

CONFERENCE ON "STRENGTHENING THE CAPACITY OF PARLIAMENTARIANS, JUDGES AND PROSECUTORS TO PREVENT CORRUPTION IN THEIR OWN RANKS: EMERGING TRENDS FROM TWO YEARS OF GRECO ROUND IV EVALUATIONS"

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Conclusions by the General Rapporteur, Mr Yves-Marie Doublet,
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When the problem of corruption is raised today, a number of points spring to mind.

Firstly, there are the factors behind this issue.

The great complexity of our societies, with ever-more intensive interaction between economic, political and social players, leads to a growing number of situations in which bribery and conflicts of interest may arise, which in turn generates a vital need for rules of ethics. Conflicts of interest were not a risk for Robinson Crusoe on his desert island. The risk arises when living in society.

Then there is the way the problem is perceived by society itself.

The culture of transparency that has developed in recent years also means that what was formerly deemed harmless and tolerated is now disapproved and condemned.

Lastly, there is the impact of corruption on society.

The preamble to the Council of Europe's Criminal Law Convention on Corruption of 1999 offers a good illustration of the consequences: "Corruption threatens the rule of law, democracy and human rights, undermines good governance, fairness and social justice, distorts competition, hinders economic development and endangers the stability of democratic institutions and the moral foundations of society".

Members of parliament, judges and prosecutors are at the centre of this debate. Whether in parliament or the courtroom, they all take public decisions that commit society. Elected representatives embody democratic values, and judges and prosecutors the rule of law. However, if the public no longer trusts them, democracy is in danger. The ministers and the Deputy Secretary General of the Council of Europe have drawn our attention to this, and the example given yesterday of the situation in Slovenia was also enlightening.

The legal arsenal for the repression of corruption has been considerably enhanced, notably under the influence of international conventions. Conversely, corruption prevention is a more recent idea and still at a very early stage. At the same time, the public now legitimately nurtures higher expectations regarding the prevention of corruption, particularly in these times of financial crisis when everyone must play their part in the efforts. As already mentioned, distrust of public decision-makers has also grown. As a consequence, safeguarding these public players against the risks of conflicts of interest, the common denominator of GRECO's Fourth Round, has become essential as a means of consolidating ties between citizens and their institutions and simultaneously making public decisions more safe.

Over the last day and a half of discussions two messages have been conveyed and one question has been raised:

- Preventing corruption of parliamentarians, judges and prosecutors is not a fad but a necessity;
- GRECO's Evaluation Round on this topic is bringing positive results and serves as a stimulus for reforms;
- Is it necessary to take things further?

I. A culture of integrity and ethics is not innate. As Jane Ley pointed out, it cannot rely solely on individual consciences. It requires vigilance, discernment and guidance and must be a collective approach based on personal responsibilities.

Whether in the case of MPs, judges or prosecutors, the lessons drawn from GRECO's evaluations show that the member States' rules and regulations are as yet incomplete or just being developed. These rules and regulations now need to:

- 1) Define conflicts of interest. The importance of perceptions and the degree of intensity of interests must be taken into account. This is because it is not sufficient that interests simply co-exist, or that they converge or diverge, but there must be a real conflict, that is to say a contradiction. The time criterion is also a factor. Conflicts of interest must be prevented in respect of interests held not only before and during the term of office but also after, as a representative from Luxembourg said. However, the law must not go too far, as there is a genuine risk of triggering excessive and constant judgment. All members of parliament and all judges and prosecutors have interests, but not all interests of themselves result in conflicts.
- 2) Identify critical or problematic situations from the ethics standpoint;
- 3) Encourage the introduction of obligatory declarations, since these foster the emergence of an ethics culture, above all if they are made public, and contribute tangibly to the prevention of conflicts of interest;
- 4) Establish the possibility of obtaining advice from third parties or authorities either within the system itself or on its margins. Guidance on questions of ethics is needed. Parliamentarians, judges and prosecutors must not be left alone to deal with these issues. A related discussion took place yesterday with the UK representative concerning the comparative merits of internal and external control.

One of the lessons drawn from the evaluations is that ethics is not so much a matter of prohibition and punishment as of values and positive principles, which must be implemented preventively, as Ms Artukovic-Kunst underlined. However, there is no sure and certain recipe for preventing corruption of MPs, judges or prosecutors. This justifies the UN Convention's prudent approach, to which Mr Manquet appropriately referred this morning. A culture of preventive ethics can nonetheless prove effective, as criminal and disciplinary penalties, albeit useful and dissuasive, are not the right answer in every case.

The representative of Liechtenstein raised the question of the penalties that should be imposed for non-compliance with the rules on conflicts of interest. The sanctions must be proportionate. Ones that are disproportionate may be unconstitutional, as the French courts decided with regard to a penalty of deprivation of civic rights for five years pronounced following a conviction for corruption. It should be recalled here that GRECO has insisted that penalties be effective, dissuasive and proportionate.

II. GRECO's Fourth Round certainly can have positive outcomes and encourage States to pass appropriate legislation and undertake policy, institutional and judicial reforms.

I am aware of the arguments of those who entertain doubts about this exercise. At first glance, it might appear that the Fourth Round is not based on any particular legal instrument. In reality, as mentioned by Mr Mrčela, GRECO's evaluations are anchored in the fundamental principles and standards for credible and effective democratic institutions as endorsed by the Council of Europe and its "variable geometry" of inter-governmental and inter-parliamentary bodies. Rather than monitoring compliance with specific provisions of the organisation's anti-corruption treaties and imposing uniform rules, GRECO's approach in the Fourth Round has been to evaluate each country purely on its own merits and context and to design tailor-made recommendations.

Evaluation team members know full well that the recommendations targeting MPs, judges and prosecutors encounter strong corporatist resistance. MPs jealously guard their independence and are used to determining their own rules of conduct. Judges and prosecutors are wary of any interference with their status by the executive or legislative branches of power. Mention was made this morning of the muffled discord in France between the Judicial Service Commission and the justice minister, reminding us of the sensitive nature of such relationships when it comes to the appointment of judges. Judges and prosecutors in the more recent democracies know from experience that independence has its price.

Should one then simply give in and leave these public players exposed to a risk of potential or real conflicts of interest? Should registers of lobbyists be operated solely on a voluntary basis? Should grey areas be tolerated in respect of the acceptance of gifts by MPs? Must one await hypothetical national laws, which are likely to emerge only under the pressure of the media attention surrounding certain scandals? Yesterday, we heard a presentation from an NGO concerning the example of the half measures taken with regard to Austrian parliamentarians.

Conversely, in the case of judges and prosecutors, the appointment and promotion procedures in Germany described in Mr Hornung's very detailed presentation, the work of the International Association of Judges mentioned by Mr Reissner, the progress noted in Croatia regarding the composition of the Council of Prosecutors, the very complete integrity programme in the Dutch prosecution service, which Ms Nooy has just outlined for us, and Poland's experience of applying GRECO's recommendations, presented by Ms Lewandowska, are all good practice examples which could provide GRECO's evaluators with very useful food for thought.

GRECO's considerations have the merit of situating the problems in an international context. While avoiding any kind of naive optimism, **three lessons** can be drawn from this initial experience.

Firstly, this is an area where we are nearly starting from scratch. Codes of ethics are still virtually unknown at the level of parliamentarians, and to a lesser degree - among judges and prosecutors. In our sample of 17 countries evaluated so far, one-third has a code of conduct for judges. As Mr Duro Sessa told us concerning Croatia, those codes that do exist have their strong and weak points. It must also be said that everything depends on how the term is interpreted. It has been announced that the Polish Sejm has a code of conduct. GRECO is not entirely in agreement, since it considers that principles of ethics which invite Polish MPs to exercise objectivity and to be broad-minded do not constitute corruption prevention guidelines.

Also, virtually none of the countries in our sample has a definition of a conflict of interests. GRECO will therefore be providing a powerful spur to act, since most countries will be unable to take refuge behind pre-existing rules.

The second point I wish to make is that by choosing parliamentarians, on one hand, and judges and prosecutors, on the other, GRECO has shown discernment. The recent political history of Southern Europe offers frequent examples of tense relations between politicians and prosecutors. Evaluating one camp while deliberately ignoring the other would have engendered an imbalance. Submitting both to the same evaluation exercise in respect of very similar problems obliges the two camps to respond to GRECO's observations.

Lastly, many of us here today deal with reports by international organisations and NGOs relating to corruption. However, without wishing to hurt anyone's feelings, we can but acknowledge that these reports are variable in quality. One of GRECO's undisputed strengths is that its reports are based on well-founded, sound, precise and verified legal analyses, avoiding generalities and biased surveys whose questions point respondents towards the desired answers. As Mr Manquet said, peer review also lends the process considerable legitimacy. GRECO's findings of weaknesses are hard to evade. It is this approach which makes GRECO an authoritative body and has over time earned it its reputation.

III. By choosing the hitherto unexplored theme of prevention of corruption of parliamentarians, judges and prosecutors GRECO has broken new ground. Should things be taken further in future?

I am asking this question because any observer of the Fourth Round is entitled to ask why GRECO is taking an interest in the legislature and the judiciary and ignoring the executive branch of power. Why is the focus on preventing corruption of judges, when scandals involving government members are much more frequent than those concerning judges?

Why attach importance to "revolving doors" for judges, when most of the latter only look to retire once their judicial career is over? Is there a real need for a declaration of assets by judges and prosecutors, as compared with the holders of executive power who are far more exposed to corruption risks?

Clearly, in a democratic society, parliaments, courts and prosecution services are vested with significant public authority and expected to be in the vanguard of corruption prevention. The increasing public demand for integrity and incorruptibility extends to both institutional settings and persons, particularly when these are elected or appointed to such important public positions as that of MP, judge or public prosecutor. The striking reality has however been widespread mistrust and the perception in some GRECO member States that politicians and members of the judiciary are particularly tainted by corruption. That explains the focus and scope of GRECO's Fourth Round. However, by raising these questions I may already be sketching out the direction to be taken by GRECO's future evaluation rounds, which could concern the executive, public administration, where there is often well-advanced legislation, and, as I suggested yesterday, local elected representatives, since conflicts of interest can also arise at that level.

However, whether in the current round or a future round, the issues that GRECO has chosen to address bring to mind what Max Weber said in his famous lecture of 1919: *"It is immensely moving when a mature man – no matter whether old or young in years – is aware of a responsibility for the consequences of his conduct and really feels such responsibility with heart and soul. He then acts by following an ethic of responsibility and somewhere he reaches the point where he says 'Here I stand; I can do no other.' That is something genuinely human and moving. And every one of us who is not*

spiritually dead must realize the possibility of finding himself at some time in that position. In so far as this is true, an ethic of ultimate ends and an ethic of responsibility are not absolute contrasts but rather supplements, which only in unison constitute a genuine man – a man who can have the 'calling for politics'."

By making its contribution to the development of corruption prevention tools, GRECO is in its own way participating in shaping this public figure to whom Max Weber pays tribute.