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

**Opinion No. 11 (2016)
of the Consultative Council of European Prosecutors
on
the quality and efficiency of the work of prosecutors,
including when fighting terrorism and serious and organised crime
*adopted by the CCPE at its 11th plenary meeting
(Strasbourg, 17-18 November 2016)***

I. INTRODUCTION

1. In accordance with the terms of reference entrusted to it by the Committee of Ministers, the Consultative Council of European Prosecutors (CCPE) prepared an Opinion on the quality and efficiency of the work of prosecutors, including when fighting terrorism and serious and organised crime. In member states, where prosecution services perform other functions outside criminal justice, the principles and recommendations of this Opinion apply also to these functions.
2. In a growing number of member states of the Council of Europe, the public service in general, and institutions in the field of criminal justice including prosecution services in particular, receive, to an increasing extent, attention from the public, politicians and the media. Therefore, prosecution services need to demonstrate that they fulfil their duties with an utmost and up-to-

date professionalism.

3. The objective of this Opinion is to determine how prosecution services can fulfil their mission with the highest quality and efficiency. It also looks into how they should organise their work in a modern manner using all the latest technical methods and means, and how the efficiency and quality of their work can be measured and evaluated. The second part of the Opinion will address how prosecution services can meet the growing demands for quality and efficiency also when facing specific challenges in the fight against terrorism and serious and organised crime.
4. The CCPE considers that prosecution services are complex public organisations. Therefore, in order to respond adequately to increasing needs, social challenges and pressure for rendering better public services, the overall legal, organisational and technical framework as well as the necessary financial and human resources are of paramount importance.
5. Member states of the Council of Europe have different legal systems including prosecution services. The CCPE respects each of them in their diversity. Therefore, not all the elements discussed in this Opinion may concern all member states. However, they mostly do address the concerns of prosecutors to work as efficiently as possible and with a high quality and strict respect for the law and human rights.
6. This Opinion has been prepared on the basis of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereafter ECHR) as well as other Council of Europe instruments including: European Convention on Mutual Assistance in Criminal Matters of 1959, European Convention on the Suppression of Terrorism of 1977, European Convention on Cybercrime of 2001, Convention on the Prevention of Terrorism of 2005 and its Additional Protocol of 2015, Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism of 2005, Convention on Action against Trafficking in Human Beings of 2005, Recommendation Rec(2000)19 of the Committee of Ministers on the role of public prosecution in the criminal justice system and Recommendation Rec(2012)11 of the Committee of Ministers on the role of public prosecutors outside the criminal justice.
7. This Opinion is also based on the Committee of Ministers Guidelines on human rights and the fight against terrorism of 2002, Recommendation Rec(2005)10 of the Committee of Ministers on “special investigation techniques” in relation to serious crimes including acts of terrorism, and previous CCPE Opinions, in particular No. 1(2007) on ways to improve international co-operation in the criminal justice field, No. 7(2012) on the management of the means of prosecution services, No. 9(2014) on European norms and principles concerning prosecutors, including the “Rome Charter”, No. 10(2015) on the role of prosecutors in criminal investigations.
8. The following United Nations instruments have also been taken into account: Convention for the Suppression of Terrorist Bombings of 1997, Convention for the Suppression of the Financing of Terrorism of 1999, Convention against Transnational Organized Crime of 2000, Convention against Corruption of 2003.
9. The CCPE has also considered the Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors, adopted by the International Association of Prosecutors (IAP) in 1999.
10. To prepare this Opinion, the CCPE analysed in particular the replies by 30 of its members to the questionnaire drafted for this purpose by the Secretariat (the compilation of replies is available on the CCPE website: www.coe.int/ccpe).

II. QUALITY AND EFFICIENCY FACTORS OF THE WORK OF PROSECUTORS

A. External environment

11. The quality and efficiency of the work of prosecutors depend not only on their talent and skills, but are also significantly affected by external factors which are mostly out of control of prosecutors: legislative and court decisions, resources made available and expectations from the society. Consequently, these factors merit a careful consideration particularly from the point of view of their impact on the quality and efficiency of prosecutorial work.

1. Legal framework, national traditions

12. Respect for the rule of law is an obligation for all Council of Europe member states. Also, a number of quality requirements have been laid down in the ECHR. Thus, Article 6 sets important requirements for any national legal framework to ensure the quality of criminal justice, such as independence of the judiciary, reasonable time, accessibility and publicity¹. Since every prosecution service carries out its functions within a legal framework, legislation is a paramount precondition for the quality and effectiveness of its work. Laws and, mostly in common law systems, judgments influence the type and volume of cases brought by prosecutors before the courts, as well as the ways in which they are processed. This framework should be clear and simple to operate, ensuring that national systems are not flooded with cases, for instance by establishing alternative ways of dispute resolution. On the other hand, poor drafting or too frequent changes in the legislation or jurisprudence may prove to be serious barriers for well-reasoned and convincing prosecutorial decisions.
13. A clear and simple legal framework facilitates access to justice and contributes to making it efficient, for instance by helping to reduce the heavy caseload, particularly within the criminal justice system, using public resources more efficiently and productively, as well as allowing for allocation of more time and financial resources for offences that severely disturb public order, in particular for offences of terrorism and serious and organised crime. Likewise, national legislation and justice systems should take into consideration technological development, promote easy access of prosecution services to databases and other relevant information and provide the basis for improving the quality of their work.
14. Political systems and legal traditions also have direct impact on the work of prosecutors. This includes the status of the prosecution services and, in particular, their independence from the executive power. Furthermore, the current security situation in Europe where countries face increasing threats of terrorism and serious and organised crime, should lead to national criminal policies aiming to improve the quality and efficiency of prosecutors' work.
15. Although international cooperation has been steadily improving in the past decades, sometimes there are delays in answering requests from other states that may seem to be unjustified. This hinders efficient extradition and other requests for assistance and therefore undermines the efficiency of prosecutors' work and the court proceedings in the requesting states. States should thus continue to strive for immediate transnational cooperation in criminal cases, on a basis of mutual trust.

¹ See Final Report 2008 of the European Network of Councils for the Judiciary (ENCJ) Group on Quality Management.

2. Resources

16. The availability of financial and other resources in member states has a direct impact on the quality and efficiency of prosecutors' work. In this context, the CCPE underlines in particular the need to ensure adequate human and technical resources, proper and consistent training, as well as the scope of the social security packages provided to prosecutors that should be commensurate with the importance of their mission. The situation in member states shows furthermore that efficiency can be increased by a certain level of autonomy (in particular regarding the budget) of prosecution services in most areas concerning management.
17. Prosecutors should thus have adequate human, financial and material resources in order to be able to consider and examine all relevant matters. The assistance of qualified staff, adequate modern technical equipment and other resources can relieve prosecutors from undue strain and therefore improve the quality and efficiency of their work.

3. Impacts from the public

18. Prosecutors need receiving quickly reliable and comprehensive information from all relevant players in a society. Therefore, relations with other actors within and outside the justice system (e.g. police and other state authorities, lawyers, NGOs) play a vital role in the capacity of prosecutors to quickly take well-founded decisions based on an effective exchange of relevant information at national and international level. For this purpose, prosecutors need coherent and sufficient legal norms and procedures allowing to gather information needed for taking qualified decisions in ways proportionate to the interests at stake.
19. Member states should take measures in line with the rights set out in the ECHR which can help to strengthen the public trust in prosecution services by responding to growing demands from the media and thus working more transparently. For prosecution services, the use of modern information structures and techniques is indispensable for delivering quick and accurate information to the public.
20. The leaking, in criminal cases, of sensitive information to the media may not only reduce the efficiency of the investigation and infringe the victims' rights, but also create risks for the presumption of innocence and the right "not to be labelled". To prevent this, the access of unauthorised persons to sensitive information should be inhibited. False or biased news on investigations might betray the public trust and generate doubts as to the independence, impartiality and integrity of the prosecution system or the courts. Therefore, proper communication between the prosecution services and the media should be established, to help avoiding the publication of false or biased news or minimising the negative effects thereof.
21. Everyone should have a right to complain or appeal against a measure taken by a prosecutor. To increase the quality and accountability of prosecutors' decisions, an effective and impartial complaint mechanism should be established and the grounds and the results of the complaints should be analysed, not only from the point of view of the right to a fair trial, but also to promote the quality of prosecutors' work through eliminating their shortcomings and preventing failures.

4. Undue external influence

22. Prosecutors should exercise their functions free from external undue influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason.

B. Internal environment

1. Strategic vision

23. The quality and efficiency of the work of prosecutors are also significantly affected by internal factors. The management of the prosecution services should provide strategic leadership. A strategic plan including professional objectives and management of human and material resources should guide the prosecutors' work. It can provide for internal measures to improve quality and efficiency through adequate management of human resources and cases, as well as targeted activities to that effect.

2. Management of human resources: selection, recruitment, promotion and training of prosecutors

24. To promote quality, it is indispensable that the selection, recruitment, promotion and relocation of prosecutors be based on clear and predictable criteria laid down in law or internal guidelines in written form.
25. The quality of prosecutorial decisions or other actions depends, among other factors, on permanent training of the prosecutors involved. The CCPE is of the opinion that the heads of prosecution offices and/or other competent institutions (e.g. judicial training institutions) should be responsible for an active training policy, including self-education, within their institutions that provides for increasing quality and efficiency in the work of prosecutors.
26. Prosecutors should have, at every phase of their career, a continuous training programme in order to maintain and improve their professional skills². Such training should also include information technology, ethics and communication skills³, as well as management issues in general and case management in particular, and be available for every level of the prosecution service. Specific themes should be addressed in depth (providing also common training with other institutions, when useful) to improve professional skills needed to face constantly evolving challenges (such as terrorism, as specified below)⁴.
27. In several previous Opinions, the CCPE emphasised the importance of promoting specialisation of prosecutors, especially through participation in regular training sessions⁵, professional events and conferences. Gaining more advanced knowledge through such participation and acquiring other qualifications may lead to promotions, advancement or better remuneration for prosecutors.
28. Principles and guidelines on issues such as time management, adequate methodology or increased co-operation with other actors of the justice administration system should aim at facilitating everyday work and thus enhancing the quality and efficiency of prosecutorial work.
29. Integrity, standards of good behaviour, both professional and personal, and, in member states where they exist, legal provisions on ethics or codes of ethics for prosecutors should be part of their regular training.

² See CCPE Opinion No. 9(2014) on European norms and principles concerning prosecutors, Rome Charter, Article XIII, Explanatory Note, paragraphs 57, 61 and 63.

³ Ibid., Explanatory Note, paragraph 62.

⁴ Ibid., Rome Charter, Article XX, Explanatory Note, paragraph 64.

⁵ Ibid., Rome Charter, Article XIII, Explanatory Note, paragraphs 57 and 62.

3. Management of prosecution services

a. Organisation of the work of prosecution services: responsibilities, administrative divisions, distribution of competence, etc.

30. The efficiency and quality of prosecutors' work call, in general, for clear and adequate organisational structure, responsibilities and competencies to administer human and material resources in line with the actual criminal or social situation in the area of their jurisdiction⁶. On the other hand, when facing new criminal, sociological, economic and international challenges, the structure and working mechanisms of the prosecution services should be flexible enough to respond in an adequate, sufficient, quick and legal way.
31. In particular, establishment, where appropriate, of specialised units in the framework of prosecution services (e.g. prosecutors dealing with cases of terrorism, narcotics, economic crimes, environment protection, and working in the area of international co-operation) should be considered.
32. Furthermore, prosecution services should organise proper analytical and methodological work with a view to enhancing the quality and efficiency of prosecutors' work.
33. In member states, dissemination of best practices for dealing with certain types of crimes as well as proper distribution of cases and effective use of information technology, including for the management of single cases, may increase efficiency and ensure better quality. Heads of prosecution services/offices and/or other competent institutions, in particular, should be responsible for promoting the use of such management tools and for sharing the knowledge of best practices within their offices.

b. Ethical rules

34. In most member states, to enhance quality and efficiency, prosecution services evaluate the integrity of prosecutors and other employees over a mid-term or long-term period. This is done in different ways. Some systems have laid down legal or general standards, others have adopted a code of ethics. Others, still, take oaths from newly appointed prosecutors. They commit to personal and professional qualities, impartiality and fairness, integrity and ethical impeccability. The CCPE has previously recommended that "codes of professional ethics and of conduct, based on international standards, should be adopted and made public"⁷, having emphasised that "prosecutors should adhere to the highest ethical and professional standards, always behaving impartially and with objectivity"⁸.
35. The main aim of a code of ethics would be to promote those standards recognised as necessary for proper and independent work of prosecutors. If prosecution services are to adopt codes of ethics, these should, as mentioned above, be in line with adopted common international standards such as laid down in 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 (hereafter Rec(2000)19)⁹, the European Guidelines on ethics and conduct for public prosecutors of the CPGE, 31 May 2005 (Budapest Guidelines), CCPE Opinion No. 9(2014) on European norms and principles concerning prosecutors (Rome Charter) quoted above, and other relevant international instruments.

⁶ See CCPE Opinion No. 7(2012) on the management of the means of prosecution services, paragraph 47.

⁷ See CCPE Opinion No. 9(2014) on European norms and principles concerning prosecutors, Rome Charter, Article VII.

⁸ *Ibid.*, Article VI.

⁹ See Rec(2000)19, Explanatory Memorandum, commentaries on individual recommendations, paragraph 35.

c. Measuring the performance of the prosecution services (quantitative and qualitative)

36. In a large number of member states, there are statistics available to measure the quantitative workload, the performance of the prosecutor's office and the criminal situation in the area of its jurisdiction. In many member states, the evaluation of prosecutors is used to enhance the quality and efficiency of the prosecution service.
37. Prosecution services should determine indicators and follow-up mechanisms in a transparent way, primarily to motivate prosecutors to strive for higher levels of professional work. Internal follow-up within prosecution services should be regular, proportionate and be based on the rule of law.
38. The CCPE considers that quantitative indicators as such (number of cases, duration of proceedings, etc.) should not be the only relevant criteria to evaluate efficiency, either in the functioning of the office or in the work of an individual prosecutor. Similarly, it has been stated by the Consultative Council of European Judges (CCJE) "that "quality" of justice should not be understood as a synonym for mere "productivity" of the judicial system"¹⁰.
39. This is why qualitative indicators, such as proper and thorough investigation (when this is under the prosecutor's competence), appropriate use of evidence, accurate construction of the accusation, professional conduct in court, etc., should also be taken into consideration as a way to complement indicators of a quantitative character. The desirability for speedy prosecutions should also take into account the safeguards provided by Article 6 of the ECHR¹¹.
40. Therefore, as the real and final objective, legal systems should be able to provide for a system of evaluation capable of assessing both quantitative and qualitative indicators of prosecutors' work which respects the essential principles of justice, in line with the ECHR and other international instruments.
41. The special nature of terrorism and serious and organised crime makes it even more necessary to follow and respect the above-mentioned approach. In those cases, it will also be necessary to take into account the safeguards provided in CCPE Opinion No. 10(2015) on the role of prosecutors in criminal investigations, in particular when special investigation techniques are being used¹², due to the risk of significant human rights restrictions that they entail.

d. Evaluating the work of individual prosecutors (quantitative and qualitative)

42. Evaluation of prosecutors and their work may be a useful strategic tool in order to improve skills necessary for confronting the evolving demands for quality, efficiency and professionalism. Individual evaluations may also provide important input for developing the most relevant training for prosecutors at all levels.
43. Responses to the questionnaire by members of the CCPE show that there are two types of evaluation used: formal and informal. The formal evaluation is made within a fixed timeframe (e.g. every 3 or 5 years). It is governed by a special procedure and focuses on specific skills to be evaluated. Sometimes, it is combined with a rating system which allows for comparison with other colleagues and for a quicker promotion. Its results are open for judicial review when they are not accepted by the evaluated prosecutor. The informal evaluation is more or less a discussion to collect and give information about how to improve the quality and efficiency of the

¹⁰ See CCJE Opinion No. 6(2004) on a fair trial within a reasonable time and the role of judges in proceedings, taking into account alternative means of dispute settlement, paragraph 42.

¹¹ See CCJE Opinion No. 11(2008) on the quality of judicial decisions, paragraph 26.

¹² See paragraphs 40-43.

prosecutor's work (e.g. drafting an understandable accusation, ability for team working, avoiding violation of standards, etc.) or in a more strategic manner, whether for instance prosecutors have skills to fulfil their duties. The aim of both types of evaluation of the prosecutors' work should be to examine the development of skills and working capacity, as well as to envisage promotion and – in some countries – incentives and awards, or generally to prevent disorder and misconduct, avoiding potential disciplinary measures.

44. The CCPE recommends that the evaluation of prosecutors' work be transparent and foreseeable, having been based on clear and previously published criteria, both as regards substantive and procedural rules.
45. Transparent and foreseeable evaluation means for the evaluated prosecutor to be able to discuss the results of the evaluation, or, where appropriate, compare the results of a self-evaluation with the evaluation conducted by the superior or by the person responsible, if different, and to submit them for review. The results of the evaluation should not be published in a way that may infringe the personal integrity and honour of the evaluated prosecutor.
46. Evaluation should be conducted on the basis of equal criteria at the same level within the prosecution service. Like in the case of measuring the overall performance of the prosecution service, the CCPE considers that defining quality of prosecutors' work should contain both quantitative and qualitative elements, such as the number of opened and closed prosecution cases, types of decisions and results, duration of prosecutorial proceedings, case management skills, ability to argue clearly orally and in writing, openness to modern technologies, knowledge of different languages, organisational skills, ability to cooperate with other persons within and outside the prosecutor's office.

4. Management of cases

47. A high quality decision or other relevant action by a prosecutor is one which reflects both the available material and the law, and which is made fairly, speedily, proportionally, clearly and objectively. In this respect, it is obvious that prosecutorial actions should, in line with the ECHR and other relevant international instruments, respect the rights of victims, their families and witnesses and be balanced with the rights of the defendants, as well as with the public interest in prosecuting crimes. Therefore, prosecutors should seek to carry out their work in accordance with these principles. It is the opinion of the CCPE that prosecution services should support prosecutors' work by setting out good practices of case management in various fields of prosecutorial competences and duties. Prosecutors' decisions should further reflect the following elements:

a. Objectivity and impartiality

48. Prosecutors should remain independent in the performance of their functions and exercise them always upholding the rule of law, integrity of criminal justice system and the right to a fair trial. Prosecutors should adhere to the highest ethical and professional standards, should carry out their duties fairly, and always behave impartially and objectively.
49. Prosecutors should provide for equality of individuals before the law without any kind of discrimination, including on the grounds of gender, race, colour, national and social origin, political and religious belief, property, social status and sexual orientation.

b. Comprehensiveness

50. All decisions and actions by prosecutors should be carefully considered by them. They should seek out evidence relating both to guilt and innocence and should ensure that all appropriate lines of enquiry be carried out, including those leading to evidence in favour of the accused or suspected persons. Thus, they should consider if the evidence delivered by the investigation is

clear and comprehensive. This does not, however, require an investigator to engage in a disproportionate commitment of resources and should be reasonably and realistically interpreted on the facts of each case. It does not take away from the responsibility of defence lawyers to seek out evidence they consider relevant.

51. Prosecutors should decide to prosecute only upon well-founded evidence, reasonably believed to be reliable and admissible, and refuse to use evidence involving a grave violation of human rights.

c. Reasoning

52. Clear reasoning and analysis are basic requirements of prosecutors' work. They should fully consider all relevant evidence and examine factual and other issues revealed by the investigation and by the parties. All decisions or actions by prosecutors should reflect such relevant evidence, be in accordance with the law and general guidelines which may exist on the subject. Decisions and actions by prosecutors should be justified in consistent, clear, unambiguous and non-contradictory manner.

d. Clarity

53. All instructions or directives, as well as any official acts given by prosecutors should be clearly understandable by those to whom they are addressed. Where in writing, such instructions and directives should be drafted in a very clear language. In addition, prosecutors should pay particular attention to the format of written instructions and directives so that they can be readily identified.

e. Exchange of information and co-operation

54. Co-operation is essential for the effectiveness of the prosecution service both at national and international levels, between different prosecution offices, as well as between prosecutors belonging to the same office, as well as between prosecutors and law enforcement agencies/investigators. Increasing specialisation of prosecutors is likely to improve the effectiveness of such cooperation.
55. Where prosecutors have an investigative function, they should seek to ensure an effective exchange of information in a due manner among themselves, as well as between themselves and law enforcement agencies/investigators. This should help in avoiding duplication of work, as well as in complementing efforts of different prosecutors and law enforcement agencies in cases which are connected to each other.
56. Where prosecutors do not have such an investigative function, they should, as appropriate, co-operate during investigations with the relevant investigating agency, particularly in furnishing relevant advice and/or guidance.
57. Such co-operation should continue until the end of investigation, with a view to ensuring that all relevant evidence is made available to the prosecutor and disclosed, as appropriate, to the defence.

III. MAJOR CURRENT CHALLENGES FOR QUALITY AND EFFICIENCY IN FIGHTING TERRORISM AND SERIOUS AND ORGANISED CRIME

A. Introduction

59. Most member states of the Council of Europe have observed that serious and serious and organised crimes have become more complex and international. Terrorism has severely hit many countries and is currently a major priority in the work of prosecution services. Illegal migration poses new challenges in this context such as in the areas of terrorism, organised crime and human trafficking.
60. Prosecutors are in the first line to pursue the prosecution of these grave crimes in courts and therefore they exercise an essential role in safeguarding public safety and protecting the rule of law.

B. Fighting terrorism and serious and organised crime at national level

1. Strategy of the fight against terrorism and serious and organised crime

61. In line with UN Security Council Resolution 1566 (2004) concerning threats to international peace and security caused by terrorism, the CCPE considers it as a key duty of prosecutors “to bring to justice, on the basis of the principle to extradite or prosecute, any person who supports, facilitates, participates or attempts to participate in the financing, planning, preparation or commission of terrorist acts” or serious and organised crime. To fulfil this duty in a qualified and efficient way, prosecutors need to act within a sufficient legal framework, to cooperate with all relevant stakeholders in this field at national and international levels, and to have sufficient human and material resources. New threats of terrorism (financing by serious and organised crime, propaganda, recruitment and training of fighters through the internet) require new responses, new forms of investigation and prosecution techniques and measures, so that prosecutors are able to act with the efficiency and quality increasingly required by the society.
62. The CCPE considers that in the investigation and prosecution of cases of terrorism and serious and organised crime, the independence and impartiality of prosecutors in performing their duties should be particularly safeguarded.

2. Legislative framework to set up for these types of crime, and organisational and financial resources to be made available to prosecutors

63. An inadequate legislative and institutional framework for combating terrorism, serious and organised crime and cybercrime and their financing, including money laundering, allows terrorists, perpetrators in the field of serious and organised crime and their supporters to act without territorial limits and to use their funds to carry out and expand their criminal activities. To be effective, prosecutors depend on the legislation that clearly criminalises any activities which constitute a direct or indirect support to terrorist activities and serious and organised crime, including propaganda for, and recruitment of terrorists, etc. This would allow prosecutors to widen their field of action in the fight against terrorism and serious and organised crime by application of legal instruments set up for severe forms of criminality.
64. The fight against terrorism and, in particular, recruitment of potential terrorists, admission into the

organisation, making terrorist propaganda and sharing information with terrorist purposes, training and preparation for terrorist activities and transporting with terrorist purposes would require the need to have at an early stage insider information about terrorist and serious and organised crime. However, disproportionate restriction of fundamental rights and freedoms should be avoided. For the same reason, clear limits and criteria for a proportionate application of the laws should be established, especially when preventive measures are to be brought before the prosecution, and so being subject to regular law of criminal procedure.

3. Investigation techniques and using special tools and means including modern information technologies

65. In most member states, special investigative techniques such as electronic surveillance and undercover operations have been shown to be effective tools to combat terrorism and serious and organised crime. These tools are being made available to prosecution offices, at least in jurisdictions where prosecutors have investigative powers. As they infringe the right of privacy not only of suspects but of other persons not necessarily involved in the relevant criminal situation under investigation, the use of these measures needs thorough and permanent consideration by prosecutors at any stage of the proceedings, so that the outcome of the investigation is accepted by courts and society at large.
66. The retention and preservation, to an appropriate and proportional extent, of traffic and location data by private enterprises and communication companies should be ensured, while respecting the national and international jurisdiction as well as the ECHR and the Council of Europe's Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data of 1981.
67. The answers to the questionnaire show that all member states have taken organisational steps to enhance the quality and efficiency of prosecutorial decisions in terrorist and serious and organised crimes cases. Some have specialised units within the prosecution offices, others have transferred this duty to one office for the whole country. The CCPE considers it desirable to concentrate the investigation and prosecution of these criminal cases in special units. This can ensure the necessary professionalism not only in the use of special investigative techniques but in developing the communication to, and with, other stakeholders in this field. This can also ensure special training of the prosecutors involved and allowing them to receive the most modern technical, legal and organisational means available. Specialised police units or experts, which are directly subordinated to and are at the disposal of the prosecution entities, where appropriate, may enhance the quality and efficiency of the investigations combating terrorism and serious and organised crime. Such organisational framework will further help prosecutors to perform their duties with full independence and impartiality, with the necessary respect for the human rights of suspects, and the necessary protection of victims, witnesses and other persons involved in the criminal process.

4. Case management

68. A proper case management methodology can ensure that special investigation techniques that are intrusive are only to be used, subject to the necessary judicial oversight, where there is sufficient reason to believe that a serious crime has been committed or prepared, or is being prepared, by one or more individuals or by an as-yet-undetermined individual or group of individuals.
69. The CCPE underlines that, according to the case-law of the European Court of Human Rights (hereafter the ECtHR), special investigations techniques are only to be used while respecting the principle of proportionality and they should meet minimum requirements of confidentiality, integrity and availability¹³.

¹³ For a list of the ECtHR cases related to terrorism, see at <https://www.unodc.org/tldb/en/case-law-of-the->

70. In cases, where the law on terrorism and serious and organised crime provides for the limitation of the rights of individuals in criminal proceedings, prosecutors who decide to apply such a limitation should always consider whether it is justified vis-à-vis the obligation of proportionality, and ensure that evidence is not obtained by means of torture or other cruel, inhuman or degrading treatment, taking as a basis the interpretation of these concepts in the case-law of the ECtHR. Notwithstanding the gravity of the offences of terrorism and serious and organised crime, a qualified and effective case management ensures that prosecutorial decisions are taken with respect for the time limits and are carried out in an objective, impartial and professional manner, respecting the presumption of innocence and the right to defence, as well as the rights of victims of crime. It is part of their competences, that prosecutors should monitor the respect of these fundamental principles and freedoms throughout the proceedings of law enforcement agencies.
71. If victims and witnesses are allowed to preserve their anonymity, the right balance should be preserved with the rights of accused persons.
72. Appropriate protection should be applied towards victims, witnesses and other persons involved in the proceedings including prosecutors themselves and their families.

5. Training

73. Rec(2000)19 indicates that special attention should be paid to continuous training of prosecutors, given the emergence of new forms of crime and the necessity of continuing international cooperation in criminal matters. To carry out the most efficient prosecution, prosecutors have constantly to be updated and specialised in investigating and prosecuting terrorism and serious and organised crime in all their forms. As regards special needs in these fields of criminality, training of prosecutors should in particular focus on the collection and use of evidence at regional, national and international levels, forms and techniques of co-operation of stakeholders, exchange of experience and best practices, understanding of possible violations of human rights, the role of social media in recruitment of potential terrorists, and proper communication with the media.
74. The CCPE is of the opinion that training in this field should also cover relevant national and international legal instruments and the case-law of the ECtHR.

6. Information management (exchange, cooperation)

75. Sharing of evidence or information with relevant units is among the most important elements of fighting terrorism and serious and organised crime. Such information should especially be shared with intelligence and security units, judicial units and, where appropriate, institutions that have been targeted numerous times by terrorist activities. Moreover, if deemed necessary and beneficial, evidence and information regarding terrorists may be directly disclosed to the public as well.
76. One of the possible weaknesses in investigations occurs when the police and other law enforcement and intelligence authorities do not share relevant received information with prosecutors at the right time. To avoid this problem, it could be advisable to promote joint investigations between relevant prosecutorial and police authorities. In member states, where prosecutors have investigative powers, they should coordinate and manage these actions.

[european-court-of-human-rights-related-to-terrorism.html](#). See also a book entitled “Counter-terrorism and human rights in the case law of the European Court of Human Rights” by Ana Salinas de Frias (2012), see at <https://book.coe.int/eur/en/european-court-of-human-rights/4966-counter-terrorism-and-human-rights-in-the-case-law-of-the-european-court-of-human-rights.html>.

77. For the purposes of greater efficiency, besides cooperation and joint resolution of specific problems in the operations, it has been proved to be effective to hold consultative meetings with members of multidisciplinary groups with the participation of prosecutors.
78. The CCPE stresses the necessity to enhance the efficiency of investigating and prosecuting the financing systems of terrorism and serious and organised crime through an intensive, systematic and consistent approach. First of all, there is a need to exchange information through a national data based information system. Furthermore, it is necessary to establish close cooperation between law enforcement agencies and banks, as well as other private legal entities and individuals (insurance companies, brokerages, notaries, lawyers, bailiffs, etc.). Another increasingly important investigative approach is the cooperation with internet service providers to follow virtual or digital money.

C. Fighting terrorism and serious and organised crime at international level

79. International cooperation between prosecutors has become a vital tool due to the increasing number of transborder crimes, in particular severe and serious and organised crime, including terrorism. The international scale of the relations between criminal groups and individuals, facilitated by globalisation and modern means of communications, means that a solely national focus on investigating and prosecuting those crimes, as well as preventing them, is not sufficient.
80. As affirmed by the CCPE, prosecutors should always show willingness to cooperate and “should treat international requests for assistance within their jurisdiction with the same diligence as in the case of their work at national level and should have at their disposal the necessary tools, including training, to promote and sustain genuine and effective international judicial cooperation”¹⁴.
81. Fulfilling these requirements has become particularly urgent today, taking into account the level of attacks and challenges raised by terrorism and international serious and organised crime. Effective international cooperation is unavoidable not only to prevent, but also to investigate, prosecute, prove and legally punish perpetrators of those crimes and to confiscate and recover criminal proceeds. These objectives presume a shared maximum effort to detect and destroy the financing of criminal groups and individuals, their logistical and operational bases, the supply of false documents, weapons and explosives. A great challenge by modern criminals comes from their use of modern means of communication (including social media and networks in the internet), whose monitoring and legal interception require a global action.
82. Direct contacts between national prosecution services are an efficient and adequate way to raise efficiency and quality in cross-border criminal cases, not only by responding to requests for legal assistance, but also by promoting exchanges of information originating from parallel investigations and sometimes by setting up joint investigation teams. The CCPE encourages member states to improve legal basis for direct co-operation and to promote quick and flexible cooperation through the appointment of national focal points on certain types of crime like terrorism or serious and organised crime and/or by appointing liaison magistrates in other countries.
83. Harmonising national legislation with international legal standards, regarding both legal classification of criminal acts and the legality of the proceedings, would significantly ease cross-border cooperation. The same applies to the possible systematisation and harmonisation of national laws. A strong effort should thus be made to overcome obstacles arising from national

¹⁴ See CCPE Opinion No. 9(2014) on European norms and principles concerning prosecutors, Rome Charter, Article XX.

cultures, which consider autonomy in criminal law as a valuable part of the identity of each national criminal system.

84. In order to improve and facilitate international cooperation, three main aspects should be considered: the legal basis for a smooth and effective cooperation; an adequate implementation of international legal instruments in every participating state; creation of practical and operational instruments.
85. Obstacles to international cooperation should be removed. Not knowing the colleagues on the other side of the border, not speaking the same language, not understanding other cultures in fighting crime cause natural hesitation to work together. For that purpose, international cooperation bodies and networks have been set up, both institutional and informal. Formal network organisations at law enforcement level, such as Europol and Interpol, and at judicial level, such as Eurojust and the European Judicial Network, are swift and efficient ways to develop legal cooperation across borders, bridging gaps between legal systems, cultures and languages. States should provide those organisations with capacities needed for smooth and successful international assistance. Less formal organisations can also be useful in fighting crime across borders, like the International Association of Prosecutors, which contributes to systematising international standards related to the exercise of prosecutorial functions, and to connecting prosecutors all over the world through thousands of contact points (e.g. network of prosecutors dealing with terrorist cases established in 2015, and the network of prosecutors dealing with cybercrime created in 2010).

RECOMMENDATIONS

1. In order to respond to public demands for transparency and accountability, prosecution services should act strategically with a view to ensuring the highest possible level of quality and efficiency in the work of prosecutors.
2. Since every prosecution service carries out its functions within a legal framework, proper legislation is a paramount precondition for the quality and effectiveness of its work.
3. In order to improve and facilitate international cooperation, including in extradition, legal assistance and recovery of criminal proceeds, three main aspects should be considered: legal basis for smooth and effective cooperation; adequate implementation of international legal instruments in every participating state and creation of practical and operational tools.
4. The impartiality of prosecutors is an important requirement for improving the quality of human rights protection. Therefore, member states should ensure that prosecutors can perform their functions with maximum independence, free from undue influences, inducements, pressures, threats or interference, direct or indirect, coming from any quarter or for any reason.
5. The quality of prosecutors' work depends also on guarantees provided for the personal safety of prosecutors and their families. In particular, when prosecutors are involved in cases of terrorism and serious and organised crime, prosecution services should take proactive measures for the protection of their lives, health, freedom, physical integrity and property.
6. False or biased news on investigations might betray the trust of the public in the quality of justice and generate doubts as to the independence, impartiality and integrity of the prosecution system and the courts. Therefore, one should achieve an active information policy towards the media and the public.

7. In order to act with the efficiency and quality expected by the public, prosecutors should have adequate human, financial and material resources in order to give appropriate attention to all relevant matters in considering their cases, including specialised units in the framework of prosecution services. Providing them with the assistance of qualified staff, initial and continuous training, adequate modern technical equipment including centralised database systems, and other resources can relieve prosecutors from undue strain and therefore increase the quality of their decisions and the efficiency of prosecution services. All these measures should be encompassed within a mid-term or long-term strategic view.
8. The CCPE considers that standards for defining quality of the work of prosecution services and of prosecutors should contain both quantitative and qualitative elements, such as number of opened and closed prosecution cases, types of decisions and results, duration of prosecutorial proceedings, case management skills, ability to argue clearly in speaking and in writing, openness to modern technologies, knowledge of other languages, organisational skills, ability to cooperate with other persons within and outside the prosecutor's office.
9. Clear reasoning and analysis are basic requirements for the quality of prosecutors' work. Therefore, they should fully consider all relevant evidence and examine all relevant factual and other issues revealed by the investigation and by the parties. All decisions or actions by prosecutors should reflect such relevant evidence, be in accordance with the law and general guidelines which may exist on the subject. Decisions and actions by prosecutors should be justified in consistent, clear, unambiguous and non-contradictory manner.
10. Where appropriate and in line with national legislation, prosecution services should publish guidelines for prosecutors setting out in general terms the principles which should guide the initiation and conduct of prosecutions. Such guidelines should set out the factors to be taken into account at different stages of a prosecution, so that a fair, reasoned and consistent policy underpins the prosecution intervention. Prosecution services should determine indicators and follow-up mechanisms in a transparent way, primarily to motivate prosecutors for higher levels of professional work. Internal follow-up within prosecution services should be regular and based on the rule of law.
11. To increase the quality of prosecutors' work, an effective and impartial complaint system and periodical questionnaires carried out with relevant stakeholders have been shown to be beneficial in terms of identification of possible deficiencies in the system. A control mechanism monitoring the prosecutors' decisions, especially as regards offences without a complainant or victim, may make it possible to redress possible mistakes made during the investigation and prosecution phases.
12. Qualified and effective case management ensures that prosecutorial decisions are taken with respect for any time limits and are carried out in an objective, impartial and professional manner, respecting the presumption of innocence and the right to defence, as well as the rights of victims of crime. It is part of their competences that prosecutors should also monitor respect for these fundamental rights and freedoms throughout the proceedings of law enforcement agencies.
13. In cases of terrorism and serious and organised crime, member states should take appropriate and proportional measures to allow prosecutors the use of special investigation techniques.