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FOURTH EVALUATION ROUND

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# FOURTH EVALUATION ROUND

## Corruption prevention in respect of members of parliament, judges and prosecutors

# EVALUATION REPORT

# FINLAND

Adopted by GRECO at its 59th Plenary Meeting
(Strasbourg, 18-22 March 2013)

## TABLE OF CONTENTS

## EXECUTIVE SUMMARY

1. In Finland, corruption prevention concerning members of parliament, judges and prosecutors relies to a large degree on trust, openness and public scrutiny and appears to be quite effective in practice. According to international indices, in Finland the perception of corruption in general and with respect to the above categories of persons in particular is clearly below the average of EU countries. Domestic actors suggest to further increase transparency and awareness in certain areas rather than to introduce a regime built on mandatory declarations, restrictions and enforcement. While GRECO takes account of this context, it nevertheless wishes to stress that the risks of corruption resulting from conflicts of interest must not be underestimated. The present report includes recommendations – as well as several further suggestions – aimed at raising awareness among members of parliament, judges and prosecutors about such risks, further increasing transparency and ultimately fostering public trust in them and the institutions they represent.

2. GRECO identified areas regarding corruption prevention among members of parliament which leave room for improvement. In particular, it is recommended to establish a Code of Conduct, clarify the concept of conflict of interest in the meaning of article 32 of the Constitution as well as the mechanism for its implementation, further elaborate the rules applicable to the acceptance of gifts and other advantages, make the disclosure of outside ties by members of parliament mandatory and widen its scope and ensure enforcement of the existing and yet-to-be established rules. Such measures should be seen as safeguards to ensure that the parliamentary process is free from – and also seen to be free from – improper external influence.

3. Turning to judges and prosecutors, the dissemination of the recently adopted Ethical Principles for Judges – in particular to lay judges and expert members of courts, the establishment of a comprehensive set of standards of ethics and conduct for prosecutors, as well as the provision of further guidance on these matters – including through specific training – are recommended. In addition, accessory activities – especially arbitration assignments – of high-ranking judges, which triggered much media attention at the time of the evaluation visit, warrant closer consideration. It would be unfortunate if a perception emerged among citizens that taking part in such activities might interfere with the professional duties of a judge – which could potentially undermine the authority of the court system. Finally, the Finnish authorities may wish to reflect on several further suggestions, *inter alia*, regarding the appointment procedure in respect of referendaries, expert members of courts and lay judges as well as disciplinary liability of judges and prosecutors for misconduct. The current reform process aimed at the elaboration of an Act on Judges and Courts, including regulation of the status of judicial staff, could provide a good opportunity to respond to some of the recommendations and proposals concerning judges included in the present report. The authorities may also wish to consider the elaboration of corresponding specific legislation on prosecutors.

## I. INTRODUCTION AND METHODOLOGY

4. Finland joined GRECO in 1999. Since its accession, the country has been subject to evaluation in the framework of GRECO's First (in June 2001), Second (in July 2004) and Third (in December 2007) Evaluation Rounds. The relevant Evaluation Reports, as well as the subsequent Compliance Reports, are available on GRECO's homepage (http://www.coe.int/greco).

5. GRECO's current Fourth Evaluation Round, launched on 1 January 2012, deals with "Corruption prevention in respect of members of parliament, judges and prosecutors". By choosing this topic, GRECO is breaking new ground and is underlining the multidisciplinary nature of its remit. At the same time, this theme has clear links with GRECO's previous work, notably its First Evaluation Round, which placed strong emphasis on the independence of the judiciary, the Second Evaluation Round, which examined, in particular, the public administration, and the Third Evaluation Round, which focused on the incriminations of corruption (including in respect of parliamentarians, judges and prosecutors) and corruption prevention in the context of political financing.

6. Within the Fourth Evaluation Round, the same priority issues are addressed in respect of all persons/functions under review, namely:

- ethical principles, rules of conduct and conflicts of interest;
- prohibition or restriction of certain activities;
- declaration of assets, income, liabilities and interests;
- enforcement of the applicable rules;
- awareness.

7. As regards parliamentary assemblies, the evaluation focuses on members of national parliaments, including all chambers of parliament and regardless of whether the members of parliament are appointed or elected. Concerning the judiciary and other actors in the pre-judicial and judicial process, the evaluation focuses on prosecutors and on judges, both professional and lay judges, regardless of the type of court in which they sit, who are subject to national laws and regulations.

8. In preparation of the present report, GRECO used the responses to the Evaluation Questionnaire (Greco Eval IV (2012) 7E) by Finland, as well as other data, including information received from civil society. In addition, a GRECO evaluation team (hereafter referred to as the "GET"), carried out an on-site visit to Finland from 4-8 June 2012. The GET was composed of Mr Jean-Christophe GEISER, *Conseiller scientifique, Unité Projets et méthode législatifs, Office fédéral de la justice* (Switzerland), Mr Frank RAUE, Deputy Head of Division, Division PM1, Remuneration of Members, Administration, German Bundestag (Germany), Mr Atle ROALDSØY, Senior Adviser, Ministry of Justice, Police Department (Norway) and Mr Georgi RUPCHEV, State Expert, Directorate of International Cooperation and European Affairs, Ministry of Justice (Bulgaria). The GET was supported by Mr Michael JANSSEN from GRECO's Secretariat.

9. The GET held interviews with several representatives of the *Eduskunta* (the national Parliament), including Chairs of the Audit Committee, the Constitutional Law Committee, the Finance Committee, the Legal Affairs Committee and senior civil servants of the Parliamentary Office. Additionally, the GET held interviews with representatives of different political parties and with representatives of the Åland Parliament. The GET also interviewed officials of the Ministry of Justice, the Supreme Court, the Helsinki Court of Appeal, the Central Finland District Court, the Supreme Administrative Court, the Turku Administrative Court, the Insurance Court, the Labour Court, the Market Court, the Office of the Prosecutor General, the Prosecution Office of Helsinki, the Judicial Appointments Board, the Office of the Chancellor of Justice and the Office of the Parliamentary Ombudsman. Finally, the GET spoke with representatives of the Association of Finnish

Judges, the Association of Finnish Lay Judges, the Association of Finnish Lawyers, the Finnish Prosecutors' Association, the Finnish Bar Association, Transparency International Finland, the University of Helsinki (Faculty of Law) and the Association of Justice Journalists.

10. The main objective of the present report is to evaluate the effectiveness of measures adopted by the authorities of Finland in order to prevent corruption in respect of members of parliament, judges and prosecutors and to further their integrity in appearance and in reality. The report contains a critical analysis of the situation in the country, reflecting on the efforts made by the actors concerned and the results achieved, as well as identifying possible shortcomings and making recommendations for further improvement. In keeping with the practice of GRECO, the recommendations are addressed to the authorities of Finland, which are to determine the relevant institutions/bodies responsible for taking the requisite action. Within 18 months following the adoption of this report, Finland shall report back on the action taken in response to the recommendations contained herein.

## II. CONTEXT

11. According to GRECO's previous pronouncements on the situation of corruption in Finland which are, on the whole, still valid today, "Finland is one of the members of GRECO least affected by corruption. The transparency and openness of the Finnish society, the control exercised by citizens and the media over the management of public affairs constitutes a powerful deterrent to corruption. High public ethics and an adequate system of internal and external controls also explain the very low-level of corruption cases found in Finland. The easy, free of charge access to the Parliamentary Ombudsman and the Chancellor of Justice facilitates the involvement of the general public in the control of the exercise of public functions."[1] In the three preceding Evaluation Rounds, GRECO has addressed altogether 29 recommendations to Finland in order to further improve its capacity to fight corruption, and Finland has fully implemented practically all of them.[2] Notably, Finland put in place a new legal framework aimed at providing transparency of political financing, in line with Recommendation Rec(2003)4 of the Council of Europe[3] and the recommendations based on it issued by GRECO. GRECO qualified those achievements as impressive, considering that Finland had had a long tradition of only limited regulation in this area.[4]

12. Finland was ranked in first place, as the country with the lowest perceived level of corruption, by Transparency International's yearly corruption perception index (CPI) for several years since 2000. In 2008 Finland fell to the fifth rank.[5] In the years that followed, the perceived level of corruption improved again according to the CPI and Finland regained the first rank in 2012. Rule of law and control of corruption have been ranked at the higher end of the World Bank governance indicators since 1996, the year in which they were first published.[6]

13. In terms of the focus of the Fourth Evaluation Round of GRECO, while parliaments and political parties top the list of least trusted institutions in most of the countries surveyed for the European Commission's Eurobarometer,[7] in Finland this phenomenon is still less marked than in other countries. Similarly, the percentage of those surveyed who think that corruption is widespread among politicians at national level was 38% in 2011, as compared to 57% in the EU 27.[8]

14. Turning to the judiciary, according to the most recent Eurobarometer on corruption the percentage of those surveyed who think that corruption is widespread in this branch of power (6%) is noticeably below the EU average (32%).[9] Moreover, it would appear that the judiciary is one of the most trusted institutions in Finland.

15. While the Finnish system has gained the confidence of the citizens in such crucial institutions as Parliament and the judiciary, the GET still sees room for improvement in the regime for preventing corruption. The measures recommended below may also

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[1] Cf. GRECO's First Round Evaluation Report on Finland, document Greco Eval I Rep (2000) 4E, paragraph 103.
[2] In total, 28 recommendations have been implemented satisfactorily or dealt with in a satisfactory manner and one recommendation has been partly implemented.
[3] Recommendation Rec(2003)4 of the Committee of Ministers of the Council of Europe on Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns.
[4] See document Greco Second RC-III (2011) 13E (paragraph 77).
[5] The CPI score dropped from 9.40 in 2007 to 9.00 in 2008. See http://www.transparency.org. – According to the Sustainable Governance Indicators (SGI) (2011) Finland Report by Bertelsman Stiftung, this drop could be explained by political financing scandals in 2008 (and again in 2009).
[6] See http://info.worldbank.org/governance/wgi/sc_country.asp
[7] See http://ec.europa.eu/public_opinion/cf/step1.cfm, under "Trust in Institutions".
[8] Special Eurobarometers on corruption 291 (published in April 2008), 325 (published in November 2009) and 374 (published in February 2012). – Likewise, Transparency International's Global Corruption Barometer 2010/2011 (GCB) indicated that in Finland, the perceived level of corruption in Parliament was clearly below the EU average, see http://gcb.transparency.org/gcb201011/.
[9] This result is again corroborated by other surveys such as the GCB.

respond to concerns expressed by some of the GET's interlocutors and other observers[10] about the existence of hidden corruption, questionable connections between business and politicians, a lack of investigative journalism and of public debate on corruption.

[10] See e.g. the National Integrity System Assessment on Finland. Transparency International (2011).

## III. CORRUPTION PREVENTION IN RESPECT OF MEMBERS OF PARLIAMENT

Overview of the parliamentary system[11]

16. Finland is a parliamentary republic with a multi-party system. The current Constitution dates from 1999. The unicameral national Parliament (the *Eduskunta*) exercises supreme legislative authority. It passes legislation, decides on the State budget, approves international treaties and supervises the activities of the Government (the Council of State). It may alter the Constitution and ordinary laws, dismiss the cabinet, and override presidential vetoes. Legislation may be initiated by the Council of State or a member of parliament (MP) and since March 2012, by a citizens' initiative.

17. The *Eduskunta* is composed of 200 MPs elected directly for a term of four years using the semi-proportional *d'Hondt* method within 15 constituencies. A number of MPs proportional to the number of Finnish citizens residing in the constituency are elected from each constituency. However, one MP is always elected from the constituency of the autonomous Åland Islands. Candidates are mainly nominated by political parties, but the election law also allows the candidacy of a person supported by a minimum of 100 Finns united in an electoral association. There is no hard and fast election threshold to obtain a seat. Currently 43 per cent of MPs are women.

18. The imperative mandate is prohibited by the Constitution which provides that an MP is to follow justice and truth in his/her office and to abide by the Constitution, and that no other orders are binding on him/her. Due to the representative character of the parliamentary system, MPs are not considered to be exclusive representatives of the electoral body that has elected them nor are they direct representatives of their electoral district. On the other hand, in practice, MPs are bound by party discipline both as members of the party and as members of the parliamentary group.

19. Under articles 27 and 28 of the Constitution, an MP loses his/her mandate if s/he is elected President of the Republic or appointed Parliamentary Ombudsman or to certain high-level positions, or if s/he forfeits his/her eligibility. An MP can also be released from office upon his/her request if Parliament deems there is an acceptable reason for granting such release. Further, if an MP essentially and repeatedly neglects his/her duties as a deputy, Parliament may, after having obtained the opinion of the Constitutional Law Committee, dismiss him/her from office permanently or for a given period by a decision supported by at least two thirds of the votes cast. Also, if an MP has been convicted of a deliberate crime or an electoral offence, Parliament may inquire whether s/he can be allowed to continue to serve as MP. If the offence is such that the accused does not command the trust and respect necessary for office, Parliament may, after having obtained the opinion of the Constitutional Law Committee, declare the MP's term of office terminated by a decision supported by at least two thirds of the votes cast.

20. According to the authorities, there have not been many instances in which the rules on dismissal of an MP had to be applied or considered. The GET was informed of one case in 1993, where a member of Government – who was at the same time an MP – had promised State aid to a bank for granting him a private loan and was convicted by the High Court of Impeachment of requesting a bribe.[12] Subsequently, Parliament decided to terminate his term of office as an MP. More recently, in 2010, the Chancellor of Justice submitted to the Constitutional Law Committee a notification of an inquiry into the lawfulness of the official acts of the former Prime Minister.[13] The Constitutional Law Committee requested a pre-trial investigation. In the end the Committee concluded that there had been a violation of official duties but the case was not severe enough to open

[11] For the Parliament of Åland, see below under the separate chapter.
[12] Cf. article 101 of the Constitution. For more details on the High Court on Impeachment, see below under "Corruption prevention in respect of judges".
[13] Cf. article 115 of the Constitution.

proceedings in the Court of Impeachment. Parliament decided in 2011 not to bring charges.

21. The internal organisation and conduct of work of the *Eduskunta* are specified in the Constitution and Parliament's Rules of Procedure (RoP). The Presidency of Parliament comprises the Speaker and two Deputy Speakers who are elected by Parliament from among its members by an absolute majority vote for the parliamentary session. The Speaker, the Deputy Speakers and the chairpersons of parliamentary committees form the Speaker's Council which, *inter alia*, issues instructions on the organisation of parliamentary work and decides on the procedures to be followed in the consideration of matters in Parliament. Standing committees (altogether 16) are appointed by Parliament for each electoral term, including the Constitutional Law Committee which is tasked, *inter alia*, with issuing statements on the constitutionality of legislative proposals (as there is no constitutional court in Finland) and other matters brought for its consideration, and on their relation to international human rights treaties.[14]

22. The administration of Parliament is entrusted to the Office Commission which is composed of the Speaker, the Deputy Speakers and four members elected by Parliament from among its members (and four alternates for the latter members). The Office Commission supervises the work of the Parliamentary Office. The latter is headed by the Secretary General who is elected by Parliament.

23. Parliament appoints for a term of four years a Parliamentary Ombudsman. The Ombudsman is an independent "guardian of legality", as is the Chancellor of Justice who is appointed by the President of the Republic. The two institutions co-exist for historical reasons and their duties overlap to a large extent.[15] Both institutions oversee the lawfulness of the acts of the Government and the President, ensure that the courts and other authorities and officials (including prosecutors) obey the law and fulfil their obligations and, in this process, monitor the implementation of basic rights and liberties and human rights. They have no mandate to supervise the activity of MPs or of Parliament as a whole.

24. The Ombudsman and the Chancellor agree on a division of labour (case by case). They receive complaints from the public and also investigate cases on their own initiative. They have similar investigative methods as well as powers at their disposal, including the power to give opinions and instructions to authorities/officials, issue a reprimand to a public official and order that a criminal charge be brought. Both authorities submit an annual report to Parliament (and to the Government, in the case of the Chancellor of Justice) on their activity and on how the law has been obeyed.

Transparency of the legislative process

25. A proposal for the enactment of an act is initiated in Parliament through a proposal submitted by the Government or through a legislative motion submitted by an MP. In addition, since March 2012, a new form of legislative initiative offers citizens a possibility to have their proposal considered by Parliament. A group of at least 50,000 Finnish citizens entitled to vote have the right to submit an initiative. A citizens' initiative may include either a bill or a proposal that a drafting process should be started. A citizens' initiative may also concern amending or repealing an effective act.

26. The authorities indicate that draft laws are usually brought to the attention of the public already at an initial stage. Information about issues under preparation can be found on the websites of the ministries concerned. Information about legislative projects being prepared by public servants at ministries can also be obtained from the

[14] See articles 35 and 74 of the Constitution and section 7 RoP.
[15] See articles 108 and 109 of the Constitution.

Government Project Register (HARE), which is a shared public online service of Parliament and the ministries. The authorities add that besides hearing experts and interest groups during the evaluation of a bill, the standing committees of Parliament can also arrange open public hearings for the purpose of gathering information and opinions.

27. The plenary sessions of Parliament are open to the public, unless Parliament for a very weighty reason decides otherwise for a given matter.[16] The agendas of plenary sessions are published on the internet and all plenary sessions are webcasted.

28. Almost all votes in Parliament are cast electronically and the results can be disclosed immediately on the internet. The results from the electronic cast are always published on the Parliament's webpages, with tables showing how each MP has voted and voting statistics according to government/opposition, parliamentary group, gender and by constituency. It is expected that following the current reform of the Parliament's webpages, more emphasis might be placed, *inter alia*, on visualisation of vote results as from 2013. The results of votes are archived.[17]

29. Information on the composition of parliamentary committees is published on the website of Parliament. The meetings of parliamentary committees are as a rule not open to the public. However, a committee may open its meeting to the public during the time it is gathering information for the preparation of a matter.[18] In accordance with section 43 RoP, minutes are kept of committee meetings, indicating the members present and the experts heard as well as the proposals and decisions taken, with voting results. Committee minutes are stored in an information network accessible to the public and preparatory documents concerning a matter become public when consideration of the matter by the committee has been concluded - unless the committee decides that for a compelling reason the documentation is to be kept secret, e.g. if divulging information would cause significant harm to Finland's international relations or to capital or financial markets.[19] According to the authorities, it is the general understanding that the possibility for a committee to decide to restrict public access to its documentation is to be used only exceptionally.

Remuneration and economic benefits

30. Members of parliament are expected to work full-time but there are no fixed working hours. They are paid a remuneration of €6,335 a month, with the figure rising to €6,811 after 12 years of service. Committee chairs receive a monthly supplement of €714 or, in certain cases, €1,178. Chairs of specified subcommittees receive a monthly supplement of €714 or €471. Parliamentary group chairs receive a monthly supplement of €1,178 if the group has 16 or more members and €714 if it has 3-15 members. The Speaker receives €11,675 and the Deputy Speakers €9,729 a month. MPs' pay is taxable income. In 2010, the average gross monthly salary in Finland was €3,043.20.

31. Compensation for expenses ranging from €990 to 1,810 a month is received depending on where MPs live and whether they have a second home in the Helsinki metropolitan area. It is in the form of a lump-sum, is intended to cover work-related costs and is tax-free. MPs are also entitled to travel free of charge by rail, scheduled flight and coach in Finland and by taxi in the Helsinki metropolitan area for purposes related to legislative work.

[16] Article 50 of the Constitution and section 67 RoP. The last closed session of the plenary was held during World War II.
[17] Sections 61 to 63 RoP.
[18] Article 50 of the Constitution.
[19] See section 43a.2 RoP.
[20] Source: Statistics Finland (latest available figures).

32. Information on MPs' salaries and additional benefits is public. Receipts and accounts can be read by media and citizens at the Parliamentary Office's Accounts Office upon request. There is a right of access to accounting documents and copies can be obtained (€ 0.05 per page).

33. The budget for an MP's office is provided solely from public resources. No separate financial allowances for the purpose of running an office are received. MPs are entitled to a personal assistant employed by the Parliamentary Office with a monthly salary for fulltime work of € 2,315 and they dispose of two furnished office rooms with standard office equipment free of charge on the parliamentary premises. Other services provided free of charge in connection with the work of an MP include use of a mobile phone.

34. An MP can receive a pension at the age of 65. Pensions are earnings-related and calculated according to the length of career and income received during the last 15 years. The pension accrues 4.0 % per annum. The maximum pension amounts to 60 % of the average monthly salary over the last 15 years of employment.

Ethical principles and rules of conduct

35. Articles 29 to 32 of the Constitution regulate MPs' independence, immunity, freedom of speech, conduct and conflicts of interest. The authorities indicate that these articles do not form a Code of Conduct in the strict sense but can be seen as the core ethical values for MPs. In addition, there are internal guidelines relating to gifts and a well-established, although not legally binding, practice of reporting and publishing outside ties. However, there is no single document codifying the different rules of conduct for MPs (Code of Conduct).

36. During the on-site visit, the GET was presented conflicting views regarding the desirability of elaborating a specific Code of Conduct for MPs. Some interlocutors held the view that the existing rules and arrangements worked well and that a Code of Conduct would not make any significant difference. *Inter alia*, the legal framework provided by the Constitution, the preventive control function of the Constitutional Law Committee, as well as the role and responsibilities of the Speaker of Parliament, the Secretary General of Parliament and the committees and Parliament itself were evoked. On the other hand, a number of interlocutors supported the idea of elaborating a Code of Conduct for MPs and thought it could be a useful tool for creating greater awareness among MPs of the requirements and expectations connected to their role as elected representatives. In addition, on the understanding that such a Code would be made easily accessible to the public, it would constitute a very clear message to the general public that ethical issues are indeed being given appropriate attention. In this connection, the GET noted that some interlocutors shared their concerns about the existence of hidden corruption, strong connections between business and politicians, lack of public debate on corruption and lack of clear regulation on conflicts of interest of MPs. The GET furthermore wishes to draw attention to Guiding Principle 15 of Resolution (97) 24 of the Committee of Ministers of the Council of Europe on the twenty guiding principles for the fight against corruption "to encourage the adoption, by elected representatives, of codes of conduct …".

37. Regarding the contents of such a Code, at the very least it will have to mirror and make more appropriately accessible the basic standards concerning the fundamental duties of MPs and restrictions on their activity. Given the fact that the relevant legal provisions tend to be rather vague, and in order for it to be a meaningful tool in the hands of MPs, it is crucial that the Code of Conduct also provides clear guidance on the prevention of conflicts of interest and on related issues, such as the acceptance of gifts and other advantages, incompatibilities, additional activities and financial interests, misuse of information and of public resources, the obligation to disclose outside ties and attitudes towards third parties such as lobbyists (including elaborated examples).

Moreover, complementary measures such as the provision of specific training or confidential counselling on the above issues would be a further asset. Consequently, given the preceding paragraphs, **GRECO recommends (i) that a Code of Conduct for members of parliament be adopted and made easily accessible to the public; and (ii) that it be complemented by practical measures for its implementation, such as dedicated training or counselling.** In this connection, the recent decision of the Speaker's Council to appoint a working group tasked, *inter alia*, to consider the necessity of preparing a Code of Conduct for MPs and to draft the possible contents of such a code was noted with interest. The GET wishes to add that on top of such a code, the existing framework (rules, guidelines and recommendations) on conflicts of interest, the acceptance of gifts and the disclosure of outside ties need to be further developed, as recommended below.

Conflicts of interest

38. According to Article 32 of the Constitution, "a Representative[21] is disqualified from consideration of and decision-making in any matter that concerns him/her personally. However, s/he may participate in the debate on such matters in a plenary session of the Parliament. In addition, a Representative shall be disqualified from the consideration in a committee of a matter pertaining to the inspection of his/her official duties."

39. The authorities indicate that the starting point for assessing whether a matter "concerns" an MP "personally", is whether a decision is at stake that specifically concerns the MP's own legal or economic situation. Each MP is on his/her own initiative obliged to make sure that s/he does not take part in any discussions or decisions that s/he according to article 32 is not justified to take part in. The authorities state that in practice, if an MP is unsure whether s/he is able to take part in the preparation or decision-making in a certain matter, s/he can ask for a legal opinion from the Secretary General on whether there is a conflict of interest or not. If deemed necessary, the Secretary General Office consults jurisprudents on the Constitution before issuing a recommendation on the matter.

40. According to the authorities, during the last three years, there has been one case where an MP on his own initiative announced a conflict of interest and thereby did not take part in committee discussions and decision-making. Moreover, there have been several cases where MPs have asked for advice on possible incompatibility and one where the committee chair asked for an investigation of a committee member's possible conflict of interest. In those cases, the Secretary General consulted jurisprudents on the Constitution who stated that there was no conflict of interest. The authorities indicate that such cases are not recorded.

41. The GET notes that the interpretation and application of article 32 of the Constitution – which leads to severe legal consequences, namely being disqualified from decision-making – is a highly sensitive issue. The disqualification of MPs because they are "concerned personally" can reverse the majority structure in Parliament. Therefore, the GET accepts the cautious application of this provision and the rather narrow interpretation of the concept of "concerned personally". That said, the GET takes the view that article 32 of the Constitution does not serve as a sufficient reference for preventing and resolving conflicts of interest of MPs and that it needs to be complemented in order to prevent any confusion and to raise awareness. Some interlocutors interviewed during the visit argued that the general nature of this provision poses a problem of legality. For example, it does not appear to be entirely clear whether an MP is also "concerned personally" in the meaning of article 32 of the Constitution if the economic or legal situation of a family member or another related person, including an organisation, is concerned. Furthermore, the procedure and competences for disqualifying an MP need to

[21] I.e. an MP.

be clarified. In this regard, it was only stated that the Speaker of Parliament (or, in case of committee meetings, the committee chair) has to ensure that the Constitution is complied with and that "in the last resort" the Speaker or the Committee decides on whether there is a conflict of interest or not.

42. Although some representatives of Parliament met had no particular concerns relating to conflicts of interest and referred to a publication[22] which to some degree discusses the interpretation of article 32 of the Constitution, some other interlocutors held the view that this issue was not addressed by Parliament with the seriousness it deserved. The GET is of the opinion that the absence of clear rules is unsatisfactory, bearing in mind that the law does not contain any restrictions on business activities performed and financial interests held by MPs, and that many MPs in Finland are engaged in various additional functions.[23] The present situation calls for a clarification of the rules, the provision of guidance to MPs on types of conflicts and elaborated examples and how to act when faced with actual or potential conflicts of interest, and for the further development of a mechanism for the implementation in practice of article 32 of the Constitution. This would be of benefit not only to MPs themselves and parliamentary administration, but also to the public at large and the public's confidence in Parliament and its members. Legislative changes would not necessarily be required, the provision of clarifications and guidance could be effected through other instruments. Consequently, **GRECO recommends that written (public) clarification of the meaning of article 32 of the Constitution (conflicts of interest) and guidance on the interpretation and application of that article be provided to members of parliament.**

Prohibition or restriction of certain activities

*Gifts*

43. The Office Commission of Parliament has adopted two internal guidelines concerning gifts, the "*Eduskunta* gifts policy 2009-2010" which concerns gifts given to MPs (and which is still in force) and the "Principles underlying *Eduskunta* representation" which concerns expenditure for hospitality provided on behalf of Parliament. According to the gifts policy, a gift given to an MP "when s/he is representing Parliament", valued at €100 or more, should be considered to be the property of Parliament and the gift must be registered in the gift record held by the Parliamentary Office. The gift record is public, anybody can consult it at the Parliamentary Office for free. According to the authorities, the term "when s/he is representing Parliament" is understood in practice as covering, in particular, official representations in meetings, committee visits abroad, visits of Parliament by delegations from abroad etc. Gifts received by committees are generally stored in the Parliament premises (e.g. committee meeting rooms). The GET was told that gifts valued at €100 or more were rare and came mainly from foreign visitors.

44. Members of parliament are prohibited from accepting bribes in the meaning of the bribery provisions in Chapter 40 of the Criminal Code (CC) "offences in office".[24] Under article 4(1) of this chapter, "if an MP, for himself or herself or for another, (1) requests a gift or other unlawful benefit or otherwise takes an initiative in order to receive such a benefit, or (2) accepts or agrees to accept a gift which cannot be considered an act of ordinary hospitality or other unlawful benefit, or agrees to a promise or offer of such a gift or other benefit in order to act in his/her parliamentary mandate in a certain manner or to refrain from acting in a certain manner in exchange for the benefit, or as a reward for such action, and the act is conducive towards seriously undermining the independence of the exercise of his/her parliamentary mandate, s/he shall be sentenced

[22] "Law and procedures in the work of Parliament" (Juridik och former i riksdagsarbetet).
[23] See below under "Incompatibilities and accessory activities, post-employment restrictions".
[24] The bribery provisions applicable to MPs were subject to amendments adopted on 13 March 2011 and which entered into force on 1 October 2011 and include definitions of basic and aggravated forms of such bribery.

for acceptance of a bribe as a member of Parliament …".[25] According to the authorities, whether a gift can be considered an – acceptable – act of ordinary hospitality must be judged on a case by case basis as detailed definitions of acceptable and unacceptable gifts do not exist. Some guidelines can be found in recent legislative documents,[26] according to which, for example, compensation for reasonable costs relating to travel, accommodation and meals when taking part in seminars, events etc., ordinary gifts that relate to anniversaries and ordinary commercial gifts, would be acceptable. Finally, the authorities stress that in determining the meaning of "ordinary hospitality" the nature of the work of an MP must be taken into account, i.e. it is normal for MPs to keep in touch with voters and interest groups and to participate in a variety of events.

45. The GET acknowledges the fact that the acceptance by MPs of gifts has been regulated in internal guidelines – the "*Eduskunta* gifts policy 2009-2010", but it has identified two areas of concern. Firstly, there appears to be no clear rule or mechanism for the valuation of gifts. The authorities state that it could be possible to ask, for example, for an expert valuation but this did not occur in practice. Since the basic rule is that gifts with a value exceeding €100 are the property of Parliament, it seems reasonable to elaborate an appropriate mechanism so that MPs can seek authoritative advice when in doubt as to whether the value of a gift exceeds this threshold or not . Secondly, it is unclear whether the concept of "gift" in the meaning of the above-mentioned guidelines refers only to tangible objects or whether it is broad enough to also cover benefits in kind such as hospitality, reimbursement of travel and accommodation expenses by third parties or invitations to cultural or sports events. On-site, the GET was concerned to hear of grey zones in this respect. Examples quoted included inviting MPs on trips to Lapland without a clear link to parliamentary work, or to sports events. Notably, it would appear that invitations to the 2011 World Championship in ice-hockey co-hosted by Finland triggered some public controversy and that such practices could impact society's confidence in the integrity of MPs. The GET is of the opinion that the guidelines are not designed to deal with such benefits, in particular it is unclear what conduct is expected of MPs who receive benefits valued at €100 or more. From the point of view of corruption prevention, this state of affairs is unsatisfactory, especially as under the existing criminal legislation "acts of ordinary hospitality" are excluded from the scope of the bribery provisions. The current situation warrants the establishment of clear rules on the acceptance by MPs of benefits. This would not necessarily involve further restrictions but could, for example, consist in a clearly defined notification system and more detailed guidance. In view of the above, **GRECO recommends that the rules applicable to the acceptance of gifts by members of parliament be clarified and further developed so as to ensure that they provide for an appropriate mechanism for the valuation of benefits received or offered (in cases of doubt), that they cover any benefits, including benefits in kind, and that they clearly define what conduct is expected of members of parliament who are given or offered such benefits.**

*Incompatibilities and accessory activities, post-employment restrictions*

46. Outside posts can be held by MPs. However, an MP loses his/her mandate if elected President of the Republic or appointed Parliamentary Ombudsman, Chancellor of Justice, justice of the Supreme Court or the Supreme Administrative Court or Prosecutor-General.[27] Moreover, a person holding military office cannot be elected to parliament. Tenure is suspended for the duration of military service and when serving as a Member of the European Parliament. Finally, a State civil servant elected to parliament is

[25] The new article 4a of Chapter 40 of the CC foresees more severe sanctions for aggravated cases of passive bribery of MPs. Furthermore, articles 14a and 14b of Chapter 16 of the CC ("offences against the public authorities") criminalise active bribery of MPs.
[26] E.g. Government proposal 79/2010 regarding bribery rules in the Criminal Code and reports of the relevant committees.
[27] See articles 27 and 28 of the Constitution.

considered to be on leave of absence for the duration of the term in parliament if s/he does not choose to resign.[28]

47. The GET was informed that in practice, notwithstanding the fact that MPs are expected to work full-time, many of them are engaged in various additional functions, such as membership or head of a provincial federation (responsible for regional planning), head of a federation of municipalities, membership of the board of directors of a co-operative bank or other business, membership of the supervisory board of a State-owned company, etc. Moreover, it would appear that about 3/4 of all MPs are also members of their respective municipal council and almost 1/5 are heads of a municipal executive board. In addition, many are heads of different municipal committees, some in the field of municipal planning.

48. There are no regulations that would prohibit MPs from being employed in certain positions or in specific sectors upon expiry of their term of office.

*Financial interests, contracts with State authorities, misuse of public resources, third party contacts*

49. There are no prohibitions or restrictions on the holding of financial interests by MPs or on MPs entering into contracts with State authorities (the general legislation on public procurement applies). Moreover, there are no specific rules on (mis)use of public resources by MPs. The authorities state that the possibility to directly misuse public money for personal benefit is quite limited, as MPs cannot control or decide on the use of significant sums of public resources themselves. Finally, there are no specific prohibitions or restrictions on MPs' contacts with third parties, but the prohibition of the imperative mandate under article 29 of the Constitution has to be kept in mind.

*Misuse of confidential information*

50. The Act on the Openness of Government Activities sets forth the general principles on the right to information on Government activities and also contains provisions on restricted access (secrecy). As concerns rules on misuse of confidential information, the authorities refer to the data and communication offences included in Chapter 38 of the CC – namely, "secrecy offence" (article 1) and "secrecy violation" (article 2).

51. Overall, regarding the prohibition or restriction of certain activities, the GET notes that the authorities of Finland have opted for a system of little regulation which leaves it open to MPs to engage in business activities, hold financial interests, enter into contracts with State authorities or engage in additional functions during their term of office. The information gathered by the GET shows that those possibilities are broadly made use of by MPs; many hold positions, for example, as elected local representatives or as members of the supervisory boards of State-owned companies. It appears to be generally accepted that this situation is explained by the culture and legal tradition of Finland, which is based on openness and transparency rather than restrictions and control. The majority of those the GET spoke to therefore argued that possible future reforms should be aimed at perfecting the existing system and further increasing transparency. The GET generally accepts this approach, it being understood that the situation surrounding the interpretation and application of the rules on disqualification under article 32 of the Constitution will be clarified, as recommended above, and that the notification system on "outside ties" will be further developed (see below). Finally, while it is clear that a parliamentary mandate will not, as a rule, span a whole career, the GET is nevertheless concerned that an MP could drive legislation through Parliament while having in mind interests that would come into play once s/he leaves Parliament to

[28] Section 23 of the State Civil Servants Act.

join/return to the private sector. The authorities are encouraged to reflect on the necessity of introducing adequate rules/guidelines for such situations.

Declaration of assets, income, liabilities and interests

52. There is no legal obligation on an MP to declare assets, income, liability or interests in Finland. However, by a decision of the Speakers´ Council, MPs are asked to file a notification of interests ("disclosure of outside ties") with the Parliamentary Office at the beginning of each parliamentary term, on a form established by the Parliamentary Office. During the term an MP may, on his/her own initiative, supplement the information or state any changes that have occurred. It was indicated to the GET, in the course of the on-site visit, that in practice the Parliamentary Office asks MPs to update the information provided once, in the middle of the parliamentary term. Disclosure of outside ties is not mandatory, but the authorities state that during the last electoral period, all MPs filed notifications of interests and during the current term, only four MPs have not filed such notifications. A register of notifications and updates by MPs is kept by the Parliamentary Office. It is published on the Parliament's website and reveals the complete information provided.[29]

53. One category of information included in the notification of interests relates to certain additional activities, namely paid positions in a private enterprise or organisation, engagement in a profession or trade, posts in central or local government and other public sector organisations, administrative tasks (e.g. membership in a supervisory board) in State-owned companies, in financially significant enterprises, in banks and other financial institutions and in other significant organisations. Furthermore, positions of trust – at the national or central level – in representative organisations (e.g. trade unions or business organisations) as well as municipal and church positions of trust are also included. Information on remuneration from accessory activities is not asked for.

54. The second category of information relates to the personal financial status of MPs, such as significant holdings of shares or other assets that may have been acquired for business or investment purposes (e.g. acquisition of 30% of a company's voting rights or an investment amounting to over €50,000) and debts of over €100,000 incurred for business or investment purposes, as well as guarantees given or other liabilities incurred for the same purposes and amounting to over €200,000. Information concerning family members or relatives is not included.

55. During the interviews held on site, the GET was told that the above-mentioned 1993 bribery case involving an MP who was a member of Government[30] was a turning point in Finland in that it showed the need to reveal conflicts of interest at an early stage. Subsequently, the Constitution was amended in 1995 to oblige ministers to submit information on outside ties.[31] In the same vein, at the beginning of the 1995-1998 electoral term the voluntary system of disclosure of MPs' outside ties was introduced. Since then, for each electoral term a decision by the Speaker's Council – which is by nature a recommendation – asks MPs to submit the above-mentioned information. The GET was interested to hear that the Speaker's Council has repeatedly evaluated the procedure and has, in particular, considered the advisability of making the disclosure of outside ties by MPs mandatory. However, such an obligation was not introduced as it would raise further questions relating to monitoring and enforcement and as the system of voluntary disclosure worked quite well. It was further explained that interest and pressure from the media was instrumental in motivating the submission of forms. On the other hand, the GET noted that a number of representatives met during the visit did see some merits in making the reporting arrangement obligatory, and it did not hear any

[29] By contrast, ad-hoc declarations on conflicts of interest submitted by MPs to the Speaker or the relevant committee chair are not registered.
[30] See above under "Overview of the parliamentary system".
[31] See article 63 of the Constitution.

major arguments opposing such a solution. Given the fact that the vast majority of MPs actually submit notifications of interests, the GET cannot see why they should remain optional. Mandatory and regular notification and disclosure of interests (e.g. on an annual basis) would, in the GET's view, be the logical next step and consistent with the existing requirements on ministers.

56. The GET furthermore takes the view that the content of the current notifications of interests leaves room for improvement. MPs mainly provide information on additional activities, significant assets (e.g. acquisition of 30% of a company's voting rights or an investment of over €50,000), debts of over €100,000 incurred for business or investment purposes and guarantees or other commitments of over €200,000 incurred for the same purposes. The GET notes that no information about the remuneration received by MPs for each additional activity is provided, and it is of the opinion that such information needs to be included, in order to facilitate the identification of potential conflicts of interest. The information currently available on the total annual income of each citizen, and thus an MP under existing tax law, which was referred to by some interlocutors, is not sufficient for this purpose. Moreover, the GET takes the view that the above-mentioned thresholds are quite high and merit further consideration. Finally, no information is provided on spouses or dependent children. The GET is to some extent concerned that the existing transparency regulations may be circumvented by transferring property to such persons.[32] Several interlocutors supported widening the scope of notifications, mentioning also that this issue had been subject to debate in the media. On the other hand, the GET is fully aware of the associated challenges that may arise in relation to concerns for the privacy of family members and it takes the view that a reasonable balance has to be struck between the need to protect the legislative process from improper influence and the protection of individual privacy rights. A proportionate solution might be found by requiring MPs to give information on significant interests, income and assets of spouses and dependent children, though not necessarily making it public. Consequently, given the preceding paragraphs, **GRECO recommends (i) that regular disclosure of outside ties by members of parliament be made mandatory and that its scope be widened to include information on income received from additional activities; and (ii) that consideration be given to widening the scope of disclosure to include information on assets and liabilities below the current thresholds as well as information on spouses and dependent family members (it being understood that such information would not necessarily need to be made public).**

Supervision and enforcement

*Rules on the use of public funds*

57. Control over the legitimate use of MPs' benefits is exercised by the Parliamentary Office's Accounts Office and the Parliamentary Auditors. Since part of the compensation for expenses granted to MPs living outside Helsinki metropolitan area is meant to compensate costs of a second home (€492), the MPs concerned have to declare permanent residences and second homes to the Parliamentary Accounts Office. Two civil servants are responsible for verifying the information provided. Accounts concerning free travel allowances are supervised by four civil servants.

58. Parliament elects from among its members three auditors (and designated deputies) – who then elect a fourth auditor and deputy who must be chartered public finance auditors or authorised public accountants.[33] They are tasked with auditing the finances and administration of Parliament and submit an annual audit report to Parliament. Twice a year the two chartered accountants audit payments made to 10-20

[32] Such cases (involving young children) have, according to testimony given during the interviews, occurred in the past.
[33] Section 14 RoP.

MPs to check whether the paid remunerations, compensation for expenses and costs of free travel have been paid according to the law.

*Rules on conflicts of interest and disclosure of outside ties*

59. As stated above, each MP is obliged to make sure that s/he does not take part in any discussions or decisions that, according to article 32 of the Constitution, s/he is disqualified from taking part in. The authorities state that, as it is the Speaker's duty to ensure that the Constitution is complied with in the consideration of matters in plenary sessions, it is also his/her duty to ensure that the rule on conflicts of interest is obeyed. In the committees this duty belongs to the committee chair. The authorities furthermore indicate that in the last resort the Parliament and its other organs are responsible for preventing conflicts of interest as a collective organ. A recommendation aimed at clarifying/further developing the mechanism for the implementation of article 32 of the Constitution has been made above.[34]

60. Regarding disclosure of outside ties by MPs, the authorities indicate that the holder of the register of interests – i.e. the Parliamentary Office – does not check the veracity of data provided or examine whether all questions have been answered. Thus it is the MP him/herself who is responsible for the accuracy of the information.

61. As MPs are not legally obliged to declare their interests and assets, no disciplinary sanctions or other specific enforcement measures are in place. Likewise, violation of the rules on conflicts of interest under article 32 of the Constitution is not a judicially punishable act. The authorities stress that traditionally, there has been trust in political accountability in Finland.

62. As mentioned before, several criminal law provisions may be applied, in particular the provisions on bribery and data and communication offences.
- Under article 4(1) of Chapter 40 of the CC ("offences in office"), acceptance of a bribe as an MP is punishable by a fine or by up to two years' imprisonment. The new article 4a of this chapter foresees imprisonment of between four months and four years for aggravated cases, e.g. if the gift or benefit is of considerable value.
- Under Chapter 38 of the CC ("data and communication offences"), "secrecy offences" are punishable by a fine or by one year's imprisonment (article 1). In cases of lesser significance or if specifically provided for, such violations constitute "secrecy violations" which are punishable by a fine (article 2).
The authorities indicate that there have not been any such criminal cases in recent years.

63. MPs are subject to only limited legal liability for their actions as MPs. Pursuant to article 30 of the Constitution, they may not be charged in a court of law nor deprived of liberty for opinions expressed in Parliament or for conduct in the consideration of a matter, unless Parliament consents by a decision supported by at least five sixths of the votes cast. Other crimes committed by MPs can be prosecuted as if they had been committed by any other citizen and the permission of Parliament for this is not required. However, an MP enjoys enhanced protection in criminal proceedings, in that s/he may not be arrested or detained before the commencement of a trial without the consent of Parliament – unless there are substantial reasons to suspect that a crime for which the minimum punishment is imprisonment for at least six months has been committed.

64. The GET notes that control over the conduct and over possible conflicts of interest of MPs is, to a large extent, entrusted to the general public and the media who may, in particular, consult the text of the voluntary disclosures of outside ties by MPs via the parliamentary website. While the GET repeatedly heard in this context that the press in Finland exerted significant pressure on MPs – reflected in the fact that almost all MPs

[34] See above under "conflicts of interest".

voluntarily disclose outside ties – some other interlocutors, however, were concerned about the lack of investigative journalism (due to its high costs) and the high degree of centralisation of the media. The GET was not in a position to verify such claims but it has some doubts as to whether the media and citizens are able to effectively and continuously oversee the conduct and possible conflicts of interest of MPs. The GET acknowledges that public control ("enforced" by free, fair and regular elections) is a central and indispensable means of preventing corruption in the context of political decision-making, but it is of the opinion that such control can become even more effective if it is accompanied by administrative safeguards – not the least in order to ensure that the public gets the information it needs to perform its control function. Bearing in mind the above recommendations to further develop the rules on MPs' conduct and duties – in particular, with regard to conflicts of interest and disclosure of outside ties – the GET believes that it is only logical to require some kind of monitoring and enforcement of such standards by competent bodies.

65. At the same time, the GET is fully aware of the concerns expressed by several officials interviewed that the Finnish culture of transparency and trust should be preserved and no additional unnecessary bureaucracy be created. Clearly, it is up to the Finnish authorities themselves to decide how the monitoring could best be organised. In the view of the GET, such a role could, for example, be efficiently exercised by existing parliamentary bodies such as relevant committees or the Parliamentary Office (e.g. with regard to the disclosure of outside ties, similarly to the supervision of benefits which is already exercised by the Parliamentary Office's Accounts Office and the Parliamentary Auditors). Finally, in order to be credible, the system will have to foresee the imposition of appropriate sanctions in case of infringements of the rules such as violation of article 32 of the Constitution or non-disclosure of outside ties. Given the preceding paragraphs, **GRECO recommends that appropriate measures be taken to ensure supervision and enforcement of the existing and yet-to-be established rules on conflicts of interest and disclosure of outside ties by members of parliament.** Such arrangements will also need to be reflected in the Code of Conduct recommended above.[35]

Advice, training and awareness

66. At the beginning of each parliamentary term the Parliamentary Office arranges an orientation session for all new MPs, during which the existing rules and practices regarding the declaration of conflicts of interest and notification of assets and interests are explained.

67. The Parliamentary Office publishes a handbook for MPs and a collection of the most central laws and instructions concerning their work. The handbook is, however, rather general and does not deal with conflicts of interest. MPs can obtain advice from the Secretary General, Deputy Secretary General or the Parliamentary Office. In particular, as mentioned above, if an MP is unsure whether s/he is able to take part in the preparation or decision-making in a certain matter, s/he can ask for a legal opinion from the Secretary General.

68. The GET was informed that the orientation sessions for new MPs are quite extensive and also deal with issues such as the declaration of conflicts of interest and notification of interests. However, it believes that more could be done to raise MPs' awareness about those issues and about integrity standards more generally, and to further explain the rules, in particular in view of the development of more comprehensive rules and standards of conduct advocated for in this report. A recommendation aimed at

[35] See above under "Ethical principles and rules of conduct".

the provision of further guidance to MPs, e.g. through dedicated training or counselling, has been made above.[36]

Parliament of Åland

69. The Swedish-speaking Åland Islands belong to Finland but have autonomous status. The present Act on the Autonomy of Åland was passed by the Parliament of Finland in a constitutional order, with assent of the Åland Parliament and entered into force on 1 January 1993. Under this act, parliamentary business belongs to the legislative competences of Åland.[37] The Parliament of Åland is unicameral and consists of 30 MPs who are elected through direct elections for a term of four years. The electoral system is the same as that of Finland. The internal rules of the Parliament of Åland are similar to those applied in the *Eduskunta*. Moreover, the legal situation and parliamentary culture concerning the conduct of MPs, conflicts of interest, gifts etc. are to a large degree similar to those applicable to members of the *Eduskunta*. The authorities of Åland are therefore similarly invited to take action in accordance with the recommendations contained in the present chapter of this report, as appropriate.

[36] See above under "Ethical principles and rules of conduct".
[37] By contrast, Åland has no legislative powers concerning judges and prosecutors. The Finnish State is solely responsible for the prevention of corruption among judges and prosecutors.

## IV. CORRUPTION PREVENTION IN RESPECT OF JUDGES

Overview of the judicial system

70. The judicial system in Finland is established by the Constitution (Chapter 9, articles 98 to 105, "Administration of justice") and several laws, in particular the Code of Judicial Procedure. As concerns the status of judges, in principle the general provisions of the State Civil Servants Act apply – except for certain provisions, *inter alia*, those on appointment and dismissal.[38] In November 2011, the Ministry of Justice established a working group (some 15 members, mainly judges) to prepare an Act on Judges and Courts by end 2013. The objective of this project is to codify the existing legislation (organisation of the courts, status of judges, etc.) and to raise the level of regulations. E.g. it is planned to review the recruitment/status of certain categories of "referendaries"[39] (in particular by aligning the appointment procedure with that applicable to judges) who are tasked with preparing cases for decision at certain categories of courts and are considered to be part of the judicial staff. It is currently not planned to include conflicts of interest regulations in the Act.

71. Judicial independence and the impartiality of judges are fundamental principles in a State governed by the rule of law; they benefit the citizens and society at large as they protect judicial decision-making from improper influence and are ultimately a guarantee of fair court trials. The independence of the judiciary in Finland is guaranteed by the Constitution (article 3, "Separation of powers"). The Constitution also provides that no individual or institution can give instructions in individual cases to a judge, see article 21 which furthermore guarantees the right to a fair trial, the right to be heard, the right to a reasoned decision, and the right to appeal against a decision.

72. According to article 98 of the Constitution, the general courts are the Supreme Court, the Courts of Appeal and the District Courts. The courts of administrative law are the Supreme Administrative Court and the regional courts. Parliament can establish special courts for specific matters. Provisional courts are prohibited by the Constitution. There is no constitutional court.[40] Currently, there are around 950 professional judges, 370 referendaries and 1,700 lay judges in Finland.

73. The central administration of the courts rests with the Ministry of Justice (the Department of Judicial Administration). There is no council for the judiciary or equivalent body. Some of the GET's interlocutors opined that the administration of the judiciary should be separated from the Ministry of Justice in order to better ensure the independence and efficiency of the judiciary. The GET wishes to draw the attention of the authorities to international standards calling for the establishment of a council for the judiciary or an equivalent independent authority, entrusted with broad competences for questions concerning the statute of judges as well as the organisation and the functioning of judicial institutions.[41]

74. The Association of Finnish Judges aims for its part to develop the court system and maintain its significance as well as the independent position of judges in society. It follows legal policy and the preparation of draft legislation in particular, makes statements and introduces motions. Other activities include education and publishing as well as the organisation of joint events for judges. Currently, around 850 judges and

[38] See Chapter 12 of the State Civil Servants Act, sections 45 to 48, "Judges".
[39] I.e. referendaries who, according to law, can be regarded as judges in certain cases – namely referendaries at Courts of Appeal.
[40] The constitutionality of legislative proposals is examined by the Constitutional Law Committee of Parliament, see above under "Corruption prevention in respect of members of parliament".
[41] See, *inter alia*, Recommendation Rec(2010)12 of the Committee of Ministers of the Council of Europe to member States on judges: independence, efficiency and responsibilities; Opinion No.10(2007) of the Consultative Council of European Judges (CCJE) to the attention of the Committee of Ministers of the Council of Europe on the Council for the Judiciary at the service of society.

referendaries are members of the Association of Finnish Judges (via specific sub-associations) and the 40 Supreme Court justices are members of a specific association. There is also an Association of Finnish Lay Judges.

*General Courts*

75. For criminal and civil law, there are three levels of court. There are 27 judicial districts, each with a District Court (first level). Each District Court has a Chief Judge, other professional judges and lay judges. Professional judges are appointed and lay judges are elected. Lay judges are involved only in criminal proceedings. In a criminal case, the quorum of a District Court is composed of the chairman and three lay judges, unless the presence of three legally trained members is deemed justified instead. In certain cases the quorum is composed of one legally trained member. A District Court may also include junior district and trainee judges and, furthermore, judge-engineers to consider matters which need to be heard by a Land Court (i.e. specified court composition to deal with land court cases) or military members for military court proceedings. Land court proceedings and military court proceedings are not held in all District Courts.

76. Courts of Appeal hear civil and criminal appeals. A Court of Appeal is made up of a Chief Judge, other professional judges and referendaries. According to the Court of Appeals Act, an experienced referendary can be considered one of the three sitting judges in some less demanding cases. In military cases a Court of Appeal is made up of professional judges and expert (military) members.

77. The Supreme Court is the third and final instance in civil and criminal matters and its duties and capacity to supervise the administration of justice in its own fields is provided for in Article 99 of the Constitution. Cases are admitted only under certain conditions. The Supreme Court is made up of a Chief Justice, professional judges (justices) and referendaries[42]. The referendaries of the Supreme Court have the same security of tenure as the justices. In military cases the Supreme Court is made up of professional justices and expert (military) members.

*Administrative Courts*

78. Administrative cases are usually heard by a regional Administrative Court made up of a Chief Judge, referendaries, other professional judges and, for certain matters, expert members as well. The Government appoints a sufficient number of expert members[43] as well as deputies to serve 4-year terms and appoints successors to serve out the term where necessary. An expert member or his/her alternate member can be dismissed during his/her term only on the same grounds and following the same procedure as a tenured judge.

79. The Supreme Administrative Court is the final instance in administrative matters and is made up of a Chief Justice, other professional judges (justices), referendaries and expert members for certain matters. The referendaries of the Supreme Administrative

[42] Article 100 of the Constitution.

[43] Expert members with the relevant education and experience at the required level consider the following cases: 1) child and family-specific child welfare as referred to in the Child Welfare Act; 2) involuntary provision or continuation of special care as referred to in the Act on Special Care for the Mentally Handicapped; 3) commitment to or continuation of involuntary treatment, seizure of possessions or restriction of communication referred to in the Mental Health Act; 4) commitment to involuntary care as referred to in section 11 or 12 of the Act on Welfare for Substance Abusers, and cases referred to in section 13 of the said Act; 5) referred to in the Communicable Diseases Act. Administrative Courts may also include members with no legal qualifications who take part in the consideration of cases under the Water Act and the Environmental Protection Act. Such members must hold an appropriate Master's degree and be familiar with the relevant legislation.

Court have security of tenure in the same way as the justices. Expert members[44] are appointed by the President of the Republic for 4-year terms.

*Special Courts*

80. The High Court of Impeachment, which has convened only a few times, hears criminal cases relating to offences in office allegedly committed by a member of the Council of State, the Chancellor of Justice, the Parliamentary Ombudsman or a member of either the Supreme Court or the Supreme Administrative Court[45]. The High Court of Impeachment consists of the President of the Supreme Court (presiding), the President of the Supreme Administrative Court, the three most senior-ranking Presidents of the Courts of Appeal and five members (including a personal deputy for each) elected by the Parliament for a 4-year term. Expert members can be re-elected but they must retire at 67. If a case is brought to court prior to the end of any members' term, they must remain in post until a judgement is delivered.

81. The Market Court hears disputes regarding *inter alia* public procurement, competition and improper marketing. Depending on the nature of the case, a Market Court decision can be appealed to the Supreme Administrative Court or the Supreme Court. The Market Court consists of a Chief Judge, other professional judges and expert members[46].

82. The Labour Court hears employment disputes relating to collective agreements and civil service relationships. Its decisions are not subject to appeal. The Labour Court is made up of a Chief Justice, a professional judge and 14 part-time expert members[47]. Two of the latter must hold a law degree and be familiar with judicial practice in order to serve as deputy presiding judges as necessary. Experts at the Labour Court must be Finnish citizens over the age of 20 who have never been declared bankrupt. They must retire by the age of 68.

83. The Insurance Court considers certain cases that fall within the field of social insurance, e.g. occupational accident insurance and pensions. Such cases are usually first heard by an appellate board, its decisions can then be appealed to the Insurance Court. In specific cases relating to accident insurance, Insurance Court decisions can be appealed, with leave, to the Supreme Court. The Insurance Court is made up of a Chief Judge, other professional judges, referendaries and for certain matters expert members[48]. For the time being, a referendary is regarded as one of the judges in certain cases.

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[44] Expert members are required for cases under the Water Act, the Environmental Protection Act and the Act on Water Resources Management (and equivalent cases concerning the Aland Islands), as well as for cases concerning engineering patents, utility model rights or integrated circuit design. The experts must hold an appropriate Master's degree, be familiar with the relevant legislation and have good Finnish and Swedish language skills.

[45] Article 101 of the Constitution

[46] The Government appoints a sufficient number of part-time expert members to serve 4-year renewable terms. Experts must have a Master's degree, have good spoken and written Finnish and Swedish language skills, and be familiar with either competition law, procurement, the energy market or consumer protection and marketing along with economics, business or financial matters.

[47] Eight members must be familiar with private employment matters and are appointed on the recommendation of employer and employee associations; four must be familiar with civil service employment relations and of these two are appointed on recommendation from the Ministry of Finance, the Commission for Local Authority Employers, the Labour Market Organisation of the Church and the Bank of Finland, and two on the recommendation of employee associations of the State and the Bank of Finland, local Government and church office holders.

[48] The Insurance Court employs part-time medical experts (and their deputies) appointed by the Government on 5-year renewable terms (mandatory retirement at age 68) on the recommendation of the Ministry of Social Affairs and Health. Other experts include those with knowledge of working conditions, business, and military injuries. Depending on the nature of the case, two of these other experts are recommended by representative employer and employee organisations, or by the Commission for Local Authority Employers and main contractors, or by the Office for the Government or civil service employee organisations, or by representative entrepreneur or agriculture entrepreneurs organisations, or central organisations for the military – the last

Recruitment, career and conditions of service

84. Article 102 of the Constitution provides that tenured judicial appointments are made by the President of the Republic and that this process, and the process for otherwise appointing judges, are to be laid down by law. The Act on Judicial Appointments (Law 205/2000) governs the judicial appointment process. Judges are mainly appointed for an indefinite period of time. Temporary appointees can cover when a judge is prevented from carrying out his/her duties, including vacations, heavy caseloads in court, or other special reasons.

85. Judges are usually appointed by the President of the Republic on recommendation from the Government, as advised by a Judicial Appointments Board (the JAB). The law does not specify for which reasons the President or the Government may derogate from the advice of the JAB. In practice this has only happened once. The JAB (12 members) is an independent body composed mainly of members of the judiciary. Three members come from outside the judiciary. One is a practicing lawyer appointed by the Bar Association, another is a prosecutor appointed by the Prosecutor General, and the third is an academic appointed by the Ministry of Justice. However, the JAB has no jurisdiction regarding the appointment of justices to the Supreme Court and the Supreme Administrative Court. These courts of final instance make their own appointment proposals and the President makes the final decision.

86. The procedure for appointing judges to Courts of Appeal, District Courts, Administrative Courts and special courts follow the same process. In the first two courts mentioned, the Court of Appeal declares a vacancy, prepares a summary of the merits of the candidates and presents a statement to the JAB. The statement always includes a reasoned decision as to which applicant should be appointed. For vacancies in the District Court, the Court of Appeal first consults with the District Court in which the vacancy is located and follows the same process. For the position of President of the Court of Appeal the process of declaring a vacancy, preparing and submitting a statement to the JAB is managed by the Supreme Court. The Administrative Court manages the same process for its own vacancies as do the special courts (Market, Labour and Insurance).

87. The JAB usually convenes monthly and the secretary prepares all appointment matters. The JAB may request statements and reports on the applicants and hear both the applicants and experts. The JAB submits a written reasoned proposal on the appointment to the Government (i.e. Minister of Justice), which then presents the recommendation to the President of the Republic. Prior to submitting any recommendations, the JAB must ensure that applicants have an opportunity to comment on the statements and reports obtained in preparing the matter. The JAB has issued guidelines to the courts on how to consider judicial appointments and prepare the necessary statements.

88. Recommendations made by the JAB or the Government cannot be appealed against. However, complaints may be lodged with the Parliamentary Ombudsman and, in particular, with the Chancellor of Justice. The authorities report that, for example, an applicant lodged a complaint when the JAB had not acquired all the statements that the applicant regarded as obligatory.

89. The Act on Judicial Appointments sets out the requirements for candidates to the judiciary. Candidates must be "righteous" Finnish citizens with a Master's in Law who have demonstrated (in court or elsewhere in their careers) the necessary professional competency and personal characteristics to successfully carry out the duties and responsibilities inherent to the position. All judges must satisfy the Finnish and Swedish

being then recommended by the Ministry of Defence. In some of these cases, a member each will be appointed to represent the interests of employers and employees and a sufficient number of both Finnish and Swedish speakers among the experts must be ensured.

language proficiency requirements laid down by law. Candidates for the position of President or justice of either the Supreme Court or Supreme Administrative Court must also be eminent legal experts and demonstrate leadership. Leadership skills are required for Court Presidents.

90. There are no further integrity checks on judicial candidates. The general requirements are skill, ability and proven civil merit and their personal qualities are assessed as part of the appointment process and included in the statements sent to the JAB and on which the candidates may comment.

91. The respective courts invite applications from candidates for any temporary vacancy lasting more than six months. The same qualifications are required for fixed term appointments as for indefinite terms.

92. Fixed term appointments are made by the Supreme Court for the position of the President or Chief Judge of the Court of Appeal, Labour and District Courts, and the Supreme Administrative Court for the Administrative, Market and Insurance Courts. The Supreme Court and the Supreme Administrative Courts also appoint temporary judges (for terms of more than one year) to these same courts on the recommendations of their respective Presidents or Chief Judges. If the appointment is for no more than one year, then it is made by the President or Chief Judge of the respective courts. Before a temporary vacancy is filled, the management team[49] of the court is consulted or where there is none, the tenured judges of the court, unless it is such a short contract that this is not deemed necessary. Vacancies for the position of justice at the Supreme Court or Supreme Administrative Courts must be announced prior to being filled. Such appointments are made by the President of Finland for a fixed term.

93. Trainee judges are always appointed on a fixed term contract for one year and are appointed by the Chief Judge of the court in question. Judge-engineers are competent to sit in the Land Courts at the District Court level. Rules governing their workload and joint operation are set by the Ministry of Justice. Judge-engineers must be qualified at Master's level and have excellent language skills in either Finnish or Swedish or both depending on the working language of the court. Judge-engineers are appointed in the same way as District Court judges except that a statement about the candidate must be obtained from the central administration of the National Land Survey of Finland.

94. Lay judges and expert members of certain courts[50] are elected or appointed for a fixed period but can be re-elected. Lay judges are elected and can be re-elected for 4-year terms by municipal councils which are also elected every 4 years. Lay judges must be 25 years or older but under the age of 63 and must be as representative as possible of the municipality in which they serve (i.e. age, occupation, gender, language). Military members of general courts are appointed by the Court of Appeal for courts of first instance, by the Supreme Court for the Court of Appeal, and by the President of the Republic for the Supreme Court. Military members of higher courts must hold higher ranks (major or higher for Court of Appeal, colonel or higher for the Supreme Court). All are appointed for 2 years and must have the required Finnish and Swedish language skills.

95. Judges can be promoted and transferred through the appointment procedure. Article 103 of the Constitution only allows judges to be transferred with their consent unless the reason is the reorganisation of the judiciary.

[49] District courts can have a management group for the preparation of administrative and financial matters, which consist of the Chief Judge, his/her substitute and representatives of other judges and personnel. In Courts of Appeal, Administrative Courts and the Insurance Court, management groups assist the Chief Judges in steering and developing the operations.

[50] Including members of the High Court of Impeachment, military members of general courts, expert members of the Supreme Administrative Court and Administrative, Labour, Insurance, and Market Courts.

96. Judges enjoy constitutional protection and can, in principle, not be removed.[51] A judge can however be dismissed by court order if s/he is found guilty of abuse of official authority or other serious offences of office or if s/he is sentenced to jail. Justices or referendaries of the Supreme Courts who wish to resign, offer their resignation to the court in which they serve. All other judges submit their resignations to the Ministry of Justice unless otherwise provided for by law. A judge is required to resign from State service if s/he has become disabled because of sickness, handicap or injury. If a judge does not then resign, the court of law before which s/he would be charged with an offence in office shall discharge him/her without application, after having been given an opportunity to state his/her case.[52]

97. The salaries of judges depend on their salary bracket and work experience. Work experience allowances are paid after 2, 5, 10, 16 and 22 years of service and are calculated on the basis of 5–25% of the base salary in the relevant salary bracket. Judges are not provided any benefits related to additional jobs.

98. The annual salary of judges at the beginning of their career in the District, Administrative, Insurance and Market Courts, who have more than two but less than five years' experience and are in the lowest salary bracket, is approximately €56,600. Judges in the District and Administrative Courts (or the Insurance Court or Market Court) who are in the same salary bracket but have experience of 22 years or more earn approximately €67,400 a year. In the higher salary bracket of District and Administrative Court judges (as well as Insurance and Market Court judges) the maximum annual salary (exclusive of any management or language allowances) is approximately €74,800.

99. Judges of the Courts of Appeal are generally in higher salary brackets than those at the District and Administrative Courts. The highest salaries in the Courts of Appeal, after the head of agency, are paid to the heads of divisions, who after 22 years of experience earn approximately €87,800 a year. The annual salary of the justices of the Supreme Court and the Supreme Administrative Court is approximately €131,600 and that of the Presidents of these courts approximately €154,800. The salaries of the justices and Presidents of the courts of final instance do not include work experience or other allowances as separate items - the salaries instead being set by specific legislation.

100. The GET acknowledges the 2000 reform of the judicial appointment process which was aimed at strengthening the independence of the judiciary, through the adoption of the Act on Judicial Appointments and the establishment of the JAB – a body which is composed mainly of members of the judiciary. It would appear that the JAB has had a significant role in increasing the transparency of the appointment of judges and in clarifying and unifying the appointment criteria. The importance of the JAB in practice is evidenced by the fact that so far, only in one case has the President made an appointment which deviated from the advice by the JAB. That said, during the on-site visit the GET was made aware of several particularities of the system which may warrant further reflection and possibly reform.

101. First, the GET was informed that the Parliamentary Ombudsman has consistently criticised the manner of appointment of lay judges in District Courts. The Ombudsman finds it problematic from the point of view of the independence of the judiciary that lay judges are appointed by municipal councils, i.e. political actors from the executive, without any involvement of the judiciary. Given the high number (altogether 1,700) and the important role of lay judges in Finland (generally, in serious criminal cases a District Court will include three lay judges, each with full voting rights), the GET understands these concerns and encourages the authorities to seek ways to involve the judiciary in

[51] Article 103 of the Constitution.
[52] Section 46(2) of the State Civil Servants Act. Justices of the Supreme Courts are, however, discharged by the court of which they are members.

the appointment of lay judges, as appropriate, as is the case in some other European countries (e.g. candidates are proposed by municipal councils but the appointment is made by Court Presidents or judicial appointment boards).

102. Secondly, a particular feature of the Finnish court system is the participation of expert members in panels of administrative courts and special courts i.e. the Insurance Court, the Market Court and the Labour Court. Expert members are appointed by the Government or, in the case of the Supreme Administrative Court, by the President of Finland. While in the administrative courts appointments are made upon recommendation by the relevant administrative courts, the judiciary is not involved in the appointment process concerning expert members of special courts. The GET's attention was drawn in particular to the Insurance Court (and the appellate boards, which are usually first heard in cases concerning social insurance). In some of their panels, expert members – who are appointed by the Government on the recommendation of the Ministry of Social Affairs and Health – are in the majority. For example, medical cases are decided by panels composed of two professional judges and three expert members with full voting right. Court sessions are in principle closed. According to several interlocutors, such experts often have experience as medical experts for private insurance companies, to which health insurance is entrusted in Finland. The GET, fully aware of the long-standing Finnish tradition of expert members participating in the administration of justice, takes note however of the concerns expressed by some interlocutors about the appointment of such expert members by the executive, without any involvement of the judiciary, and about possible conflicts of interest. The authorities may wish to consider these concerns and to seek ways to strengthen the prevention of conflicts of interest of expert members, e.g. by revisiting the appointment process or fostering transparency of decision-making by court panels including expert members.

103. Thirdly, the GET notes that the Act on Judicial Appointments does not apply to referendaries (who prepare cases for decision at certain categories of courts), who are appointed by the Chief Judge of the court in question without involvement of the JAB. The GET welcomes current plans to review their recruitment/status,[53] in particular by aligning the appointment procedure with the one applicable to judges, in the framework of the elaboration of an Act on Judges and Courts. Finally, the GET notices that the JAB has no jurisdiction regarding the appointment of justices to the Supreme Court and the Supreme Administrative Court. These courts of final instance make their own appointment proposals. As the President always follows the proposals, some interlocutors were critical of the fact that in practice those courts choose their members themselves. The authorities may wish to take account of such concerns in the current reform process.

Case management and procedure

104. There is no express provision in the law for case management. The assignment of cases is usually governed by the courts' rules of procedure. Normally, cases are assigned to judges in turn on a random basis. However, as an administrative measure the Chief Judge of the court may organise the activities of the court in such a manner that certain divisions or judges only hear certain kinds of cases, for instance criminal or civil cases. In the Administrative Courts, the assignment of cases to referendaries and the specific composition of the court is usually determined by the nature of the case.

105. There is no express provision in the law on removal of a judge from a case. The authorities state that in practice, the Chief Judge as part of his/her management duties may remove a judge from a case in the event of unacceptable delay in the consideration of a case. The GET was informed that the Parliamentary Ombudsman has recommended to the Ministry of Justice that it take under consideration the need to regulate, on the level of an act and more precisely than in the current District Court Decree, the

[53] See above under "Overview of the judicial system".

preconditions for transferring cases assigned to a District Court judge and possibly also the principles underpinning a court's allocation of cases.[54] The Ministry stated in 2007 that it concurred with these positions, but the Ombudsman's recommendation has not led to any legislative changes as of yet. The GET was interested to hear that this matter is being reviewed in the current reform process. Such moves are clearly to be supported, with a view to ensuring objectivity and transparency in the assignment of cases and to avoiding any appearance of arbitrariness.

106. Under article 21 of the Constitution, everyone has the right to have his/her case dealt with appropriately and without undue delay by a legally competent court of law or other authority. A recent specific act lays down provisions on the right of a party to receive compensation out of State funds for the excessive length of judicial proceedings.[55] This Act only applies to civil and criminal matters considered in general courts of law, but the authorities indicate that legislative amendments to expand its scope of application to Administrative Courts and special courts will enter into force on 1 June 2013. It is up to the Chief Judge of the court to ensure that cases are resolved without undue delay. During the interviews held on site, the GET was concerned to hear that the length of proceedings appears to be a significant problem, reportedly due to the lack of adequate resources and the heavy procedural system. In this connection, the authorities indicate that mechanisms to draw attention to deadlines, for example, have been incorporated into the case management systems of courts and will be further upgraded to facilitate the monitoring of case duration as well. It is crucial that the authorities pursue their efforts and reflect on possible further measures to ensure that cases are decided in due time.

107. Chapter 19 of the Code of Judicial Procedure provides for those cases deemed urgent. In respect of cases heard in general courts of law, provisions for declaring a case as urgent are laid down in special acts (e.g. the enforcement of a child custody decision, rights of access, detention matters). Furthermore, section 14 of the Decree on Courts of Appeal provides that cases are normally to be heard in the order of their commencement and lists those matters that must be heard as a matter of urgency (e.g. matters of detention, complaints concerning detention, travel bans, telecommunications interception and monitoring under the Coercive Measures Act, criminal cases involving detainees and persons suspended from office). Provisions on urgency are also laid down in special laws in respect of administrative law cases (e.g. cases concerning civil service employment security, care orders, the publication of documents and complaints significant to the construction of housing or of other public significance).

108. As a rule, judicial proceedings are open to the public. Provisions concerning closed proceedings are laid down in law[56].

[54] Such a recommendation was included in the Ombudsman's Annual Report 2006 (pages 88/89) and again in the Annual Report 2010 (page 96), which also refers to a decision by the European Court of Human Rights of 5 October 2010 (DMD Group, A.S. v. Slovakia), in which it found that there had been a breach of Article 6 ECHR, because the legislation relating to transferring cases was too imprecise.

[55] Act on Compensation for the Excessive Length of Judicial Proceedings (Law 362/2009) which entered into force on 1 January 2010. In the assessment of whether the length of the judicial proceedings has been excessive, the case law concerning the application of Article 6.1 ECHR of the European Court of Human Rights is also taken into account.

[56] Act on the Publicity of Court Proceedings in General Courts (Law 370/2007) and Act on the Publicity of Administrative Court Proceedings (Law 381/2007).

Ethical principles, rules of conduct and conflicts of interest

109. In accordance with section 14(2) of the State Civil Servants Act, a civil servant – including a judge – "shall conduct him/herself in the manner befitting his/her status and duties." Pursuant to article 7 of the Code of Judicial Procedure, judges take an oath of office at the start of their judicial career which binds them to upholding the principles of office and to avoiding misconduct.[57] The authorities furthermore indicate that the "Instructions for a Judge" - drafted by the reformer, minister and legal scholar Olaus Petri around 1540 - are integral to the Finnish legal tradition.[58] Although the Instructions have never been confirmed as law, they have, as the introduction to the Collection of Laws, had a profound influence on judicial practice and a number of these rules on civil, criminal and procedural law have also been incorporated into the laws. The main theme of the Instructions is that the laws and authorities are for the good of the people and that power must not be abused.[59]

110. On 4 May 2012, the Association of Finnish Judges adopted a set of "Ethical Principles for Judges", following consultations with the Finnish Bar Association, the Association of Finnish Prosecutors, the Faculty of Law and the Department of Philosophy at the University of Helsinki, the Ministry of Justice, the Parliamentary Ombudsman, the Office of the Chancellor of Justice, the National Research Institute of Legal Policy, the Association of Finnish Crime and Court journalists "*Oikeustoimittajat*", and the Association of Finnish Lawyers. Furthermore, during the preparation of the Ethical Principles hearings had been organised for judges and referendaries – regardless of whether they were members of the Association of Finnish Judges or not – and the Association of Finnish Lay Judges had been asked to comment on the draft. The Ethical Principles were made public on 12 October 2012 and are available on the website of the Association of Finnish Judges[60] and on a website on the "Judicial system in Finland" maintained by the Ministry of Justice.[61] The authorities furthermore indicate that the Ethical Principles have already been distributed to all professional judges and referendaries and they will be included in the next Ministry of Justice training programme for 1,700 newly elected lay judges.

111. The Ethical Principles include those of independence and impartiality, righteousness, professional skills and openness which are defined and explained in 15 sections. According to the introduction, the Ethical Principles "correspond to the views of the Finnish judiciary at the time of their approval" and are aimed at strengthening the public's trust in the administration of justice, informing the public about judicial ethics and helping judges to make ethically justified choices. They do not change the status of the above-mentioned "Instructions for a Judge" which remain valid.

112. The Code of Judicial Procedure includes provisions on conflicts of interest in Chapter 13 on the "Disqualification of a judge" (described below), but the concept of "conflict of interest" is not otherwise described by law.

113. The GET welcomes the recent adoption by the Association of Finnish Judges and the internet publication of the "Ethical Principles for Judges", prepared with the

[57] In particular, the oath includes the following passage: "I shall never, under any pretext, pervert the law nor promote injustice because of kinship, relationship, friendship, envy, hatred or fear, or for the sake of gifts or presents or other reasons, nor shall I find an innocent person guilty or a guilty person innocent."
[58] For an overview on the instructions, see:
http://www.om.fi/en/Etusivu/Julkaisut/Esitteet/OlausPetrintuomarinohjeet
[59] The Instructions state, in particular, that "the judge shall also remember that his/her office is for the benefit of the common people and not for the benefit of the judge him/herself, and therefore s/he must look after the good of the common people and not of him/herself, even though it is also good for him/her when s/he acts correctly. His/her goal in office shall, however, be the common good and not his/her own good. Because the judge is for the common people and not the people for the judge."
[60] See http://www.tuomariliitto.fi/prime103/prime101.aspx
[61] See http://www.oikeus.fi/8854.htm

involvement of various actors from within and outside the judiciary. This move represents a significant step towards defining and promoting ethical standards for all judges in Finland. Regarding their scope of application, the authorities indicate that they clearly apply to all professional judges and referendaries (and have been distributed to them), irrespective of whether they are members of the Association of Finnish Judges or not (the majority of them *are* members), especially since the Principles are guidelines and not legally binding provisions. According to the authorities, the Principles are to be applied in the administration of justice generally, i.e. also in respect of lay judges (who had to some extent been involved in their preparation) and expert members of courts. The GET accepts these explanations but wishes to underline that it is important that this new tool now be disseminated also to all lay judges and expert members, so as to contribute to ensuring that they are aware of the ethical principles governing their tasks.

114. The GET notes that the Ethical Principles are quite general and even though the authorities argue that they are to serve as ethical objectives, that any person applying them is expected to use their own judgement and judicial accuracy was not the goal, the GET is of the opinion that the Principles do not take sufficient and coherent account of certain corruption risks. Notably, they do not attempt to define conflicts of interest or offer adequate guidance for resolving such conflicts. This calls for complementary measures aimed at providing further guidance on ethical questions and on the concept of conflict of interest, and related issues such as the acceptance of gifts and other advantages and the exercise of additional activities. Such measures could include the provision of confidential counselling within the judiciary or of written guidelines and, in any case, specific, preferably regular, training activities of a practice-oriented nature (including practical examples). In light of the above, **GRECO recommends (i) that the "Ethical Principles for Judges" adopted by the Association of Finnish Judges be communicated effectively to all lay judges and expert members of courts; and (ii) that they be complemented by further measures, including dedicated training, aimed at offering proper guidance on the application of the Ethical Principles and on conflicts of interest and related issues.**

Prohibition or restriction of certain activities

*Incompatibilities and accessory activities, post-employment restrictions*

115. No legal provisions prohibit judges from taking up specific posts or functions. However, section 18 of the State Civil Servants Act regulates secondary employment of civil servants in general and of judges specifically.[62] Under paragraph 2 of this section, judges and court referendaries cannot accept or hold any "ancillary" jobs unless they have applied to their respective courts and declared their interest, and permission has been granted. "Ancillary" jobs in this context mean an office, paid work and duties which the civil servant concerned – including a judge – is entitled to refuse (i.e. which are not part of his/her official duties), as well as any profession, trade or business. When considering whether to grant permission for "ancillary" jobs, the courts must take into account that such work must not disqualify the judges from carrying out their tasks or undermine confidence in their impartiality or capacity to do their jobs properly. Permission can be for a fixed term and with conditions and can be revoked if there are valid reasons to do so.

116. According to the authorities, in practice, outside employment permits have been granted e.g. to act as an arbitrator and as a company board member, to give lectures

[62] In addition, on 23 August 2010 the Ministry of Finance issued guidelines on "Secondary jobs held by civil servants" which are aimed at ensuring that all government agencies are aware of secondary jobs held by their staff and that they inform them about their obligations and conduct expected from them. The guidelines provide a compilation and some explanation of the relevant regulations. According to the authorities, they are also relevant to judges insofar as they do not contradict the specific legal provisions applicable to judges (e.g. provisions on disqualification).

and to assist in individual cases (for instance drawing up an estate inventory). Having asked various courts, they found no example of a decision to refuse an employment permit, but in some cases judges had refrained from making an application after having first discussed their wish to take up an "ancillary" job with the Chief Judge or President of the Court.

117. Information gathered by the GET suggests that few judges are engaged in secondary employment. That said, during the on-site visit the issue of arbitration, in particular concerning the participation of Supreme Court justices (but also some judges of other courts, in particular Courts of Appeal) in such activities,[63] was raised by a number of interlocutors, both from public institutions and civil society.[64] At the time of the visit, much media attention was given to a limited number of cases of judges acting as arbitrators and who allegedly gained more income from that activity than from their main profession (e.g. one was said to have earned €370,000, though possibly for several cases over a longer period). Interlocutors met by the GET were critical towards the lack of transparency regarding such assignments, the level of remuneration received, unclear procedures as well as the possible impact on a judge's duties and on the trust of the general public in the judiciary. The media were particularly concerned that the income received and the names of the parties involved in arbitration cases are not disclosed (information on the parties is confidential under section 18(5) of the State Civil Servants Act). Furthermore, there is no uniform practice regarding granting permission to engage in such activities through the court system, and procedures differ depending on the category of court. For example, whereas the Supreme Administrative Court, under an internal agreement, does not allow its members to act as arbitrators, the Supreme Court had at the time of the visit only unwritten rules that prevented a justice from being an arbitrator in several cases simultaneously. However, the GET was interested to hear that after the visit (20 December 2012) the Supreme Court adopted written guidelines for outside employment permissions for arbitration tasks, which include procedural rules and criteria for not granting such permission.

118. In the view of the GET, the situation described above needs to be further addressed, e.g. in the framework of the current reform process aimed at the elaboration of an Act on Judges and Courts. As one of the interlocutors put it, it is crucial that the judiciary is not only free from corruption and conflicts of interest, but that it is also seen to be so by the general public. It would be unfortunate if a perception emerged among citizens that taking part in arbitration activities might interfere with the professional duties of a judge. In the long term, such perceptions could contribute to undermining the authority of the court system. The GET holds the view that appropriate measures need to be taken to ensure that accessory activities of judges – and arbitration activities in particular – are compatible with judicial status and do not distract from the proper performance of judicial duties. Such measures might include enhanced transparency rules (e.g. a requirement on judges to inform the Court President of the income received from arbitration activity and the names of the parties involved, as has been provided for in the above-mentioned Supreme Court guidelines), uniform procedures and criteria for granting permission (including, for example, appropriate ceilings for the remuneration a judge may receive annually from such activity and for the number of weekly working hours s/he may spend on it). Consequently, **GRECO recommends that the rules on accessory activities of judges, including arbitration activities in particular, be further developed so as to enhance transparency and to introduce uniform procedures, criteria – and appropriate limits – for granting permission to engage in such activities.**

[63] According to statistics submitted by the authorities, altogether 41 arbitration assignments were recorded during the period 2008 to 2012 (first semester).
[64] The GET was also informed that in May 2012, the Chancellor of Justice had received a complaint by an NGO on this subject.

119. No regulations prohibit judges from holding certain posts/functions or engaging in other paid or unpaid activities after exercising a judicial function. In the view of the GET, where judges intend to move to work in the private sector, for example as lawyers or consultants (the GET heard about such cases during the interviews), they may be exposed to conflicts of interest in view of future outside employment or may accept outside employment having taken improper advantage of their judicial office. While it is clear that former judges must be given the possibility to continue legal practice after leaving office, the GET encourages the authorities to reflect, in the current reform process, on the necessity of introducing adequate rules/guidelines for situations where judges move to the private sector, in order to avoid conflicts of interest.

*Recusal and routine withdrawal*

120. Provisions in Chapter 13 of the Code of Judicial Procedure (articles 1 to 9) cover the grounds for disqualifying a judge from hearing certain cases. They also apply to other members of the court, the referendaries, record-keepers, and others who make decisions or may be present when a case is decided. These rules were amended in 2001 (by Law 441/2001) in order to strengthen the independence of the judiciary and the impartiality of judges in the exercise of judicial powers, taking into account case law of the European Court of Human Rights and of the Finnish Supreme Court.

121. A judge is disqualified
- if s/he, or a close relation,[65] is a party, or acts or has acted as the representative, counsel or attorney of a party;
- if s/he appears or has appeared as a witness or expert, if a close relation of the judge appears as a witness or expert, or if the close relation has been heard in that capacity at an earlier stage in the proceedings and the decision in the matter may also depend on that hearing;
- if it can be anticipated that the decision in the matter will be to the specific advantage or disadvantage of the judge, his/her close relation, or a person represented[66] by the judge or his/her close relation;
- if s/he, or a close relation, is (1) a member of the board of directors, a supervisory (or comparable) board, or is the CEO (or comparable officer) in a corporation, foundation or public-law foundation or enterprise, or (2) in a position where s/he decides on the exercise of the right of the State, a municipality or another public corporation to be heard in the matter, and the party referred to under (1) or (2) is a party to the matter or the decision in the matter is likely to be of special advantage or disadvantage to the party;
- if a party to a matter before a judge is also an opposing party in another judicial proceeding or matter before another authority involving the same judge or his/her close relative, the judge will be disqualified. However, the mere fact that a public corporation, State or municipality is also party to the other matter does not disqualify the judge, nor will a request to have the judge disqualified succeed without a valid reason. Similarly and where, due to an existing service relationship or otherwise and in view of the nature of the matter, there is good reason to doubt his/her impartiality, the judge will be disqualified. However being a customer, shareholder or in a comparable relationship deemed ordinary will not result in a disqualification;
- if s/he, or a close relation, has heard the same matter in another court or authority or as an arbitrator or, if s/he is a party to a similar matter and its nature or the effect of a decision in it gives rise to a justifiable doubt as to the judge's impartiality;

[65] A close relation in this context includes: (1) a judge's spouse, child, grandchild, sibling, partner and grandparent and another person especially close to the judge, and the spouse of the same; (2) a sibling of a judge's parent and the spouse of the same, the children of a judge's siblings and a judge's former spouse; and (3) a child, grandchild, sibling, parent and grandparent of a judge's spouse and the spouse of the same, and the children of the siblings of a judge's spouse. A spouse refers to a husband, wife or domestic partner. A respective half-relative shall also be deemed a close relation in this section.
[66] A representative in this context means the person responsible for the care and custody of a natural person, guardian or other comparable representative of a natural person.

- if another circumstance, comparable to the circumstances set out above, gives rise to a justifiable doubt as to the judge's impartiality.

122. A plea to disqualify a judge can be entered by a party to the matter and is decided by the court seized in the main matter. The court may also take up the issue of disqualification on its own motion. The judge concerned may him/herself decide the issue of disqualification only if the plea is clearly ill-founded or if the court has no quorum without him/her and a non-disqualified replacement can be obtained only with considerable delay.

*Gifts*

123. There are no detailed rules on the acceptance of gifts specifically by judges. The authorities refer in this respect to bribery and related offences under Chapter 40 of the CC ("offences in office"). An example of the offence "negligent violation of official duty" (article 10) arose in a decision of the Supreme Court of 24 March 2000 (2000:40), which found that members of the Water Court committed the offence by accepting hospitality from a company that was a party to a case before them. In addition, the general rule under section 15 of the State Civil Servants Act – which provides that a civil servant may not demand, accept or receive any financial or other advantage if this might reduce confidence in him/her or in an authority – is also applicable to judges.[67] During the on-site visit, the GET was not made aware of any problems in the application of this legal framework. The GET was left with the clear impression that judges do not consider it permissible for them to accept gifts, and that it was implicit in the status of a judge to maintain an impeccable character and to be, and to be seen to be, independent.

*Third party contacts, confidential information*

124. The above-mentioned Act on the Openness of Government Activities[68] – which states that official documents are public unless otherwise provided for under the Act – also applies to courts of law and other bodies for the administration of justice. While court proceedings and trial documents are public, obligations of secrecy are provided for in the Act on the Publicity of Court Proceedings in General Courts (370/2007) with respect to proceedings held *in camera* and in the secrecy obligations found in the Act on the Openness of Government Activities. Court deliberations and voting are to be conducted without the presence of the parties and the public and all such contents are to be kept secret. Any violations of the secrecy obligations pertaining to documents or otherwise set out in these Acts are punishable under the CC. Similarly secrecy obligations are provided for in the Act on the Publicity of Administrative Proceedings (Law 381/2007). The CC provisions on secrecy that apply to judges (and other officials) are set out in Chapter 38 – data and communication offences, and Chapter 40 – on offences in office.

*Declaration of assets, income, liabilities and interests*

125. Judges are not prohibited under law from having any specific holdings or financial interests. Judges are, however, required to comply with the provisions on disqualification and to declare their interests.

126. Pursuant to section 14 of the Act on Judicial Appointments, before being appointed to a tenured position in the judiciary, the judicial candidate must make a declaration of his/her interests as outlined in section 8a of the State Civil Servants Act. Any changes or

[67] In addition, on 23 August 2010 the Ministry of Finance issued guidelines on "Hospitality, benefits and gifts" which are aimed at providing answers to questions that have arisen in practice and at defining boundaries between the acceptable and the forbidden, including practical examples. The guidelines are applicable to all civil servants and also to judges.
[68] See above under "Corruption prevention in respect of members of parliament".

corrections to this declaration must be made without delay and judges must provide pertinent information at the request of the competent authority. During the interviews, the GET was told that an update of declarations was rare in practice and only required in cases of "essential changes". For those appointed to a temporary position in the judiciary, a declaration must be made before and during the appointment if the duration is one year or more. A person nominated as a temporary member of the Supreme Court or the Supreme Administrative Court must always make a declaration of interests.

127. Declarations are to be submitted to the Ministry of Justice on a standard form ("Declaration of interests for highest State civil servants") which includes instructions for completing it. Declarations of interest must include information on assets and the holding of financial interests, sources of income, liabilities (including loans), the holding of posts and functions or engagement in accessory activities, whether remunerated or not, and on any other interest or relationship that may or does create a conflict of interest. However, income from accessory activities or the amounts of financial and economic interests need not be indicated. Moreover, the duty to declare does not extend to close family members of judges.

128. The declarations of interest are kept in a register held by the Ministry of Justice until a judge retires. The first part of the declarations containing information on outside employment and other interests is public, whereas the second part containing information on economic and financial interests is confidential.

129. The Ministry of Justice verifies that a declaration of interests has been submitted and if necessary a judge may be asked to provide further information or invited to reconsider a given "ancillary" job or membership. If a judicial candidate fails to submit a declaration of interests before the matter of his/her appointment is presented to the President of the Republic, it is postponed until the declaration is received. Neither the Ministry of Justice nor any other body verify the information included in the declaration of interests. The authorities state that there are no means or resources for such supervision. They add, however, that the Chancellor of Justice or the Ombudsman may take notice of the interests of a judge as a consequence of a complaint lodged with them.

130. The GET acknowledges the benefit of requiring candidates to the judiciary to submit declarations of interest. That said, in order to further facilitate the identification of potential conflicts of interest, the authorities may wish to reflect, in the current reform process, on possibilities for refining the transparency regime – for example, by requiring judges to submit declarations regularly and to provide more comprehensive information (e.g. on the remuneration of accessory activities[69] or on close family members), or by introducing a verification of the declarations submitted. The GET notes that during the interviews it held, some – including members of the working group tasked to prepare an Act on Judges and Courts – were open to such suggestions.

Supervision and enforcement

131. There is no separate judicial disciplinary or equivalent body to systematically supervise the conduct of judges. In 1994, disciplinary liability of public officials in general was abolished. Instead, the supervisory tasks and management powers of the employer institutions were increased. In the case of judges, supervision is performed by heads of courts. In addition, the Parliamentary Ombudsman and the Chancellor of Justice are tasked with supervising the actions of public officials including judges.[70] Only the Parliamentary Ombudsman and the Chancellor of Justice have the power to press

[69] Currently, solely information on the total annual amount of income of each citizen and thus a judge is available under existing tax law.
[70] See above under "Corruption prevention in respect of members of parliament".

criminal charges against judges.[71] The Chancellor of Justice is the primary institution to handle cases of suspected offences in office by judges.

132. If a minor breach of duties by a judge which does not constitute a criminal offence in public office comes to the knowledge of the head of the court, the latter may under the recent section 46a of the State Civil Servants Act – introduced in 2009[72] – issue a written warning. The authorities state that such a warning may be pronounced, for example, in case a judge acts contrary to the rules of procedure of the court. A warning cannot result in a dismissal. Pursuant to section 53a of the State Civil Servants Act – also introduced in 2009 – written warnings can be appealed against before the competent court.[73] The appeal is considered as a judicial procedure matter in the court, the appellant and the judge having issued the decision must be given an opportunity to be heard and, when necessary, to present evidence and other clarifications. Finally, the authorities state that, while there is no express provision in law, in practice a Chief Judge may, as part of his/her management duties, remove a judge from a case in the event of unacceptable delay in the consideration of a case.

133. Under the Constitution, the Chancellor of Justice and the Parliamentary Ombudsman are to ensure that the courts obey the law and fulfil their obligations.[74] Both institutions receive complaints from the public and also investigate cases on their own initiative, e.g. in the framework of inspection tours. In case of a breach of official duties – e.g. a judge does not file a notification of outside employment – the Chancellor of Justice or the Ombudsman may issue a reprimand, issue opinions and instructions or, if the act or omission is regarded as a breach of the CC, press criminal charges. One example provided concerns a 2010 case where the Chancellor of Justice ordered that charges be brought against a Chief Judge and a legal secretary because 11 unsolved cases had been marked as solved in the court diary.[75] In addition, the Chancellor of Justice also inspects on a random basis penal judgements rendered by courts, which are systematically submitted by the Legal Register Centre of the Ministry of Justice.[76] The authorities indicate that in principle a decision made by the Chancellor of Justice or the Ombudsman to issue a reprimand or similar measure may not be appealed against. However, if there are reasons to believe that the decision has been based on incorrect facts, it is possible to make a complaint to the institution that decided the case in the first place.

134. Special arrangements are in place as regards notification of suspected offences in office and pre-trial investigation concerning judges. In particular, the police and the prosecution service are obliged to inform the Chancellor of Justice – and, in certain cases, the Parliamentary Ombudsman – of cases where a judge is suspected of an offence in office.[77] Furthermore, Courts of Appeal are obliged to notify the Chancellor of Justice of circumstances that may result in criminal prosecution in a Court of Appeal.[78] Although the police independently decide to initiative a criminal investigation concerning a judge and the appropriate lines and scope of the investigation, they must however follow any instructions that the Chancellor of Justice or the Ombudsman may issue in

[71] Cf. article 110 of the Constitution.
[72] This provision was inserted in the State Civil Servants Act by the law no. 288 of 24 April 2009.
[73] A decision of the Chief Judge of a District Court may be appealed against before a Court of Appeal. A decision of the President of a Court of Appeal and the President of the Labour Court may be appealed against before the Supreme Court. A decision of the Chief Judge of an Administrative Court, the Market Court and the Insurance Court may be appealed against before the Supreme Administrative Court. A decision of the President of the Supreme Court and the President of the Supreme Administrative Court may be appealed against before the court in question, and the appeal is considered in a plenary session.
[74] Articles 108 and 109 of the Constitution.
[75] Charges against the Chief Judge for negligent violation of official duty (Chapter 40, section 10 CC) were dropped. The Court of Appeal decided that the delivery and progress of matters was the responsibility of the legal secretary. The latter was sentenced to pay 20 day-fines.
[76] Section 3(3) of the Act on the Chancellor of Justice.
[77] According to Standing Instruction VKS 2000:6 issued by the Deputy Chancellor of Justice and the Prosecutor General.
[78] Section 23(2) of the Court of Appeal Decree.

their role as special prosecutors. At the close of a criminal investigation, the case is sent on either to the Chancellor of Justice or the Ombudsman. If they decide to bring criminal charges, a State Prosecutor will as a main rule take care of the prosecution at court.

135. As mentioned before, several criminal law provisions may be applied, in particular the following.

- "Offences in office" under Chapter 40 of the CC, namely "abuse of public office" (article 7), "aggravated abuse of public office" (article 8), "violation of official duty" (article 9) and "negligent violation of official duty" (article 10). According to the authorities, those provisions may be applied, for example, if a judge violates the rules on outside employment or on disqualification.
- In cases relating to the acceptance of gifts, bribery offences under Chapter 40 of the CC – or above-mentioned related offences in office, depending on the circumstances of the case – may be applied, namely "acceptance of a bribe" (article 1), "aggravated acceptance of a bribe" (article 2), "bribery violation" (article 3), "violation of official duty" (article 9) and "negligent violation of official duty" (article 10).[79]
- In cases of breach of secrecy, the data and communication offences under Chapter 38 of the CC as described under "Corruption prevention in respect of members of parliament" apply accordingly. Moreover, judges may be held liable under Chapter 40, article 5 CC for "breach or negligent breach of official secrecy" – i.e. intentionally disclosing a document or information deemed secret by law or making use of it for him/herself, or to the detriment of another.

Sanctions available in such cases include warnings, fines, imprisonment or dismissal (in case of serious offences of office or if a judge is sentenced to jail).

136. Judges are not immune from prosecution under the CC. They may be charged with a criminal offence whether in relation to their official duties or not. While the forum[80] for prosecutions of judges who have violated their official duties may differ depending on the judicial position, judges are subject to the same criminal law provisions as anyone else.

137. According to statistics provided by the Chancellor of Justice, in 2011 the Chancellor made 283 decisions on complaints concerning judges. In most cases, no erroneous conduct was revealed; seven opinions and instructions were given, but no reprimands were issued and no cases were transferred to the prosecution service. Furthermore, in the framework of reviews of penal judgements and judicial offences in office by the judiciary in one case charges were brought, six reprimands, one written statement and 17 opinions and instructions were issued. Finally, six own initiatives to investigate were taken and two on-site inspections were carried out, which led to one reprimand and three opinions and instructions. The authorities add that there is no knowledge of recent criminal offences by judges which would fall under the above-mentioned criminal law provisions.

138. Following the on-site visit, the GET was left with the clear impression that integrity standards among judges are high and, as representatives of the civil society put it, that it would be very hard to bribe a judge. It seems that the sanctions available in case of breach by a judge of his/her official duties, namely reprimands/warnings (which may hamper promotion of a judge) and criminal sanctions, are dissuasive and contribute to the generally high level of obedience of the law. Moreover, in addition to the internal oversight by Court Presidents, the Chancellor of Justice and the Parliamentary

[79] Active bribery is criminalised under article 3 ("bribery violation").

[80] A charge of offence in office is brought in the Court of Appeal against Chief Judges of District Courts, District Court Judges, Junior District Court Judges and Trainee District Judges as well as lay judges and members of an Administrative Court. Such charges against Presidents and members of Courts of Appeal are brought in the Supreme Court, and those against justices of the Supreme Court and the Supreme Administrative Court are brought in the High Court of Impeachment. For charges of offence in office against the Chief Judge, members and deputy members of the Labour Court as well as Market Court and Insurance Court judges are brought in the Helsinki Court of Appeal.

Ombudsman have significant powers to supervise the conduct of public officials, including judges, and they appear to play an important and pro-active role. On the other hand, some of the GET's interlocutors were concerned that the system relied too much on these two institutions, which had a very wide variety of tasks and would tend to be quite cautious in respect of judges, in order not to interfere with their independence. Furthermore, the GET was told that there were individual instances where the police or judges themselves seemed to be unfamiliar with the system.

139. Against this background, the GET was interested to hear that the establishment of specific disciplinary liability of judges and of a specific supervisory board for judges has been discussed repeatedly. For example, in 1999 the need to introduce disciplinary liability had been considered by a working group under the Ministry of Justice. However, the majority opinion of the working group denied such a need and decided to give priority to further developing existing alternatives – in particular, preventive measures such as enhancing the quality of the appointment procedure and the disqualification rules (both of which were consequently amended in 2001/2001). While the GET accepts the general approach by the authorities to mainly focus on preventive measures, it nevertheless takes the view that the system may further gain from developing genuine disciplinary liability of judges, defining the failings that may give rise to disciplinary sanctions and introducing a range of sanctions which are proportionate to the seriousness of the offence committed.[81] Moreover, in line with international standards, it would be preferable to entrust a disciplinary body, in which at least half of the members should be elected judges, with the imposition of such disciplinary sanctions.[82] While the GET refrains from making a formal recommendation in this respect, the authorities are encouraged to resume their reflections on these matters, in the light of the aforementioned comments.

Advice, training and awareness

140. All training provided by the Training Unit of the Ministry of Justice is optional, however it arranges approximately 150 days of judicial staff training each year on a rolling programme. Each year, the Training Unit prepares a staff training programme which is made available to the District Courts, Courts of Appeal and Supreme Court for use in the preparation of their individual strategic development plans. The typical duration of the seminars is 2–3 days.

141. Seminars on civil and criminal procedure management have been arranged for the past twenty years or so. In 2012, the Training Unit started to provide training separately for newly appointed judges and for those who have served longer on the bench. Four two-day procedure management seminars are typically arranged each year (two 2-day civil procedure management seminars and two 2-day criminal procedure management seminars). Judges are also offered advanced courses in both civil and criminal matters.

142. Themes such as ethics, expected conduct, prevention of corruption and conflicts of interest and related matters are addressed in so-called procedure management seminars held on civil and criminal procedure. The seminars cover problem-solving, and include discussions and lectures on various procedural topics including ethics, decision-making and the provisions governing criminal and civil procedure.

143. There is no specialised and dedicated counselling within the judiciary. The authorities stress in this connection that judges have independence in their decision-making. When they identify a potential concern having to do with ethics or conflicts of interest, the first course of action is to discuss the matter with the head of the court.

[81] Cf. Opinion No. 3(2002) of the Consultative Council of European Judges (CCJE) to the attention of the Committee of Ministers of the Council of Europe on the principles and rules governing judges' professional conduct, in particular ethics, incompatible behaviour and impartiality.
[82] See, in particular, the European Charter on the statute for judges.

Sources of guidance for judges regarding conflicts of interest and ethical principles are the law, precedents and other case law, including that of the Supreme Court, the European Court of Human Rights, the Chancellor of Justice, the Parliamentary Ombudsman, and finally the Ethical Principles for Judges set by the Association of Finnish Judges.

144. The GET notes that various optional training courses are provided to judges, some of which also cover issues related to ethics and prevention of corruption. However, it would appear that there is no training focusing more specifically on conflicts of interest and related issues. In the view of the GET – also shared by several interlocutors met on site, who referred to the forthcoming recruitment of many new judges, due to retirement – the current situation merits the elaboration of a dedicated programme for all categories of professional and lay judges, referendaries and expert members of courts, especially in the light of the recently adopted Ethical Principles for Judges. The GET furthermore believes that confidential counselling services within the judiciary could be an additional asset for effectively preventing risks of conflicts of interest and of corruption. A recommendation aimed at the provision of further guidance to judges, including by way of dedicated training, has been made above.[83] In this connection, the GET wishes to stress again that in Finland, there is no special independent body serving to safeguard the independence and integrity of the judiciary (judicial council), which could also be entrusted with counselling services.[84] The authorities may wish to explore possibilities of establishing such a special body or entrusting an appropriate body within the existing institutional framework with consultative functions in respect of judges who seek advice on questions of ethics and conduct.

[83] See above under "Ethical principles, rules of conduct and conflicts of interest".
[84] Cf. Opinion No. 10(2007) of the Consultative Council of European Judges (CCJE) to the attention of the Committee of Ministers of the Council of Europe on the Council for the Judiciary at the service of society.

## V. CORRUPTION PREVENTION IN RESPECT OF PROSECUTORS

Overview of the prosecution service

145. The prosecution service is grounded in article 104 of the Constitution. According to this provision, the prosecution service is headed by the highest prosecutor, the Prosecutor General, who is appointed by the President of the Republic. More detailed provisions on the prosecution service are laid down by the Act on the Prosecution Service (APS) which came into force on 1 January 2012, as complemented by the governmental Decree on the Prosecution Service. The main function of prosecutors is to decide which of the investigated criminal cases are brought to court and to present these cases before the court. As regards the status of prosecutors, the general provisions of the State Civil Servants Act – as complemented by relevant APS provisions – apply.

146. Before 1996, Finland had no single prosecution service and many prosecutors belonged instead to the police service. Since the Act on District Prosecutors (195/1996) (subsequently repealed) established a new, cohesive prosecution service independent of the police service, the independence and autonomy of prosecutors has increased markedly. Section 7(1) of the recent APS states that prosecutors have independent and autonomous power to consider charges. No one can issue directives to prosecutors on how to decide in individual criminal cases nor how to evaluate the evidence or interpret the law. Prosecutors are duty-bound to comply with the law in the same manner as judges. The only party which can influence a prosecutor's decision-making in any way is the Prosecutor General (or Deputy Prosecutor General). They can exercise their right to take over a case under section 10 APS[85] but they cannot order a prosecutor to make a specific decision in a specific case.

147. The authorities state that the prosecution service cannot unequivocally be assigned to either the judicial or the executive branch. At the same time, they argue that given the legally mandated independence and autonomy of prosecutors – which is further strengthened by the fact that the funding of the prosecution service stands as a separate item in the State budget to be approved by Parliament, prosecutors have much the same standing as judges and are to be placed within the "judicial system".

148. As the director of the prosecution service, the Prosecutor General manages and supervises its operation and work. S/he furthermore has specific competences, e.g. s/he has sole authority to bring charges in respect of offences arising from the contents of a published message (where subject to public prosecution) and in respect of terrorism offences. The – currently 13 – State Prosecutors, who work in the Office of the Prosecutor General, appraise the evidence and decide whether charges should be brought in cases with wider national significance. The State Prosecutors have the right to act throughout the country. The local prosecuting authorities are District Prosecutors. There are currently about 350 prosecutors working in 13 local prosecution offices. Leading District Prosecutors head the regional offices.

149. As mentioned above, the decision to bring charges against a judge is not taken by the prosecution service but the Chancellor of Justice or the Parliamentary Ombudsman. They may also direct that charges be brought in other matters within their jurisdiction (i.e. supervising the legality of Government activities and the actions of public authorities) and conduct prosecutions. In practice, cases in which the Chancellor of Justice or the Parliamentary Ombudsman decide to bring charges are prosecuted by the Prosecutor General.

[85] Section 10 APS: "The Prosecutor General may take over a case from a subordinate prosecutor or order a subordinate prosecutor to prosecute a case in which charges are brought by the decision of the Prosecutor General. The Prosecutor General may also assign a case to a subordinate prosecutor for consideration of charges."

150. The Finnish Prosecutors' Association is a central professional organisation which seeks to promote the economic, professional and social interests of prosecutors. The Association follows legal policy and law drafting in particular, makes statements and introduces motions. Currently, around 66% of Finnish prosecutors are members of the association.

Recruitment, career and conditions of service

151. Prosecutors are generally appointed for an indefinite term under a permanent civil service contract. Leading District Prosecutors and District Prosecutors are appointed by the Office of the Prosecutor General and junior prosecutors are appointed by the prosecution offices.[86] State Prosecutors are appointed by the Government on the recommendation of the Prosecutor General.[87] The Prosecutor General and the Deputy Prosecutor General are appointed by the President of the Republic.

152. All public offices are advertised setting out the professional and personal requirements for the post. According to article 125 of the Constitution, the general qualifications for public office are skill, ability and proven civic merit. For prosecutors, previous or comparable experience and excellent oral and written presentation skills are considered an advantage.

153. When the appointing authority is the Prosecutor General, the Leading District Prosecutors provide a statement assessing the applicants, who can submit a statement in response. The appointment is then made by the Prosecutor General on the recommendation of a State Prosecutor, on the basis of the public memoranda that evaluate and compare the applicants. When the appointing authority is a Leading District Prosecutor, the appointment memorandum is prepared at the relevant prosecution office.

154. Fixed-term appointments are an option primarily to cover absences or temporarily vacant posts.[88] Candidates who lack prosecutorial experience are appointed initially for six months as a junior prosecutor.

155. The appointment of a State Prosecutor for a fixed term of more than one year is made by the Ministry of Justice on the recommendation of the Office of the Prosecutor General and for a term of less than a year, directly by the Office of the Prosecutor General[89]. Fixed term appointments to the position of Leading District Prosecutor are made by the Office of the Prosecutor General. The appointment of a district prosecutor for a fixed term of more than one year is made by the Office of the Prosecutor General and for a term of less than one year by a prosecution office[90].

156. An appointment decision cannot normally be appealed although the public officials taking part in preparing and taking decisions are always subject to official liability in the performance of their duties. Complaints concerning appointment decisions may be lodged with either the Chancellor of Justice of the Government or the Parliamentary Ombudsman and a complaint concerning a decision to appoint a leading district prosecutor can be lodged with the Prosecutor General. Also, a complaint concerning sexual discrimination in connection with an appointment may be lodged with the Equality Ombudsman.

157. The promotion of prosecutors is processed as a decision to appoint (i.e. to a more demanding office) by the Prosecutor General. As well, with his/her consent, a prosecutor

[86] Section 22 APS
[87] Section 14(2) APS.
[88] See section 9 of the State Civil Servants Act, as well as section 56 of this law which provides for compensation by the State if a civil servant has been appointed for a fixed term without just and acceptable cause.
[89] Section 6, Decree on the Prosecution Service and section 20, State Civil Servants respectively.
[90] Under section 17 of the Decree on the Prosecution Service and section 20 of the State Civil Servants Decree.

may be assigned by the Prosecutor General to serve as special prosecutor or key prosecutor, for a maximum of four years at a time.[91] The latter must take part in training for prosecutors and in the national coordination and steering in their particular area of specialisation.[92]

158. The transfer of prosecutors, if within the prosecution service, is decided by the Office of the Prosecutor General (in practice, by the Prosecutor General) or, if within the judicial administration, by the Ministry of Justice on the recommendation of the Office of the Prosecutor General – in all cases transfers are subject to the consent of the officeholder.[93]

159. The Office of the Prosecutor General can dismiss a local prosecutor[94] if there are compelling reasons to do so.[95] The authorities provide the following examples: a) conviction for an offence, where a sentence of imprisonment has been issued; b) gross violation or negligence of official obligations (e.g. failure to appear in court or a wide scale failure to execute the consideration of charges which would then lead to offences becoming time barred). Usually, before dismissal, the prosecutor would first be warned. Only the Office of the Prosecutor General can convert prosecutors' civil service employment into part-time employment, terminate employment with immediate effect, issue lay-offs or suspensions and all other warnings. Such decisions are taken by the Prosecutor General after submissions by the State Prosecutor. The decision to dismiss the Prosecutor General or a State Prosecutor must in principle be taken by the appointing authority. Where the President is the appointing authority, which is the case with the Prosecutor General, the decision to dismiss and terminate the contract is taken by the Government.

160. A request to "rectify a dismissal" may be made to the Public Service Board of the Ministry of Finance. A decision of the Public Service Board may be appealed to the Supreme Administrative Court. Section 50 of the State Civil Servants Act governs the composition and procedures of the Public Service Board, whose members are officially liable in the performance of their duties. A legislative project to transfer the duties of the Public Service Board to the Administrative Courts is pending.

161. Generally speaking, the remuneration of prosecutors is determined by job grade, experience allowance and performance review. There are a total of eleven job grades. The maximum experience allowance is approximately 16% and the bonus resulting from a performance review cannot exceed 30% of the salary (at that job grade). The prosecutors and their immediate supervisors conduct annual performance appraisals and performance reviews that impact on salary are carried out by the supervisor.

162. At the beginning of their careers prosecutors are paid a gross monthly salary of €3,000 in the first six months (as a junior prosecutor) and approximately €3,380 per month thereafter. The Prosecutor General is paid a monthly gross salary of around €10,120. There are no additional benefits on top of salary.

Case management and procedure

163. Cases are allocated to prosecutors for consideration of charges in accordance with instructions prepared by the Leading District Prosecutor. As a rule, cases are randomly allocated although prosecutors specialising in certain types of crime are allocated cases within their particular area of specialisation. Normally, cases are prosecuted in court by

[91] Section 13 of the Decree on the Prosecution Service.
[92] Section 30 APS.
[93] Section 5 of the State Civil Servants Act.
[94] Section 19 of the Decree on the Prosecution Service.
[95] Sections 25 and 33 of the State Civil Servants Act. Under section 33, a civil servant's service relationship can be cancelled immediately if s/he grossly violates or neglects his/her official obligations.

the prosecutor who considered the charges. The prosecutor at the District Court usually serves as the prosecutor in the Court of Appeal as well.

164. The Prosecutor General may take over from a subordinate prosecutor at any point in the processing of a case. This mainly occurs in situations where the prosecutor has decided not to bring charges and the Prosecutor General, as a result of a complaint or on his/her own initiative, decides that charges shall be brought. In this context, the Prosecutor General may remove a case from one prosecutor and assign it to another. Except in cases of clear misconduct in a charging decision, the Prosecutor General does not usually intervene in cases already pending in court.

165. No maximum time is laid down in law for the consideration of charges, but prosecutors are tasked with processing criminal cases without undue delay.[96] When a suspect is under the age of 18, the decision to lay charges is processed as an urgent matter, and certain coercive measures require the prosecutor to bring charges within a certain time limit. Parties to cases may make a formal complaint of undue delay in the consideration of charges to the Prosecutor General who may reprimand a prosecutor or bring charges against the prosecutor for offence in office. The Chancellor of Justice of the Government and the Parliamentary Ombudsman can also reprimand prosecutors for a delay in considering charges and bring charges against them.

166. The authorities state that over recent years, a small number of such cases each year were brought to the attention of the supervising authorities. During the interviews, however, the GET's interlocutors shared their concerns about a significant backlog of cases and frequently slow progress in pre-trial investigations and consideration of charges by prosecutors. Several possible reasons for such delays were indicated, in particular – similarly as in respect of lengthy court proceedings[97] – the lack of adequate resources and the heavy procedural system. In this context, the authorities report that the Prosecutor General has issued general guidelines to prosecutors regarding prioritisation in considering charges (8 June 2009) and on preventing delays in court proceedings (24 May 2010). *Inter alia*, annual targets for promptness are set for the prosecution offices and reviewed twice a year in the performance management system. It is essential that the authorities pursue their efforts and reflect on possible further measures to ensure that cases are processed in due time.

Ethical principles, rules of conduct and conflicts of interest

167. There is no specific Code of Conduct or Ethics Policy for prosecutors. However, the Prosecutor General in 2005 declared that the values to be followed in all (external and internal) activities conducted by the prosecution service are "fairness, professionalism and occupational wellbeing". Every member of the work community is bound by these values,[98] which are further defined on the basis of the findings of a working group composed of representatives from each personnel group of the prosecution service. *Inter alia*, the value "fairness" implies that all decisions of the prosecutor be in conformity with the law (including Article 6 ECHR as interpreted by the European Court of Human Rights), to ensure that everyone is treated equally in the decision-making and that all decisions are well motivated.

168. Furthermore, the authorities indicate that when the Prosecutor General (or the Deputy Prosecutor General) makes decisions upon complaints or otherwise makes decisions in supervisory matters, s/he may in his/her reasoning state what in his/her opinion should be seen as proper conduct for a prosecutor in similar cases. Such decisions – which are taken up and discussed, for example, in the training of prosecutors – constitute a form of "case law" and, ultimately, a policy of proper conduct. The

[96] Cf. article 21 of the Constitution, section 14 of the State Civil Servants Act and section 6 APS.
[97] See above under "Corruption prevention in respect of judges".
[98] The values are included, for example, in the Standing Order of the Office of the Prosecutor General.

authorities add that the (Deputy) Prosecutor General in some statements refers to the above-mentioned values, e.g. in the case (146/45/05) of a district prosecutor who had commented and publicly criticised another prosecutor's decision while the criminal case in question was still pending in a court of law.

169. The APS includes rules concerning conflicts of interest in the provisions on disqualification of prosecutors from isolated cases (set out below), but the concept of "conflict of interest" is not otherwise described by law.

170. The GET takes note of the values of the prosecution service and the "case law" deriving from the General Prosecutor's statements, but it regrets that there is not a more comprehensive and detailed set of ethical standards and rules of conduct. Even if the absence of such a document has apparently not created major concrete difficulties for prosecutors in the execution of their duties, it seems clear that it could provide a very useful tool in creating greater awareness among prosecutors about ethical questions and rules on prosecutors' behaviour and in informing the general public about the existing standards.[99] The values of the prosecution service may form a basis for such a document, which will also have to take sufficient and coherent account of certain corruption risks, notably by providing a definition and further written guidance – either in the document itself or in a complementary guide – on the concept of conflict of interest, including practical examples, and on related issues (such as the acceptance of gifts and other advantages and the exercise of additional activities), and to offer adequate solutions to resolving such conflicts. Moreover, complementary measures such as the provision of specific, preferably regular, training of a practice-oriented nature (including practical examples), or confidential counselling on the above issues would be a further asset. Therefore, **GRECO recommends (i) that a set of clear ethical standards/code of professional conduct (including guidance on conflicts of interest and related issues) be made applicable to all prosecutors and made easily accessible to the public; and (ii) that it be complemented by practical measures for its implementation, such as dedicated training or counselling.** In this connection, the 11 February 2013 decision of the management team of the Office of the Prosecutor General to appoint a working group tasked to prepare a set of ethical principles for prosecutors was noted with interest.

Prohibition or restriction of certain activities

*Incompatibilities and accessory activities, post-employment restrictions*

171. No legal provisions prohibit prosecutors from engaging in specific posts or functions. The provisions of section 18 of the State Civil Servants Act concerning the acceptance or holding of an "ancillary" job – which may be permitted under certain circumstances – as detailed under "Corruption prevention in respect of judges" also apply to prosecutors.[100] A prosecutor must notify the Office of the Prosecutor General and ask for permission to engage in any secondary employment. The GET was told that few prosecutors are engaged in such employment and there are no problems in practice.[101] It was indicated that prosecutors have, for example, been granted permission to act as lecturers at the police academy whereas permission has been denied for "ancillary" jobs relating to advocacy in the field of private law.

[99] See in this connection principle 35 of Recommendation Rec(2000)19 of the Committee of Ministers of the Council of Europe to member States on the role of public prosecution in the criminal justice system, which requires States to ensure that "in carrying out their duties, public prosecutors are bound by "codes of conduct". The explanatory memorandum to the Recommendation further explains that such codes should not be a formal, static document, but rather a "reasonably flexible set of prescriptions concerning the approach to be adopted by public prosecutors, clearly aimed at delimiting what is and is not acceptable in their professional conduct".

[100] In addition, the authorities again refer to the guidelines of the Ministry of Finance of 23 August 2010 on "Secondary jobs held by civil servants".

[101] Only one case has recently come to the attention of the Office of the Prosecutor General where a prosecutor has engaged in secondary employment without permission. The case is not yet closed.

172. Prosecutors are free to take up new employment after serving as a prosecutor. The GET reiterates its comments made with respect to judges, namely that judges and prosecutors may be exposed to conflicts of interest in view of future outside employment or that they may accept outside employment having taken improper advantage of their office. While it is clear that former prosecutors must be given the possibility to continue legal practice after leaving office, the GET encourages the authorities to reflect on the necessity of introducing adequate rules/guidelines for situations where prosecutors move to the private sector, in order to avoid conflicts of interest.

*Recusal and routine withdrawal*

173. Here the main rule is that a case cannot be removed from the prosecutor without his/her consent. In the event of a conflict of interest, a prosecutor may be disqualified from prosecuting a case. In the event of a disqualification, a prosecutor is to notify the person who is in charge of appointing a substitute.

174. Pursuant to section 26 APS, a prosecutor is disqualified if:
(1) the prosecutor or a close relative[102] is a party to the case;
(2) the case is likely to cause specific benefit or damage to the prosecutor or a close relative;
(3) the prosecutor or a close relative counsels or represents a party or a person to whom the case is likely to cause specific benefit or damage;
(4) the prosecutor is in a service relationship or an agency relationship pertaining to the matter at hand with a party or a person to whom the case is likely to cause specific benefit or damage;
(5) the prosecutor is a member of the board, a comparable body or the supervisory board, the managing director or in a comparable position in a corporation, foundation or public-law institution which is a party or to whom the case is likely to cause specific benefit or damage; or
(6) a circumstance other than those referred to in subparagraphs (1)–(5) gives rise to reasonable doubt as to impartiality of the prosecutor in the case.

175. It is the duty of a prosecutor to comply with section 26 APS. S/he must personally assess potential conflicts and notify his/her supervisor if anything arises which necessitates disqualification. The fact that a party to a case or another person submits a request to disqualify a prosecutor does not mean automatic disqualification. To avoid unnecessary disqualifications, such complaints are assessed by the Prosecutor General who may also assess any such instances on his/her own initiative. If charges have already been brought in a case in which a conflict arises for the prosecutor, his/her disqualification may also be assessed by the court hearing the case.

176. The authorities indicate that no cases of disqualification of a prosecutor have come before the courts in the past three years. The Office of the Prosecutor General has no knowledge of how frequently instances of disqualification have affected the allocation of cases to consider charges, or the transfer of cases to another prosecutor within the prosecution office.

[102] A "close relative" in this context means the persons referred to in section 28(2) and (3) of the Administrative Procedure Act (434/2003), namely "the spouse of the official, a child, grandchild, sibling, parent, grandparent of the official, a person otherwise especially close to the official, as well as the spouse of the same; a sibling of a parent of the official and the spouse of the same, a child of a sibling of the official and a previous spouse of the official; and a child, grandchild, sibling, parent and grandparent of the spouse of the official, the spouse of the same, as well as a child of a sibling of the spouse of the official. A comparable half-relative shall also be considered a close person. For the purposes of this section, a spouse is defined as a partner in wedlock, a domestic partner and a partner in a registered partnership."

*Gifts*

177. As for judges, the authorities refer in this respect to (1) section 15 of the State Civil Servants Act, according to which a civil servant may not demand, accept or receive any financial or other advantage if this might reduce confidence in him/her or in an authority;[103] and (2) the bribery and related offences under Chapter 40 of the CC ("offences in office"). According to the authorities, there is no practical experience with the application of section 15 of the State Civil Servants Act in relation to prosecutors. In general, it would largely depend on the circumstances what would be deemed inappropriate. Even one cup of coffee, when accepted from a defendant, could be contrary to this provision. The GET was left with the general impression that prosecutors do not consider it permissible for them to accept gifts, as it would impair the dignity of the office.

*Third party contacts, confidential information*

178. Under section 24(1) item 3) of the Act on the Openness of Government Activities, the following official documents are secret: the reports of offences made to the police and any other authority carrying out criminal investigations, as well as those made to the prosecutor and the authorities responsible for inspection and supervision; the documents obtained or prepared for purposes of criminal investigations or a decision on whether to bring charges, as well as the application for a summons, the summons and the defendant's response in a criminal case, until a decision has been made for a hearing in the case, the prosecutor has decided to waive prosecution, or once the case has been abandoned, unless it is obvious that access to the documents will not compromise the clarification of the offence, the achievement of the objectives of the investigation, or without a pressing reason cause injury or suffering to a party, or compromise the right of the court to order that the documents are to be kept secret on the basis of the Act on the Publicity of Court Proceedings in General Courts. As concerns rules on misuse of confidential information, the authorities refer to the CC provisions on secrecy set out in Chapter 38 (data and communication offences) and Chapter 40 (on offences in office).[104]

Declaration of assets, income, liabilities and interests

179. Prosecutors are not prohibited under law from having any specific holdings or financial interests, but they are required to comply with the provisions on disqualification and to give notice of any conflict of interest giving reasons for disqualification as they arise. Moreover, under sections 8a and 26 of the State Civil Servants Act, the Prosecutor General and heads of local prosecution offices must declare their interests to the Ministry of Justice. The rules described above in respect of judges apply accordingly, the same standard form is used and the Prosecutor General/heads of local prosecution offices must also give an account of any changes, deficiencies or shortcomings in previous declarations, and respond to requests from the Ministry of Justice for any other accounts without delay. There is no equivalent duty for other prosecutors.

180. The Ministry of Justice verifies that a declaration of interests has been submitted by the Prosecutor General/heads of local prosecution offices and if necessary they may be asked to provide further information. On the other hand, the Ministry of Justice does not check whether the information included in the declaration is correct. The authorities add, however, that the Chancellor of Justice or the Parliamentary Ombudsman may take notice of the interests of the Prosecutor General/heads of local prosecution offices as a consequence of a complaint lodged with them.

[103] In addition, the authorities refer to the guidelines of the Ministry of Finance of 23 August 2010 on "Hospitality, benefits and gifts".
[104] See above under "Corruption prevention in respect of members of parliament" and "Corruption prevention in respect of judges".

181. The GET notes that, unlike judges, prosecutors (other than the Prosecutor General and heads of local prosecution offices) are not required to submit declarations of interest, but they have to give notice of any conflicts of interest giving reasons for disqualification as they arise. The authorities explain that prosecutors are not regarded as high civil servants, as listed in section 26 of the State Civil Servants Act, who are under such an obligation. Given that no concerns have come to light as to instances of corrupt behaviour by prosecutors and that the prosecution service is generally perceived to be a much trusted institution, the GET does not consider it necessary to address a recommendation in this connection. That said, bearing in mind that prosecutors are – like judges – part of the criminal justice system, the authorities may wish to consider the introduction of declarations of interests for prosecutors, at least in respect of significant interests – e.g. holding of posts and functions or engagement in accessory activities, especially if remunerated, or ownership in public or private companies.

Supervision and enforcement

182. Supervision over the conduct of prosecutors is performed by the Prosecutor General, the Deputy Prosecutor General, the Chancellor of Justice and the Parliamentary Ombudsman. The authorities indicate, however, that it is primarily the responsibility of the Prosecutor General. A case may be brought on the initiative of the said authorities – e.g. following inspections of regional prosecution offices[105] – or result from a complaint. There is, however, no systematic supervision over how prosecutors comply with their official duties, such as the obligation to notify the Office of the Prosecutor General of secondary employment.

183. Complaints to the Prosecutor General about the conduct of prosecutors are in practice decided by the Deputy Prosecutor General. If a complaint is made to the Chancellor of Justice or to the Parliamentary Ombudsman, the case is usually transferred to the Prosecutor General who then decides whether the complaint gives cause to further actions. However, if the complaint concerns a final decision by a prosecutor, the Chancellor of Justice or the Ombudsman may scrutinise the matter themselves. In general, the procedure is for the prosecutor concerned to submit a report in response to a request for further information, after which the case is decided on the basis of the documentary materials. A pre-trial investigation may also be conducted.

184. If a prosecutor knowingly breaches his/her official duties – e.g. relating to disqualification, additional activities or acceptance of undue advantages – the above-mentioned authorities may bring criminal charges or, in less serious cases, they may issue a reprimand or a written warning (only the Prosecutor General) to the prosecutor concerned. The decisions are public. The authorities state that even mild reprimands to prosecutors are often the focus of considerable media attention. If the Prosecutor General gives a written warning to a prosecutor, the latter may demand rectification from the Public Service Board whose decisions may be appealed against before the Supreme Administrative Court.[106] A reprimand cannot be appealed against. Finally, the Prosecutor General may also dismiss a prosecutor for compelling reasons, as described above under "Recruitment, career and conditions of service".[107]

[105] For example, in 2010 the Parliamentary Ombudsman conducted inspection visits at one regional prosecution office and at the Office of the Prosecutor General.

[106] See sections 53 and 54 of the State Civil Servants Act. Pursuant to section 49 of the Act, the Public Service Board handles and decides matters for which the Civil Service Committee is competent, under the purview of the Ministry of Finance. The Public Service Board has a chairman and eight other members appointed by the Ministry of Finance for a period of three years. The chairman and two members are appointed among persons who cannot be representatives of either employers' or employees' interests. Three members are appointed among civil servants representing the State as employer and three members among persons proposed by the central organisations of civil service unions.

[107] Warnings by the Prosecutor General are regulated in section 24 of the State Civil Servants Act and dismissals in sections 25 and 33. Section 24 states that "a civil servant who acts contrary to his/her official obligations or fails to meet them can be given a written warning".

185. As stated earlier, several criminal law provisions may be applied, in particular the provisions on bribery and related offences in office under Chapter 40 of the CC and on breach of secrecy offences under Chapter 38 of the CC.[108] Sanctions available in such cases include fines, imprisonment and dismissal. Prosecutors are not immune from prosecution under the CC. While the forum[109] for prosecutions may differ depending on the position of the prosecutors concerned, they are subject to the same criminal law provisions as anyone else.

186. According to the authorities, in recent years no breaches of official duty relating to, in particular, disqualification, additional activities or acceptance of undue advantages have occurred and none of the above-mentioned criminal offences have been recorded in respect of prosecutors. According to statistics provided by the Chancellor of Justice, in 2011 the Chancellor made 65 decisions on complaints concerning prosecutors. In most cases, no inappropriate conduct was revealed; two opinions and instructions were given and four cases were transferred to the Prosecutor General,[110] but no reprimands were issued. Furthermore, two own initiatives to investigate were taken and one on-site inspection was carried out, which led to two opinions and instructions.

187. It is the GET's impression that, overall, prosecutors have a high level of integrity and are aware of their role and duties as representatives of the State. The GET was provided with information on some isolated cases of misconduct, but there seems to be no systemic deficiency within the prosecution service. It would appear that, as in the case of judges, the sanctions available in cases of misconduct by prosecutors are, although limited to reprimands/warnings and criminal sanctions, dissuasive and effective. Supervision is mainly exercised by the Prosecutor General and his/her deputy, and complemented by the activity of the "overseers of legality" i.e. the Chancellor of Justice and the Parliamentary Ombudsman. In principle, the prosecutor concerned is heard before any decision on possible sanctions is taken. While it appears to the GET that the system works and has not shown particular problems in practice, it nevertheless takes the view – as it did with respect to judges – that it may further gain from developing genuine disciplinary liability of prosecutors, defining the failings that may give rise to disciplinary sanctions and introducing a range of sanctions which are proportionate to the seriousness of the offence committed.

Advice, training and awareness

188. At the start of their careers prosecutors attend mandatory training designed to familiarise them with their tasks and with the related duties and requirements. It consists of distance learning, centralised studies at the Office of the Prosecutor General, and on-the-job learning under the guidance of a tutor. The training and guidance also addresses the conduct of prosecutors in the event of conflicts of interests and disqualification.

189. After having served in the prosecution service for some years, prosecutors take part in a centralised six-week basic training programme provided at the Office of the Prosecutor General. Disqualification and resolving conflicts of interest are also addressed in this mandatory programme.

[108] See above under "Corruption prevention in respect of judges".
[109] Charges against the Prosecutor General and the Deputy Prosecutor General for offences in office are brought in the Supreme Court and prosecuted by either the Chancellor of Justice or the Parliamentary Ombudsman as set out in the APS. Charges against all other prosecutors for offences in office are brought in the Court of Appeal. The decision to bring charges may be taken by the Chancellor of Justice, the Parliamentary Ombudsman, the Prosecutor General, the Deputy Prosecutor General or a State Prosecutor. The case, however, is prosecuted by a State Prosecutor. In such cases, as the court of first instance is the Court of Appeal, an appeal may be lodged with the Supreme Court without seeking leave.
[110] The four cases concerned complaints by citizens about prosecutors' decisions not to prosecute. The cases were handed to the Prosecutor General as the only person who may order a new consideration of charges. However, the Prosecutor General found that charges had been duly considered and took no action.

190. Other training provided by the Office of the Prosecutor General includes annual courses on corruption offences, some of which are aimed at all prosecutors and some at prosecutors specialising in offences in office. These normally last three days and attendance is not mandatory.

191. Prosecutors may consult the Office of the Prosecutor General for guidance regarding matters of disqualification and the circumstances in which notification is required.

192. Summaries of complaints resolved by the Prosecutor General or any other matter in which the conduct of a prosecutor has necessitated an answer, are published on the website of the Office of the Prosecutor General. If the Prosecutor General finds that a prosecutor has acted contrary to the provisions regarding disqualification, the summary allows the general public to review the main points of the decision. Persons wishing to learn more about a given decision may also request a copy of the full text of the decision from the Office of the Prosecutor General.

193. The general public has access to the legislative provisions concerning disqualification through the governmental legal database FINLEX (www.finlex.fi). Besides Acts and Decrees, this database contains decisions of the Supreme Court and the Courts of Appeal as well as the European Courts. Decisions taken by the Parliamentary Ombudsman and the Chancellor of Justice are also available for public review in online data-bases.

194. The GET notes that there is currently neither a dedicated training programme focussing specifically on conflicts of interest and broader ethical issues, nor specialised and dedicated counselling on ethical questions and conflicts of interest within the prosecution service. The GET believes that more specific training and dedicated counselling within the prosecution service would be beneficial to the prevention of conflicts of interest and of corruption. A recommendation aimed at such practical measures has been made above.[111]

[111] See above under "Ethical principles, rules of conduct and conflicts of interest".

## VI. RECOMMENDATIONS AND FOLLOW-UP

195. In view of the findings of the present report, GRECO addresses the following recommendations to Finland:

*Regarding members of parliament*

i. **(i) that a Code of Conduct for members of parliament be adopted and made easily accessible to the public; and (ii) that it be complemented by practical measures for its implementation, such as dedicated training or counselling** (paragraph 37);

ii. **that written (public) clarification of the meaning of article 32 of the Constitution (conflicts of interest) and guidance on the interpretation and application of that article be provided to members of parliament** (paragraph 42);

iii. **that the rules applicable to the acceptance of gifts by members of parliament be clarified and further developed so as to ensure that they provide for an appropriate mechanism for the valuation of benefits received or offered (in cases of doubt), that they cover any benefits, including benefits in kind, and that they clearly define what conduct is expected of members of parliament who are given or offered such benefits** (paragraph 45);

iv. **(i) that regular disclosure of outside ties by members of parliament be made mandatory and that its scope be widened to include information on income received from additional activities; and (ii) that consideration be given to widening the scope of disclosure to include information on assets and liabilities below the current thresholds as well as information on spouses and dependent family members (it being understood that such information would not necessarily need to be made public)** (paragraph 56);

v. **that appropriate measures be taken to ensure supervision and enforcement of the existing and yet-to-be established rules on conflicts of interest and disclosure of outside ties by members of parliament** (paragraph 65);

*Regarding judges*

vi. **(i) that the "Ethical Principles for Judges" adopted by the Association of Finnish Judges be communicated effectively to all lay judges and expert members of courts; and (ii) that they be complemented by further measures, including dedicated training, aimed at offering proper guidance on the application of the Ethical Principles and on conflicts of interest and related issues** (paragraph 114);

vii. **that the rules on accessory activities of judges, including arbitration activities in particular, be further developed so as to enhance transparency and to introduce uniform procedures, criteria – and appropriate limits – for granting permission to engage in such activities** (paragraph 118);

*Regarding prosecutors*

**viii. (i) that a set of clear ethical standards/code of professional conduct (including guidance on conflicts of interest and related issues) be made applicable to all prosecutors and made easily accessible to the public; and (ii) that it be complemented by practical measures for its implementation, such as dedicated training or counselling** (paragraph 170).

196. Pursuant to Rule 30.2 of the Rules of Procedure, GRECO invites the authorities of Finland to submit a report on the measures taken to implement the above-mentioned recommendations by 30 September 2014. These measures will be assessed by GRECO through its specific compliance procedure.

197. GRECO invites the authorities of Finland to authorise, at their earliest convenience, the publication of this report, to translate the report into the national language and to make the translation publicly available.

## About GRECO

The Group of States against Corruption (GRECO) monitors the compliance of its 49 member states with the Council of Europe's anti-corruption instruments. GRECO's monitoring comprises an "evaluation procedure" which is based on country specific responses to a questionnaire and on-site visits, and which is followed up by an impact assessment ("compliance procedure") which examines the measures taken to implement the recommendations emanating from the country evaluations. A dynamic process of mutual evaluation and peer pressure is applied, combining the expertise of practitioners acting as evaluators and state representatives sitting in plenary.

The work carried out by GRECO has led to the adoption of a considerable number of reports that contain a wealth of factual information on European anti-corruption policies and practices. The reports identify achievements and shortcomings in national legislation, regulations, policies and institutional set-ups, and include recommendations intended to improve the capacity of states to fight corruption and to promote integrity.

Membership in GRECO is open, on an equal footing, to Council of Europe member states and non-member states. The evaluation and compliance reports adopted by GRECO, as well as other information on GRECO, are available at www.coe.int/greco.