial role as well as an appropriate age of retirement⁴.
9. Moreover, the conditions of service should reflect the importance and dignity of the prosecution office, and respect attached to it. The appropriate **remuneration** of prosecutors also implies recognition of their important function and role and can also reduce the risk of corruption⁵.
10. The CCPE also emphasised this issue in its landmark Opinion No. 13 (2018) on independence, accountability and ethics of prosecutors, where it outlined the main aspects of the prosecutorial independence. It mentioned the issue of proper remuneration of prosecutors several times in the text of this Opinion and finally specified it in the set of Recommendations provided at the end of the Opinion. It recommended that the status, **remuneration** and treatment of prosecutors as well as the provision of financial, human and other 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 prosecutors⁶.
11. Finally, the CCPE emphasised the issue of prosecutorial remuneration in its Opinion No. 16 (2021) on implications of the decisions of international courts and treaty bodies as regards the practical independence of prosecutors. It repeated the previously mentioned

¹ Joint Opinion of the CCPE and the CCJE (No. 4 (2009) for the CCPE and No. 12 (2009) for the CCJE) on relations between judges and prosecutors in a democratic society, Bordeaux Declaration, Section 8.

² Joint Opinion of the CCPE and the CCJE (No. 4 (2009) for the CCPE and No. 12 (2009) for the CCJE) on relations between judges and prosecutors in a democratic society, Explanatory Note, para 37.

³ Opinion No. 9 (2014) of the CCPE on European norms and principles concerning prosecutors, Rome Charter, Section IV.

⁴ Opinion No. 9 (2014) of the CCPE on European norms and principles concerning prosecutors, Explanatory Note, para 75.

⁵ Opinion No. 9 (2014) of the CCPE on European norms and principles concerning prosecutors, Explanatory Note, para 76.

⁶ Opinion No. 13 (2018) of the CCPE on independence, accountability and ethics of prosecutors, Recommendation XI.

standards and endorsed in particular the above-mentioned Recommendation contained in Opinion No. 13 (2018) in the Conclusions of Opinion No. 16 (2021)⁷.

Standards of the Committee of Ministers of the Council of Europe

12. The Committee of Ministers of the Council of Europe underlined in its Recommendation CM/Rec(2000)19 on the role of public prosecution in the criminal justice system that member States should take measures to ensure that public prosecutors have reasonable conditions of service such as **remuneration**, tenure and pension commensurate with their crucial role as well as an appropriate age of retirement and that these conditions are governed by law⁸.
13. Moreover, the Committee of Ministers of the Council of Europe pointed out that the status of public prosecutors and their rates of **remuneration** and pension must take account of the need to maintain **a certain balance between members of the judiciary and the prosecution service**, as both - despite the different nature of their duties - play a part in the criminal justice system. The material conditions of service should also reflect the importance and dignity of the office. Lastly, improving the situation of public prosecutors in certain member states, particularly in central and east Europe, should curb the tendency for them to desert to private sector posts⁹.

Standards of the European Commission for Democracy through Law (Venice Commission)

14. The Venice Commission stressed in its Report on European Standards as regards the Independence of the Judicial System: Part II – the Prosecution Service **in relation to prosecutors that like for judges, remuneration** in line with the importance of the tasks performed is essential for an efficient and just criminal justice system. A sufficient remuneration is also necessary to reduce the danger of corruption of prosecutors¹⁰.

Standards of the Group of States against Corruption (GRECO)

15. GRECO has underlined on numerous occasions the importance of proper remuneration for various professional groups including prosecutors and judges as key actors of the

⁷ Opinion No. 16 (2021) of the CCPE on implications of the decisions of international courts and treaty bodies as regards the practical independence of prosecutors, Conclusions, Section A(1).

⁸ Recommendation CM/Rec(2000)19 of the Committee of Ministers of the Council of Europe on the role of public prosecution in the criminal justice system, para 5(d).

⁹ Recommendation CM/Rec(2000)19 of the Committee of Ministers of the Council of Europe on the role of public prosecution in the criminal justice system, Commentaries on individual recommendations, para 5.

¹⁰ Venice Commission 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.

justice system. For example, it encouraged to ensure that the **remuneration** of prosecutors be based on transparent and objective criteria¹¹.

Standards of the United Nations (UN)

16. The UN Guidelines on the role of the public prosecutor underlined that prosecutors, as essential agents of the administration of justice, shall at all times maintain the honour and dignity of their profession. The Guidelines went on to mention that reasonable conditions of service of prosecutors, **adequate remuneration** and, where applicable, tenure, pension and age of retirement shall be set out by law or published rules or regulations¹².

Standards of the Human Rights Committee (treaty body under the UN International Covenant on Civil and Political Rights (ICCPR))

17. The Human Rights Committee (HRC) which is a treaty body of independent experts that monitors the implementation of the UN International Covenant on Civil and Political Rights (ICCPR)¹³ by its State Parties, issued a number of relevant recommendations as regards the judicial and prosecutorial independence. In this context, it mentioned several times the issue of remuneration for the judiciary which may be understood as including prosecutors. According to the HRC, States should take specific measures establishing clear procedures and objective criteria for the appointment, **remuneration**, tenure, promotion, suspension and dismissal of the members of the judiciary and disciplinary sanctions taken against them¹⁴.

Standards of the European Network of the Councils for the Judiciary (ENCJ)

18. The European Network of the Councils for the Judiciary (ENCJ) stressed in its Report 2014-2016: Independence and Accountability of the Prosecution that the independence of prosecutors must be protected by compliant recruitment procedures, the incompatibility of appointment with other public or private functions, **adequate and protected levels of remuneration**, and protections in relation to removability and promotion, discipline and dismissal¹⁵.

¹¹ GRECO's Fourth Evaluation Round: Corruption Prevention in respect of Members of Parliament, Judges and Prosecutors, Evaluation Report concerning Estonia adopted by GRECO at its 58th Plenary Meeting (Strasbourg, 3-7 December 2012), para 172.

¹² UN Guidelines on the Role of Prosecutors adopted on 7 September 1990 by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, paras 3 and 6.

¹³ Ratified by Lithuania in 1991.

¹⁴ Human Rights Committee, consideration of reports submitted by States Parties under Article 40 of the Covenant, concluding observations, Slovakia, CCPR/C/79/Add.79 (1997), para 18.

¹⁵ ENCJ Report 2014-2016: Independence and Accountability of the Prosecution, para 20.

Standards of the International Association of Prosecutors (IAP)

19. The International Association of Prosecutors (IAP) pointed out in its Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors that in order to ensure that prosecutors are able to carry out their professional responsibilities independently and in accordance with these standards, they should be protected against arbitrary action by governments. In general, they should be entitled, among other guarantees, **to reasonable conditions of service and adequate remuneration, commensurate with the crucial role performed by them and not to have their salaries or other benefits arbitrarily diminished**¹⁶.

Standards of the Organisation for Economic Co-operation and Development (OECD)

20. 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) stressed that **prosecutors need to be paid adequately**, and in line with the essential role they play in the criminal justice system. Their **salaries should be comparable to those of judges**, especially at the beginning of their career in order to attract the most qualified students and professionals. The grant of benefits other than the basic salary should be regulated by law, and non-political authorities should take decisions on the conferral of these emoluments¹⁷.

CONCLUSIONS AND RECOMMENDATIONS

21. Taking into account the above-mentioned standards, the CCPE Bureau, which represents the CCPE members who are serving prosecutors from all Council of Europe member States, agrees with the concerns expressed by the Prosecutor General of Lithuania related to the legislative developments resulting in a disproportionately large gap in the remuneration of prosecutors and judges in Lithuania.
22. It is evident from the above-mentioned various advisory opinions and instruments that there is a broad consensus in the international community concerning the remuneration of prosecutors, notably on two crucial points:
 - 1) The conditions of service of prosecutors, including their remuneration, should reflect the importance of their mission and dignity of their office, and should be at a proper level. This is important also in the context of preventing corruption among prosecutors and enabling their real independence and impartiality.

¹⁶ IAP Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors, adopted by the IAP on 23 April 1999, Article 6(3).

¹⁷ OECD study on the Independence of Prosecutors in Eastern Europe, Central Asia and Asia Pacific (2020), Section 3.3, page 148.

- 2) The level of remuneration of prosecutors must be analogous or at least comparable to that of judges, since both professional groups are key actors in any justice system and they both contribute essentially and extensively to the rule of law.
23. The CCPE Bureau notes that the international advisory instruments do not provide exact quantitative indicators as regards the specific amounts or percentages for remuneration to be allocated for prosecutors. The CCPE Bureau fully admits and agrees that the member States of the Council of Europe have a margin of appreciation in this respect, and that they have the full and sole authority to establish remuneration levels for various professional groups, including prosecutors.
24. However, in the opinion of the CCPE Bureau, such a substantial and crucial difference between remuneration of judges and prosecutors, as it is reportedly observed in Lithuania, goes beyond such a margin of appreciation and in fact contradicts the recommendations of various international bodies, both within and outside of the Council of Europe as regards, first of all, a proper level of remuneration for prosecutors, and secondly, as regards analogy or at least comparability of such remuneration with the one provided for judges.
25. In such context, the CCPE Bureau considers the concerns of the Prosecutor General of Lithuania as understandable and justified, especially since such situation may negatively affect the attractiveness of the prosecutorial work for highly qualified professionals and may in future potentially result in a lower quality of the work done by prosecutors, which in turn will have negative consequences for public trust in the justice system and for the rule of law in general.
26. The CCPE Bureau also notes from the letter of the Prosecutor General that the President of the Republic of Lithuania proposed to increase the salaries of prosecutors as of 1 October 2023, and that this proposal was submitted to the Seimas (Parliament) aiming to reduce the disproportionately large gap in remuneration between prosecutors and judges.
27. The CCPE Bureau welcomes such an important step by the President of the Republic of Lithuania. On its part, the CCPE Bureau calls upon relevant authorities in Lithuania to consider the issue of remuneration of prosecutors having regard to the importance of their mission and dignity of their office, in line with numerous international advisory instruments cited above, and to make sure that the remuneration of prosecutors is established at a level analogous to the remuneration of judges, or at least at a comparable level, and without any disproportionate differences.