

Strasbourg, 25 June 2018

**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 Prosecutorial Council**

and the functioning of prosecutors

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 the CCPE to assess the compatibility with European standards of the proposed amendments to the Constitution of Serbia which will affect the composition of the Prosecutorial Council and the functioning of prosecutors.
2. The Bureau of the CCPE has examined the draft Amendments I to XXIX to the Constitution of the Republic of Serbia. Following their examination in 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 PAS, the CCPE Bureau has delivered the following Opinion:

**Amendment II – election and dismissal/cessation of the term of office of
the five members of the High Prosecutorial Council (HPC), Supreme Public
Prosecutor and public prosecutors**

3. This Amendment stipulates that the qualified majority by which the Parliament (National Assembly) will elect five members of the HPC requires a three-fifths majority (150 deputies).
4. This is welcome since according to the Venice Commission, if members of such a council are elected by the Parliament, preferably this should be done by qualified majority^[1].
5. In the event that all members are not elected in this manner, the remaining members must be elected within the following ten days by a five-ninths majority (138,9 deputies). Such majority (five-ninths) is also required for their dismissal.
6. However, it is important that members of the HPC are not elected according to the preference of any one dominant political party or parties. A qualified majority of three-fifths will normally ensure that this is the case. It would therefore be advisable to uphold the requirement for such a qualified majority for all five members of the HPC regardless at what stage of the election process the members are elected by the Parliament.
7. Amendment II also introduces the possibility for dismissal of the HPC members by a qualified - but lower - majority of deputies (five-ninths). In this regard, the same qualified majority necessary for the election of the HPC members (three-fifths) should apply in the case of their dismissal, in order to avoid politicisation and political pressures from the ruling party.
8. Moreover, the Parliament will elect the Supreme Public Prosecutor and public prosecutors, as well as cease their term of office, by a simple majority vote at a session where a majority of deputies are present.
9. The manner in which the Prosecutor General is appointed and dismissed plays a significant role in the system guaranteeing the correct functioning of the prosecutor's office^[2]. The establishment of a Prosecutorial Council, which would play a key role in the appointment of the Chief Prosecutor, can be considered as one of the most effective modern instruments to achieve this goal^[3]. In countries where the Prosecutor General is elected by Parliament, the obvious danger of a politicisation of the appointment process could also be reduced by providing for the preparation of the election by a parliamentary committee, which should take into account the advice of experts. The use of a qualified majority for the election of a Prosecutor General could be seen as a mechanism to achieve consensus on such appointments^[4].

10. Therefore, the qualified three-fifths majority (150 deputies) mentioned above for the election of five members of the HPC must be especially strongly required in the case of election of the Supreme Public Prosecutor, as well as for cessation of his/her term of office, in order to avoid politicisation and political pressures from the ruling party.
11. As regards appointment of public prosecutors, as the CCPE emphasised, member States should take measures to ensure that recruitment, promotion and transfer of prosecutors are carried out according to fair and impartial procedures, based on transparent and objective criteria, such as competence and experience, and excluding discrimination on any ground. Recruitment bodies should be selected on the basis of competence and skills and should discharge their functions impartially and based on objective criteria^[5]. The appointment and termination of service of prosecutors should be regulated by the law at the highest possible level and by clear and understood processes and procedures^[6].
12. Furthermore, the proximity and complementary nature of the missions of judges and prosecutors create similar requirements and guarantees in terms of their status and conditions of service, namely regarding recruitment, training, career development, salaries, discipline and transfers which must be carried out only according to the law or with their consent. For these reasons, it is necessary to secure proper tenure and appropriate arrangements for promotion, discipline and dismissal^[7].
13. Also, as the Venice Commission has stressed, when all prosecutors are appointed and dismissed by the Parliament with no qualified majority, the prosecutorial system is totally under the control of the ruling party or parties: this is not in conformity with European standards^[8].
14. Therefore, in view of the above, although the recommendations given in Amendment XXI seem preferable, the qualified three-fifths majority (150 deputies) must also be required in the case of election of public prosecutors, as well as for cessation of their term of office, in order to avoid politicisation and political pressures from the ruling party.
15. As regards the grounds for dismissal of the HPC members, please see the analysis and recommendations for Amendment XXVII. As regards the grounds for cessation of the term of office of the Supreme Public Prosecutor and public prosecutors, please see the analysis and recommendations for Amendment XXI.

16. **For these reasons, Amendment II is quite far from providing sufficient Constitutional guarantees for the independence of HPC members, the Supreme Public Prosecutor and public prosecutors. It should be substantially re-drafted in accordance with what is indicated above (please also see the Summary of Recommendations at the end of this Opinion).**

Amendment XVIII – autonomy of the Public Prosecutor's Office

17. This Amendment, which describes the status of the prosecution service, does not in fact mention independence. Instead, it only refers to the prosecution service as an “autonomous state body”. In this regard, the CCPE Bureau wishes to underline that autonomy is not always the same as independence, and independence is more than a simple autonomy, first of all as regards the decision-making process.
18. The Amendment mentions that “any influence on Public Prosecutor's Office in an individual criminal prosecution case is prohibited”, however such a general declarative statement appears not to be enough. 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^[9].
19. The CCPE underlines that the independence of prosecutors must be guaranteed by law, at the highest possible level, in a manner similar to that of judges^[10], 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^[11].
20. The European Court of Human Rights (ECtHR) considered it necessary to emphasise that “in a democratic society both the courts and the investigation authorities must remain free from political pressure”^[12]. 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”^[13].
21. 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^[14]. 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^[15].

22. 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^[16].
23. **Therefore, it is essential that this Amendment, first of all, declares independence of the Public Prosecutor's Office, and secondly, specifies both its organisational independence from executive and legislative powers and functional independence of individual prosecutors.**

Amendment XX – hierarchy and instructions within the Public Prosecutor's Office

24. This Amendment provides, in a very general way, for a kind of hierarchy within the prosecution system referring to the public prosecutors and deputy public prosecutors who are “obliged to act upon instruction from the public prosecutor”. Even though the Amendment does specify that the “deputy public prosecutors shall have available legal remedy against the instructions of the public prosecutor”, this seems not to be a sufficient guarantee for the impartiality of lower-level prosecutors and exclusion of the possibility of biased pressures and prejudices in instructions given by the higher-level prosecutors, particularly in specific criminal cases.
25. As regards the hierarchy, the CCPE stated 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^[17]. 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^[18].
26. The CCPE also stressed that instructions of a general nature must be in writing and, where possible, be published and transparent. While there is a general tendency for more independence of the prosecution system, which is encouraged by the CCPE, there are no common standards in this respect. Where the legislation still allows for such

instructions, they should be made in writing, limited and regulated by law^[19].

27. **Therefore, the CCPE Bureau recommends to clearly reflect the above-mentioned considerations in this draft Amendment.**

Amendment XXI – term of office of the Supreme Public Prosecutor and public prosecutors

28. This Amendment provides for a five-year term of office of the Supreme Public Prosecutor, elected by the Parliament upon the proposal of the HPC, without possibility of re-election. Likewise, public prosecutors will be elected on the proposal of the HPC for a five-year term of office. However, in their case, nothing is said about the possibility of their re-election or non-re-election.
29. The CCPE emphasised that the Prosecutors General should be appointed for a sufficiently long period to ensure stability of their mandate and make them independent of political changes^[20].
30. The Venice Commission has pointed out in specific cases that a longer mandate than five years would be needed (excluding re-election) in order to protect persons appointed as Prosecutor General from political influence^[21]. It has also welcomed what has been proposed, in some countries, of a seven-year term of office for the Prosecutor General rather than the current five years as it was both a sufficiently long period that went beyond the term of any one government, and it removed a significant threat to independence by excluding re-appointment^[22].
31. Therefore, the CCPE Bureau advocates for introducing a seven-year term of office for the Supreme Public Prosecutor in Serbia, without the possibility of re-election.
32. As regards the term of office for public prosecutors, as the Venice Commission has pointed out, they should be appointed 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 will re-appoint him/her^[23].
33. The CCPE Bureau wishes to endorse this position of the Venice Commission and propose to consider appointment of public prosecutors on a permanent basis.

34. As regards the grounds for dismissal or cessation of the term of office of the Supreme Public Prosecutor and public prosecutors – the possibility of dismissal is mentioned in Amendment I and the possibility of cessation in Amendment II - they are not mentioned either in this or other Amendments and it is not clear how this issue would be regulated. In addition, nothing is said about the possibility of appeal against decisions of dismissal or cessation of the term of office.
35. Not mentioning the concrete grounds for dismissal or cessation of the term of office may leave room 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.
36. As regards the Prosecutors General, the Venice Commission has specified that the grounds for their dismissal would have to be prescribed by law. Moreover, there should be a mandatory requirement that before any decision is taken, there must be sufficient grounds for dismissal. In any case, the Prosecutor General should benefit from a fair hearing in dismissal proceedings, including before Parliament^[24].
- 37. The CCPE Bureau agrees with the Venice Commission and is of opinion that these crucial points indicated in the paragraph above should be expressly mentioned in Amendment XXI.**
- 38. Furthermore, as regards grounds for dismissal or cessation of the term of office of public prosecutors, and recalling its own standards – that termination of service of prosecutors should be regulated by the law at the highest possible level and by clear and understood processes and procedures^[25] - the CCPE Bureau recommends to integrate in Amendment XXI provisions stating that such grounds would have to be prescribed by law, there should be a mandatory requirement that before any decision is taken an independent body (like the HPC) has to ascertain whether there are sufficient grounds for dismissal, and in any case, the public prosecutors should benefit from a fair hearing in dismissal proceedings and the right to judicial appeal.**

Amendment XXIII – term of office and dismissal of deputy public prosecutors

39. This Amendment provides for a permanent term of office for deputy public prosecutors which is welcome. However, it goes on to provide the grounds for their possible dismissal by the HPC, and in particular, including in the case “if he/she incompetently performs function of deputy public prosecutor”.
40. As it was already mentioned, the CCPE indicated that the appointment and termination of service of prosecutors should be regulated by law at the highest possible level and by clear and understood processes and procedures^[26]. Incompetent performance as a ground for dismissal seems to be a very broad and vague concept and it may be understood and interpreted in an arbitrary manner, opening the door for politically motivated or otherwise biased dismissals under the pretext of “incompetent performance”.
41. **The CCPE Bureau therefore recommends either deleting this ground from the Amendment, or specifying that only very serious and repetitive incompetence cases established through due disciplinary procedure, with a possibility of judicial appeal, may lead to dismissal.**

Amendment XXV – jurisdiction of the High Prosecutorial Council (HPC)

42. This Amendment provides for the HPC as an autonomous state body that ensures the autonomy of the public prosecutors’ offices, public prosecutors and deputy public prosecutors; however it does not mention the concept of independence.
43. The importance of independence of the prosecution service and individual prosecutors, in addition to their autonomy, was already thoroughly highlighted in this Opinion, therefore the CCPE Bureau would like to recall it in this particular context of the HPC, which in principle must be a guardian of prosecutorial independence.
44. **The Bureau of the CCPE recommends to include reference to this key role of the HPC in the Amendment, as well as to broaden the scope of powers of the HPC in order to enable it to protect the status and independence both of the prosecution service and of individual prosecutors.**

Amendment XXVI – composition of the HPC

45. This Amendment establishes that the “HPC shall have eleven members: four deputy public prosecutors elected by public prosecutors and deputy public prosecutors, five prominent lawyers elected by the

National Assembly, the Supreme Public Prosecutor of Serbia and the minister in charge of the judiciary”.

46. Both the CCPE and Venice Commission have underlined that setting up a Prosecutorial Council is a very welcome step towards depoliticisation of a Prosecutor’s Office and therefore, it is very important that it is conceived as a pluralistic body, which includes prosecutors, members of civil society and a government official. In order to ensure the neutrality of this body, the independence of the Prosecutorial Council and its members should be clearly stipulated^[27].
47. The Venice Commission has also pointed out in particular that if such councils are composed in a balanced way, e.g. by prosecutors, lawyers and civil society, and when they are independent from other state bodies, such councils have the advantage of being able to provide valuable expert input into the appointment and disciplinary process and thus to shield prosecutors, at least to some extent, from political influence^[28]. Moreover, in one of its previous opinions, 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^[29].
48. **In light of the above, the Bureau of the CCPE recommends reconsidering the composition of the HPC and making sure that it is composed of a majority, at least slight, of prosecutors from all levels of the prosecution service, and that the other part includes lawyers, legal academics and members of civil society, while there remains only one member from the executive power.**

Amendment XXVII – term of office of members of the HPC

49. This Amendment stipulates that a “member of the HPC shall be elected to a five-year term of office. The same person may not be re-elected as member of the HPC. The term of office of a member of the HPC shall terminate for reasons and in the proceedings prescribed by law. The Supreme Public Prosecutor of Serbia shall perform *ex officio* the function of the president of the HPC”.
50. The Venice Commission has pointed out that the election of the President of the Council by its members is welcome^[30]. It would therefore be advisable to have the President elected by the members of the Prosecutorial Council themselves from their ranks. As regards the Minister of Justice being a member of the Prosecutorial Council ex

officio, having him/her to chair the Council may raise doubts as to the independence of this body^[31].

51. Therefore, the CCPE Bureau recommends pointing out in this Amendment that the HPC President should be elected by the HPC members themselves.
52. As regards the grounds for dismissal of members of the HPC – the possibility of dismissal is mentioned in Amendments I and II - they are not mentioned either in this or other Amendments and it is not clear how this issue would be regulated. In addition, nothing is said about the possibility of appeal against decisions of dismissal.
53. Not mentioning the concrete grounds for dismissal may leave room for arbitrariness, pressures and politically motivated initiatives, in which case it would clearly be a threat to the independence of the HPC members.
54. The CCPE agrees with the Venice Commission that the mandate of the members of such Councils should only end at the expiry of their term of office, on retirement, on resignation or death, or on their dismissal for disciplinary reasons. Members of prosecutorial councils should be autonomous and independent and should not be subjected to a vote of no confidence which will make them too dependent on the wishes of prosecutors. The Venice Commission strongly recommends that such a procedure not to be introduced^[32].
55. **Therefore, the CCPE Bureau is of the opinion that these crucial points indicated in the paragraph above should be expressly mentioned in Amendment XXVII.**

Summary of Recommendations

56. Based on the above considerations, the Bureau of the CCPE recommends:
 - **in Amendment II**, stipulate that five members of the HPC are elected, dismissed or the term of their office is ceased only by the qualified majority of three-fifths of the Parliamentary members, even when their initial election fails; that the Supreme Public Prosecutor and public prosecutors are elected, dismissed or the term of their office is ceased also by the same qualified majority of three-fifths; as regards the grounds and due process for dismissal or cessation of the term of office of all above-mentioned persons, please refer also to the recommendations for Amendments XXI and XXVII;

- **in Amendment XVIII**, stipulate the independence of the Public Prosecutor's Office and specify both its organisational independence from the executive and legislative powers and the functional independence of individual prosecutors;
- **in Amendment XX**, mention that instructions given to prosecutors by higher level prosecutors must be made in writing, limited and regulated by law;
- **in Amendment XXI**, introduce a seven-year term of office for the Supreme Public Prosecutor in Serbia, without the possibility of re-election; introduce a permanent term of office – until retirement - for all other prosecutors; specify the grounds for dismissal or cessation of the term of office of the Supreme Public Prosecutor in the law, with a mandatory requirement that before any such decision is taken, there must be sufficient grounds for dismissal, and with the right of the Supreme Public Prosecutor to benefit from a fair hearing in such proceedings, including before the Parliament, and with the possibility of judicial appeal; specify the grounds for dismissal or cessation of the term of office of other prosecutors in the legislation, with a mandatory requirement that before any decision is taken, an independent body (such as the HPC) has to ascertain whether there are sufficient grounds for dismissal, and with the right of prosecutors to benefit from a fair hearing in such proceedings, and with the possibility of judicial appeal;
- **in Amendment XXIII**, either delete “incompetent performance” as a ground for dismissal for deputy public prosecutors, or specify that only very serious and repetitive incompetence cases, established through due disciplinary procedure regulated by law, with a possibility of judicial appeal, may lead to dismissal;
- **in Amendment XXV**, include reference to the key role of the HPC as a guardian of prosecutorial independence and to a broadening of the scope of powers of the HPC in order to enable it to protect the status and independence both of the prosecution service and of individual prosecutors;
- **in Amendment XXVI**, reconsider the composition of the HPC and make sure that it is composed of a majority, at least slight, of prosecutors from all levels of the prosecution service, and that the other part includes lawyers, legal academics and members of civil society, while there remains only one member from the executive power;

- **in Amendment XXVII**, point out that the HPC President is elected by the HPC members themselves; reconsider the role of the Minister of Justice as having the Minister chairing the HPC may raise doubts as to the independence of this body; specify that the mandate of the HPC members ends only at the expiry of their term of office, on retirement, on resignation or death, or on their dismissal for disciplinary reasons, after due process and with the possibility of judicial appeal; also mention that the HPC members cannot be subjected to a vote of no confidence.

[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 Opinion No.9(2014) of the CCPE on European norms and principles concerning prosecutors, Explanatory Note, para 55; 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 34-35.

[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, paras 19, 20 and 27.

[4] 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 35-38, 40.

[5] See Opinion No. 9(2014) of the CCPE on European norms and principles concerning prosecutors, Explanatory Note, para 51.

[6] See Opinion No. 9(2014) of the CCPE on European norms and principles concerning prosecutors, Explanatory Note, para 52.

[7] See Opinion No. 9(2014) of the CCPE on European norms and principles concerning prosecutors, Explanatory Note, para 53.

[8] See Venice Commission's Opinion on the Constitution of Montenegro, CDL-AD(2007)047, para 104; see also Venice Commission's Opinion on the Draft Amendments to the Law on the State Prosecutor of Montenegro, CDL-AD(2008)005, para 12.

[9] See Magna Carta of Judges (Fundamental Principles) (2010) of the CCJE, para 11.

[10] See Opinion No. 9(2014) of the CCPE on European norms and principles concerning prosecutors, Explanatory Note, para 33.

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

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

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

[14] 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.

[15] See Rec(2000)19, para 16.

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

[17] See CCPE Opinion No. 9(2014) on European norms and principles concerning prosecutors, Explanatory Note, para 40.

[18] See CCPE Opinion No. 9(2014) on European norms and principles concerning prosecutors, Explanatory Note, para 42.

[19] See CCPE Opinion No. 9(2014) on European norms and principles concerning prosecutors, Explanatory Note, paras 46-47.

[20] See CCPE Opinion No. 9(2014) on European norms and principles concerning prosecutors, Explanatory Note, para 56; see also 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 37.; see also UN Human Rights Council, Report of the Special Rapporteur on the independence of judges and lawyers, Gabriela Knaul, A/HRC/20/19, 7 June 2012, para 65.

[21] See Venice Commission's Joint Opinion on the Draft Law on the Public Prosecutor's Office of Ukraine, CDL-AD(2013)025, para 117.

[22] 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.

[23] 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.

[24] 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.

[25] See Opinion No. 9(2014) of the CCPE on European norms and principles concerning prosecutors, Explanatory Note, para 52.

[26] See Opinion No. 9(2014) of the CCPE on European norms and principles concerning prosecutors, Explanatory Note, para 52.

[27] 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, paras 33-34.

[28] 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.

[29] 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.

[\[30\]](#) See Venice Commission's Opinion on the draft law on the Public Prosecutors' service of Moldova, CDL-AD(2008)019, para 62.

[\[31\]](#) 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 40.

[\[32\]](#) See Venice Commission's Opinion on the draft amendments to the Law on the State Prosecutorial Council of Serbia, CDL-AD(2014)029, paras 52-54 and 56.