

# Consultative Council of European Prosecutors (CCPE) Opinion no. 13(2018) of the CCPE: «Independence, accountability and ethics of prosecutors»

## I. INTRODUCTION, PURPOSE AND SCOPE OF THE OPINION

1. The Consultative Council of European Prosecutors (CCPE) was set up by the Committee of Ministers of the Council of Europe in 2005 with the task of formulating particularly opinions on matters concerning the implementation of Recommendation Rec(2000)19 of the Committee of Ministers to member States on the role of public prosecution in the criminal justice system.

2. Following the decision of the Committee of Minister adopted in this framework<sup>[1]</sup>, the CCPE decided to prepare and adopt in 2018 an Opinion for its attention on the independence, accountability and ethics of prosecutors.

[1] 130th meeting of Deputies Ministers, 21-23 November 2017.

3. For this purpose, bearing in mind that many international instruments are already devoted to the independence of prosecutors, the CCPE relies in particular on its Opinion No. 4 (2009) entitled “Judges and prosecutors in a democratic society” (Bordeaux Declaration), adopted jointly with the Consultative Council of European Judges (CCJE), and recalls that the independence of public prosecution is an indispensable corollary to the independence of the judiciary. The CCPE refers also to its Opinion No. 9 (2014) entitled “European norms and principles concerning prosecutors” (Rome Charter), where it is mentioned that the general tendency to enhance the independence and effective autonomy of prosecution services should be encouraged, prosecutors should be autonomous in their decision-making and perform their duties free from external pressure or interference.

4. The CCPE, in this Opinion, addresses possible interferences into prosecutors’ independence and pressures, in particular political pressures, exerted on them, as it has been observed in some member States. By gaining insight into the issues linked to independence, accountability and ethics, the CCPE seeks to raise awareness among prosecutors and relevant authorities as regards relevant developments and reforms in these areas.

5. The CCPE also takes into consideration the Council of Europe’s Plan of Action on strengthening judicial independence and impartiality in member States<sup>[2]</sup>, as well as the Report of the Secretary General of the Council of Europe – 2016 on the “State of democracy, human rights and the rule of law – a security imperative for Europe”<sup>[3]</sup>.

6. The CCPE recalls here, as it did in the course of its previous work, that the functions of prosecutors and the way in which they

<sup>[2]</sup> Prepared at the initiative of the Secretary General of the Council of Europe and adopted at the 1253rd meeting of Deputies Ministers, 13 April 2016.

<sup>[3]</sup> Presented at the 126th Session of the Committee of Ministers, 18 May 2016 (Sofia).

exercise them, should be consistent with respect for the right of individuals to a fair trial laid down in Article 6 of the European Convention on Human Rights (hereafter referred to as the ECHR). Prosecutors also exercise their functions within the framework of the rule of law principle, which requires respect for a certain number of fundamental values, such as impartiality, transparency, honesty, prudence, fairness, and contributing to the quality of justice. In order to increase public confidence in the justice system, prosecutors must always be concerned with making sure that these values are respected and that they guide prosecutors' activities.

7. In recent years, the European Court of Human Rights (hereafter referred to as the ECtHR) has developed important case law in support of the prosecutors' independence, regardless of whether they are considered to be a judicial authority or not. The prosecutor who directs and controls the first phase of criminal proceedings is to be considered "the advanced watchdog of human rights" and this essential role is to be played throughout the process<sup>[4]</sup>.

8. In their systems of administrative and hierarchical organisation, member States, if they intend to confer or maintain the status of judicial authority for prosecutors within the meaning of the ECHR, should ensure that they have all the guarantees, in particular required for independence, attached to this status, as specified by the ECtHR case law<sup>[5]</sup>.

9. The tasks assigned to prosecutors vary from State to State in line with the systems in force. Thus, the legal systems of some member States provide for the principle of "legality" as the basis for prosecutions, some other member States provide for the principle of "discretion" or "opportunity"; others have a mixture of

[4] See the selection of the case law of the ECtHR concerning the prosecutors' action in the annex to the present Opinion.

[5] See the selection of the case law of the ECtHR concerning the prosecutors' action in the annex to the present Opinion.