

Consultative Council of European Prosecutors

Opinion No. 16 (2021):

Implications of the decisions of international courts
and treaty bodies as regards the practical independence
of prosecutors

I. INTRODUCTION:

PURPOSE AND SCOPE OF THE OPINION

1. In accordance with the mandate given to it by the Committee of Ministers, the Consultative Council of European Prosecutors (CCPE) has prepared the present Opinion on the implications of the decisions of international courts and treaty bodies as regards the practical independence and effective autonomy of prosecutors and related aspects.
2. This topic was selected by the CCPE with a view to highlighting the impact of decisions of international courts and treaty bodies on the independence of prosecutors. Although many of such decisions focus rather on the independence of the judiciary, this independence is closely linked to the independence of prosecutors since the independence and autonomy of the prosecution services constitute an indispensable corollary to the independence of the judiciary^[1]. Prosecutors should be

^[1] See the CCPE Opinion No. 9 (2014) on European norms and principles concerning prosecutors, Rome Charter, Section IV.

autonomous in their decision-making and should perform their duties free from external pressure or interference, having regard to the principles of separation of powers and accountability^[2].

Consequently, appropriate provisions should be adopted in member States, in parallel to the independence of judges, to strengthen likewise the independence, accountability and ethics of prosecutors^[3].

3. Systems of criminal justice vary throughout Europe. The different systems are rooted in different legal cultures and there is consequently no uniform model for all states. There are, for example, important differences between systems which, in the framework of criminal procedure, are adversarial in nature and those which are inquisitorial^[4]. Nevertheless, over the centuries, European criminal justice systems have borrowed extensively from each other so that today there are probably no pure systems. This borrowing across systems has led to a degree of convergence^[5].
4. The most important convergence factor, and one that really brings all these systems together, is the requirement of the independence of the prosecution services as a prerequisite for the rule of law and the independence of the judiciary, as mentioned in para 2 of the present Opinion. Because of the serious consequences for the individual of a criminal investigation and trial, since it may lead to conviction and punishment, the pros-

[2] See the CCPE Opinion No. 9 (2014) on European norms and principles concerning prosecutors, Rome Charter, Section V.

[3] See the CCPE Opinion No. 13 (2018) on the independence, accountability and ethics of prosecutors, Recommendations, Section i.

[4] See the 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 7.

[5] See the 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 9.

ecutor must act cautiously and fairly in deciding whether to prosecute, and for what charges. In this regard, a prosecutor, like a judge, may not act in a matter where he or she has a personal interest, and may therefore be subject to certain professional restrictions aiming to safeguard his or her own impartiality and integrity^[6].

5. The independence of prosecutors is indispensable for enabling them to carry out their mission. It strengthens their role in a state of law and in society and it is also a guarantee that the justice system will operate fairly and effectively and that the full benefits of judicial independence will be realised. Thus, akin to the independence secured to judges, the independence of prosecutors is not a prerogative or privilege conferred in their interest, but a guarantee in the interest of a fair, impartial and effective justice that protects both public and private interests of the persons concerned^[7].
6. In countries, where the public prosecution is part of, or subordinate to, the government, the state must ensure that the nature and the scope of its powers with respect to the public prosecution is clearly established by law, and that the government exercises its powers in a transparent way and in accordance with international treaties and standards, national legislation and general principles of law^[8].
7. The independence and autonomy of prosecutors and prosecution services should therefore be encouraged^[9] and guaranteed by law, at the highest possible level, in a manner similar to that of

^[6] See the 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), paras 16-17.

^[7] See the CCPE Opinion No. 4 (2009) on relations between judges and prosecutors in a democratic society, para 27.

^[8] See the CCPE Opinion No. 9 (2014) on European norms and

principles concerning prosecutors, para 33.

^[9] See CCPE Opinion No. 9 (2014) on European norms and principles concerning prosecutors, Rome Charter, Section IV.