

# Consultative Council of European Prosecutors Opinion No. 18 (2023): on Councils of Prosecutors as key bodies of prosecutorial self-governance<sup>[\*]</sup>

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## I. INTRODUCTION

1. In accordance with the mandate given to it by the Committee of Ministers, the Consultative Council of European Prosecutors (CCPE) has prepared this Opinion on Councils of Prosecutors as key bodies of prosecutorial self-governance.
2. The topic of the Opinion was chosen by the CCPE following the development of the CCPE standards on the independence and impartiality of prosecutors and the need to understand the institutional framework required to support these fundamental principles. The CCPE found it necessary to examine the present situation in member States as regards prosecutorial self-governance and to formulate a roadmap for the future based on best European practices.
3. The Opinion duly takes into account Recommendation Rec(2000)19 of the Committee of Ministers of the Council of Europe on the role of public prosecution in the criminal justice system and previous CCPE Opinions, in particular, Opinion No. 9 (2014) on European norms and principles concerning prosecutors, including the Rome Charter, Opinion No. 13 (2018) on the independence, accountability and ethics of

prosecutors, Opinion No. 16 (2021) on the implications of the decisions of international courts and treaty bodies as regards the practical independence of prosecutors. Furthermore, the Opinion takes note, *inter alia*, of the responses of the CCPE members to the questionnaire on Councils of Prosecutors as key bodies of prosecutorial selfgovernance.

4. The Opinion also takes into account Opinions of the Consultative Council of European Judges (CCJE) No. 10 (2007) on Council for the Judiciary at the service of society and No. 24 (2021) on the evolution of Councils for the Judiciary and their role in independent and impartial judicial systems, as well as the relevant case law of the European Court of Human Rights (ECtHR) and of the Court of Justice of the European Union (CJEU), relevant instruments of the European Commission for Democracy through Law (Venice Commission), the Group of States against Corruption (GRECO) and other institutions of the Council of Europe.
5. The Opinion also uses relevant instruments of the institutions outside of the Council of Europe, in particular, the Compendium on Councils for the Judiciary (2021) of the European Network of Councils for the Judiciary (ENCJ), the Standards of professional responsibility and statement of the essential duties and rights of prosecutors of International Association of Prosecutors (IAP), the Report of the Special Rapporteur of the United Nations on the independence of judges and lawyers, 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) and the Report of the OSCE Office for Democratic Institutions and Human Rights (ODIHR) on Strengthening Functional Independence of Prosecutors in Eastern European Participating States (2020).

6. The CCPE wishes to thank the experts appointed by the Council of Europe, Mr João Manuel da Silva Miguel (Portugal) and Ms Anca Jurma (Romania), for their significant contributions in the process of drafting the text of the Opinion.

## II. SCOPE AND PURPOSE OF THE OPINION

7. Councils of Prosecutors are becoming increasingly widespread in the legal systems of individual States.<sup>[1]</sup> However, justice systems vary throughout Europe. The different systems are rooted in different legal cultures and there is no uniform model for all member States. This diversity also has an impact on prosecutorial self-governance models, with or without Council of Prosecutors or other bodies dealing with such self-governance.
8. The replies<sup>[2]</sup> to the questionnaire on Councils of Prosecutors as key bodies of prosecutorial self-governance show that in the majority of member States, a collective body – irrespective of its official title – exists within the prosecution system to deal with prosecutorial career, including appointment/election, evaluation, promotion, transfer, discipline and other matters. Approximately half of these bodies deal with matters related to both judges and prosecutors while the other half deal only with prosecutors. In some member States, a Council of Prosecutors or other bodies dealing with prosecutorial self-governance do not exist.

<sup>[1]</sup> Venice Commission's Report on European Standards as regards the independence of the Judicial System: Part II – The Prosecution Service, 17-18.12.2010, CDL-AD(2010)040 §§ 64-68; see also the Venice Commission's Compilation of Opinions and Reports concerning prosecutors

(CDL-PI(2022)023), 26 April 2022. See also the Report of the UN Special Rapporteur on the independence of judges and lawyers (Doc. A/HRC/38/38, 2 May 2018) where it is pointed out that the number of judicial councils, responsible either for judges or both for judges and prosecutors,

increased greatly in recent decades, and it is estimated that, to date, over 70 percent of the countries in the world have some form of judicial council.

<sup>[2]</sup> Mentioned in the para 3 of the present Opinion.