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NETWORK OF THE PROSECUTORS AT THE SUPREME JUDICIAL COURTS OF THE EUROPEAN UNION

Judicial independence and the rule of law: challenges facing European prosecution services

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## Introduction

Judicial independence is a fundamental component of the rule of law and an essential safeguard for the effective administration of justice. While the institutional arrangements governing prosecution services differ considerably across European countries, their ability to exercise their functions impartially, in accordance with the law and free from undue influence, is central to the protection of fundamental rights, public confidence in justice and the proper functioning of democratic institutions.

Across Europe, prosecution services face challenges extending beyond direct political interference in individual cases. These include institutional reforms affecting appointments and careers, pressure on prosecutorial decision-making, public attacks on judicial institutions, disinformation, increasing political polarisation, security threats and inadequate resources. Their cumulative effects may progressively weaken the safeguards necessary for the impartial administration of criminal justice.

The diversity of European prosecutorial systems adds a further dimension to these challenges. National arrangements reflect different constitutional traditions, institutional structures and relationships with the executive. Although no single model of prosecutorial organisation is required across Europe, all systems must ensure that

prosecutors can exercise their responsibilities in accordance with the law, without improper interference and subject to appropriate mechanisms of accountability.

These issues were among the central themes of the 17th conference of the NADAL Network, held in Brussels from 6 to 8 May 2026 under the overarching theme “Between tradition and future: the rule of law under pressure”.

This report considers the principal challenges affecting the independence of European prosecution services and the relevant standards developed within the European Union and the Council of Europe.

## I. Institutional independence and the pressures facing prosecution services

### 1.1. Political and institutional pressures on prosecutorial independence

The relationship between prosecution services and the executive remains one of the principal challenges in assessing prosecutorial independence in Europe. National systems differ significantly in their constitutional organisation, including the degree of autonomy granted to prosecutors, their hierarchical structure and the mechanisms through which they are held accountable. These differences do not necessarily indicate different levels of commitment to the rule of law. However, they raise a common question: how can prosecutors remain impartial and exercise their legal responsibilities without undue political interference?

Political and institutional pressures may take different forms, ranging from direct interference in individual cases to more gradual changes affecting the organisation and functioning of prosecution services. Appointment procedures, disciplinary mechanisms, hierarchical structures and the allocation of resources may become instruments of influence, even where existing legal guarantees formally remain in place.

Recent European experiences illustrate how institutional independence may be progressively undermined without the formal abolition of existing safeguards. Delayed appointments, institutional uncertainty, financial pressure and public campaigns directed against prosecutorial authorities can weaken their effective autonomy.

Particular concerns arise where interference with national appointment procedures affects the designation of European Delegated Prosecutors within the European Public Prosecutor's Office (EPPO). Such interference may have consequences extending beyond domestic institutional arrangements, potentially affecting the functioning of European judicial cooperation mechanisms.

Institutional reforms affecting prosecutorial appointments, disciplinary mechanisms, hierarchical structures and governance may also progressively concentrate authority and weaken prosecutorial autonomy. Measures that appear individually administrative or organisational may, when combined, substantially alter the conditions in which prosecutors exercise their responsibilities.

These developments highlight the distinction between formal legal guarantees and their practical effectiveness. Prosecutorial independence cannot be assessed exclusively by reference to constitutional provisions or statutory declarations. It also depends on how powers of appointment, supervision, discipline and removal are exercised in practice.

At the same time, independence must be reconciled with accountability. Prosecution services exercise significant public powers and must remain subject to appropriate legal oversight. The essential distinction is between legitimate institutional accountability, exercised through established legal procedures, and interference intended to influence prosecutorial decisions or penalise prosecutors for the lawful exercise of their functions.

### 1.2. Operational challenges, public pressure and the protection of prosecutors

The independence of prosecution services is also affected by the practical environment in which prosecutors perform their duties. Increasingly complex criminal activity, threats against judicial actors, public criticism and pressure to deliver rapid results may challenge their capacity to act objectively and impartially.

Efforts to respond rapidly to serious criminal threats may create tensions between criminal justice policy objectives and the safeguards necessary for independent prosecutorial decision-making. While legislative reforms and expanded investigative powers may be necessary to address evolving forms of organised crime, accelerated legislative processes can reduce opportunities for legal scrutiny and consultation.

Particular difficulties arise where proposed measures risk requiring prosecutors to pursue specific outcomes in criminal proceedings irrespective of whether the applicable legal conditions are satisfied. Such measures may interfere with the prosecutor's responsibility to assess individual cases according to law.

Threats to prosecutorial independence may also originate outside the political sphere. Intimidation, infiltration, information leaks and threats linked to organised criminal activity can directly affect the security of prosecutors and their ability to perform their duties without fear. Effective security arrangements, sufficient institutional resources and appropriate professional safeguards are therefore essential.

Beyond these operational challenges, prosecution services must contend with increasing public scrutiny and pressures arising from political and media debate. Criticism of judicial institutions is a legitimate feature of democratic societies, but it becomes problematic when used to intimidate individual prosecutors, discredit prosecutorial decisions or undermine public confidence in the administration of justice.

This raises questions about the responsibility of judicial institutions to defend their independence in the public sphere. The case-law of the European Court of Human Rights provides a relevant framework for examining the protection of professional expression and the possibility of a duty to speak out when fundamental judicial guarantees are threatened.

At the same time, prosecutors must exercise professional restraint, preserve the appearance of impartiality and avoid political involvement. Responsible institutional communication can help reconcile these requirements by explaining the role of prosecution services, the legal constraints governing their decisions and the principles underlying their independence.

Prosecutorial independence therefore requires more than formal legal guarantees. It also depends on adequate resources, effective protection against intimidation, appropriate working conditions and the capacity to maintain public confidence without compromising impartiality.

## II. European legal standards and safeguards for prosecutorial independence

### 2.1. European legal standards on prosecutorial independence

The European Union and the Council of Europe have developed complementary standards concerning prosecutorial independence and the proper administration of criminal justice.

European standards do not impose a uniform constitutional model for prosecution services. They nevertheless establish common principles intended to ensure that prosecutors exercise their responsibilities impartially, in accordance with the law and free from improper interference.

Within the European Union, Article 2 of the Treaty on European Union identifies the rule of law as one of the Union's foundational values, while Article 19(1) TEU requires Member States to provide remedies sufficient to ensure effective legal protection in the fields covered by EU law.

In *Associação Sindical dos Juízes Portugueses* (C-64/16, judgment of 27 February 2018), the Court of Justice of the European Union established that national courts which may be called upon to apply or interpret EU law must satisfy the requirements of effective judicial protection, including independence.

The position of prosecution services under EU law nevertheless differs from that of courts and tribunals. Prosecutors perform functions distinct from those of judges, notably through their responsibility for conducting prosecutions and their participation as parties in criminal proceedings. EU law does not therefore require prosecution services to enjoy identical institutional guarantees in every respect.

The scope of the independence required of prosecutors must instead be assessed in relation to their functions, the powers they exercise and the legal framework within which they operate.

This functional approach is particularly apparent in the case-law concerning the European arrest warrant.

In *OG and PI* (Joined Cases C-508/18 and C-82/19 PPU, judgment of 27 May 2019), the CJEU held that German public prosecutors' offices exposed to the risk of receiving instructions from the executive in individual cases could not qualify as issuing judicial authorities within the meaning of the European arrest warrant framework.

By contrast, in *PF* (C-509/18, judgment of 27 May 2019), the Court recognised that the Prosecutor General of Lithuania could qualify as an issuing judicial authority, having regard to the legal guarantees protecting that office against external instructions when deciding whether to issue a European arrest warrant.

These judgments demonstrate that the decisive consideration is not the formal classification of a prosecution service within the national institutional structure, but the existence of effective safeguards against external interference in the exercise of the powers concerned.

The requirements applicable to prosecutors also vary according to the judicial cooperation instrument at issue.

In *Staatsanwaltschaft Wien* (C-584/19, judgment of 8 December 2020), the CJEU held that a public prosecutor could qualify as an issuing authority for a European investigation order even where that prosecutor was exposed to the possibility of receiving individual instructions from the executive.

This distinction reflects the specific provisions and safeguards of the Directive on the European Investigation Order, as well as the differences between investigative measures and arrest and surrender procedures.

The Court has also addressed institutional arrangements governing prosecution services.

In *Asociaţia « Forumul Judecătorilor din România » and Others* (Joined Cases C-83/19 and others, judgment of 18 May 2021), the CJEU examined reforms affecting the Romanian judicial system, including the establishment of a specialised section responsible for investigating criminal offences allegedly committed by judges and prosecutors.

The Court recognised that the organisation of justice remains within the competence of Member States. Nevertheless, that competence must be exercised in compliance with EU law, particularly the requirements relating to the rule of law and effective judicial protection.

The establishment of a specialised prosecutorial structure must be justified by objective and verifiable requirements relating to the sound administration of justice and accompanied by safeguards preventing its use as an instrument of political control.

Related concerns were addressed in *Inspecţia Judiciară* (C-817/21, judgment of 11 May 2023), concerning the organisation and functioning of the Romanian Judicial Inspectorate. This judgment further illustrates the importance of preventing disciplinary mechanisms from becoming instruments of pressure on judicial actors.

Taken together, these developments demonstrate that Member States retain discretion in determining the organisation, hierarchy and accountability arrangements of their prosecution services, but that discretion is subject to limits where institutional arrangements risk undermining effective judicial protection or facilitating improper political interference.

## 2.2. Institutional safeguards and their practical effectiveness

The effectiveness of European standards depends on their implementation within national legal systems. Constitutional and legislative guarantees provide an essential foundation, but their practical significance also depends on the institutional and operational conditions under which prosecutors exercise their functions.

Procedures governing the appointment, promotion, discipline and removal of prosecutors play an important role. Transparency, objective criteria and appropriate procedural safeguards contribute to preserving professional autonomy.

These principles are reflected, in particular, in Recommendation Rec(2000)19 of the Committee of Ministers of the Council of Europe and in the work of the Consultative Council of European Prosecutors (CCPE).

Hierarchical organisation represents another important dimension. European systems reflect different traditions, with some granting prosecutors considerable autonomy and others relying on more hierarchical structures. These models are not, in themselves, incompatible with European principles. What matters is the existence of clear rules governing supervisory powers and instructions, together with safeguards enabling prosecutors to perform their duties impartially and in accordance with the law.

Prosecutorial independence also depends on adequate material and operational conditions. Human and financial resources, manageable workloads, access to specialised expertise and effective security arrangements all contribute to the capacity of prosecution services to fulfil their responsibilities.

Beyond legal arrangements, institutional culture and professional ethics play an essential role. Independence must be accompanied by appropriate accountability mechanisms, consistent with legality, impartiality and transparency. In this regard, Opinion No. 13 (2018) of the CCPE emphasises the complementary nature of prosecutorial independence and accountability.

Finally, dialogue among European prosecution services facilitates the exchange of experiences and a better understanding of responses to common challenges. While respecting the diversity of constitutional and judicial traditions, the NADAL Network provides a valuable framework for these exchanges and for sharing good practices.

## Conclusion

The independence of prosecution services remains an essential component of the rule of law and a fundamental condition for the impartial and effective administration of criminal justice.

Threats to prosecutorial independence may arise through different, often interconnected mechanisms. Political influence over appointments and careers, changes to institutional governance, pressure on prosecutorial decision-making, inadequate resources, intimidation and attacks on the credibility of judicial institutions can progressively undermine the conditions necessary for independent prosecutorial action.

The European Union and the Council of Europe provide complementary legal frameworks for addressing these challenges. Their standards recognise the diversity of national prosecutorial systems while requiring effective safeguards against improper interference.

The protection of prosecutorial independence therefore requires more than formal recognition in constitutional or legislative provisions. It depends on transparent and objective procedures governing prosecutorial careers, appropriate limits on hierarchical authority, adequate resources, effective protection against intimidation and a professional culture grounded in impartiality, integrity and accountability.

The diversity of European experiences also demonstrates the value of sustained dialogue between prosecution services. By facilitating exchanges of national perspectives and institutional practices, the NADAL Network contributes to a better understanding of the challenges confronting European prosecutors and the safeguards available to address them.

Ultimately, safeguarding prosecutorial independence does not require the adoption of a single institutional model across Europe. It requires a shared commitment to ensuring that prosecution services possess the legal guarantees, institutional protections and practical means necessary to fulfil their responsibilities impartially and effectively.