

Strasbourg, 24 January 2023

CONSULTATIVE COUNCIL OF EUROPEAN PROSECUTORS (CCPE)

<p>Questionnaire for the preparation of the CCPE Opinion No. 18 (2023) on the Councils of Prosecutors as key bodies of prosecutorial self-governance</p>

In your answers, please do not send extracts of your legislation but describe the situation in a brief and concise manner, including briefly what is happening in practice.

INTRODUCTION

1. As noted in the CCPE Opinion No. 4 (2009) on judges and prosecutors in a democratic society (Bordeaux Declaration) and recalled in other Opinions of the CCPE, the independence of the public prosecution service constitutes an indispensable corollary to the independence of the judiciary. The role of prosecutors in maintaining the rule of law and protecting human rights of all parties to the proceedings can best be carried out where prosecutors are independent in their decision-making from executive and legislative powers and where the distinct roles of judges and prosecutors are correctly observed.
2. In its Opinion No. 13 (2018) on independence, accountability and ethics of prosecutors, the CCPE recommended that the status, independence, recruitment and career of prosecutors should, in a way similar to that of judges, be clearly established by law and governed by transparent and objective criteria. 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 council of prosecutors, in particular for appointments, careers and discipline of prosecutors.

3. The CCPE reaffirmed that the difficult and demanding nature of the profession of prosecutors requires their status and independence to be clearly established by law. A formal guarantee of independence through legal provisions is not sufficient if it is denied or has an illusory nature in practice. The establishment of a council of prosecutors or of another self-governance body within the prosecutorial systems is one of the effective ways of endowing those systems with the necessary level of external and internal independence.
4. Acknowledging the importance of the councils of prosecutors or other prosecutorial self-governance bodies in guaranteeing the independence of prosecution services, at its 17th plenary meeting (3-4 October 2022), the CCPE decided to focus its Opinion No. 18 (2023) on the Councils of Prosecutors as key bodies of prosecutorial self-governance, which is in line with the key strategic priorities 1 and 6 of the Strategic Framework of the Council of Europe. The CCPE accordingly instructed its Bureau and the Working Group to prepare this Opinion for adoption during the CCPE's 18th plenary meeting scheduled to take place on 19-20 October 2023.
5. The present questionnaire aims at collecting information on the existence, composition, competence and functioning of the councils of prosecutors and of equivalent prosecutorial self-governance bodies in members States. Information collected through the questionnaire will be used for elaborating the CCPE Opinion No. 18 (2023) and related documents .

QUESTIONNAIRE

I. General questions

1. Is there a council of prosecutors and/or any other bodies dealing with prosecutorial self-governance in your country? If yes, what is the exact title/denomination of such body or bodies, if several? (i.e. Council of Prosecutors or Prosecutorial Council, Conference/Congress of Prosecutors, Qualification and Disciplinary Commission of Prosecutors etc.) Is there a professional association of prosecutors dealing with prosecutorial self-governance in any way?
2. If so, when was a council of prosecutors and/or any other bodies dealing with prosecutorial self-governance introduced in the prosecutorial system in your country? Please describe briefly, if applicable, any significant reforms undertaken since the establishment, aimed at strengthening effectiveness, independence and accountability of such body(ies).
3. If such a council of prosecutors and/or any other bodies dealing with prosecutorial self-governance exist in your country, are they only for prosecutors or for other professionals of justice? Are such bodies separate or do they operate within a body common to judges and prosecutors?

4. At what legislative or normative level is the status of a council of prosecutors and/or any other bodies dealing with prosecutorial self-governance established and how is its/their functioning regulated? (e.g. through Constitution, laws, by-laws or other regulations).
5. Are such council of prosecutors and/or any other bodies dealing with prosecutorial self-governance provided with the required resources (human, financial and other) to function properly?
6. If in your country there is no council of prosecutors and/or any other bodies dealing with prosecutorial self-governance, is there any discussion to introduce such a body(ies)? If so, what are the arguments in favour and against its/their introduction?

II. Composition of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance and status of its/their members

7. Please describe the composition of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance in your country. Please indicate:
 - How many of the members are prosecutors?
 - How many, if any, are non-prosecutor members and who are they? (e.g. scholars, judges, lawyers, civil society, others)
8. Please describe the procedure for the election or appointment of the members of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance (including both prosecutor members and non-prosecutor members), the duration of their mandate and the dismissal procedure, including, if applicable, the grounds for early termination of mandate or dismissal of members.
9. Are there ex officio members in the composition? (i.e. those who are members automatically due to the position they occupy, for example, the Prosecutor General, the Minister of Justice or others)
10. Are there rules or procedures to prevent possible conflict of interest situations during the process of election or appointment of the members of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance? Is there an incompatibility between certain functions in the prosecution service and membership in a council of prosecutors?
11. Are there any specific requirements for prosecutor members in order to ensure a proportional and fair representation of all levels of the prosecution system?
12. Please describe briefly the election/appointment process of the president and vice-presidents, if applicable, of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance, including dismissal processes and grounds.

III. Competence and functioning of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance

13. In your country, do the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance have exclusive power to exercise the administration of the

prosecution service or whether this power is divided with the executive bodies (those outside of the prosecution service, e.g. the ministry of justice)?

14. Please describe briefly the functions and powers of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance, in particular as regards the recruitment, promotion, transfer, evaluation, discipline or other aspects regarding prosecutors, and budgetary aspects (including the development of the prosecution service's budget, systematisation of the legislation on the activities of the prosecution service, approval of the prosecution service's task plans and annual reports, adoption of the code of ethics for prosecutors etc.).
15. Please describe briefly the competence, if any, or any role played by the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance in:
 - performance assessment of prosecutors, both in terms of substance and procedure, and including relationship/ interactions with other bodies if those are competent on performance assessment;
 - disciplinary measures against prosecutors, also both in terms of substance and procedure, and including relationship/ interactions with other bodies if those are competent on disciplinary measures.
16. Do the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance have the power to consider situations of conflict within the prosecution system, for example in case of instructions to reverse the view of a prosecutor?
17. Can prosecutors apply to the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance with an allegation of illegal instructions from their superior prosecutors or any other actors, both from within and outside of the prosecution system?
18. Please describe briefly the decision-making process of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance, including any aspects related to voting rights of members (for example, whether all members have the same right to vote), and applicable procedures and thresholds for a decision to be adopted.
19. What is the legal force of the final decisions taken by the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance? Are such decisions of only a consultative nature, not being legally obligatory, or are they of a binding nature, being legally obligatory/mandatory, or is there a mixture depending on the nature of a decision?
20. Are the final decisions taken by the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance subject to judicial review by a court?
21. Which mechanisms ensure the independent functioning of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance?
22. Are there any other institutions outside of the prosecution system which have a role with respect to the functioning and decision-making process of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance?

23. How is the transparency of the work of the council of prosecutors and/or any other bodies dealing with prosecutorial self-governance guaranteed:
- are they accountable to the public through widely disseminated reports and information?
 - do they have publicly accessible websites providing essential information on their functioning and decision-making?
 - any other measures for transparency? (i.e. public briefings, press releases etc.)