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Dear colleagues, distinguished delegates, dear friends.

Dear Mr. Shotadze and all of you in the Georgian delegation. Thank you for your hospitality and for your warm welcoming here in Georgia.

I am honoured to be invited and to be given the opportunity to speak on this important subject - Independence of Prosecution Services - as a representative of Consultative Council of European Prosecutors - CCPE.

**So**, what is CCPE?

It is a consultative body to the Committee of Ministers of the Council of Europe. It is composed of high-level prosecutors from 46 member states.

These prosecutors exchange their best practices and prepare annual opinions for the Committee of Ministers on the status, independence and impartiality of prosecutors and other important aspects of the prosecutorial profession.

First of all - systems of criminal justice vary throughout Europe - rooted in different legal cultures. There is consequently no uniform model for all states.

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 among them, and 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.

CCPE has recently prepared two opinions on the matter: The first is from 2018 and the second one is from last year 2021.

In those opinions, the CCPE has presented the following 8 key elements of independence of prosecutors and prosecution services:

1. Number one - Prosecutors must be free from unlawful interference and political pressure or unlawful influence of any kind, including when acting outside the criminal law field, to ensure full respect for the principle of the rule of law;
2. A corresponding legal framework - like that for the judiciary - regulating the status, independence, recruitment, tenure of office and career of prosecutors - on the basis of transparent and objective criteria - must be established;
3. Prosecutors should benefit from a career until retirement because appointments for limited periods with the possibility of re-appointment bear the risk that the prosecutors will make biased decisions depending on the priorities of the appointing authorities;
4. The external and internal independence of prosecutors and prosecution services should be ensured by an independent body - such as a Prosecutorial Council;
5. Instructions given to the prosecution services - both external and internal - should be based on guidelines containing specific safeguards such as legality and transparency of such instructions;
6. The status, remuneration and treatment of prosecutors as well as the allocation of financial, human and other resources allocated to the prosecution services should be regulated in line with the importance of their mission and work, and in a way comparable to those of judges;
7. Prosecutors and, where appropriate, members of their families, must be protected when carrying out their functions.
8. Prosecutors should take all measures within their competence to respect and protect the independence of courts.

Let me point out - The right to an independent and impartial tribunal is a core value of the rule of law. It is enshrined in the main international and regional legal instruments, including the European Convention on Human Rights. It is vital for ensuring public trust in the justice system in a democratic society.

This right has known a rich and well-established jurisprudence of international courts and treaty bodies whereby the independence of the judiciary has been thoroughly examined, with references to the independence of the prosecution services as well.

Moreover, since the independence of the prosecution services constitute, in the opinion of the CCPE, an indispensable corollary to the independence of the judiciary, guidance provided by relevant international judgments and decisions relating to the judiciary may to some extent be applicable mutatis mutandis to the prosecution services.

The case-law of the European Court of Human Rights underlines that in a democratic society, both the courts and the investigative authorities must remain free from political pressure. It is thus in the public interest to maintain confidence in the independence and political neutrality of the prosecuting authorities of a State.

In order for an investigation to be effective, persons responsible for carrying out the investigation must be independent, both in law and in practice.

The Court of Justice of the European Union, interpreting if a particular prosecutor is to be considered as an issuing judicial authority for a European arrest warrant, stated that this was the case when he/she meets the following three criteria:

1. participates in the administration of justice,
2. acts objectively,
3. is independent and is not exposed to any risk of being subject to an instruction in a specific case from the executive.

The Inter-American Court of Human Rights, in line with the jurisprudence of the European Court of Human Rights, stated that one of the principal purposes of the separation of public powers is to guarantee the independence of judges, and that, due to the necessary independence of the judicial power as a whole, guarantees of independence should also be applied to prosecutors based on the nature of the duties performed by them.

The relevant case-law of international courts provides useful elements which can have an important effect for the independence, in law and in practice, of prosecutors.

In addition to the case-law of international courts, the Opinions which I have just mentioned are also important for the independence of prosecutors.

The Opinions - even though they do not have obligatory force – are advisory instruments and they serve as soft law standards and constitute a basis for judicial and prosecutorial reforms in Member states in the framework of the Council of Europe co-operation activities.

These soft law instruments may, in turn, serve as a source of inspiration and can be used as a reference by international courts and treaty bodies in their increased search for a fairer and more effective judicial system in which the independence and impartiality of prosecutors and prosecution services are laid down in a proper legal framework, similar to the one applicable to judges.

Thank you for your attention