

Conference on “Judicial Integrity and Corruption”, organized by the Consultative Council of European Judges (CCJE) on 7 November 2017, Room G03

The fight against corruption in the judiciary – conclusions and recommendations of GRECO’s 4th Evaluation Round

Speech by Marin Mrčela, President of GRECO

President, Colleagues, Ladies and Gentlemen,

It is a great pleasure for me to be here today for this very important event on a topic – preventing corruption in the judiciary – that has occupied GRECO over the past 4 years and that is very dear to my heart as a judge.

This topic remains high on GRECO’s agenda and I am glad the CCJE is devoting this event to it.

Judges are the public face of justice. It is to us – judges - that citizens and the State turn to interpret and apply the Law and to take binding legal decisions that can have a great impact on people’s lives. It is to us that they turn to uphold the Rule of Law.

But when judges do not live up to the high standards of integrity, independence and impartiality expected of them, trust falters, and public disquiet is palpable. The very foundations of a democratic State governed by the Rule of Law start to crumble as a result, and may eventually collapse.

The day after tomorrow, in Prague, under the auspices of the Czech Chairmanship of the Committee of Ministers of the Council of Europe, GRECO will be discussing the lessons learned from our 4th Evaluation Round which focused on corruption prevention in respect of Members of Parliament, Judges and Prosecutors. Let me today give you a preview of our main findings in relation to judges specifically.

Overall, in many countries, society has a high level of confidence in judges. In others, however, opinion polls reveal low levels of trust. In a small but significant number of countries, judges are perceived as being the most corrupt of the three groups under review in the 4th Round - the other two groups are MPs and prosecutors.

In some jurisdictions this gives rise to concerns about a culture of impunity, notably as regards the ability of judges to convict powerful individuals. GRECO has made a number of strong recommendations relating to the judiciary which in some cases will require political will to implement.

At a time when we in Europe thought that the principle of judicial independence was clearly established, GRECO has still identified serious problems with respect to judicial independence, and weaknesses in the structures separating the three branches of power. GRECO has been unequivocal in this respect: judicial independence must be recognised and guaranteed by all branches of government.

We must react to any attempt to go backwards in this area. Pressure on judges to refrain from fully exercising their judicial functions or to do so in a biased way not only taints individual judges but also undermines the authority of the judiciary as a fair and impartial arbiter for all citizens.

The three areas where GRECO has issued most of its recommendations relating to judges are the following:

First: recruitment, career and conditions of service;
Second: ethical principles and rules of conduct; and
Third: supervision and enforcement.

Let me, in the minutes I have at my disposal, address these three issues in turn. Since GRECO looks into country-specific situations, I will at the end of each section provide a few “real” examples of GRECO’s recommendations....don’t worry, I will be kind enough not to mention countries by name...☺

So, first, recruitment, career and conditions of service of judges.

A majority of countries received recommendations on the recruitment, transfer or promotion of judges and court presidents. Judicial positions need to be awarded on merit and GRECO made it clear that career progression and other conditions of employment, such as transfers between courts, must be managed fairly. This means that decisions should be taken on clear and objective, merit-based criteria.

In Europe, methods of judicial appointment vary according to different traditions and legal systems; they can also differ within the same system depending on the type of judge being appointed. GRECO evaluation reports show that the number of countries where the executive or legislative branches are involved in the appointment of judges is limited. In most countries governing judicial councils now play the pivotal role.

In the few systems where the executive branch has traditionally, and continues to play a role in appointments, judicial independence has been maintained by cultures and traditions that restrain executive power. Where these are not well established, most countries have adopted specific constitutional or legal provisions to prevent political abuses of power in the appointment of judges.

A balance must be struck between guarding against undue external influence and a system where the preponderance of judges gives rise to concerns about self-protection, self-interest and cronyism in the selection and oversight of judges. However, where judicial independence is at stake, GRECO clearly supports judges playing the decisive role.

So that I can be very concrete, let me give you a few examples of some of GRECO's recommendations in this area.

GRECO has asked one of its members to strengthen the decisive influence of the relevant self-governing judicial bodies, such as Judicial Councils, in the appointment, reappointment and career progression of the judiciary, and to reconsider the role of the Parliament in that area.

To another country, GRECO recommended that judicial independence be further strengthened by increasing the role of the Judicial Legal Council in the appointment of all categories of judges and court presidents, and substantially reducing the five-year probation period for judges, as well as making permanent appointments to the post of judge subject to clear, objective and transparent criteria.

To yet another country, GRECO recommended that the power of the President of the National Judicial Office to re-assign ordinary judges without their consent be reduced to a minimum in time, and only for precise and particular reasons of a temporary nature.

GRECO has also recommended (i) strengthening the role of the judiciary in the procedures for the recruitment, promotion and dismissal of judges, reducing the role of the head of state and requiring that written motivations for his/her decisions are given and, (ii) ensuring that any decisions in those procedures can be appealed to a court.

Finally, GRECO has noted – to be honest, not without some surprise - that it is still possible in a number of European countries to be at the same time a judge and an elected representative. GRECO has been firm in recommending in such cases that a restriction on the simultaneous holding of office as a judge and as a member of a national or local executive or legislative body be laid down in law.

The second issue I wish to cover relates to ethical principles and rules of conduct.

The vast majority of GRECO member states received recommendations on codes of conduct. A third of these were to adopt such codes and the rest focused on their substance and implementation. GRECO insisted on the importance of active involvement of judges from all levels, in the development of a set of standards which should ideally be agreed upon following an open debate and discussion of their particular content.

For GRECO, the fact that judges from all different levels engage in such a discussion represents an ideal opportunity to exchange views and experiences

about the ethical dilemmas and potential conflicts of interest they might face in the fulfilment of their tasks. The adoption of a code of conduct is also a key opportunity to translate core values into standards of behaviour and to create clear expectations among judges, and the public, as to what conduct is to be expected in court.

Regarding the substance of the codes themselves, GRECO has looked to ensure that the rules explicitly promote the independence, integrity and impartiality of judges. A particular focus was placed on judges taking responsibility for understanding and addressing potential conflicts of interest, not just the specific rules that may apply to them such as prohibitions on holding certain outside positions, or on accepting gifts.

GRECO stresses that codes of conduct are meant to be living documents that help guide judges in their daily practice, and that judges need support to successfully fulfil their function. In keeping with safeguarding judicial independence, the support must come first and foremost from within the judiciary itself.

Let me give you a flavour of GRECO's recommendations that target those objectives. GRECO recommended, for instance...

- that a set of clear standards/code of professional conduct, accompanied by explanatory comments and/or practical examples, be established which would cover in scope all judges;
- that (i) a code of conduct for judges be adopted and made easily accessible to the public; and (ii) that it be complemented by dedicated advisory services on conflicts of interest and other integrity-related matters;
- that (i) a system of confidential counselling on integrity and ethical matters be established within the judiciary, including specifically on judges' accessory activities; and that (ii) dedicated on-going training be provided to judges on ethical conduct, conflicts of interest and asset disclosure;

- that (i) clear, enforceable, publicly-available standards of professional conduct (covering e.g. gifts, conflicts of interest, etc.) are set out for all judges and used *inter alia* as a basis for promotion, periodic evaluation and disciplinary action; and that (ii) awareness of the standards of conduct is promoted amongst judges through dedicated guidance, confidential counselling, and initial and in-service training.

Dear Colleagues, the third and last point I would like to address concerns supervision and enforcement.

The 4th Round has demonstrated the need to increase the responsibility and independence of the judiciary for maintaining high standards of integrity and ethical conduct among their ranks. This is a matter of continuing professional development as well as supervision and support. Consequently, GRECO recommendations have naturally focused on the role of judicial councils and judicial governing bodies in terms of structure and independence.

A key issue is to ensure that the supervision and monitoring of judicial conduct does not interfere with judges' independence in decision-making. This requires precision in defining misconduct in a disciplinary sense and gross misconduct that could lead to dismissal.

The other important way that judges' conduct is monitored is through public complaints procedures. In many GRECO countries, these were found to be fairly well established. Some are separated between issues that occur within the court room and complaints about the conduct of a judge outside the court.

Clearly, parties to legal disputes have access to appeal mechanisms, but issues of possible judicial bias may arise including circumstances where a judge does not recuse her or himself, or oversteps the boundaries of proper judicial conduct. Thus there are processes for the public to complain and for possible actions to be taken. GRECO has recommended to member states to gather and publish key data concerning complaints, including their number and outcome.

To complete this section, let me again provide a few examples.

GRECO has recommended, for instance...

- that appropriate legal, institutional and/or operational measures be put in place, or strengthened, to ensure a more in-depth scrutiny of judges' asset declarations and to enhance the preventive dimension of asset declarations;
- that disciplinary authority over judges and any prior administrative procedure be concentrated in the hands of the section of the Judicial Service Commission with jurisdiction over judges;
- that the disciplinary proceedings applicable to judges be reviewed so that (i) infringements are subject to one single disciplinary procedure and (ii) with due regard to the principle of judicial independence, the authority to initiate proceedings and to investigate be separated from the authority to decide on sanctions;
- (i) that the role of the Ministry of Justice in disciplinary proceedings against judges be reviewed; (ii) that adequate safeguards be put in place to ensure that disciplinary proceedings are not used as an instrument of influence or retaliation against judges, including the possibility for judges to challenge disciplinary decisions before a court;
- (i) that the system of disciplinary proceedings against judges and prosecutors be subject to an in-depth evaluation aiming at establishing a process guided by objective criteria without undue influence from the executive powers and (ii) that this process, measures and sanctions be subject to review by judicial authorities;
- that appropriate measures be taken to increase the effectiveness, transparency and objectivity of disciplinary proceedings against judges, *inter alia*, by defining disciplinary offences more precisely; ensuring in-depth examination of complaints submitted to the High Council of Justice

and requiring that its decisions to dismiss cases be reasoned, notified to the complainant and subject to review; introducing a simple majority requirement for the Council's decisions; and removing the Council's power to send private recommendation letters to judges as a disciplinary measure.

Ladies and Gentlemen, let me conclude.

In times of increased citizens' demands for trustworthy core state institutions, such as the judiciary, it is paramount that any holder of public office acts with integrity, and is perceived as doing so, by the wider public. Judges are no exception.

Today more than ever, we must not take judicial independence for granted. This is not a matter of self-protection by judges, as is sometimes claimed. Judicial independence is an essential guarantee for the values which the Council of Europe promotes and on which all our member states rest. We are seeing too many signs of regression, in too many countries. We must react to them. The full implementation of all of GRECO's recommendations by all countries in this area will go a long way in guaranteeing an efficient, independent and impartial judiciary.

Thank you for your attention, I look forward to our discussion.