



## **Synopsis of the presentation**

CCPE has recently prepared two opinions regarding prosecutorial independence (Opinion No. 13 in 2018 on independence, accountability and ethics of prosecutors; and Opinion No. 16 in 2021 on implications of the decisions of international courts and treaty bodies as regards the practical independence of prosecutors.)

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

1. Prosecutors must be free from unlawful interference in the exercise of their duties and political pressure or unlawful influence of any kind.
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 prosecutors and to the prosecution services, both external and internal, should be based on guidelines containing specific safeguards.
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.
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.

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.

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.

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: participates in the administration of justice, acts objectively, is independent.

The Inter-American 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.

In addition to the case-law of international courts, the CCPE Opinions are also important for the independence of prosecutors. These soft law instruments may also serve as a source of inspiration and can be used as a reference, both universally and at a regional level, by international courts and treaty bodies.