

Strasbourg, 27 March 2019

**CONSULTATIVE COUNCIL OF EUROPEAN PROSECUTORS
(CCPE)**

Opinion of the CCPE Bureau

following a request by the Prosecutors Association of Serbia

**to assess the compatibility with European standards of the
proposed amendments to the Constitution of Serbia which will
affect the composition of the High Prosecutorial Council**

and the way prosecutors work

Introduction

1. The Prosecutors Association of Serbia (PAS), in its communication of 20 April 2018 addressed to the Council of Europe's Consultative Council of European Prosecutors (CCPE), requested that the CCPE assess the compatibility with European standards of the proposed amendments to the Constitution of Serbia (hereafter April 2018 Amendments) which would affect the composition of the High Prosecutorial Council (hereafter the HPC) and the way prosecutors work.
2. Following examination of the above-mentioned amendments in the light of the Council of Europe's standards and, in particular, the adopted Opinions of the CCPE on the matters relevant to the issues raised by the PAS, the CCPE Bureau delivered, on 25 June 2018, its Opinion (document CCPE-BU(2018)3 hereafter June 2018 Opinion) on the concerns expressed in the request of the PAS.
3. On 8 January 2019, the PAS addressed a new request to the CCPE having underlined that, on 15 October 2018, the Ministry of Justice of Serbia announced a new version of the Amendments to the Constitution

of Serbia (hereafter October 2018 Amendments). The PAS emphasised that this new version also raised serious concerns, pointed out that the process of consideration of these Amendments had started in the National Assembly of Serbia, and requested that the CCPE reassess them vis-à-vis the applicable European standards.

4. The Bureau of the CCPE has examined, in particular, the draft October 2018 Amendments XIX, XXI, XXII, XXIV, XXVI, XXVII, XXIX to the Constitution of Serbia in respect of which the PAS raised concerns. Following their examination in the light of the Council of Europe's standards and, in particular, the adopted Opinions of the CCPE, as well as the documents of the European Commission for Democracy through Law (Venice Commission), on the matters relevant to the issues raised by the PAS, the CCPE Bureau has delivered the Opinion below which contains the legal analysis of the Amendments. The analysis of each amendment is followed, in bold, by the corresponding recommendations. A summary of the recommendations appears at the beginning in order to make the Opinion reader-friendly and facilitate a quick reference to the key findings and recommendations of the CCPE Bureau.

Summary of Recommendations

5. Based on the considerations contained below in the legal analysis of the October 2018 Amendments, the Bureau of the CCPE recommends:
 - **in Amendment XXVII**, to reconsider the composition of the HPC and make sure that it is composed of - at least a slight - majority of prosecutors from all levels of the prosecution service elected by their peers, and that the remaining part includes lawyers, legal academics and members of civil society, with only one member representing the executive power;
 - **also in Amendment XXVII**, in order to provide representation of prosecutors from all levels of the prosecution service, the CCPE Bureau recommends including in the HPC composition not only deputy public prosecutors and the Supreme Public Prosecutor, but also public prosecutor(s);
 - **also in Amendment XXVII**, as regards the second round of election of the HPC non-prosecutor members, to return to the qualified majority in the Parliament as it was in the April 2018 Amendments, however making this required majority equal to the one used during the first round of election, i.e. two-thirds;
 - **in Amendment XXVI**, to make reference to independence in the same way as it is done for the courts and judges, and to state that the HPC "is an autonomous and independent state body that guarantees the autonomy and independence of the public

prosecutors' offices, public prosecutors and deputy public prosecutors”;

- **also in Amendment XXVI**, as regards the budgetary competences of the HPC, to not change in any way the actual scope of power of the current prosecutorial council in Serbia – the SCP (State Prosecutorial Council);
- **in Amendment XXIX**, to delete the provision that the term of office of the members of the HPC shall cease in case the HPC does not make a decision within 60 days from the day of its first attempt to do so;
- **in Amendment XIX**, to include reference to independence in the same way as is the case for courts and judges, and establish that the “Public Prosecutor's Office shall be an autonomous and independent state body”, and also to clearly refer to the functional independence of individual prosecutors;
- **in Amendment XXII**, as regards the second round of election of the Supreme Public Prosecutor, to return to the qualified majority in Parliament as it was in the April 2018 Amendments, making, however, this required majority equal to the one used during the first round of election, i.e. three-fifths (in the case of the Supreme Public Prosecutor);
- **also in Amendment XXII**, as regards the term of office of the Supreme Public Prosecutor, to welcome its increase to six years in the new version of the Amendment, while considering, however, the possibility of making it seven years, as recommended in the June 2018 Opinion;
- **also in Amendment XXII**, as regards the term of office of public prosecutors, to provide for permanent terms of office until retirement, as recommended in the June 2018 Opinion;
- **also in Amendment XXII**, as regards the grounds for dismissal of public prosecutors, to delete the ground - “some of the legally stipulated reasons occur that render him/her unworthy for the function of public prosecutor”;
- **also in Amendment XXII**, as regards the Supreme Public Prosecutor, to ensure that the fair hearing in the case of his/her termination of office or dismissal, must include, in particular, a hearing before Parliament;
- **also in Amendment XXII**, to include incompetence, as a ground for dismissal, for public prosecutors using exactly the same wording as recommended below under Amendment XXIV;
- **in Amendment XXIV**, to provide that “a deputy public prosecutor may be dismissed due to incompetence if, in a significant number of serious and repetitive cases, he or she clearly does not meet the benchmarks of satisfactory performance prescribed by law. Such

- incompetence should be established by the High Prosecutorial Council following due disciplinary procedure";
- **in Amendment XXI**, to provide that “an immediately higher public prosecutor may issue, in writing, a mandatory instruction for acting in a particular case to the lower public prosecutor in limited cases established by law and in the interest of lawful, fair, consistent and objective prosecution”;
 - **also in Amendment XXI**, to provide that “a lower public prosecutor who considers that the mandatory instruction of an immediately higher public prosecutor is unlawful, ill-founded or not in accordance with the code of ethics, has the right not to be compelled to comply with such instruction and to object to the Supreme Public Prosecutor of Serbia and ask to be replaced, and the deputy public prosecutor who considers that the mandatory instruction of an immediately higher public prosecutor is unlawful, ill-founded or not in accordance with the code of ethics - not to be compelled to comply with such instruction and to object to an immediately higher public prosecutor and ask to be replaced”.

Legal Analysis

Amendment XXVII – composition and election of the HPC

6. First of all, the Bureau of the CCPE welcomes two positive changes compared with the April 2018 Amendments:
 - 1) One concerns the composition of the HPC. The new Amendment establishes that the HPC shall have ten members, as opposed to eleven in the April 2018 Amendments, meaning that there will be one less of non-prosecutor members. As a result, half of the HPC members will consist of prosecutors (four deputy public prosecutors, elected by public prosecutors and deputy public prosecutors, and the Supreme Public Prosecutor of Serbia) and half will be non-prosecutor members (four - as opposed to five in April 2018 Amendments - prominent lawyers elected by the National Assembly, and the minister in charge of the judiciary). The non-prosecutor members will no longer be in the majority in the HPC but comprise only half, and the prosecutor members will constitute another half.
 - 2) Another welcome change relates to the election of four non-prosecutor members by a qualified majority of two-thirds, as

opposed to a qualified majority of three-fifths as envisaged in the April 2018 Amendments (which, however, was also considered acceptable). According to the Venice Commission, if members of such a council are elected by Parliament, preferably this should be done by qualified majority^[1]. The qualified majority of two-thirds is quantitatively slightly higher than the qualified majority of three-fifths, and this is to be welcomed since it will reduce further the possibility of decisive influence of any dominant political party(ies).

7. However, even though these changes are to be welcomed, they may be further improved. In its previous Opinion, the CCPE Bureau underlined that setting up a Prosecutorial Council is a very welcome step towards the depoliticisation of a prosecutor's office and for that reason it is important that the Council is conceived as a pluralistic body and composed in a balanced way, e.g. of prosecutors, lawyers and civil society representatives. In such cases, Prosecutorial Councils will have the advantage of being able to provide valuable expert input into the appointment and disciplinary process and to shield prosecutors, at least to some extent, from political influence^[2]. The Venice Commission noted that the balance proposed for the Council, in which prosecutors have a slight majority but which contains a significant minority of eminent lawyers, seems appropriate^[3].
8. As regards the election of the HPC members, in the June 2018 Opinion, the CCPE Bureau criticised the possibility of electing HPC non-prosecutor members by a five-ninths majority in case they are not elected in the first round by a three-fifths majority. This criticism was due to the negative quantitative difference resulting in a higher risk of decisive influence by any dominant political party(ies).
9. Consequently, the CCPE Bureau recommended, in the June 2018 Opinion, upholding the requirement of a three-fifths majority for the election of the HPC non-prosecutor members, regardless of the stage of the election process.
10. In the new version of the Amendments, even though the first stage of the election is improved by shifting from three-fifths to two-thirds majority, the second stage may open the door for an even greater risk of political influence, if compared with the April 2018 Amendments. Instead of a five-ninths majority, there is now the possibility of election, in the second round, by a commission comprised of the President of the National Assembly, the President of the Constitutional Court, the President of the Supreme Court, the Supreme Public Prosecutor and the Ombudsman, by a simple majority vote.

11. In this regard, the Bureau of the CCPE agrees with the PAS in that such a mechanism may make possible an undue influence of dominant political party(ies), mainly because of the fact that four out of five members of the Commission (or three out of five - if the Amendments will be adopted) are elected by Parliament.
12. The Bureau of the CCPE also agrees with the PAS that such a solution may facilitate political engineering, such as deliberately avoiding a qualified majority of the Parliament in the first round of election and introducing indirect control by the dominant political party(ies) through this five-member Commission.
13. **In light of the above, the Bureau of the CCPE repeats its recommendation made already in the June 2018 Opinion, about reconsidering the composition of the HPC and making sure that it is composed of - at least a slight - majority of prosecutors from all levels of the prosecution service elected by their peers, and that the other part includes lawyers, legal academics and members of civil society, while there remains only one member from the executive power.**
14. **In order to provide representation of prosecutors from all levels of the prosecution service, the CCPE Bureau also recommends including in the HPC composition not only deputy public prosecutors and the Supreme Public Prosecutor, but also public prosecutor(s).**
15. **As regards the second round of election of the HPC non-prosecutor members, the Bureau of the CCPE recommends returning to the qualified majority in Parliament as envisaged in the April 2018 Amendments, however making this required majority equal to the one used during the first round of election, i.e. two-thirds.**

Amendment XXVI – autonomy and jurisdiction of the HPC

16. This Amendment provides that the HPC “is an autonomous state body that guarantees the autonomy of the public prosecutors’ offices, public prosecutors and deputy public prosecutors”. However, it does not mention the concept of independence.
17. In this regard, first of all, the CCPE Bureau wishes to underline once again that autonomy is not always the same as independence, and independence is more than a simple autonomy, particularly as regards the decision-making process.

18. Furthermore, the CCPE Bureau notes that Amendment XII establishes that “the High Judicial Council (HJC) is an autonomous and independent state body that guarantees the autonomy and independence of the courts and judges, court presidents and lay judges”.
19. Thus, what is seen is that there is the same wording both for the HPC and the HJC, however, with two important differences: 1) the HPC is not independent, as the HJC, but only autonomous; 2) the HPC guarantees only the autonomy of the prosecution service and prosecutors, while the HJC guarantees the autonomy and independence of the courts and judges.
20. Such a difference in the highest legal instrument of the country may have far-reaching consequences. The CCPE Bureau is concerned that such a difference may result from a negative political attitude towards the concept of independence of the prosecution service and of prosecutors.
21. As the CCPE Bureau pointed out in the June 2018 Opinion, there should be guarantees of independence in relation to the executive and legislative powers and in particular against any political influence. Autonomy only is not in itself sufficient to provide for functional independence of prosecutors in performing their duties. The independent status of prosecutors is a basic requirement of the rule of law^[4].
22. The CCPE has underlined that the independence of prosecutors must be guaranteed by law, at the highest possible level, in a manner similar to that of judges^[5], and that the independence and autonomy of the prosecution services constitute an indispensable corollary to the independence of the judiciary. Therefore, the general tendency to enhance the independence and effective autonomy of the prosecution services should be encouraged^[6].
23. The European Court of Human Rights (ECtHR) has considered it necessary to emphasise that “in a democratic society both the courts and the investigation authorities must remain free from political pressure”^[7]. The ECtHR has also referred to the issue of independence of prosecutors in the context of “general safeguards such as guarantees ensuring functional independence of prosecutors from their hierarchy and judicial control of the acts of the prosecution service”^[8].
24. States must ensure that prosecutors are able to perform their functions without intimidation, hindrance, harassment, improper interference or unjustified exposure to civil, penal or other liability^[9]. Prosecutors should be in a position to prosecute, without obstruction, public officials for

- offences committed by them, particularly corruption, unlawful use of power and grave violations of human rights^[10].
25. Prosecutors must be independent not only from the executive and legislative authorities but also from other actors and institutions, including those in the areas of economy, finance and media. Prosecutors must also be independent with regard to their cooperation with law enforcement authorities, courts and other bodies^[11].
 26. In particular, the CCPE Bureau wishes to recall that the CCPE adopted, in 2018, its landmark Opinion No. 13(2018) on independence, accountability and ethics of prosecutors, where it codified all the above-mentioned provisions and emphasised in particular that “appropriate provisions should be adopted in member States, in parallel to the independence of judges, to strengthen the independence, accountability and ethics of prosecutors, whether in the criminal law field or as regards their other fields of competence. Political influence should not be acceptable”^[12].
 27. Against this background, it is clear that Amendment XXVI may run counter to the above-mentioned instruments of the CCPE, as well as to the findings of the Venice Commission and the case law of the ECtHR.
 28. The Bureau of the CCPE also refers to the complaint of the PAS that, under this Amendment, the “budgetary competences for the functioning of the prosecution service should not be in full authority of the HPC. This provision is narrowing the scope of power of current prosecutorial council - SCP (State Prosecutorial Council)”^[13].
 29. The CCPE Bureau wishes to underline that “prosecutors must have at their disposal sufficient means in order to fulfil their various tasks in the situation of new national and international dangers and challenges, including those brought by the development of technologies and globalisation processes”. “Prosecution services must be enabled to estimate their needs, negotiate their budgets and decide how to use the allocated funds”^[14].
 30. Moreover, “the independence of prosecutors also requires material independence which implies, in the same way as for judges, financial and other means necessary for the exercise of their missions”^[15].
 31. **Therefore, the CCPE Bureau strongly recommends that this Amendment include reference to independence in the same way as is the case for courts and judges, and that it establish that the HPC “is an autonomous and independent state body that guarantees the autonomy and independence of the public prosecutors’ offices, public prosecutors and deputy public prosecutors”.**
 32. **As regards budgetary competences, it is essential that this Amendment not change in any way the actual scope of power of**

the current prosecutorial council in Serbia – the SCP (State Prosecutorial Council).

Amendment XXIX – HPC work and decision-making

33. This Amendment provides that the term of office of the members of the HPC shall cease in case the HPC does not make a decision within 60 days from the day of its first attempt to do so.
34. The Bureau of the CCPE is of the opinion that this could lead to hastened decision-making or frequent dissolutions of the HPC. Taking into account the composition of the HPC, the deadlock in the decision-making process could potentially be provoked by the members of the HPC elected by the National Assembly. This has the potential of rendering the HPC inoperative^[16].
35. **The CCPE Bureau recommends deleting this provision.**

Amendment XIX – status of public prosecutor’s offices

36. This Amendment provides that the “Public Prosecutor's Office shall be an autonomous state body”; however, it does not mention the notion of independence. Nor does it mention the independence of individual prosecutors. At the same time, Amendment IV on principles for the courts refers explicitly to independence, as does Amendment VI, which refers to the independence of judges.
37. The reasoning emphasised by the Bureau of the CCPE above under Amendment XXVI as regards the necessity of independence for the prosecution service, as well as for individual prosecutors, applies equally to Amendment XIX.
38. In this Amendment, there is again a difference in the reference to the independent status of courts and judges and the absence of any such reference for the prosecution service and prosecutors. The CCPE Bureau is again concerned that this difference may result from a negative political attitude towards the concept of independence of the prosecution service and of prosecutors.
39. **The CCPE Bureau strongly recommends, as it already did in the June 2018 Opinion, that this Amendment include reference to the independence of prosecutors in the same way as is the case for courts and judges, establish that the “Public Prosecutor's Office shall be an autonomous and independent state body”, and that the**

Amendment also clearly refer to the functional independence of individual prosecutors.

Amendment XXII – election of the Supreme Public Prosecutor and public prosecutors and termination of the term of office of public prosecutors

40. The Bureau of the CCPE is pleased to note positive changes compared to the previous version of this Amendment, including a six-year term of office for the Supreme Public Prosecutor. At the same time, the Bureau of the CCPE recalls that it recommended, in the June 2018 Opinion, a seven-year term of office, in line with the considerations of several documents of the CCPE and of the Venice Commission^[17].
41. The Bureau of the CCPE is also pleased to note that the new version of this Amendment introduces, as it was recommended in June 2018 Opinion, the concrete grounds for termination of the term of office and dismissal of prosecutors, as well as the possibility of appeal. However, the ground for dismissal – “some of the legally stipulated reasons occur that render him/her unworthy for the function of public prosecutor” – raises concerns as it may open the door for arbitrariness, pressures and politically motivated initiatives, in which case it would clearly be a threat to the independence of the Supreme Public Prosecutor and public prosecutors.
42. In addition, as regards in particular the Supreme Public Prosecutor, as the Venice Commission has specified, the grounds for his/her dismissal must be prescribed by law, as opposed to “legally stipulated reasons” which may be introduced *inter alia* merely by secondary legislation. Furthermore, the fair hearing in the case of his/her termination of office or dismissal, must include, in particular, a hearing before Parliament^[18].
43. As regards the term of office for prosecutors which was also increased to six years, as opposed to five years in the previous version of the Amendment, the Bureau of the CCPE notes that perhaps this increase was introduced by analogy with the term of office of the Supreme Public Prosecutor. However, there is a big difference between these terms of offices. For the Supreme Public Prosecutor, the recommended term of office is seven years without the possibility of re-election, in order to avoid threats to independence^[19].
44. For prosecutors, the recommended term of office is permanent, until retirement. Appointments for limited periods with the possibility of re-appointment carry the risk that the prosecutor will make his/her

decisions not on the basis of the law but with the idea to please those who may re-appoint him/her^[20].

45. Therefore, the Bureau of the CCPE wishes to uphold the permanent term of office and reiterates its proposal already made in the June 2018 Opinion.
46. As regards the procedure for the election of the Supreme Public Prosecutor, the Bureau of the CCPE notes the same problems as with the election of non-prosecutor members of the HPC by the National Assembly, i.e. election in the second round by a commission comprised of the President of the National Assembly, the President of the Constitutional Court, the President of the Supreme Court, the Supreme Public Prosecutor and the Ombudsman, by a simple majority vote.
47. As has already been underlined above under Amendment XXVII, the Bureau of the CCPE considers that such a mechanism will make possible an undue influence of dominant political party(ies) and will facilitate political engineering, such as deliberately avoiding a qualified majority of the Parliament in the first round of election and introducing indirect control of dominant political party(ies) through this five-member Commission.
48. **In light of the above, as regards the second round of election of the Supreme Public Prosecutor, the Bureau of the CCPE recommends returning to the qualified majority in Parliament as it was in the April 2018 Amendments, making, however, this required majority equal to the one used during the first round of election, i.e. three-fifths (in the case of the Supreme Public Prosecutor).**
49. **As regards the term of office of the Supreme Public Prosecutor, the Bureau of the CCPE welcomes its increase to six years in the new version of the Amendment, while considering, however, the possibility of making it seven years, as recommended in the June 2018 Opinion.**
50. **As regards the term of office of public prosecutors, the Bureau of the CCPE recommends permanent terms of office until retirement, as emphasised in the June 2018 Opinion.**
51. **As regards the grounds of dismissal of public prosecutors, the Bureau of the CCPE recommends deleting the ground - “some of the legally stipulated reasons occur that render him/her unworthy**

for the function of public prosecutor”. Concerning the Supreme Public Prosecutor, the fair hearing in the case of his/her termination of office or dismissal, must include, in particular, a hearing before Parliament.

Amendment XXIV – permanent tenure of deputy public prosecutors

52. This Amendment continues to provide, as it already did in the April 2018 Amendments, for a permanent term of office for deputy public prosecutors which is very welcome.
53. The CCPE Bureau also notes a positive change in this Amendment following the Bureau’s recommendations in the June 2018 Opinion as regards specifying what the incompetent performance means for the purposes of dismissal. Such specification was not available in the April 2018 Amendments which created the risk of an arbitrary interpretation, opening the door for politically motivated or otherwise biased dismissals under the pretext of incompetent performance.
54. The present version of the Amendment provides that “a deputy public prosecutor may also be dismissed due to incompetence if, in a significant number of cases, he or she clearly does not meet the benchmarks of satisfactory performance prescribed by law and evaluated by the High Prosecutorial Council”.
55. The recommendation of the CCPE Bureau in the June 2018 Opinion was to either delete the ground of incompetence from the Amendment, or to specify that only very serious and repetitive incompetence cases established through due disciplinary procedure, with a possibility of judicial appeal, may lead to dismissal.
56. The CCPE Bureau also notes that, regarding public prosecutors as opposed to deputy public prosecutors, there is no provision for incompetence as a ground for dismissal either in Amendment XXII or anywhere else. The Bureau of the CCPE agrees with the PAS that, consequently, this creates a significant discriminatory discrepancy between public prosecutors and deputy public prosecutors.
57. **In order to improve the wording of the present Amendment, the CCPE Bureau recommends that it provide that “a deputy public prosecutor may be dismissed due to incompetence if, in a significant number of serious and repetitive cases, he or she clearly does not meet the benchmarks of satisfactory performance prescribed by law. Such incompetence should be established by**

the High Prosecutorial Council following due disciplinary procedure".

58. **In order to eliminate the above-mentioned discrepancy between public prosecutors and deputy public prosecutors, the CCPE Bureau recommends including incompetence as a ground for dismissal also for public prosecutors in Amendment XXII. In doing so, the CCPE Bureau recommends using the exact wording indicated above.**

Amendment XXI – mandatory instructions for actions of public prosecutors and deputy public prosecutors

59. The CCPE Bureau notes an improvement to this Amendment compared to Amendment XX of April 2018, particularly as regards the right of prosecutors to object when they consider that the mandatory instruction of an immediately higher prosecutor is “unlawful or ill-founded”.
60. At the same time, the Amendment does not indicate clearly that prosecutors must not be compelled to fulfil such instructions. The CCPE Bureau considers that having the right to object may not be sufficient in itself: such provision stops, in fact, half-way and creates a possibility for arbitrary interpretations.
61. Above under Amendment XXVI, the CCPE Bureau already refers to the importance of functional independence of individual prosecutors. It also wishes to stress the importance of prosecutors’ impartiality and recall that, while the hierarchical structure is a common aspect of most public prosecution services, relations between the different levels of the hierarchy must be governed by clear, unambiguous and well-balanced regulations^[21]. It is essential to develop appropriate guarantees of non-interference in the prosecutor’s activities. Non-interference means ensuring that the prosecutor’s activities, in particular in trial procedures, are free of external pressure, as well as from undue or illegal internal pressures from within the prosecution system^[22].
62. In particular, the CCPE Bureau wishes to recall its landmark Opinion No. 13(2018) which established that, if a prosecutor receives individual instructions from his/her hierarchy which appear illegal or not in accordance with the professional code of ethics, he/she should not be compelled to comply with them and should be given the opportunity to present his/her reasons to his/her hierarchy^[23].

63. In addition, there are three key elements for such instructions as the CCPE Bureau already emphasised in the June 2018 Opinion: they should be made in writing, limited and regulated by law^[24].
64. The Amendment speaks about “issuing instructions”, which may be taken to imply that they will be in writing. However, in order to be crystal-clear and to exclude even the slightest possibility of arbitrary interpretation, the CCPE Bureau still considers it necessary to explicitly mention that any instruction must be in writing.
65. The other two elements - limited and regulated by law - are not mentioned either. The Amendment mentions the possibility of instructions in particular cases “if there is doubt about the efficiency and legality” of a prosecutor’s actions. This is extremely broad and the term “doubt” is subjective rather than objective. Everyone can have doubts.
66. **The CCPE Bureau considers that some objective criteria must be put in place and recommends that this Amendment provide that “an immediately higher public prosecutor may issue, in writing, a mandatory instruction for acting in a particular case to the lower public prosecutor in limited cases established by law and in the interest of lawful, fair, consistent and objective prosecution”.**
67. **The CCPE Bureau further recommends that this Amendment provide that “a lower public prosecutor who considers that the mandatory instruction of an immediately higher public prosecutor is unlawful, ill-founded or not in accordance with the code of ethics, has the right not to be compelled to comply with such instruction and to object to the Supreme Public Prosecutor of Serbia and ask to be replaced, and the deputy public prosecutor who considers that the mandatory instruction of an immediately higher public prosecutor is unlawful, ill-founded or not in accordance with the code of ethics - not to be compelled to comply with such instruction and to object to an immediately higher public prosecutor and ask to be replaced”.**

[1] See Venice Commission’s Report on European Standards as Regards the Independence of the Judicial System: Part II – the Prosecution Service, CDL-AD(2010)040, para 66.

[2] See Venice Commission's Report on European Standards as Regards the Independence of the Judicial System: Part II – the Prosecution Service, CDL-AD(2010)040, para 65.

[3] See Joint Opinion of the Venice Commission, Consultative Council of European Prosecutors (CCPE) and OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR), on the draft Amendments to the Law on the Prosecutor's Office of Georgia, CDL-AD(2015)039, para 36.

[4] See Opinion No. 4(2009) of the CCPE on the relations between judges and prosecutors in a democratic society, Bordeaux Declaration, paras 3, 8; Opinion No. 9(2014) of the CCPE on European norms and principles concerning prosecutors, Rome Charter, Sections IV, V; Opinion No. 13(2018) of the CCPE on independence, accountability and ethics of prosecutors, paras 15, 16, 31.

[5] See Opinion No. 4(2009) of the CCPE on the relations between judges and prosecutors in a democratic society, Bordeaux Declaration, Explanatory Note, paras 10, 26, 27, 34; Opinion No. 9(2014) of the CCPE on European norms and principles concerning prosecutors, Rome Charter, Explanatory Note, para 33.

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

[7] See ECtHR *Guja v. Moldova* (Grand Chamber), no. 14277/04, para 86.

[8] See ECtHR *Kolevi v. Bulgaria*, no. 1108/02, 05/02/2010, para 142.

[9] See Guidelines on the Role of Prosecutors adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990, para 4; Opinion No. 9(2014) of the CCPE on European norms and principles concerning prosecutors, Rome Charter, Explanatory Note, para 36.

[10] See Rec(2000)19, para 16; Opinion No. 9(2014) of the CCPE on European norms and principles concerning prosecutors, Rome Charter, Explanatory Note, para 37.

[11] See CCPE Opinion No. 9(2014) of the CCPE on European norms and principles concerning prosecutors, Rome Charter, Explanatory Note, paras 38-39.

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

[13] Letter of the PAS to the CCPE, dated 8 January 2019, requesting the assessment of the October 2018 Amendments.

[14] See Opinion No. 4(2009) of the CCPE on the relations between judges and prosecutors in a democratic society, Bordeaux Declaration, Explanatory Note, para 33; Opinion No. 7(2012) of the CCPE on the management of the means of prosecution services, Recommendations I and ii; Opinion No. 9(2014) of the CCPE on European norms and principles concerning prosecutors, Rome Charter, Explanatory Note, para 74.

[15] See Opinion No. 13(2018) of the CCPE on independence, accountability and ethics of prosecutors, para 45.

[16] The Bureau of the CCPE has used, in this paragraph, the wording expressing a similar concern regarding the High Judicial Council in similar conditions, see the Venice Commission Opinion on the Draft Amendments to the Constitutional Provisions on the Judiciary in Serbia (Venice, 22-23 June 2018), para 92(3). The only difference was that in the case of the High Judicial Council, the deadline was 30 days (it was in the text of April 2018 Amendments), as opposed to 60 days for the HPC in October 2018 Amendments, however, the CCPE Bureau considers that even 60 days is a short deadline which can easily be provoked by the members of the HPC elected by the National

Assembly, and furthermore, the CCPE Bureau is against any such deadlines at all, be it 30 days, 60 days or whatever, if such deadlines are connected with the cessation of the term of office of the members of the HPC.

[17] See in particular paras 29-30 of June 2018 Opinion of the Bureau of the CCPE.

[18] See Venice Commission's Report on European Standards as Regards the Independence of the Judicial System: Part II – the Prosecution Service, CDL-AD(2010)040, paras 39-40.

[19] See Venice Commission's Joint Opinion on the Draft Law on the Prosecution Service of the Republic of Moldova, CDL-AD(2015)005, para 89.

[20] See Venice Commission's Report on European Standards as Regards the Independence of the Judicial System: Part II – the Prosecution Service, CDL-AD(2010)040, para 50.

[21] See CCPE Opinion No. 9(2014) on European norms and principles concerning prosecutors, Rome Charter, Section XIV, Explanatory Note, para 40.

[22] See CCPE Opinion No. 9(2014) on European norms and principles concerning prosecutors, Rome Charter, Explanatory Note, paras 34, 42, 47; Opinion No. 13(2018) of the CCPE on independence, accountability and ethics of prosecutors, para 31.

[23] See Opinion No. 13(2018) of the CCPE on independence, accountability and ethics of prosecutors, para 42.

[24] See Opinion No. 4(2009) of the CCPE on the relations between judges and prosecutors in a democratic society, Bordeaux Declaration, para 9, Explanatory Note, para 31; CCPE Opinion No. 9(2014) on European norms and principles concerning prosecutors, Rome Charter, Explanatory Note, paras 46-47, 49; Opinion No. 13(2018) of the CCPE on independence, accountability and ethics of prosecutors, para 40.