

Consultative Council of European Prosecutors (CCPE)

Opinion No. 14 (2019) of the CCPE: «The role of prosecutors in fighting corruption and related economic and financial crime»^[1]

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I. INTRODUCTION: PURPOSE, SCOPE, DEFINITIONS

A. PURPOSE

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^[1].
2. In accordance with the mandate given to it by the Committee of Ministers, the CCPE has prepared this Opinion on the role of prosecutors in fighting corruption and related economic and financial^[2] crime.
3. As already highlighted in previous Opinions of the CCPE, the tasks assigned to prosecutors vary from State to State in line with the respective constitutional and legislative backgrounds and legal traditions. Thus, the criminal justice systems of some

^[1] In drafting its Opinions, the CCPE also takes into account other relevant Recommendations and instruments adopted after its creation, particularly

Recommendation Rec(2012)11 of the Committee of Ministers to member States on the role of public prosecutors outside the criminal justice system.

^[2] In some member States, the concept of economic crime covers financial crime as well.

member States provide for the principle of “legality” as the basis for prosecutions, while other member States provide for the principle of “discretion” or “opportunity”; others have a mixture of these principles. Some member States entrust prosecutors with a general supervision role over police and investigators, and others do not^[3]. In countries, where prosecutors have the general oversight of investigations, they may themselves conduct the investigations, or the latter is conducted by the police under the authority of the prosecution service.

4. Regardless of the different prosecution systems, common requirements and challenges can be identified in relation to the effective fight against crime, and when it comes to respecting the defendant’s human rights, the interests of the State regarding crime policy and the rights of victims and other participants in the criminal procedure. The present Opinion seeks to identify common guidelines and standards for how prosecutors should act in the specific field of corruption and related economic and financial crime. In member States, where prosecutors perform functions outside the criminal law field, the conclusions and recommendations of this Opinion also apply, *mutatis mutandis*, to such prosecutorial activities. Some of the findings will likely be more relevant for a given prosecutorial system than for another. However, the present Opinion does not intend to express a preference for one or the other system, but rather intends to promote improvements in all of them. The Opinion may therefore be used for inspiration for all actors involved in criminal proceedings, particularly from the point of view of bringing them together for better efficiency.

^[3] See, for example, Opinion No. 13 (2018) of the CCPE on independence, accountability and ethics of prosecutors, para 9.

B. SCOPE

5. The fight against corruption and related economic and financial crime is of interest to, and requires the involvement of, many public and private actors, such as prosecutors, judges, police investigators, experts, supervisory entities, governmental agencies, mass media, NGOs and other concerned elements of civil society. The CCPE expresses the wish that the principles set out in this Opinion will, in addition to prosecutors, inspire also the actions of other interested and relevant actors in order to enhance the overall results.
6. The objective of the Opinion is to specify the particular personal and institutional approaches to be followed by prosecutors and prosecution services involved in the fight against a set of crimes, complex by nature and often involving secretive forms, such as corruption and related economic and financial crime (as defined below). The present Opinion particularly focuses on high-level criminal offences in this field, i.e. when the prosecution service and individual prosecutors face particular challenges as regards substantive law and procedure. In this regard, it is recommended that prosecution services be consulted whenever new rules or provisions are being designed by executive or legislative authorities in this domain.
7. The CCPE emphasises from the outset that an efficient and effective, and at the same time transparent and human rights-abiding, prosecutorial fight against corruption and related economic and financial crime, depends to an important extent on the political will to truly tackle and control such criminal behaviour. Therefore, member States should not only show strong commitment but also foster supportive environment for their prosecution services, as well as for the individual prosecutors dealing with this type of crime, in addition to in-