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## FOURTH EVALUATION ROUND

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

### EVALUATION REPORT HUNGARY

Adopted by GRECO at its 67<sup>th</sup> Plenary Meeting  
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## EXECUTIVE SUMMARY

1. This report evaluates the effectiveness of the systems in place in Hungary to prevent corruption in respect of members of parliament, judges and prosecutors. Hungary has been through substantial constitutional and legislative reforms in 2010-2012, *inter alia*, in respect of the areas covered by this report and a new Constitution and new cardinal acts pertaining to central parts of public structures, including the legislature, the judiciary and the prosecution service have been adopted and enacted in a short period of time. This process has been subject to considerable attention in Hungary, but also amongst the international community (e.g. the Council of Europe, the European Union and the OSCE). A dialogue between the Hungarian authorities and the Council of Europe, to a large extent based on legal opinions of the Venice Commission, has focused on the legislative process as such and also the substance of the recent reforms of the judiciary and the prosecution system, which led to several positive changes.

2. More particularly, the report acknowledges that the legislative process is regulated in an adequate way and that it provides for openness and transparency as a main rule. Nevertheless, it would appear that the same process when applied in practice, in particular relating to the legislative reforms 2010-2012, has not always been guided by sufficient levels of transparency and consultation. Furthermore, third party involvement in this process is not perceived as being sufficiently transparent since there is no lobbying regulation at parliamentary level. These problems call for broad reflexions and decisive measures. Moreover, the report stresses the need to establish codes of ethics/conduct for members of parliament in order to complement existing regulations with guidance, particularly in situations where MPs are faced with various forms of conflicting interests; for example, in respect of gifts and other benefits offered which are currently insufficiently regulated. Furthermore, MPs ought to be obliged to report conflicts of interest as they occur (*ad-hoc*) and the practical implementation of the obligation to submit asset declarations could well be further enhanced.

3. The judiciary has, ever since the transformation of the political system in Hungary in 1989-90, undergone important reforms to consolidate its independence and respect for the rule of law. Hungary was a pioneer among the new democracies in central and eastern Europe when its National Council of Justice was set up in the mid-1990s. With the judicial reforms 2010/2012 a new structure of the judiciary comprising yet another authority has been made responsible for judicial administration ie the National Judicial Office (NJO), headed by a President (PNJO) elected directly by Parliament. The extensive powers vested in the PNJO at the outset, have been reduced as a result of the dialogue between Hungary and the international community and a better balance between the powers of the PNJO and those of the National Judicial Council (NJC), which is a collective body, has been established. The need for further moves in this direction is stressed in the current report, in order to minimise potential risks of discretionary decisions; for example, in relation to appointment and promotion of judges. Moreover, a recently adopted Code of Ethics for judges is to be welcomed as an instrument that may hopefully evolve over time; it could be made more explicit and should be accompanied by dedicated in-service training.

4. The prosecution service in Hungary is an independent institution vested with pertinent powers to investigate and prosecute criminal cases; however, its mandate goes beyond that, as it includes a number of supervisory functions. This service is built on a strict hierarchical structure, allowing superior prosecutors (ultimately the Prosecutor General) to instruct subordinate prosecutors, to overrule their decisions and to re-distribute or take over cases. In such a system there is a need for adequate checks and balances in order to prevent the potential for malpractice and corruption and more could be done in this respect. Furthermore, the independence of the Prosecutor General from political influence would be clearer if this official could not be re-elected and, the current possibility to politically block the election of a new prosecutor general with a minority

vote in Parliament, in which case the sitting prosecutor general will remain in office after the expiry of his/her mandate, ought to be discontinued for the same reason. Moreover, the disciplinary proceedings in respect of ordinary prosecutors would benefit from being made more transparent and connected to broader accountability. Superior prosecutors' decisions to move cases from one prosecutor to another ought to be guided by strict criteria and justifications.

5. The report also stresses the general need to deal with the situation in Hungary in relation to immunities, i.e. that members of parliament, judges and prosecutors all enjoy immunity in the strict sense (inviolability) in respect of all criminal offences, except for situations of "*in flagrante delicto*". Such privileges, ought to be reduced to the extent necessary for the functions of the officials concerned; they may otherwise counteract efficient corruption prevention in respect of these officials.

## **I. INTRODUCTION AND METHODOLOGY**

6. Hungary joined GRECO in 1999. Since its accession, the country has been subject to evaluation in the framework of GRECO's First (in March 2003), Second (in March 2006) and Third (in June 2010) Evaluation Rounds. The relevant Evaluation Reports, as well as the subsequent Compliance Reports, are available on GRECO's homepage ([www.coe.int/greco](http://www.coe.int/greco)).

7. 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 executive branch of 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.

8. 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.

9. 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.

10. In preparation of the present report, GRECO used the responses to the Evaluation Questionnaire (Greco Eval IV (2013) 13E) by Hungary, 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 Hungary from 27 to 31 October 2014. The GET was composed of Mr Flemming DENKER, former Deputy State Prosecutor (Denmark), Mr Tomáš HUDEČEK, legal expert, Ministry of Justice (Czech Republic), Ms Rusudan MIKHELIDZE, Secretary of the Anti-Corruption Council, Ministry of Justice (Georgia) and Mr Dimosthenis STIGGAS, Presiding Judge of the District Court of Serres (Greece). The GET was supported by Mr Björn JANSON, Deputy to the Executive Secretary of GRECO.

11. The GET was received by the State Secretary and the Deputy State Secretary for EU and International Relations of the Ministry of the Interior and the Head of the Department for Corruption Prevention of the National Protective Service. It interviewed members and other representatives of the National Assembly (Parliament): the Deputy Speaker, the Committee on Immunity, the Committee on Justice, the Committee on Legislation, the Directorate on Legislation, the Department of Codification, the Directorate for Financial Management and Operations, the Chief of Staff and the Media Office. Furthermore, the GET met with representatives of the Judiciary: judges of all court levels and officials of the National Judicial Office, the National Judicial Council and the Judicial Academy. The GET also interviewed officials of the Ministry of Justice, the Office of the Prosecutor General, including its Secretary General and prosecutors at

various levels, the Department for Personnel and the Training Centre for Prosecutors. The GET also discussed with representatives of the Association of Hungarian Judges, the Bar, and the Association of Hungarian Prosecutors. The GET's meetings also included representatives of civil society, more particularly Transparency International, Cöf-Cöka, K-monitor, Geopol Tanács, JVSZ and Hir 24.

12. The main objective of the present report is to evaluate the effectiveness of measures adopted by the authorities of Hungary 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 Hungary, which are to determine the relevant institutions/bodies responsible for taking the requisite action. Within 18 months following the adoption of this report, Hungary shall report back on the action taken in response to the recommendations contained herein.

## II. CONTEXT

13. GRECO concluded in its First Evaluation Round Report<sup>1</sup> in 2003 that corruption had been and still was an important problem in Hungary, affecting a number of public services. In its Second Evaluation Round Report on Hungary (2006), GRECO acknowledged that substantial steps appeared to be underway to prevent and combat corruption within public administration<sup>2</sup>. However, in the following compliance procedure, ended in 2010, GRECO noted that a number of reforms foreseen in this area had not materialised as foreseen and concluded in the Addendum to the Compliance Report that Hungary needed to display more convincing efforts to effectively address GRECO's concerns in the area of prevention of corruption in public administration<sup>3</sup>.

14. Within the framework of its Third Evaluation Round<sup>4</sup>, GRECO concluded that overall the Hungarian criminal law contained a broad range of provisions to cover various forms of corruption offences and the legislation was assessed as being largely in conformity with the requirements of the Criminal Law Convention on Corruption (ETS 173). GRECO also commended Hungary for the fact that the criminal legislation had been subject to several amendments in recent years in order to incorporate additional requirements of the Convention and other international instruments. On 27 February 2015, Hungary ratified the Additional Protocol to the Criminal Law Convention on Corruption (ETS 191).

15. As far as transparency of political financing is concerned, GRECO concluded in its Third Evaluation Round Report on Hungary<sup>5</sup>, that the political process in Hungary was dominated by the political parties, which were largely funded by the State, and that there were rules aimed at ensuring transparency of private funding and strict limits for parties' involvement in business activities. In contrast to this, GRECO stated that the system of political funding had been subject to heavy and justified criticism, based on the widely shared perception that the legislation was not fully applied and implemented as intended and that it carried shortcomings, which allowed regulations to be circumvented in practice. GRECO addressed a number of recommendations to Hungary in order to remedy this; however, to date the situation remains largely the same as when the evaluation report was adopted in 2010.

16. The perception of Hungary as affected by corruption has, according to Transparency International's (TI) annual perception index, been relatively stable over the past 10 years. In the 2014 Corruption Perception Index (CPI) ranking, Hungary scored 54 on a scale from 0 (highly corrupt) to 100 (very clean) which places Hungary as number 47 on a list of 174 countries. The results of TI's Global Corruption Barometer (2013) is more negative, indicating in 2011-2013 that 62% of the respondents perceived that the level of corruption in Hungary was increasing, while only 7% indicated a perception that this phenomenon was decreasing.

17. Following the parliamentary elections in 2010 where the current Government received more than two-thirds majority in Parliament, it entered into massive constitutional and legislative reforms concerning major areas of the State, including those of particular focus in the current report: the legislature, the judiciary and the prosecution service. These reforms, which resulted in, *inter alia*, a new Constitution as well as new cardinal acts regulating these areas, triggered considerable criticism in Hungary as well as amongst the international community, as mentioned in the executive summary and elsewhere in this report. In the light of this and as a result of a dialogue

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<sup>1</sup> [Greco Eval I Rep \(2002\) 5](#)

<sup>2</sup> [Greco Eval II Rep \(2005\) 5](#)

<sup>3</sup> [Greco RC-II \(2008\) 4 Addendum](#)

<sup>4</sup> [Greco Eval III Rep \(2009\) 8, Theme I](#)

<sup>5</sup> [Greco Eval III Rep \(2009\) 8, Theme II](#)

between the international community and Hungary, the Constitution (Fundamental Law) as well as the cardinal acts have been subject to numerous amendments.

18. As part of the reforms, the Hungarian Government adopted a two-year anti-corruption programme, in early 2012, comprising a range of integrity related measures for the public administration; for example, the introduction of ethical codes and integrity officers responsible for monitoring compliance with ethical standards. While the prevention side of this programme has been welcomed by the EU, it has also been criticised for not being sufficiently geared to areas, such as law enforcement and political financing or towards risks of favouritism and nepotism at a high level in public administration and risks arising from the interface between business and political actors<sup>6</sup>.

19. In August 2014, the Government decided to move the responsibility for corruption prevention from the Ministry of Public Administration and Justice to the Ministry of the Interior, in order to bring together corruption prevention with the repressive side (law enforcement) of corruption. The reasons for this move have been explained as a general commitment to gathering all efforts against corruption under the same structure, in order to work more efficiently in the future. In contrast, the move of corruption prevention from the Ministry of Public Administration and Justice has been criticised by civil society in Hungary arguing that the repressive powers will not be able to fight the roots of corruption as a societal phenomenon which is distinct from the objectives of law enforcement.

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<sup>6</sup> European Commission, 3.2.2014, COM(2014)38 final, p 2.

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

#### Overview of the parliamentary system

20. Hungary is a parliamentary democracy with a written constitution titled the Fundamental Law of Hungary (hereinafter referred to as the Constitution). The National Assembly (Parliament) is the supreme organ of popular representation in Hungary. Article XXIII of the Fundamental Law prescribes the main rule that every adult (18 years old) Hungarian citizen has the right to vote in elections to the National Assembly. Citizens can vote for a party-list (or a minority-list) and, in case of residing in Hungary, citizens can also vote for a constituency candidate.

21. The National Assembly is unicameral and consists of 199 members. As laid down in the Act on the Election of Members of Parliament, 106 members are elected in single-member constituencies by majority rules and 93 are elected from national party lists by proportional representation. The threshold to obtain a mandate for a party in Parliament is set at 5% of the total votes cast. The parliamentary elections are held in one round. Hungarian citizens with residence in Hungary may cast two votes, one for a candidate of their single-member constituency and one for a party list. Voters with residence in Hungary who are enlisted on the electoral register as belonging to a national minority may vote for a candidate of their single-member constituency and the national list of their national minority. Voters belonging to a minority group but who are not enlisted as such may also vote for a national party list. The number of votes necessary to obtain a mandate in Parliament for minorities is calculated as follows: i) all votes cast for lists (both party and minority lists) divided by the party list mandates (93) divided by four; ii) if the respective nationality fails to get a seat in Parliament it can still be represented in Parliament by a nationality spokesperson (advocate).

22. As a general requirement, every adult Hungarian citizen has the right to be voted for in elections of members of the National Assembly (Parliament). However, candidates need to be nominated before the elections; for constituency seats by at least 500 proposal coupons; for party-list (or national-list) by parties that have set candidates in at least 27 constituencies (out of the 106) in at least nine county (out of 19) and in Budapest. Minority councils can establish minority-lists without any restrictions (one minority-list per acknowledged minority).

23. The National Assembly elects the President of Hungary for five years. The Head of State has largely ceremonial functions. According to the Hungarian Constitution, Parliament also elects the Head of the Government – the Prime Minister – upon the proposal of the President of the Republic. Furthermore, Parliament elects a number of other officials in Hungary, such as the Presidents of the Constitutional Court, the Supreme Court and the National Office of the Judiciary, the Prosecutor General, the Commissioner for Fundamental Rights and the President of the State Audit Office.

24. In accordance with Article 4(3) of the Fundamental Law, the mandate of a member of the National Assembly is to terminate

- a) upon the termination of the mandate of the National Assembly;
- b) upon his/her death;
- c) upon the declaration of a conflict of interests;
- d) upon his/her resignation;
- e) if the conditions required for his/her election no longer exist; (e.g. no longer a citizen of Hungary, has lost his/her right to vote due to mental capacity or is subject to imprisonment); or
- f) if s/he has failed to participate in the National Assembly's work for one year.

25. Furthermore, the Act on the National Assembly (ANA) provides that a member of parliament is to be declared disqualified from serving as a member if s/he has been

convicted of a criminal offence or if s/he has failed to follow certain conditions to regulate a public due payable to the State (Section 88 ANA).

26. The National Assembly is obliged to decide by two-thirds majority of the members present on the declaration of the absence of condition(s) required for the election of a member of parliament, on the declaration of a conflict of interests and on the declaration of failure to participate in the National Assembly's work for one year.

27. According to Article 4(1) of the Fundamental Law of Hungary "*Members of the National Assembly shall have equal rights and obligations, they shall perform their activities in the public interest, and they shall not be given instructions in that respect.*" As a consequence of the fact that members of Parliament are elected not only from party lists but from single-member constituencies as well, it is possible that a special request or interest of the inhabitants of a given single-member constituency is present in the legislature. According to Article 4(2) of the Fundamental Law, MPs benefit from immunity<sup>7</sup> and remuneration ensuring their independence. Members of parliament cannot be directed or held responsible for actions committed in the exercise of their functions; and they cannot be recalled for their activities or votes they cast in Parliament. The opinions and views of members of parliament are to be elaborated in a free manner, according to their conscience and convictions, and they are expected to vote accordingly.

#### Transparency of the legislative process

28. The legislative process in Hungary is regulated in the Constitution, the Act on the National Assembly (a cardinal act) and in the Rules of Procedure of the National Assembly (a resolution).

29. The President of the Republic, the Government, any parliamentary committee or MP may submit draft legislation to Parliament. The President has not used this power since 1994, the most significant law drafter being the Government which introduces more than 90% of all enacted laws. Some 55-60% of all draft legislation submitted emanates from the Government and the remaining part from individual MPs and parliamentary committees.

30. There are two types of law in Hungary: cardinal acts and ordinary acts. The cardinal acts, which aim at regulating basic constitutional matters of high importance, require a two-thirds majority vote of the votes cast to be enacted in order to guarantee high parliamentary consensus for such matters. Other laws are enacted by a simple majority vote. The use of cardinal acts is a tradition in Hungary; and it is to be noted that these acts are hierarchically below the Constitution and their constitutionality, similar to any other law, may be examined by the Constitutional Court. The GET notes that the Venice Commission of the Council of Europe has, on several occasions, criticised Hungary for using cardinal acts beyond what is strictly necessary, and even in respect of detailed legislation, which has been considered questionable from a democratic perspective as it makes it difficult to introduce reforms in the future<sup>8</sup> (should a government have less than two-thirds majority in Parliament).

31. According to Act CXXXI of 2010 on social participation in the drafting of legislation (only applicable to the process under the government), all draft bills, governmental decrees and ministerial decrees drafted by ministries are to be published on the Government's webpage prior to their submission to Parliament. The minister responsible for drafting a given bill is also responsible for publishing the draft and for holding a social consultation.

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<sup>7</sup> The immunity is fully described below under "Supervision and enforcement"

<sup>8</sup> E.g. Venice Commission, CDL-AD(2012)009, p.11

32. Public consultations are to be carried out within the framework of general or direct consultations. While general consultations are mandatory, direct consultations are optional. General consultation is carried out in a way that anyone, using the e-mail address published on the webpage, may express an opinion on the draft or concept subjected to social consultation. The minister responsible for drafting is to consider the opinions received and is to prepare a general summary of them and – in the case of rejected opinions – a standardised explanation of the reasons for rejection, which is to be published on the webpage along with the list of those offering their opinions.

33. Furthermore, the minister responsible for drafting the legislation may decide to form a 'strategic partnership' and hold working groups or agree on other forms of consultation with the partners. The minister may also involve others than the strategic partners, in a direct consultation held on a given draft law. A summary is to be drawn up also in respect of such consultations and published on the website of the Government. Such a summary is to contain the reasoned opinions represented by strategic partners or other participants.

34. Strategic partnerships may be formed between the government and any organisation with a broad social reputation, for example, with non-governmental organisations, recognised churches, professional and scientific organisations, national self-governments of national minorities, organisations of interest representation, public bodies and with representatives of institutions of higher education. The GET understood that a large number of Strategic Partnership Agreements (SPA) are established between the government and the commercial industry. The GET wishes to stress that sufficient transparency of the pre-legislative process by the government appears particularly important in a situation, like the one in Hungary, where the government has an overwhelming majority in Parliament.

35. Moving to the legislative process in the National Assembly, the GET notes that the various stages are well defined in law: 1) following reception of a legislative proposal, it is to be published without delay on the website of the National Assembly; 2) a general debate is to be held in the plenary; 3) detailed debates are to take place in the standing committees; 4) the draft is to be processed by the Committee of Legislation, which is to draw up a report which includes summaries of proposed amendments; 5) plenary debates are again to be held, now based on the committee report and findings of the committees involved; to be followed by 6) the plenary vote on the proposed amendments and a closing vote by the plenary.

36. Committees within the National Assembly are primarily regulated by Chapter III ANA, which provides that the Assembly is to establish committees which are obligatory, such as the Committee on Legislation, the Committee on Immunity, Incompatibility, Discipline and Mandate Control and the Standing Committees on Constitutional Affairs, Budget, Foreign Affairs, EU Affairs, National Defence, National Security and Hungarian Communities Abroad. The National Assembly may also establish *ad hoc* committees and a committee of inquiry, whenever deemed necessary (Section 14 ANA).

37. The GET was informed that the number of MPs from each parliamentary group acting as members in a committee should preferably be proportionate to the total number of parliamentary seats of the various groups. The composition of committees is based on agreements between the political factions.

38. In respect of public access to the parliamentary process, the GET notes that Article 5 of the Constitution prescribes that sittings of the National Assembly are, as a main rule to be public; however, the Assembly may decide, with a two-thirds majority vote, to hold sittings *in camera*. The GET was informed that there had been no *in-camera* sitting since 1995. Chapter IV ANA regulates the openness of the plenary sittings as well as the committee meetings more in detail. The minutes of the National Assembly's public

sittings and the documents discussed as well as the related electronic voting lists are published on the website of the National Assembly. The plenary sessions of the National Assembly are web streamed and broadcast on public television. The outcome of voting is to be declared without delay by the chair of the sitting. The debates and the votes are webcast and in the vast majority of cases also broadcast on public television, according to the authorities. In the case of *in camera* sittings, the minutes are not public, but resolutions adopted can be disclosed upon a decision of the National Assembly.

39. In accordance with Section 58 ANA, the meetings of the parliamentary committees are also - as a main rule - to be open to the public and the minutes of these meetings are to be published on the website of the National Assembly. *In camera* meetings can be held for certain reasons, such as to protect classified or personal data or trade secrets etc. In addition, the sessions of the Committee on Legislation, the public hearings at other committees and any other committee sitting designated by the Speaker can be broadcast live (Section 59 ANA). A closed circuit audio-visual system is operated for this purpose by the National Assembly, available for all media service providers (TV or internet). The press may also record any public sitting through their own device.

40. Section 60 ANA states that legislative proposals and amendment proposals, committee reports prepared for proposals and any other document and data recorded in the parliamentary registry are to be made public without delay upon submission on the website of the National Assembly. The same applies in respect of parliamentary committees' reports prepared for legislative proposals.

41. A law can be examined by the Constitutional Court before or after its promulgation. The Constitutional Court is to examine a law adopted but not yet promulgated for conformity with the Constitution on the bases of a request made by the National Assembly or the President. The Constitutional Court can also examine promulgated laws upon the initiation of the Government, one-fourth of the Members of the National Assembly, the President of the Kúria, the Prosecutor General or the Commissioner for Fundamental Rights. Judges in charge of an individual court case can also ask for the examination of a law which is applicable in a particular case. Moreover, any natural person or organisation may ask for the examination of a law by which s/he is affected. Should a promulgated law conflict with the Constitution, the Constitutional Court can annul it. If a not yet promulgated law has been found to conflict with the Constitution, the Constitutional Court is to send it back to the National Assembly (Article 24 of the Constitution).

42. The GET acknowledges that Hungary has in place a legal framework, which regulates the legislative process in the National Assembly in an adequate way. Furthermore, the GET notes that the formal stages of the legislative process, as a main rule, aim at openness in the form of direct public access to plenary and committee meetings as well as through public broadcasting and on-line access to adequate documents, such as draft legislation, minutes of meetings in Parliament etc. Moreover, the GET notes that the law provides a clear roadmap and timeframes for the adoption of laws and that expedite procedures are only allowed to a limited extent in urgent cases according to the Rules of Procedure. The Hungarian authorities should be commended for the legal framework in place aiming at such transparency. That said, the GET took note of criticism of the legislative process, as it sometimes appears to have been applied in practice. As already mentioned, Hungary has been criticised for an extensive regulation through cardinal legislation even for matters of a less fundamental nature. Furthermore, despite the legal framework in place, criticism from civil society, indicates that the current legislative system, as it has been applied in numerous situations, has lacked an appropriate level of transparency, that certain important acts (cardinal acts) have been passed without sufficient transparency nor been given the time necessary for broad consultations, in particular through systematic introduction of draft legal amendments at

a late stage in the parliamentary process by individual MPs<sup>9</sup>. The GET also came across criticism from civil society representatives suggesting that there is insufficient transparency regarding the involvement of third parties, including lobbyists, particularly from the business sector, in the parliamentary process, as well as in the pre-legislative process with the Government; the latter is particularly decisive for the parliamentary process in a country like Hungary, considering the strong majority of the Government in the National Assembly. The GET took note of a recent report by Transparency International Hungary<sup>10</sup>, which alleges that the lack of comprehensive lobbying regulation in Hungary and the close relations between the Government and the business community are worrisome signs that indicate the vulnerability of the democratic decision-making processes in Hungary. The report also submits that the current state of play “does not require the publication of a legislative footprint of possible lobbying, i.e. a report on who lobbied whom and on what purpose prior to adopting the respective piece of legislation”. In this connection, the GET recalls that Hungary had a lobby act in place from 2006-2010; however, it was repealed as being a largely inefficient policy tool, a concern that was widely shared in Hungary. While the quashing of the lobby legislation was not a controversial decision at the time, the GET has strong concerns about the current position of the Government not to replace that legislation with more efficient regulations concerning third party contacts with the Government and MPs in relation to the legislative process, in order to bring more transparency in this respect. While acknowledging that there are some regulations in place concerning lobbying and social participation in the legislative process at the government level<sup>11</sup>, the GET notes that these do not cover the parliamentary process. At the same time, it is fully aware that developing lobby regulations that serve the intended purposes need thorough preparation, consideration and broad consultations which include various stakeholders.

43. In view of the worrying criticism referred to above, suggesting that several measures are needed in order to enhance the overall transparency of the legislative process as applied, **GRECO recommends (i) to ensure that all legislative proposals are processed with an adequate level of transparency and consultation and, (ii) that rules be introduced for members of parliament on how to interact with lobbyists and other third parties seeking to influence the parliamentary process.**

#### Remuneration and economic benefits

44. According to the Hungarian Central Statistical Office, the average gross annual salary in Hungary in 2013 was 2 768 400 HUF (€ 9 448).

45. The remuneration of members of parliament is established in Section 104 of the Act on the National Assembly (ANA), which makes reference to the Act on Public Service Officials and the Act on the Central Organs of State Administration and the Status of the Members of Government and the Ministers of State. The current levels of remuneration are as follows:

- ordinary MPs – 747 878 HUF (€ 2 408) per month;
- Speaker – 1 507 350 HUF (€ 4 853) per month;
- Principal - 1 296 321 HUF (€ 4 173) per month;
- heads of parliamentary groups receive remuneration specified by the

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<sup>9</sup> E.g. Opinion of the Venice Commission on the Fourth Amendment of the Fundamental law of Hungary, (CDL-AD(2013)012) paragraphs 129-132, etc.; Venice Commission and OSCE/ODIHR Joint Opinion on the Act on Elections of Members of Parliament of Hungary (CDL-AD(2012)012) paragraph 52.

<sup>10</sup> Transparency International Hungary, “lifting the Lid on Lobbying, Strategic partnership Agreements in an Uncertain Business Environment (2014)

<sup>11</sup> There is a Government Decree (50/2013 (II.25.)) on the system of integrity management at public administration bodies and procedural rules of receiving lobbyists. This instrument covers public administrations supervised by the government. The authorities also refer to Act CXXXI on social participation in the drafting of legislation.

parliamentary group; however, it is not to exceed 1 296 321 HUF (€ 4 173) per month;

- deputy leaders of parliamentary groups – 997 170 HUF (€ 3 210) per month;
- deputy-Speaker – 1 296 321 HUF (€ 4 173) per month;
- chairs of standing committees, the committees representing the Nationalities, the president of the Hungarian National Group of the Inter Parliamentary Union and the parliamentary notary – 997 170 HUF (€ 3 210) per month; and
- deputy chairs of the above mentioned committees – 897 453 HUF (€ 2 889) per month.

46. If an MP holds more than one office in Parliament at the same time (e.g. being the head of a parliamentary group and a parliamentary committee at the same time) s/he is only entitled to receive only the remuneration of the higher amount.

47. The Prime Minister, ministers, ministers of state, government commissioners, prime-ministerial commissioners, prime minister's appointees and ministerial commissioners who are also members of parliament are only entitled to receive 30% of their remuneration as an MP in addition to their other salaries.

48. In addition to the remunerations described above, MPs are entitled to a wide range of other benefits, for example, daily allowances and reimbursement for their travel and hotel expenses in connection with their functions. Those who do not have a house or flat in Budapest are, under certain conditions, entitled to a housing allowance of up to 186 969 HUF (€ 602) per month. Furthermore, members are entitled to an allowance for their office costs of an amount of up to 373 939 HUF (€ 1 204) per month and they may receive an allowance for employing an assistant, not exceeding 747 878 HUF (€ 2 408) per month. MPs also receive so-called 'fuel cards' to use petrol free of charge to an extent calculated on the basis of the distance between their permanent residence and Budapest, the size of the constituency they represent and the size of engine of their vehicle. Moreover, members of parliament may use, through the Office of the National Assembly, free of charge the postal and electronic telecommunications services (internet, cell phones) necessary for performing their tasks and duties. MPs are also entitled to mobile phone services, up to a value of 30% of the minimum wage per month (approximately 30 450 HUF (€ 98)).

49. When the four-year mandate of a member of parliament comes to an end, the former member shall receive an allowance during three additional months equalling the average of his/her remuneration in the last three months of the mandate.

50. Proper use of the benefits and allowances is, in the first place, to be ensured by internal regulations of the Office of the National Assembly. Secondly, the use of the resources of the Office of the National Assembly is audited by the Internal Audit Department. Furthermore, the State Audit Office verifies the implementation of the central budget. In this regard, the Audit examines the functioning of the organs managing the various headings of the central budget and that of the included budgetary organs as well as the use of expenditure at their disposal. Information concerning members' use of benefits, which is characterised as 'information of public interest', can be made public upon request by anyone in accordance with the Freedom of Information Act (Sections 3(5), 26 and 28). Moreover, MPs have to indicate salaries and benefits in the annual asset declaration to the National Assembly (see below).

51. The GET notes that MPs' salaries are adequately regulated. Furthermore, the regulations provide for a broad range of additional benefits, which need to be calculated on the basis of the particular personal situation of each MP. Obviously, these kinds of rules may give rise to difficult interpretations in practice; however, no particular concerns relating to misuse or the like were raised by the interlocutors met. The GET was pleased to note that information on MPs' salaries and other forms of benefits are to be declared

annually and to be made accessible to the public. It notes that there are no regulations in place limiting members from supplementing the various forms of public funding for office purposes with funding from other sources or donations. On the contrary, it would appear that such contributions are rather frequent, for example, from political parties or related foundations. The GET is concerned about the lack of limitations in respect of such additional benefits; however, it notes that such benefits are to be declared annually. This matter is further dealt with under "gifts" (paragraphs 58-60).

#### Ethical principles and rules of conduct

52. The Constitution establishes a number of basic rules in respect of the National Assembly and its members. For example, it follows from Article 4(1) of the Constitution that MPs have equal rights and obligations, that they are to perform their activities in the public interest and that they are not to be given instructions in that respect. Article 5 of the Constitution provides that detailed rules relating to the legal status and remuneration of MPs are to be laid down in a cardinal act which in turn is to specify the public offices which may not be held by MPs as well as other rules on conflicts of interest. Article 4(1) of the Constitution delegates to the National Assembly the establishment of the rules of its operation and the order of its debate (decided by 2/3 majority of the votes cast). These instruments provide some rules on the status of members, including conflicts of interest etc., the details of these provisions are further explained below.

53. There are no other statutory standards adopted by Parliament particularly concerning the conduct of members of parliament in Hungary. Currently, there is no dedicated code of ethics/conduct of members of parliament. The GET was informed, however, that there are codes of ethics established within the various parliamentary groups and political parties.

54. The GET wishes to draw attention to the repeatedly expressed preference in GRECO reports in favour of parliaments having their own set of common standards and guidelines in respect of ethical principles and expected conduct of their members, as well as in respect of those who work for the members, drawn up with a strong involvement of the MPs themselves. Standards developed by political parties or parliamentary groups (which have been referred to by the authorities) have no direct legitimacy in this respect. Experience shows that the mere process of developing such standards would raise MPs' awareness of integrity issues, assist them to act proactively in difficult ethical situations and – not least – to demonstrate their commitment *vis-à-vis* the general public. Consequently, such codes and guidelines may raise public confidence in parliamentary institutions when citizens know what conduct they should expect from parliamentarians and from those who work on behalf of the members as their employees, assistants etc. - a concern that has been expressed in several GRECO reports. The GET also wishes to stress that codes of ethics/conduct are not meant to replace existing constitutional rules, legislation or other forms of regulation, rather to further develop such provisions, to complement, clarify and provide guidance in a flexible way in situations which may give rise to controversies and various forms of conflicting interests. Moreover, such codes are less static than legislation and need to evolve over time. In view of the above and with reference 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, **GRECO recommends that a code of ethics/conduct for members of parliament be adopted, including in respect of their staff as appropriate – covering various situations of conflicts of interests (gifts and other advantages, third party contacts, lobbyists, accessory activities, post-employment situations etc.) and that it be complemented by practical measures for its implementation, such as dedicated training and counselling.**

## Conflicts of interest

55. The substantive provisions of conflicts of interest regarding members of parliament are laid down in Sections 80, 84-86 and 88 ANA. These provisions list functions, activities and situations that are incompatible with the mandate of a member of parliament, such as various other public functions, financial interests, business positions and the acceptance of gifts over a certain value. The substantial regulations of the ANA, aimed at preventing certain forms of conflicts of interest are dealt with more in detail below.

56. The procedures to follow in situations where an MP is faced with conflicting interests are laid down in Sections 91-93 ANA as well as in Sections 149-152 of the Rules of Procedure of the National Assembly. The Committee on Immunity, Incompatibility and Mandate Control (CIIMC) (further explained under "Supervision and enforcement", below) is the investigative body in respect of situations of conflicts of interest of members of parliament. If a conflict of interest (incompatibility) is at stake, the objectives of the CIIMC-proceedings are either to make the MP eliminate the incompatibility by him/herself within a given time frame or to declare the incompatibility, which would lead to disqualification of the member of parliament to serve as such.

57. The GET notes with concern that in addition to the "static" list of potential conflicts of interest (prohibited side-occupations and activities of an economic character) in the ANA, the current regulations do not deal with situations where an MP is concerned personally in a matter dealt with in Parliament, whether the reason is of a financial interest or not (personal conflicts of interest of any kind). Such situations, which may occur occasionally, ought to be regulated and the regulations need to be based on a definition of personal conflicts of interest and would need, in order to be effective, to be coupled with an obligation upon the members to report on such situations when they occur, so called *ad hoc* disclosures. In order to remedy this situation, **GRECO recommends that a requirement of *ad hoc* disclosure be introduced for members of parliament for situations of personal conflicts of interest which may emerge during the parliamentary proceedings and that rules for such situations be developed.** The GET takes the view that the measures required could lead to amended legislation, procedure rules or possibly be manifested in a code of conduct/ethics.

## Prohibition or restriction of certain activities

### *Gifts*

58. Section 87 (1) ANA provides that a member of parliament is not to accept – in connection with his/her mandate as a member – any gift or other free benefit exceeding the prevailing value of his/her monthly remuneration. The same section prescribes that a member is to record – as part of his/her declaration of assets (dealt with below) – gifts or any other free benefit exceeding 1/12 of the prevailing value of his/her (monthly) remuneration.

59. According to section 87 (2) ANA, the restrictions in respect of gifts do not apply to the benefits and assets received by an MP for free use as necessary for or closely related to performing the work of a member, provided by the National Assembly, the political party or the parliamentary group to which s/he belongs (see also paragraph 39). The same applies in respect of benefits provided by a foundation performing scientific, popular science, research or training activities for the purpose of supporting the work of political parties. However, the member is to keep records – as part of his/her annual asset declaration – in respect of such benefits received. Upon termination of the parliamentary mandate, the benefits received for free use are not to be transferred free of charge into the ownership or for further free use of the member or his/her close relatives as specified in the Civil Code.

60. The GET notes with concern that the only restriction provided for in the ANA on MPs' possibilities to accept gifts are linked to their value and that the value limit is set rather high (currently some €2 400). The GET is also concerned that there are extensive exceptions in respect of gifts by political parties, foundations and the like, which clearly opens up the channelling of benefits through such organisations. The GET is well aware that MPs cannot receive "gifts" which would amount to a criminal offence, such as bribery etc. and that gifts, over the amount of some € 200, are to be declared. Nevertheless, it is of the firm opinion that the lack of more developed rules/guidelines in respect of gifts – including advantages in kind and for office use – than those provided in the ANA are needed in order to restrict MPs from accepting benefits which may interfere with an impartial exercise of their official duties or be seen to have such an impact, regardless of their value. Developed guidance in respect of gifts and the definition of expected conduct for such situations would be beneficial for MPs, their staff and the wider public, and would naturally fit into a code of ethics/conduct as was recommended in paragraph 54.

*Incompatibilities and accessory activities, post-employment restrictions*

61. Section 80 ANA states that (1) the mandate of an MP as a main rule is incompatible with any other State, local government or economic office or mandate. MPs are not allowed to engage in any other gainful occupation – with the exception of scientific, university or college lecturing, artistic, reader's or editor's activities and intellectual activities under legal protection – and must not accept remuneration for any other activity, with the exception of scientific, lecturing, artistic, reader's or editor's activities and intellectual activities under legal protection. The activity as a licensed traditional small-scale agricultural producer is not qualified as a gainful occupation in this respect. (2) A member of parliament may serve as prime minister, minister, minister of state, government commissioner, prime-ministerial commissioner, prime minister's appointee, ministerial commissioner or as the official of the National Assembly. (3) A member serving in any of these functions may not serve as an official of parliament. The GET was informed that on 12 October 2014 following a change in section 80 ANA, a member of Parliament can no longer serve, at the same time, as a mayor or member of a regional and/or local authority or a member of a local authority representing nationalities.

62. Furthermore, according to Section 84 ANA, an MP is not allowed to be the exclusive or majority owner, executive official or executive employee of a financial entity operating in the financial sector according to the Act on Capital Market; a shareholder in a business organisation not classified as a transparent organisation according to the Act on National Property; the head, member or a person contributing to the preparation or the adoption of the decisions of an organ established for the purpose of awarding individual grants for natural persons, legal entities, and other organisations without legal entity – with the exception of condominiums – outside the scope of public finances, from the subsystem of public finances, the sources of the European Union or from other programmes financed on the basis of an international agreement.

63. The GET welcomes the rules in place, which aim at avoiding conflicting interests in relation to accessory activities, be it in relation to other state functions or in terms of major economic endeavours. The exceptions provided for in respect of academic or other forms of intellectual activities appear rather wide, however, not unreasonable. By contrast, there are no measures in place which may affect MPs' employment after they leave Parliament. By contrast, Section 85 ANA provides that MPs are not allowed – during the term of their mandate and for a period of two years from the date of the termination of the mandate – to conclude a purchase agreement on acquiring the shareholdings of a business organisation operating with the direct or indirect exclusive or majority influence of the Hungarian or a foreign State, a local government, the association of local governments, a foreign municipality, a political party or a domestic or foreign religious

community. The GET notes this with particular interest and recalls that GRECO has repeatedly held that members of parliament could well engage in particular matters (including legislation) in Parliament while having in mind interests that would come into play during their mandate or upon leaving Parliament or as a future lobbyist. The authorities are encouraged to reflect on the necessity of introducing further rules/guidelines for these situations.

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

64. As mentioned above, MPs are restricted from holding certain financial interests; Section 84 ANA provides that a member is not allowed to be the exclusive or majority owner of a financial entity operating in the financial sector according to the Act on Capital Market nor a shareholder in a business organisation not classified as a transparent organisation according to the Act on National Property.

65. As already noted in this report, there are currently no general rules in respect of MPs' contacts with third parties and lobbying. Hungary had a lobby act in place from 2006 to 2010, when this law was repealed as a largely inefficient policy tool, a concern that was widely shared in Hungary at the time. While the quashing of the lobby legislation was not a controversial decision at the time, the GET is concerned about the current position of the Government not to replace that legislation with more efficient regulations concerning third party contacts with MPs in order to bring more transparency to the parliamentary process. A recommendation to that effect has been made in paragraph 43.

*Misuse of confidential information*

66. Section 86 ANA provides that MPs are not to refer to their mandate as a member of parliament in professional or business affairs and that MPs are not allowed to acquire or use confidential information through their mandate as an MP. The Act CLV of 2009 on the protection of classified data, provides detailed rules on the acquisition and use of such data. The Act CXII of 2011 on informational self-determination and the freedom of information regulates the use of personal data which applies to MPs as well.

67. In this context, the authorities also refer to the fact that *misuse of classified information* is a crime under Section 305 of the Criminal Code which may lead to imprisonment of up to eight years depending on the level of classification of the information ("restricted", "confidential", "secret" or "top secret"). Alternatively, a case of misuse of information may amount to *abuse of authority* (Section 266 Criminal Code), comprising the sanction of imprisonment for up to three years.

*Declaration of assets, income, liabilities and interests*

68. Section 89 ANA provides a list of activities and positions which are to be notified by a member to the Speaker of Parliament, comprising various functions in foundations, public bodies, civil society organisations, etc. In accordance with Section 90 ANA, members of parliament are required to disclose their assets. More particularly, the ANA provides that each MP are to file an asset declaration in accordance with a precise form, which is attached to the law, within thirty days upon the establishment of their mandate and then every year by 31 January as well as within 30 days upon the termination of the mandate. If an MP does not follow this rule, s/he is not allowed to exercise his/her rights as a member and will not receive remuneration (Section 90(3) ANA). Furthermore, the members are obliged to attach a declaration on property of the same content as their own, in respect of family members (i.e. spouse or common law spouse and children living in a common household).

69. The declarations of property are to be filed with the Committee on Immunity, Incompatibility and Mandate Control (CIIMC). This Committee prepares a list of the declarations handed in following the date of submission. A certificate regarding the submission of a declaration is issued and provided for each member on this occasion.

70. It follows from Section 94 ANA that the declaration of assets of the MP is a public document, contrary to those relating to family members. The former are to be published without delay on the web page of the National Assembly, by the CIIMC and the information is to be maintained public on-line until at least one year from the termination of the mandate of the MP. The asset declarations are then withdrawn from the website; however, the Office of the National Assembly archives them and any person has the right to request a copy of these declarations. The declarations of the family members are also kept by the CIIMC, but they are not made public.

71. The following types of assets are to be declared:

- Real estate - location, size, purpose, legal nature, date of acquisition;
- Tangible assets - vehicles, water/aircraft, protected art, other tangible assets, value of savings in bank, cash exceeding basic remuneration of members;
- Liabilities - various forms of contractual claims exceeding the value of six months' basic remuneration of members (approximately €14 400);
- Income declarations - occupation, workplace and the value;
- Economic interests held in companies - the company and the value;
- Benefits received from parliament, political party, parliamentary groups or party foundation - the benefit and the value;
- Gifts - the type of gift and the value;
- Support received from the state, EU or companies - beneficiary and the value.

72. There is no formal verification process of the asset declarations following their submission to the CIIMC; the substantial content of these declarations is not automatically examined by this Committee or by any other authority. The declarations are made public by the CIIMS on the website of the National Assembly and are thus open to scrutiny by the public. Anyone may file complaints to the Assembly/CIIMC concerning irregularities in respect of members' declarations.

73. The procedure for such complaints is contained in Section 94 of the ANA and Section 153 of Resolution No. 10/2014. (II.24.). Following a complaint, the Chair of the CIIMC will take a decision to initiate the procedure or to reject it in case it is unfounded. The Chair shall then call upon the member to correct the declaration within five days. If this is not adhered to or the MP failed to meet his/her obligation of making a proper declaration of property, or intentionally provided false data or facts of a significant nature, the Chair of this Committee is to initiate the procedure for the establishment of the member's incompatibility, which may lead to termination of the member's mandate.

74. The GET welcomes that Hungary has in place a system of asset declarations in respect of members of parliament as well as their close family members, following a standardised format in the Annex to ANA. As far as the GET can see, these declarations have been introduced with the good intention of being instrumental in discovering situations of "illicit enrichment" and conflicts of interest, ultimately to curb corruption and similar activities. That said, the asset declarations have been criticised in Hungary for not being a serious and efficient tool for the following reasons: the content of the declarations is not checked by any authority *ex officio*, unless a substantiated complaint has been initiated; public scrutiny of the forms is difficult as these are often handwritten and/or scanned documents; declarations concerning relatives are not public at all and the authorities' scrutiny of these is only done in relation to a complaint against an MP. The

GET is of the opinion that some of these remarks<sup>12</sup> by the civil society are particularly serious as they concern a system where the wider public and media are supposed to carry out the actual monitoring; such a system requires far-going transparency. In addition, the GET notes with concern that even though the ANA requires a wide range of assets to be declared and other forms of outside ties to be notified, the Annex to ANA, which provides the detailed instructions in this respect, is limited to the financial aspects of the interests, such as remunerated positions, assets and debts. The GET takes the view that declarations limited to financial interests are missing other ties of concern when dealing with possible conflicts of interests, for example, side activities, even if not remunerated, such as active participation in interest groups, NGOs etc. Consequently, **GRECO recommends to ensure (i) that the obligation upon members of parliament to disclose outside occupations and activities of a non-financial character are applied in practice; and (ii) that all declarations as submitted follow a format, which allows for adequate public scrutiny over time, preferably by using electronic means.**

#### Supervision and enforcement

75. Members of parliament enjoy immunity in respect of votes cast and opinions communicated in the course of exercising their mandate (Section 73 ANA). Moreover, members are also provided with immunity against detention and any other coercive measure under criminal proceedings, save when caught in the act of committing an offence (Section 74 ANA). In case an MP does not voluntarily waive this immunity, a prior consent is required by the National Assembly to use such measures in respect of a member of parliament (Section 74(1) ANA). The more precise procedure for lifting MPs' immunities is prescribed in Section 146 of the Rules of Procedure. It follows from the ANA and the Rules of Procedure that a motion for the suspension of immunity is to be communicated by the Prosecutor General to the Speaker of the National Assembly, who in turn is to inform the Committee on Immunity, Incompatibility and Mandate Control (CIIMC), which subsequently is to inform the member in question and to submit a proposal for a resolution on the suspension of the immunity to the National Assembly within 30 days and then the Assembly is to discuss the matter without delay. The Hungarian authorities informed the GET that between 2004 and 2014, the Prosecutor's Office initiated procedure to lift the immunity in respect of 32 MPs. In four cases the motions were unfounded and in seven cases the National Assembly refused to lift the immunity. The procedures were launched for the following suspected crimes: fraudulent bankruptcy, forgery of administrative documents, traffic accident resulting in grievous bodily injury through negligence, unlawful acquisition of economic advantage, breach of accounting regulations, assault, slander, vandalism, misappropriation of funds, forgery of documents, harassment, misuse of personal data, abuse of authority, defamation, passive bribery, fraud etc. In 13 cases a legally binding decision was made in the court proceeding, in one case the defendant was acquitted and the prosecution initiated a review procedure. In four non-finalised (no legally-binding court decision has been made yet) cases the MPs were acquitted and, out of these, two MPs received a reprimand. In four cases the investigations were terminated, only resulting in a reprimand in two of those cases.

76. The GET takes the view that immunity of members of Parliament, in as far as it goes beyond their protection of free speech, opinions and voting in Parliament, may provide important obstacles to an efficient enforcement of criminal provisions. Even if the immunities are regularly lifted by Parliament in situations where MPs are suspected of having committed an offence, the procedure for doing so will delay the law enforcement agencies from rapid investigations. Furthermore, an MP undergoing such a process will

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<sup>12</sup> It is to be noted that GRECO has in a number of fourth round evaluation reports recommended member states to consider widening the scope of asset declarations by parliamentarians to include information on assets of spouses, dependent family members and other close relatives, it being understood that such information would not necessarily need to be made public.

be informed of that process, which may yet be another obstacle to the gathering of evidence etc. Early interventions and the use of investigative measures are particularly important tools when investigating corruption offences and crucial for the possibility to prosecute at a later stage. Such measures cannot be applied against members of parliament in Hungary without the prior lifting of their immunity, unless they are caught in the act of committing an offence. In view of the foregoing and with reference to Guiding Principle 6 of Resolution (97) 24 of the Committee of Ministers of the Council of Europe on the twenty guiding principles for the fight against corruption, **GRECO recommends that appropriate measures be taken in order to ensure that the procedures to lift the immunity of parliamentarians do not hamper criminal investigations in respect of members of parliament suspected of having committed corruption related offences.**

77. Moving to the internal parliamentary procedures for the supervision of MPs and their conduct, the responsible body is the Committee on Immunity, Incompatibility and Mandate Control (CIIMC). This Committee consists of six members, three belonging to the government party and three from the opposition ("parity committee"). The procedure before the CIIMC is initiated in situations specified in Section 88 ANA on the basis of information received by the Committee from another authority. A court passing a final judgment or the authority passing a final decision is to notify the Speaker of the National Assembly without delay on the incompatibility specified in Section 88 ANA. However, the procedure might also be initiated on the basis of a member's motion or by a report made by anyone as follows from Section 91 ANA. Such a report is to specify in detail the name of the allegedly incompatible MP and the cause of the incompatibility, as well as the supporting evidence. Furthermore, it is to contain the personal identification data of the person filing the report as well as his/her signature. The CIIMC does not act on the basis of anonymous reports and in case of receiving an incomplete report, the Chair of the CIIMC will not commence the procedure, but is to inform this Committee about the existence of such a report.

78. It follows from Section 92(1) ANA that once a procedure of incompatibility has been initiated; the matter is to be investigated within thirty days by the CIIMC. To this end, the Committee establishes a special investigative body consisting of three of its members headed by the deputy chair of the CIIMC. All data requested by the CIIMC or by the investigative body in connection with the case of incompatibility are to be provided without delay by the MP under scrutiny as well as by any state authority involved. The information received in connection with the case of incompatibility is to be deleted on the thirtieth day upon closing the procedure on the case of incompatibility and all registries relating to the incompatibility are to be kept by the Committee (Section 92(2) and (3) ANA). The National Assembly is to take the final decision on the incompatibility within fifteen days following the opinion on the matter by the CIIMC.

79. Section 91(1) ANA states that the cause of a situation of incompatibility is to be eliminated or the elimination initiated by the member in question within thirty days upon the verification of the member's mandate, upon the emergence of the conflict of interest or from the date the member acquired knowledge about the conflict of interest. In the case of the speaker of parliament or the deputy speaker, the thirty day limit starts from election to the relevant position. Until a conflict of interest has been eliminated, the member is not to exercise his/her rights as a member and is not entitled to receive remuneration. In case the member fails to comply with this, Parliament is to decide within fifteen days upon a motion by any MP and following the opinion of the CIIMC on the incompatibility.

80. It follows from Section 93 (1) ANA that should the National Assembly fail to establish the incompatibility, no new procedure of incompatibility can be initiated against the MP on the basis of the same facts. On the other hand, should an incompatibility be established, the National Assembly will call upon the MP to eliminate – or initiate the

elimination of – the incompatibility within five days, and to report this fact to the Speaker. The National Assembly shall also state that should the MP fail to eliminate – or initiate the elimination of – the incompatibility or should s/he fail to report this fact to the Speaker, his/her mandate is to terminate by virtue of the decision on the fifth day upon establishing the incompatibility. Upon the expiry of five days from establishing the incompatibility, the chair of the CIIMC is to announce the elimination of incompatibility or the termination of the mandate of the member by the expiry of five days from the date of establishing the incompatibility. Should the mandate of the MP terminate on the basis of the resolution of the National Assembly, the Member is obliged to pay back to the National Assembly the remuneration s/he has received from the date of emergence of the incompatibility until the termination of the mandate.

81. The GET notes that the supervision over MPs' conduct relies, *inter alia*, on scrutiny by the general public. The GET has already criticised the fact that asset declarations, despite being publicly available, do not provide a satisfactory basis for such scrutiny in that specific context. However, the key institution for supervising members' conduct is the CIIMC, which in all cases, whether concerning immunity matters, MPs' conduct or declarations of assets, provides the "filter" through which the cases are to be processed and judged, before a final decision is taken by the National Assembly itself. It is unavoidable that such a process is perceived as MPs supervising and investigating themselves. Moreover, the composition of this "parity" committee consisting of three MPs from the government side and three representing the opposition suggests a great risk for evenly divided votes and so called "deadlocks". Another weakness is that the CIIMC does not deal with anonymous complaints. While the GET understands that a final decision concerning MPs' conduct may have to be taken by the National Assembly at the end, it is of the strong opinion that the intermediary process of supervising and investigating the conduct of members leading up to a proposal needs to be strengthened in terms of its independence and efficiency to act.

82. Furthermore, the GET is concerned by the fact that the current provisions on members' conduct are only accompanied by a few sanctions. The declaration of "incompatibility" of a member of parliament may lead to the severe sanction of termination of the mandate of the MP. The only alternative sanction in a minor case is the establishment of a resolution, either by the National Assembly or the CIIMC. The GET considers that the current possibilities to sanction MPs are not sufficient. More diversified sanctions, proportionate to various violations or shortcomings, would appear necessary, not least as a dissuasive measure. Furthermore, in line with the recommendation to introduce a code of ethics/conduct in respect of members of parliament, the GET is of the firm opinion that such regulations need to be accompanied by appropriate sanctions.

83. In view of the foregoing, **GRECO recommends that appropriate measures be taken to ensure effective supervision and enforcement of the existing and yet to be established rules on the conduct, conflicts of interest and interest declarations of members of parliament and that adequate and proportionate sanctions be introduced to that end.**

#### Advice, training and awareness

84. The Hungarian authorities refer to the Act on the National Assembly (ANA) as the main source of information on MPs' expected behaviour and obligations. In particular, part three of the ANA relates to the legal status of members of parliament and contains the regulation concerning immunity, incompatibility and the obligation to make declarations on assets. Furthermore, the Rules of Procedure provide more in-depth regulations in these respects.

85. A more user friendly booklet containing the detailed regulations has been prepared by the Office of the National Assembly and this Office is also responsible for publishing

information fiches about the procedures of the National Assembly, the legal status of members and their expected conduct. All relevant legislation is available on-line on the website of the National Assembly. A summary of the statistics concerning the different types of issues and procedures as well as the studies prepared regarding the various types of cases dealt with is available on the website of the CIIMC. Furthermore, the minutes of the sessions of this Committee containing the experts' presentations held in relation to the immunity, incompatibility and the obligation to submit asset declarations can also be accessed on this website, according to the authorities.

86. Furthermore, it is within the scope of the mandate of this Committee to follow up the regulations concerning the legal status of MPs as well as to propose modifications if necessary. Moreover, as explained above, the CIIMC that manages and investigates the complaints against MPs and its related data base can be used for advising members of parliament.

87. The GET welcomes the Hungarian authorities producing written material, available on-line, explaining the role and the procedures of the National Assembly and to some extent, the rights and obligations of members of parliament. That said, the GET notes with concern that no training on ethics and conduct for MPs is provided. Aware of efforts in several other member states, the GET see no reason why Hungary should not provide introductory training courses for newly elected members of parliament as well as in-service training at regular interval in areas such as expected ethics and conduct. Furthermore, dedicated training would be particularly relevant in view of the elaboration and implementation of new rules and instruments such as codes of ethics/conduct. Consequently, **GRECO recommends that the parliamentary authorities establish dedicated and regular training for members of parliament on issues such as ethics and conduct in situations of conflicts of interest and corruption prevention.**

#### **IV. CORRUPTION PREVENTION IN RESPECT OF JUDGES**

##### Overview of the judicial system

88. The judicial system in Hungary has, ever since the transformation of the political system in 1989-90 undergone important reforms, aiming at establishing an independent judiciary built on the rule of law. Hungary established already in the mid-1990s a National Council of Justice which took over a majority of the functions previously vested with the Ministry of Justice, thus stressing the independence of the judiciary from the executive power. A new National Judicial Council was established in 2012, following reform which also added another authority within the judiciary, the National Judicial Office (NJO), headed by a President elected by Parliament as the main authority for the central administration of the judiciary. This system is enshrined in the new Constitution of Hungary (The Fundamental Law) of 2011 which, since then, has been amended not less than five times following intense dialogue with, *inter alia*, representatives of the Council of Europe, most notably its Venice Commission, as well as the European Union and the OSCE. The current organisation of the judiciary in Hungary is also based on two cardinal acts: Act CLXI of 2011 on the Organisation and Administration of Courts (AOAC) and Act CLXII of 2011 on the Legal Status and Remuneration of Judges (ALSRJ). These have, also, been amended on several occasions following criticism from the above mentioned international organisations. One specific feature of this dialogue has focused on the establishment of an appropriate balance between the powers of the President of the NJO and the National Judicial Council (NJC) as a supervisory body of the judiciary.

89. The Constitution (Fundamental Law of Hungary), provides for a Constitutional Court (Article 24) with the main function to ensure that legislation, legal regulations and judicial decisions are in conformity with the Fundamental Law of Hungary. Furthermore, Article 25 of the Constitution provides that general courts are to administer justice at multiple levels and thus are to decide on criminal matters, civil disputes, the lawfulness of administrative decisions, conflicts between local government decrees and other legal regulations. The same Article provides that separate courts may be established for specific groups of tasks.

90. Article 26 of the Constitution establishes that judges are to be independent and only subordinate to the law; they are not to be instructed in relation to their judicial activities and they may only be removed from office for reasons and in a procedure prescribed by law. According to the same Article, judges may not be members of political parties and may not engage in political activities. Furthermore, Article 3 of Act CLXI of 2011 on the Organisation and Administration of Courts (AOAC) repeats that judges, including lay judges, are independent, they shall render their decisions based on the law and in accordance with their convictions; they may not be influenced or instructed in relation to their activities in the administration of justice. Also Act CLXII of 2011 on the Legal Status and Remuneration of Judges (ALSRJ), Section, 1 states that judges are to be independent in their administration of justice.

91. Furthermore, it follows from Article 25 of the Constitution that the central responsibility for administration of the courts is to be performed by the President of the National Office for the Judiciary and that the National Judicial Council is to supervise the central administration of the courts and participate in their administration. More detailed rules on the organisation and functions of the judiciary are laid down in the AOAC.

92. The National Judicial Council (NJC) is the body that supervises the central administration of the courts. The NJC consists of 15 members. The President of the Kúria (Supreme Court) is a member of the NJC, whereas its other 14 members are elected at a meeting of judges' delegates from among the delegates by simple-majority, secret ballot voting; one of them from the regional courts of appeal, five from the regional courts, seven from the district courts and one from the labour and administrative courts. The

meetings of the NJC may also be attended in a consultative status the President of the National Judicial Office (described below), the Minister of Justice, the Prosecutor General, the President of the Bar Association, the President of the Notary Public Association and any expert invited by them or by the President of the NJC. The sessions of the NJC are also open to judges. The NJC can order a closed session in which neither the above-listed officials, nor judges can attend. It is to be noted that these officials only hold consultative status with the NJC. The minutes of the sessions are made available to judicial employees on the intranet by the NJC. The NJC is involved in central administration and budget; however, it has only limited decisive functions in this respect. The NJC decides on the agenda of the Service Court, it adopted the Code of Ethics of the Judiciary and it is part of the supervision of the financial management of the courts. It is also involved in the appointment, promotion and mobility procedures of judges as well as in the development of training.

93. The central administration of the courts in Hungary is managed by the President of the National Judicial Office (PNJO), supported by vice-presidents as well as the NJO's staff. The PNJO is responsible for the conduct and efficiency of the central administration and for the performance of its duties in a manner compatible with the constitutional principle of judicial independence (Section 65 AOAC). In exercising his/her administrative powers, the President of the NJO hands down decisions, regulations and recommendations in matters relating to the budget and its distribution, efficiency of the judiciary, appointments, the format of evaluations, promotions of judges and their training etc. Only a judge, who is not a member of the NJC, with at least five years of experience as a judge may be elected as the President of the NJO. The PNJO is elected by Parliament with a two-thirds majority on the recommendation of the President of the Republic. The PNJO cannot be re-elected. Should Parliament not manage to obtain the two-thirds majority required, the vice-president will perform the functions of the PNJO until a new official is elected<sup>13</sup>. The NJC has a supervisory function in respect of the powers of the PNJO.

94. The GET notes that the Constitution of Hungary provides for a rather general framework of the judiciary and that the more detailed rules are laid down in the two main cardinal acts, namely the AOC and the ALSRJ. The GET is concerned that neither the Constitution, nor the cardinal acts clearly state the pivotal principle of independence of the judiciary, which was also noted by the Venice Commission of the Council of Europe in its 2011 Opinion on the New Constitution,<sup>14</sup> in which it recommended the inclusion of such a reference in the relevant cardinal act. It is true that Article C of the Constitution state that the "*functioning of the Hungarian State shall be based on the principle of separation of powers*" and that Article 65 AOAC makes a reference to judicial independence in respect of the functions of the President of the NJO and that the independence of judges is provided for in Article 26(1) of the Constitution as well as in the pertinent cardinal acts. Nevertheless, the GET believes that the proper place for a reference to the independence of the judiciary ought to be in the Constitution proper as the independence of judges is safeguarded by the independence of the judiciary as a whole, which is a fundamental requirement for the rule of law<sup>15</sup> and a pivotal basis to prevent any form of undue influence over the judiciary.

95. Moreover, the GET notes that the central administration of the judiciary, as it has been developed in Hungary is a rather unique construction as it vests in one single person, the PNJO, far-going powers to manage the judiciary. The GET is not aware of any other member state where such a system has been put in place. That said, as a result of

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<sup>13</sup> The previous procedure that the sitting PNJO could continue, should there not be a 2/3 majority vote was discontinued as a result of the dialogue between the Council of Europe and Hungary, Venice Commission, CDL-AD(2012)020, paragraph 15.

<sup>14</sup> Venice Commission, CDL-AD(2011)016

<sup>15</sup> E.g. Recommendation CM Rec (2010)12 of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities, paragraph 4.

a dialogue between, *inter alia*, the Council of Europe and its Venice Commission and the Hungarian authorities, the powers initially exclusively given to the PNJO have been balanced with a more developed participatory and supervisory functions of the NJC in the administration of the courts, and, consequently, the accountability of this Official has been improved. This is to be welcomed; however, it would appear that the NJC is still rather dependent on the PNJO in many ways. For example, it is up to the PNJO to ensure the operational conditions of the NJC and the PNJO attends the meetings of the NJC, although only with a consultative status. The GET is of the opinion that more could be done to better balance the powers within the judiciary in favour of a stronger collective approach to this administration, for example, to give the NJC a decisive mandate in the procedures concerning appointments and promotions of judges, see below.

### *The courts*

96. The Constitutional Court is the principle judicial body for upholding rights contained in the Fundamental Law. As such, this Court has the power to annul any regulation or provision of a legal regulation or judicial decision which is in conflict with the Fundamental Law, as well as any legal regulation that conflicts with an international treaty. The Court has 15 members who are to be independent, subordinate only to the Fundamental Law and other laws. These judges are elected by Parliament with an absolute two-thirds majority for a term of 12 years. The President of the Court is also elected by Parliament. The law provides that judges elect the vice president among themselves. The Constitutional Court is not part of the general court system.

97. The "Kúria" (Supreme Court) which is the supreme judicial body in Hungary is also regulated directly in the Constitution. It is the appeal instance in respect of judgments and decisions of the regional courts and the regional courts of appeal. Among its main tasks are to ensure a uniform jurisprudence and is to that end mandated to pass resolutions - in the interest of the law - which are binding upon all courts. The Supreme Court is a legal entity. The total number of judges is 83, assisted by 40 legal assistants. The President of the Kúria is elected by Parliament with a two-thirds majority vote for a period of nine years upon a recommendation made by the President of the Republic. The President of the Republic appoints the vice-presidents of the Kúria following a recommendation of the President of the Kúria.

98. There are five Regional Courts of Appeal in Hungary. Their main functions are to act as appeal instances in respect of judgments and decisions by the regional courts. These courts are legal entities.

99. The 20 Regional courts are first instance courts for certain cases specified in the law (criminal and civil cases) and are also appeal courts for judgments and decisions of the District courts and the administrative and labour courts. These courts have legal personality.

100. The ordinary first instance courts in Hungary consist of the 111 District courts, which operate with one single judge in the smallest courts and up to 265 judges in the largest (Pest Central District Court).

101. There are 20 Administrative and Labour courts. These are first instance courts in cases concerning the review of administrative decisions, employment and legal relationships.

102. There are, in total, 2 910 professional judges appointed in Hungary (some 70% are women). The Fundamental Law also provides for the participation of non-professional judges (Article 27(2)). At the time of the visit by the GET there were 4 563 lay judges. The district courts adjudicate with one single judge or in certain criminal cases in chambers (one professional judge and two lay judges or, in exceptional cases, two

professional judges and three lay judges). Lay judges also take part in the adjudication of labour cases at first instance. The rights and obligations of lay judges are identical in adjudication to those of the professional judges, but only a professional judge may proceed as a single judge or as president of a chamber. As a first instance court, the regional court hears criminal cases in chambers composed of one professional judge and two lay judges or two professional judges and three lay judges (depending on the seriousness of the offence). The lay judges are divided according to their profession, teachers, military, administrative personal and are selected for the various cases accordingly, for example, teachers for juvenile cases etc.

#### Recruitment, career and conditions of service

103. Section 4 ALSRJ establishes a list of requirements for the appointment of judges to courts: minimum 30 years of age; Hungarian nationality; university degree in law with a professional law exam; and a minimum of one year's work experience in a court, prosecution service or equivalent public administration. Persons with a criminal record or who have been sentenced for serious offences etc. are not entitled to become judges.

104. Lay judges have to fulfil the same basic criteria as professional judges, such as being aged 30 or more, having no criminal record or political affiliation etc. According to the ALSRJ, they are to be nominated by the people, in reality by various forms of labour unions and they are elected by the local municipalities, county or city boards for four years.

105. Ordinary judges in Hungary are appointed by the President of the Republic, following a proposal from the President of the National Judicial Office (NJO), who is responsible for questions relating to human resources, including recruitment, within the judiciary.

106. According to Section 7 ALSRJ, in the course of a selection procedure, guarantees are to be upheld to ensure that the position of a judge be given to the most suitable person as a result of public candidacy proceedings providing equal opportunities for all candidates satisfying the statutory requirements.

107. The procedure for appointing new judges to permanent positions is initiated by a president of a particular court who is to inform the President of the NJO (PNJO) when a position becomes vacant. The PNJO decides whether to assign the post to the same or another court, to fill the position with or without a public announcement (public announcement is the rule)<sup>16</sup>. Such a decision is to be taken within 15 days and a vacancy is to be filled within 6 months (Article 9 ALSRJ).

108. Article 10 ALSRJ provides that the public invitation of applications (published in the official journal of courts as well as on the central Internet website of courts) is to state all conditions necessary for the appointment. Applications are to be submitted to the chair of the pertinent court. A panel of judges - "judicial council" - of this court hears the candidates and ranks them in accordance with a score-system, based on detailed criteria listed in Section 14.4 ALSRJ and in Decree No.7/2011.(III.4.) KIM of the Minister of Justice (e.g. evaluations of former employers, experience, academic degree, publications, language skills etc.). Articles 142-153 AOAC regulate the judicial councils of the courts. These bodies consist of 5-15 judges, elected by their peers. Article 15 ALSRJ

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<sup>16</sup> According to Article 8 ALSRJ, there are exceptions to the main rule of public announcement of vacancies and selection procedures in particular situations where former judges following special functions return to their previous assignments as a judge. This applies to the president or vice presidents of the Curia, the president or the vice presidents of the NJO or any other court leader, who, following the cessation of their mandate, are transferred to an ordinary judge position. The same applies when an MP, who is a former judge, no longer has a mandate as an MP. In such a case, the President of the NJO, as a minimum is to transfer the judge back to equivalent post as s/he used to have and, in justified cases to a chief position.

provides that the judicial council may not depart from the ranking determined on the basis of the scores, and if there are multiple candidates at the top of the ranking, the council is to select the candidate they recommend for the position on the basis of a written, justified decision adopted on the basis of a simple majority. The judicial council then forwards the ranking of candidates and the applications to the head of the court. The head of the court can depart from the ranking set by the judicial council and recommend to the PNJO the candidate ranked second or third for the position. If the head of the court recommends the candidate ranked second or third instead of the first ranked candidate, s/he is to justify this decision in writing and forward the original ranking, the applications and his/her written recommendation to the PNJO. The applications are then to be assessed by the PNJO. If the PNJO agrees with the proposal on shortlisted candidates s/he forwards it to the President of the Republic for decision. However, in case the PNJO disagrees with the submitted shortlist, s/he may change the order of priority among the first three candidates. Should the PNJO recommend a candidate ranked second or third, s/he is to consult with the NJC in writing by providing reasons for this preference. According to Article 15 ALSRJ, the NJC has to give prior consent in order for the PNJO to be able to recommend the second or third candidate for appointment. To sum up only the applicant who is ranked first by the judicial council has the possibility to be recommended by the PNJO without the prior consent of the NJC, while for the appointment of the second or third ranked candidate, the consent of the NJC is required. Those who were not chosen amongst the three first candidates cannot be recommended.

109. Turning to the promotions and appointments of judges to ordinary courts, Section 128 AOAC provides detailed guidance. The President of the Republic appoints vice chairs of the Supreme Court upon recommendation of the President of the Supreme Court; the President of the Supreme Court appoints the heads of division etc. of his/her court. The PNJO appoints the chairs and vice chairs of regional courts of appeal and regional courts and these chairs appoint their heads of division etc.

110. Senior court positions are, as a main rule, to be filled via applications and the submission of a "career plan" (plans for the operation of the court/department etc.) (Section 130 AOAC); judges of the court/department concerned express their views by secret ballot; candidates are to be heard by the decision making official after which follows the decision of the reviewing board. The deciding official (either the president of the court or the PNJO) are not bound by this, but are obliged to inform the NJC if they deviate from the candidate suggested. Should the President of the Kúria or the PNJO wish to appoint a candidate who did not receive the majority of the votes at the secret ballot, prior consent of the NJC is needed for the appointment, according to Article 132 AOC.

111. The GET welcomes the law explicitly stating that the recruitment procedures are to ensure that the position of a judge be given to the most suitable candidate (Section 7 ALSRJ) and the criteria established for this in Section 14.4 ALSRJ, even though the GET was told on-site that some judges were of the opinion that some criteria were considered less pertinent (e.g. foreign languages) and that the accompanying point system favours outside candidates rather than those with experience within the judiciary. Furthermore, the GET is satisfied that collective bodies, the judicial councils and the National Judicial Council (NJC) are involved in the selection process as these authorities are clearly independent from the executive and legislative powers, which is in line with Recommendation CM/Rec(2010)12 of the Committee of Ministers of the Council of Europe to member states on judges: independence, efficiency and responsibilities. That said, the GET is concerned that the PNJO, which is not a collective body, but a high level administrative official appointed by Parliament, has been given a substantial and rather decisive role in this process to intervene, and even to change, the priority among

candidates agreed by the judicial council. This situation has been subject to criticism<sup>17</sup>, after which the law has been amended to require the NJC's prior consent should the PNJO defer from the priority of the candidates established by the judicial council or the PNJO appoints an applicant for a senior position who had not received the majority vote of his/her peers. These amendments are to be welcomed. Furthermore, the NJC has established principles for the PNJO when s/he intervenes in the selection procedure by changing the order between the three first candidates (Resolution No.3 of 2013 (I.21) and the GET was told that the NJC would not give its consent to the PNJO's recommendation to change the order of the candidates if these principles were not taken into consideration. The GET acknowledges that the selection has been enhanced by providing the NJC a stronger supervisory function through the amended legislation. Nevertheless, it is of the opinion that the selection/appointment procedure of judges has become unnecessarily cumbersome as a result of maintaining the PNJO as the ultimate authority to recommend/appoint candidates for judicial positions. The GET furthermore notes that the authorities have introduced a limited possibility to challenge the appointment of a particular judge, but not the whole procedure as such. Despite these amendments, the GET notes that the PNJO can declare an appointment procedure unsuccessful and thus block the appointment of a candidate who has been given first priority by two collective bodies of the judiciary: the judicial council as well as by the NJC<sup>18</sup>. The GET takes the view that the involvement of the PNJO in the appointment and promotion procedures has been balanced to some extent by the fact that the NJC has been given a stronger supervisory function. However, the GET is of the opinion that it would appear most appropriate that the NJC, as the highest collective body of the judiciary be given the final say on which candidate to be recommended for appointment or promotion<sup>19</sup>. Furthermore, the involvement of the PNJO in this process has the potential of introducing discretionary and biased decisions by a single official in a system which otherwise appears to be a fairly well-established selection procedure. Consequently, **GRECO recommends that the powers of the President of the National Judicial Office to intervene in the process of appointing and promoting candidates for judicial positions be reviewed in favour of a procedure where the National Judicial Council is given a stronger role.**

112. Concerning the tenure of appointment of judges at general courts, Article 23 of ALSRJ provides that, as a main rule, professional judges are only to be appointed for an indefinite period of time once they have moved successfully through a first judicial appointment (probation) for three years as a judge. The GET is of the opinion that, as a main rule, ordinary judges should be appointed permanently until retirement and temporary assignments should be avoided to the extent possible. That said, the GET is aware that trial periods which are limited are applied in several states as these provide a legitimate means to test and train new judges before their final confirmation. The GET was pleased to learn that the system applied in the past in Hungary, where the probationary period could be prolonged as a result of unsatisfactory evaluations of judges had largely been abandoned and that, currently, this period only lasts for three years, after which the candidate will either be dismissed or admitted as a judge for an indefinite period. It is to be noted that only in specific situations where the candidate already has the necessary experience can indefinite appointments occur without probation.

113. The law also provides for evaluation of judges' performance (Sections 65-85 ALSRJ). In respect of judges appointed for an indefinite period of time, such evaluations take place after three years of service, after an additional period of six years and then every eight years. It is also possible to institute extraordinary evaluations of judges when there are reasons to believe that the judge is unable to perform his/her functions. The law provides that the chair of the court is to evaluate the judge's activities on the basis of

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<sup>17</sup> Venice Commission opinion on Act CLXII of 2011 and Act CLXI of 2011(CDL-AD(2012)001

<sup>18</sup> The Hungarian authorities informed the GET that in 2012 five procedures of 217 and in 2013 five out 140 were declared unsuccessful by the PNJO.

<sup>19</sup> E.g. CM /Rec(2010)12 (p 44-48)

investigation material, documents and opinions obtained; however, only well founded value judgments may be featured, according to the law. The judge will receive the written evaluation 15 days prior to the disclosure at a meeting comprising the judge conducting the evaluation investigation, the head of the division and the chair of the court. As a result of the evaluation, a judge may be awarded the following marks: "excellent, suitable for promotion"; "excellent and fully eligible", "eligible"; "eligible, subsequent assessment required" and "ineligible". The result of the evaluation is subject to appeal before the Service Court. In case a judge receives the note "ineligible", the chair of the court is to call upon the judge to resign within 30 days and if this is not followed voluntarily the case is to be dealt with by the Service Court.

114. The GET is concerned about the rather intrusive evaluation system of judges. In this connection, it wishes to refer to a recent opinion of the Consultative Council of European Judges (CCJE)<sup>20</sup> in which that body has held that "*the fundamental rule of law for any individual evaluation of judges must be that it maintains total respect for judicial independence. When an individual evaluation has consequences for a judge's promotion, salary and pension or may even lead to his or her removal from office, there is a risk that the evaluated judge will not decide cases according to his or her objective interpretation of the facts and the law, but in a way that may be thought to please the evaluators. However, the risk of individual independence is not completely avoided even if the evaluation is taken by other judges. Judicial independence depends not only on freedom from undue influence from external sources, but also requires freedom from undue influence internally, which might in some situations come from the attitude of other judges, including presidents of courts*". This matter is further dealt with in paragraph 118.

115. As far as judges' salaries and benefits are concerned, the authorities refer to Articles 169 and 170 ALSRJ, from which it follows that the basic salary of a judge is defined in the Act on the Central Budget and divided into various grades. A newly appointed judge is paid according to the index for grade 1. The judges' salaries step up one grade every three years. In addition, judges are entitled to an allowance based on the basic salary according to the following: 10% for a district court judge, 15% for administrative and labour court judges, 20% for a regional court judge, 40% for a regional court of appeal judge and 60% for a judge at the Supreme Court.

116. A judge at the beginning of his career earns 430 760 HUF (€1 400) per month and a senior judge of the Supreme Court 920 260 HUF (€ 3000) per month. Article 150 ALSRJ provides that the monthly salary of the President of the Kúria is to be 39 times the public servants' salary base (38 650 HUF or €127), i.e. 1 507 350 HUF (€4 900). In comparison the PNJO earns 1 429 340 HUF (€4 650).

117. In addition, court executives receive managerial allowances, and any judicial employee or judge is entitled to a language allowance for the use of foreign languages. Judges may also be entitled to additional allowances and benefits, for example, premiums following 25, 30 or 40 years in service, on-duty allowances, detached service allowances, assignment allowances, settlement allowances, social allowances and housing allowances etc. Finally, the GET came across a provision (Section 171 ALSRJ), which allows for upgrading and thus salary adjustments based on the evaluation of a judge's performance as assessed by his/her superior, upon recommendation by the judge's professional department of the court (Section 175 ALSRJ). The GET sees a principle problem with benefits linked to assessments of judges which can be used in a way to jeopardise their independence.

118. In the view of the GET, the reformed judiciary in Hungary mirrors a system which on the one hand clearly states the independence of judges, but which at the same time in

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<sup>20</sup> CCJE, Opinion No 17 (2014)

a rather intrusive way regulates their rights, responsibilities and careers. The use of probationary employment, very strict evaluations at regular intervals - also of those employed for an indefinite period of time - the possibility to connect the evaluations to disciplinary proceedings, dismissals and salary adjustments as well as to judges' future possibilities for promotion through decisive evaluation marks and statements reflect a dedicated intention by the legislator to provide for efficiency through strong control over judges, including the possibilities to dismiss those who do not perform as intended. Moreover, the GET understood from various interlocutors that the manner in which the evaluations are carried out in Hungary differs from court to court and that these are done in a more or less serious manner; that there is a need to include external judges in the process and to establish clearer criteria for the evaluations in order to cater for a system of equal treatment of all judges. To sum up, the evaluations and their consequences call for further thorough reflexion by the Hungarian authorities. In view of the above, **GRECO recommends that the evaluation system of judges employed for an indefinite period of time be reviewed in order to provide for equal treatment of all judges and to disconnect these evaluations from consequences that may have a negative impact on judicial independence and integrity, such as disciplinary proceedings, dismissal and salary adjustments.** The GET wishes to add that proper accountability is also important in respect of the evaluation of judges, in particular, as the evaluations are closely connected to their careers.

119. As regards the mobility of judges, it is to be noted that the chair of a regional court is entitled to give judges a temporary assignment if a need occurs between a regional court and a district court, a regional court and an administrative and labour court, and further if they emerge between district courts operating in the regional court's territory of jurisdiction or between a district court and an administrative and labour court operating in the regional court's territory of jurisdiction (Section 31 ALSRJ). In other cases, the PNJO has the power to order temporary secondment (Section 31 ALSRJ). Leaving aside situations where the judge agrees to a transfer, the GET is concerned that the PNJO has been given the power to order a judge to move positions for as long as during one year, every three years with a view to ensuring an even distribution of the workload between judges/courts (Section 31.3 ALSRJ). Even if this appears as a legitimate reason for such a forced re-assignment, the GET agrees with the view expressed in an opinion by the Venice Commission that this criterion is broad and that it should not be possible to transfer a judge so often<sup>21</sup> as the irremovability of judges is an important aspect of their independence and that a threat to move a judge from one court to another may be used to exercise pressure on a particular judge, or to ensure that a certain judge deals with or does not deal with cases at a particular court. Furthermore, the GET notes that there are other possibilities to overcome a more uneven distribution of cases, e.g. to assign newly recruited judges to more than one court, if provided for in the vacancy notice. (Section 33 ALSRJ). The Hungarian authorities state that this provision has been considered to be in compliance with the Constitution and that since 2012, no judges have been re-assigned by the PNJO without their consent. In 2012/2013 70 judges were re-assigned, most of them for a period of 3-6 months. GRECO takes note of this information, which does not contradict the fact that the law in principle allows the PNJO to re-assign judges against their consent up to one year every three years. For the above reasons, **GRECO recommends 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 character.**

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<sup>21</sup> Venice Commission opinion on the cardinal Acts that were amended following the Opinion CDL-AD(2012)001, pp 21-22, (CDL-AD(2012)020) pp 11-12

## Case management and procedure

120. Sections 9 to 11 AOAC regulate issues concerning distribution of cases. The case distribution schedule of a court is to be laid down by the president of the court, upon hearing the opinion of the judicial council and the various divisions, by 10 December of the year prior to the year to which it pertains. The case distribution schedule may be modified in the course of the year for important reasons affecting the operation of the court or in the interests of the court. If a judge is assigned to a court after the case distribution schedule is drawn up, the said schedule is to be complemented accordingly. The case distribution schedule is to contain information on the composition and number of chambers operating at the given court, information on the types of cases administered by judges, chambers, the order of substitution and information on the method for distributing cases. The schedule is to include the scope of cases administered by presiding senior court officers and the manner in which these cases are distributed. This schedule is to stipulate which chambers and judges adjudicate key lawsuits as defined in the Act on Civil Procedure and key cases as defined in the Code of Criminal Procedure. When establishing the case distribution schedule, the significance and labour intensity of cases are to be considered – with regard to lawsuits and cases of particular importance – along with statistical data on the receipt of the case, and efforts are to be made to establish commensurate workloads. Any amendments and supplements to the distribution schedule are to be communicated promptly to those concerned, and the schedule is to be put on display at the court in a place where it is accessible.

121. Moreover, the Decree No. 14/2002 (VIII.1) of the Minister of Justice on the rules of court administration, stipulates various forms of systems for distributing cases within a court randomly, for example, on the basis of even-odd case numbers, names of parties, geographical belonging, software distribution etc.

122. The GET was pleased to note that a previous system providing the PNJO and the Prosecutor General with extensive powers to redistribute cases between courts in order to cater for a better case load distribution was abandoned by the introduction of the Fifth Amendment to the Fundamental Law in 2013, following intense discussions with representatives of the Council of Europe.

123. The authorities informed the GET that it is not possible to remove a judge from a case unless there are special reasons. They refer to a decision by the Constitutional Court (Decision 1001/2013 (II. 27) according to which the President of the Constitutional Court may change the designation of the judge rapporteur if s/he is permanently prevented from acting, or to assure the equal distribution of cases or processing of a backlog of cases, because of bias or exclusion, or at the request of the judge rapporteur.

124. As regards safeguards ensuring that judges deal with cases without undue delay, the authorities refer to Article 2 of the Code of Civil Procedure, which reads:

“(1) The court shall - in accordance with Article 1 - seek to enforce the parties right to reach a settlement in disputes and respect their right to a fair trial, and to reach a conclusion within a reasonable time period.

(2) A reasonable time-frame for the conclusion of litigation shall be determined in due consideration of the subject matter and nature of the dispute, as well as the unique circumstances of the proceedings. Where a party is found to have contributed to the prolongation of the proceedings through his actions and/or omissions, such party cannot rely on the closure of the proceedings within a reasonable time-frame.

(3) In the event of non-compliance with what is contained in Sub Article (1), the party affected may seek restitution - alleging the violation of his fundamental rights -, provided that such impairment of a right cannot be remedied by way of redress procedures. If in consequence of non-compliance with the provisions set out in Sub Article (1) the party suffers any loss and it cannot be remedied by way of redress procedure, he shall have the right to demand compensation from the infringer in accordance with the provisions on non-contractual liability. The court shall hear cases for restitution or damage claims in priority proceedings. If the infringement cannot be directly attributed to any person acting on the courts behalf, this shall not preclude the award of restitution or damages”.

## Ethical principles, rules of conduct and conflicts of interest

125. Some basic principles concerning judges are provided for in the Constitution: Article 26 establishes that judges are to be independent and only subordinate to the law; they are not to be instructed in relation to their judicial activities and they may only be removed from office for reasons and in a procedure prescribed by law. According to the same Article, judges may not be members of political parties and may not engage in political activities. Furthermore, Section 3 of AOAC repeats that judges, including lay judges, are independent, they are to render their decisions based on the law and in accordance with their convictions; they may not be influenced or instructed in relation to their activities in the administration of justice.

126. Moreover, judges are to take an oath before the chair of the court prior to the commencement of their judicial activities, within eight working days of their appointment. The text of the oath is included in Act XXVII of 2008 on the Oath and Pledge of Certain Public Law Officials: "*I hereby do solemnly swear that I shall assess the cases entrusted to me in fair proceedings, without bias, conscientiously, solely in accordance with the rules of law; in the fulfilment of my duties, I shall be driven by the desire to uphold justice and equity.*"

127. Furthermore, Sections 36-38 ALSRJ lists responsibilities of judges, *inter alia*, that they are to fulfil responsibilities true to the oath; act in a fair and impartial manner; deflect attempts at undue influence; observe the regulations when dealing with classified data and restrain themselves in the public and private lives from any behaviour that could damage the public trust and prestige of the office.

128. Sections 39-42 ALSRJ deals with conflicts of interest. More particularly, it provides a number of prohibitions and restrictions on judges in order prevent situations of conflicting interests, further dealt with below.

129. The GET was informed that a Code of Ethics was adopted by the Association of Judges in 2005. However, this Code only applied in respect of those being members of that association and had no binding effect. In 2012, the President of the National Judicial Office established a working group on integrity matters, which, *inter alia*, has been instrumental in developing a code of conduct for the judiciary. On 30 November 2014, (after the on-site visit of the GET) a Code of Ethics for Judges was adopted by the National Judicial Council.

130. The GET received the Code of Ethics and it welcomes that the Code applies to professional judges and to lay judges. The Code includes principles, such as independence, impartiality, dignity, diligence, propriety, respect and cooperation, as well as rules pertaining to judges in managerial positions. Not much of this appears relevant to others than the judges and the GET is doubtful that "judicial employees" are also said to be covered by this instrument. Moreover, the GET was puzzled by the text in Article 1(2) which states that "*A judge shall avoid unnecessary relations to the legislative and executive power in a way that is obvious to outsiders*". The formulation appears unclear in respect of the true meaning of independence of the judiciary and needs revision. The GET is also concerned by the managerial provision (Article 7(3)) that "*A judge shall ensure that the behaviour of his or her colleagues live up to their judicial profession*" which appears questionable as it might contradict the independence of the individual judges. Moreover, the GET is of the opinion that the code could be more outspoken in respect of various forms of conflicts of interest, for example, a clear ban on the acceptance of gifts is lacking. To sum up, the Code of Ethics for judges is to be welcomed as a useful tool; however, it needs to be further developed and refined in respect of certain aspects, beyond the examples given. In this context, the GET welcomes that the

NJC has established that the Code is to be constantly developed and interpreted<sup>22</sup>, which emphasises its character as a “living instrument” which need to evolve over time. **GRECO recommends that the Code of Ethics for Judges be subject to further considerations and revision, with a view to enhancing the guidance in respect of conflicts of interest and other integrity related matters, such as gifts, recusal, third party contacts, etc.**

Prohibition or restriction of certain activities

*Incompatibilities and accessory activities, post-employment restrictions*

131. Section 39 ALSRJ prescribes that judges may not be members of political parties and that they may not engage in political activities. The same section provides that judges may not be members of Parliament, the European Parliament or representatives of a municipality, be the spokesperson of a national minority group, mayor or state leader under the Act on the Central State Administration Organs and may not be a member of the Government nor a state secretary.

132. It follows from Section 40 ALSRJ that a judge, in addition to his/her judge functions, may only engage in remunerated activities in scientific, educational, training, referee, artistic, editorial and technical activities and in activities with copyright protection, but s/he may not endanger with these activities his/her independence and neutrality, and may not create the appearance thereof and may not hinder the fulfilment of his official obligations. Furthermore, a judge may not be the executive of a business association, cooperation, or co-operative, or a member of these obliged to perform personally, member of the supervisory board of a business association, cooperation, or co-operative, member with unlimited liability of a business association, cooperation, or co-operative, or member of a one-person firm, or an executive of a non-profit organisation engaged also in business activities. Judges may only establish a legal relationship aimed at work concerning fully or partially his/her working hours according to his/her service relationship only with the preliminary permission of the employer. No legal dispute may be initiated due to the refusal of the preliminary permission. To this end, judges are obliged to notify their employer in advance of the establishment of another legal relationship aimed at work, that does not concern his/her working hours. The employer is not to allow establishment of a legal relationship if it is incompatible with the sphere of activity based on the judge’s service relationship. Furthermore, a judge may not be a member of an arbitration court. Judges are also prevented from receiving old-age pension allowances prior to the age limit or any other financial allowance, which is to be further paid as old-age pension at the time of reaching the pension age limit.

133. Section 41 ALSRJ states that a relative of the president, vice-president, council leader and his/her deputy, group leader and his/her deputy may not act as judge at the same court, division or department.

134. Section 42 ALSRJ provides that the NJC may issue an exemption in the incompatibility case regulated in Section 41. The exceptional method of resolving the incompatibility is the exemption from the prohibition of joint employment. The exemption may be issued, if, considering every circumstance, it can be determined that the particular executive position may not be filled in any other way. The main aspect in considering the decision is the service interest.

135. Furthermore, Section 42 ALSRJ regulates the procedure to be followed by judges when a situation of “incompatibility” (conflicts of interest) appears. The law provides that such situations are to be reported instantly and that the concerned judge has 30 days for

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<sup>22</sup> NJC Resolution No.11/2015

eliminating the cause. Article 42 also provides for detailed procedure and measures on behalf of the employer in situations where the incompatibility remains.

136. There are no specific rules regulating judges' employment or engagement in other activities after having exercised judicial functions.

#### *Recusal and routine withdrawal*

137. The regulations concerning disqualification are specified in Sections 13-21A of the Code of Civil Procedure (CCP). Section 13 (1) CCP provides that the following persons are excluded from the conduct of an action and are not to function in an action as judges: a) any person who holds a right or is subject to an obligation together with the party, as well as any person who lays claim to the subject-matter of the litigation in part or in whole, or whose rights and obligation may be effected by the outcome of the action; b) the counsel or advocate of either of the persons referred to in paragraph a), or a former counsel or former advocate who was involved in the case previously; c) relatives or former spouse described in subsection (2) of the persons referred to in Paragraph a) or b); d) any person who was heard in the action as a witness or an expert, or who is ordered by the court to appear as a witness or an expert; e) any person who is unable to form an objective opinion in the case because of his preconceived mental attitude (bias).

138. Section 14 of the CCP provides that a district court, the regional court or a regional court of appeal, the head of which is disqualified according to Section 13 CCP may not act in litigation. Furthermore, according to Section 15 (1) any judge who participated in litigation in the first instance is excluded from the second instance and (2) a judge who heard a complaint lodged concerning any delay in proceedings is excluded from hearing the case in the second instance and from passing judgment of connection with a petition for review.

139. Section 16 CCP provides that the court on its own initiative is to ascertain that any judge or court disqualified as per the above sections is excluded from partaking in the proceedings. Furthermore, any judge who is subject to any grounds for recusal is to notify the chief judge of the court without delay; in the event of non-compliance or delayed compliance the judge is subject to disciplinary liability. Where any grounds for recusal exist, the chief judge of the court must *ex officio* have the judge recused.

140. According to Article 18 CCP the recusal may be handled through administrative channels or by another panel of the same court acting in the same instance and may adopt a decision relating to the recusal of the judge without a formal hearing. If the same court has no panel unaffected by the grounds for exclusion, or if the grounds for exclusion apply to the entire court, the court of appeal or a higher court may deal with the matter. Any judge who him/herself reported the grounds for his exclusion may not be involved in the case until his report is evaluated and resolved (Article 19 CCP). In all other cases the judge affected may continue to act in the case; however, s/he may not be involved in adopting a decision on the merits of the case until his/her report is evaluated and resolved. Where the same party makes another report against the same judge in the same action after the refusal of recusal, this restriction does not apply. Where the report made by a party for recusal is clearly unfounded, or if s/he makes another clearly unfounded report against the same judge in the same litigation, a financial penalty (Section 120) may be imposed upon such person in the resolution on the refusal of recusal. In connection with recusal the court shall adopt its decision in priority proceedings.

#### *Gifts*

141. Besides the general provisions contained in Section 36 ALSRJ providing that judges are to act impartially in all cases and not be influenced in any way and that they

are to deflect any attempts aimed at influencing them and obliged to inform the president of the court of any such attempts, there are no specific rules on the acceptance of gifts by judges.

142. The GET regrets that no further guidelines in respect of gifts have been included in the new Code of Ethics for Judges, adopted in November 2014. A recommendation to remedy this lacuna has been addressed in paragraph 130.

#### *Third party contacts, confidential information*

143. Section 43 ALSRJ provides that a judge may not publicly express an opinion on a case currently or previously before the court outside his service relationship, with special regard to cases adjudicated by him. Furthermore, Section 44 of the same Act states that a judge may not provide information on cases under his/her administration for the press, radio stations and television channels. Instead, such contacts are to be handled by the chair of the court or a person engaged by him/her. There is no other specific legislation regulating judges' contacts with third parties.

144. Concerning confidential information, Section 37 ALSRJ states that during and after their period of service, judges are to keep all classified information in safekeeping and only a body authorised by the law may lift this obligation of confidentiality.

145. The GET welcomes that the newly adopted Code of Ethics for Judges deals with some aspects of contacts with third parties e.g. the parties of a case (Article 5(2)) as well as in respect of other members of the legal profession (Article 5(3)) and in respect of the use of confidential information (Article 5(3)).

#### Declaration of assets, income, liabilities and interests

146. As a means of preventing, *inter alia*, corruption, judges in Hungary are under the obligation to file regular asset declarations every three years (Articles 197-203 ALSRJ). The first such declaration is to be submitted even before the oath that all new judges have to make at the beginning of their mandate (see above) and then every three years during their service. The declarations are to be submitted to the president of the court in respect of ordinary judges, while court executives appointed by the PNJO submit their asset declarations to the NJC.

147. The obligation to regularly declare assets is not limited to the judges; separate declarations concerning their spouses, life-partners and children living in the same household as the judge are also required.

148. The declarations are to consist of two separate parts, the personal data and the assets declared. The various assets that need to be declared are specified in an annex to the ALSRJ. The following assets/liabilities are to be declared: annual income, real property, holiday home and holiday plot, other non-housing buildings, arable land, valuable movable property, art, savings, stakes in businesses and debts. The personal part and the asset declaration part are kept separately in sealed envelopes by various authorities as well as by the judge and are regularly checked by the hierarchical chief judge and the PNJO respectively. The asset declarations in respect of the President of the Kúria are made public whereas all the other declarations are limited to the internal control within the Judiciary.

149. In addition to the regular asset declarations, judges may be required to provide extraordinary declarations on the request of his/her employer (chief judge or President of NJO) in case somebody has made a complaint about unreasonably accumulated wealth (Section 203 ALSRJ).

150. Within 60 days from receiving the financial disclosure statement, the person exercising the employer's right (normally the hierarchical superior of the judge) is to verify the statement with the judge's previous statement, which is normally done during an informal meeting between the judge and his immediate superior, and if unjustified increases in wealth have been discovered a verification process with the NJC is to be initiated (Section 204 ALSRJ). The GET was told this had happened only twice during the last two years.

#### Supervision and enforcement

151. Ordinary judges in Hungary enjoy the same immunity as members of parliament in respect of criminal proceedings as stipulated in Article 2 ALSRJ, i.e. in terms of activities related to their participation in the administration of justice as well as immunity against detention and any other coercive measure under criminal proceedings, save in the case of having been caught in the act of committing an offence (inviolability). To lift the immunity of judges, the President of the Republic is to make a decision based on a proposal by the President of the NJO. To lift the immunity of the President of the Kúria, Parliament requires a decision with a two-thirds majority of the votes of the Members of Parliament present, and the necessary measures shall be taken by the Speaker of the House concerning any breach of immunity.

152. Lay judges are also entitled to immunity (Article 2(4) ALSRJ); however, this immunity is limited to a so called "functional immunity", i.e. in terms of activities relating to their participation in the administration of justice. During and after their terms of office, lay judges cannot be liable before courts or other authorities for their participation in the administration of justice, and for facts and opinions they disclosed during their terms of office. Furthermore, this immunity does not apply in respect of abuse of classified information, civil liability etc.

153. According to statistics provided by the authorities between 2004 and 2014, the GET was informed that the Prosecution Service initiated procedures to lift the immunity of 37 judges. In four cases the motions were unfounded. Out of the 37 judges one was a lay judge. In one case the immunity of the judge was lifted, however, the investigation was terminated without hearing the judge. The immunity was asked to be lifted for the following suspected crimes: active bribery of public officials, abuse of authority, bribery in an administrative procedure, active corruption in court proceedings, passive bribery of a public official, forgery of public documents committed by a public official, forgery of document, driving under the influence of alcohol, traffic offence causing a road accident resulting in death, theft, misuse of personal data, violation of personal freedom etc. In 19 cases a legally binding court decision was made, in two cases reprimand was given, two cases were terminated following a mediatory procedure. In three cases the judge was acquitted. Four procedures are currently being conducted, one is at the investigative stage, three at the court stage.

154. The GET recalls its position in respect of the broad immunities provided to members of parliament and is of the firm opinion that such privileges need to be limited to the extent possible also in respect of judges. Even if the immunity in such cases is regularly waived by the authorities concerned, it represents an unnecessary obstacle for the law enforcement to act rapidly in various situations, such as to secure evidence and the like. That said, the GET is fully aware that judges may need protection from inappropriate disturbance in carrying out their duties for which so called "functional immunity" appears sufficient, in line with what already applies in respect of lay judges, who participate in many ways on an equal footing with the ordinary judges in courts. The GET discussed this matter with representatives of the judiciary, who gave the impression that they consider the current level of immunity as a privilege of an honourable character rather than a necessary protection. That said, others advocated for the need to maintain the immunity in its present form. The GET firmly believes that all judges - whether

professional or lay judges – participating in the administration of justice, with the same rights to vote etc. ought to be treated in the same way in respect of immunities and, that this extraordinary protection ought to be limited to the extent strictly necessary to carry out a judge's functions. In view of the foregoing and with reference to Guiding Principle 6 of Resolution (97) 24 of the Committee of Ministers of the Council of Europe on the twenty guiding principles for the fight against corruption, **GRECO recommends that the immunity of ordinary judges be limited to activities relating to their participation in the administration of justice ("functional immunity")**.

155. Sections 101-130 ALSRJ, provide detailed rules concerning disciplinary proceedings in respect of judges. Such proceedings are to be handled in the first instance by the Service Court, which is attached to the Regional Court of Appeal in Budapest and subsequently by the Second Instance Court of Service attached to the Kúria. The National Judicial Council is responsible for appointing the members (all judges) of the Service Court. The Service Court may deal with matters concerning judges' conduct, incompatibility or cases of declaration of assets; the procedures are described in detail in Article 42 and Articles 204-207 ALSRJ.

156. The Service Court consists of 75 judges in total. It works in chambers of three members and among them, one member acts as the "investigating commissioner" in a given case. Decisions by the Service Court may be appealed to the Second Instance Service Court.

157. Section 124 ALSRJ provides for the following sanctions at the disposal of the service courts: a) reprimand; b) censure; c) demotion by one pay grade; d) exemption from senior office, e) motion seeking the removal from the office of judge.

158. Statistics submitted by the authorities indicate that, between 2012 and 2014, 53 disciplinary cases were initiated against judges, most of which concerned delays in the administration of justice and some as follow-up to criminal proceedings. Various sanctions were used (e.g. warning, demotion, censure etc.) and, in one case, the judge was dismissed.

#### Advice, training and awareness

159. Section 45 ALSRJ makes it obligatory for judges to attend training and s/he is obliged to report on training undertaken every five years to the chair of the court or hierarchical superior. Lack of training will result in a screening test and s/he being prohibited from participating in competitions for promotion.

160. The Academy of Justice was established in 2006. It has its own premises as a part of the central administration at the National Judicial Office (NJO). The objectives of the Academy are to offer high quality, effective education to members of the judiciary and to support the functioning of the courts with a scientific and educational centre based on European standards. The GET was told on-site that the Academy has close co-operation with judges in respect of establishing the curricula and the GET noted that this was also under the responsibility of the PNJO. The Academy is assisted by a staff of 40 or more.

161. The Academy organises induction training for all new judges (4 weeks) and topics such as judicial ethics in addition to general judge training are included in the curricula. The academy also organises special training, for example related to juvenile justice. The GET was also informed of a number of *ad hoc* seminars and conferences organised by the Academy.

162. There is no single entity responsible only for providing advice to judges on the conduct expected of them. That said, the authorities stress that opinions of the Hungarian Judicial Association and the Kúria's resolutions on the uniformity of decisions

are available on the website of the National Judicial Office and other free Gazettes. Furthermore, judges who seek advice can turn to their superiors or the National Judicial Office when needed.

163. The GET welcomes that Hungary has institutionalised training for all newly appointed judges. It did not come across any special curricula concerning in-service training; however, it understood that such training was foreseen to be provided. Although it understands the rationale for obliging judges to undergo training at regular interval, it finds that such an obligation ought to be connected to the need of the particular judge. It also finds the punishment connected to the lack of enrolling for training – not to be allowed to apply for promotions – as an unnecessarily harsh measure, even if such situations may well reflect on the chances of being promoted.

164. The GET has already welcomed the adoption of a code of ethics for the judiciary/judges. The GET is of the firm opinion that this new instrument - in order to be an effective and evolving tool - does not only need to be further developed but also to be accompanied by broad in-service training open to all judges in Hungary. The GET understood that such training is planned for 2015 and beyond. **GRECO recommends that training on ethics for judges (including lay judges as appropriate) be introduced as a follow-up to the adoption of the Code of Ethics for Judges.**

## **V. CORRUPTION PREVENTION IN RESPECT OF PROSECUTORS**

### Overview of the prosecution service

165. Article 29 of the Fundamental Law of Hungary states that "*the Prosecutor General and the prosecution service shall contribute to the administration of justice by enforcing the punitive authority of the State.*" As a consequence of this constitutional regulation the prosecution service is part of the justice administration. Furthermore, the Prosecutor General is elected by the National Assembly by a two-thirds majority vote for nine years on the proposal of the President of the Republic. There is no legal way to depose the Prosecutor General. Nevertheless, the Prosecutor General has constitutional responsibility that embraces the obligation to fulfil his/her duties defined by law and there is an obligation to submit an annual report to Parliament as well as an obligation of appearance both at parliamentary commissions and plenary sessions and to respond to Parliament and its committees.

166. Further detailed regulations of the Prosecution Service are contained in two cardinal acts, both adopted in 2011: Act CLXIII on the Prosecution Service of Hungary (APS) and Act CLSXIV on the Status of the Prosecutor General, Prosecutors and Other Prosecution Employees and the Prosecutor Career (ASPGPC).

167. Article 3(1) of APS, states that the Prosecution Service is an independent constitutional organ subject only to the law. Article 3(3) of the same Act provides that "the Prosecutor General shall be instructed neither directly nor indirectly to make or amend decisions in individual cases."

168. The independence of the Prosecution Service is also enshrined in the Hungarian Constitutional Court's decision, No. 3/2004 (II.17.), which states that "*the Prosecution Service is not a separate branch of power, though it is an autonomous constitutional organ*". Neither the former nor the present Constitution defines any other constitutional body that would have supervisory power over the Prosecutor General; this position, as well as the Prosecution Service, have a wide range of independence and neither the Prosecutor General nor any office of the Prosecution Service may be instructed externally.

169. Furthermore, it is stated in Section 4 APS that "Everyone shall ensure that prosecutors may exercise the rights granted to them by law without interference" and that when performing their duties, prosecutors shall have unlimited access to any document and data held by other public bodies.

170. The organisation of the Prosecution Service is defined in Section 8 APS according to the following:

- a) *Office of the Prosecutor General,*
- b) *appellate chief prosecution offices,*
- c) *chief prosecution offices,*
- d) *district prosecution offices.*

171. Under the direction of the Office of the Prosecutor General there are five appellate chief prosecution offices and 21 chief prosecution offices (19 county chief prosecution offices, the Metropolitan Chief Prosecution Office and the Central Investigation Prosecution Office). The organisation of the chief prosecution offices – except the Central Investigation Prosecution Office – is divided into two main fields: criminal law and protection of the public interest. Although it is not a prosecutorial organ, the National Institute of Criminology - which is an institute for scientific research, responsible for research on crime and criminology, forensic science and criminal law – also belongs to the Prosecution Service (Article 10.1 APS).

172. Section 3 ASPGPC provides for a *Council of Prosecution Employees*, which is to represent the interests of prosecutors on organisational matters, schedule of work etc. Section 7 ASPGPC regulates another advisory body of the prosecution service, the *Prosecutors' Council*, which adopts advisory opinions in respect of appointments and exemptions of prosecutors (Section 7 ASPGPC). These bodies exist at the Office of the Prosecutor General, the appellate prosecutions offices and the chief prosecution offices. The decision making hierarchy (ultimately the Prosecutor General) is not bound by their opinions.

173. The Prosecution Service employs 4 800 staff, among them 1 869 prosecutors (60% women and 40% men), 126 prosecutors in the Prosecutor General's Office and 42 in the appellate offices.

174. The Prosecution Service is based on a strict hierarchical relationship, where the Prosecutor General may instruct any prosecutorial employee. According to Article 13 APS, superior prosecutors may issue instructions to subordinate prosecutors, reserve the right to take over any case from them or may appoint another subordinate prosecutor to handle the case.

175. The decision of whether or not to prosecute a case is made by the individual prosecutor. According to Article 19 APS, the prosecutor is to exercise the public prosecution or decide to terminate the criminal procedure observing the rules set by the Code of Criminal Procedure. In doing so, the prosecutor is obliged to ensure the legality of the prosecution. The Hungarian criminal law is based on the principle of legality, i.e. that both the Criminal Code and the Code of Criminal Procedure require that all crimes have to be prosecuted. No instruction from outside the Prosecution Service may be given to a public prosecutor to prosecute or not to prosecute; such an instruction would constitute a criminal offence. A decision not to prosecute is only lawful if the act is not criminalised or in case the offence cannot be proven.

176. The GET notes that the Constitution and the cardinal acts provide a Prosecution Service that has its own independent character and has been vested with far-going powers to investigate and prosecute criminal cases, and even beyond the traditional prosecutorial powers, including various forms of supervisory functions. It is also built as a strong hierarchical structure, which provides wide internal powers to superior prosecutors (ultimately to the Prosecutor General) to instruct and overrule any decision of subordinate prosecutors. The GET has no doubt that such a system has the potential to be efficient; however, it can certainly be subject to manipulation, difficult to discover as well as to remedy. Furthermore, the GET see a need to enhance the possibilities to prevent potential risks of malpractice and corruption within the system. Moreover, it is crucial for the public's confidence that this Service is - and is seen to be - impartial and free from improper influence. To achieve this, the GET believes that it would be advisable to allow for broader external accountability mechanisms and transparency over the Prosecution Service or, at least, to provide for internal mechanisms based on structured checks and balances, as indicated throughout this report.

177. The Prosecutor General, who is elected by Parliament through a two-thirds majority vote, can be re-elected after the expiry of the nine-year mandate. However, in the current system, should s/he not be re-elected and no other candidate obtains the required two-thirds majority vote, the sitting Prosecutor General will remain in office until such a vote can be reached, according to Section 22(2) ASPGPC in conjunction with Article 29(4) of the Constitution. The Hungarian representatives argued that the requirement of a two-thirds majority vote should be interpreted as a wish to achieve strong parliamentary support when electing such an important official. The GET acknowledges this; however, the current regulation also makes it possible to re-elect the Prosecutor General for several new periods or for a minority of one third plus one vote to effectively block the election of a new Prosecutor General thus extending the mandate of

the departing Prosecutor General until such a vote is reached. GRECO recalls that this situation has been criticised by the Venice Commission<sup>23</sup>. Criticism in this respect was also raised on-site by representatives of civil society. A similar situation concerning the President of the National Judicial Office was at stake until the law was amended in 2012. The GET takes the view that nine years is a relatively long period and there should be no possibility of renewal at the end of such a long period. The GET is also of the opinion that the two-thirds majority vote requirement in Parliament, to elect a new prosecutor general, which makes it possible for a minority to block the election of a new prosecutor general, and to make the previous one stay for an indefinite period of time increases considerably the political influence in respect of the elections to this important Office. As a consequence of all these interacting circumstances, **GRECO recommends that i) the possibility to re-elect the Prosecutor General be re-considered and ii) the possibility to maintain the Prosecutor General in office after the expiry of his/her mandate by a minority blocking of the election in Parliament of a successor be reviewed by the Hungarian authorities.**

#### Recruitment, career and conditions of service

178. According to Section 14 APGSGPC, the Deputy Prosecutor General is appointed by the President of the Republic upon recommendation of the Prosecutor General. The Prosecutor General appoints, promotes and dismisses all other prosecutors.

179. According to Article 11 APGSGPC, any Hungarian citizens who are not placed under guardianship limiting the ability to act or are not subject to advocated decision-making with prejudice to legal capacity, who hold a university degree in law and have passed the relevant legal examination, may be appointed prosecutor. However, persons with a criminal record, prohibited from an occupation tied to a law degree, under forced medical treatment by a court, subject to probation sentence or grave disciplinary sanctions or who have failed to submit asset declarations may not become prosecutors.

180. Job advertisements are to be published in "Ügyészségi Közlöny" (Prosecution Gazette) and on the Internet website of the prosecution office. The time limit established for the submission of applications may not be shorter than ten days after publication on the Internet.

181. Prior to appointment to prosecution offices, candidates have to take part in a prosecution career eligibility screening test, consisting of physical and psychological examinations conducted by the prosecution office.

182. Prosecutors are initially appointed for a period of three years (first prosecutorial appointment) and, thereafter, it is decided whether to renew the appointment for an indefinite period. However, a prosecutor's first appointment may be for an indefinite period of time if s/he already worked as a prosecutor or military prosecutor for a minimum of three years prior to the appointment or has had other relevant experience, as defined by law.

183. The GET was made aware that in the process of recruiting new prosecutors as well as in respect of promotions and dismissals, the Prosecutors' Council adopts opinions in respect of the candidates concerned; however, with no binding effect upon the Prosecutor General, who may overrule the Council without any obligation to state the reasons as that is not required by the law. The weak role of the Prosecutors' Council becomes even more evident since these bodies are only accountable to the Prosecutor General. The GET understood from discussions on-site with representatives of the Prosecution Service that the possibility of providing a stronger role to the Prosecutors' Councils was under discussion within the Service. The GET supports such a process which

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<sup>23</sup> Venice Commission CDL-AD (2012)008, paragraphs 55-60

primarily concerns the councils' role in respect of disciplinary matters (see paragraph 216). The GET is convinced that a stronger role of these collective councils, possibly with some form of external representation, would be a move in the right direction, also in the procedures of appointments and promotions.

184. According to Article 17 APGSGPC, the person exercising the employer's rights (superior prosecutor) is to receive a declaration from a prosecutor appointed for a fixed term as to whether s/he requests the applicant's appointment to be transformed to an indefinite term. If so, the "person exercising the employer's rights" (i.e. county chief prosecutor or a higher prosecutor) is to evaluate the applicant prosecutor, with special regard to the observance of the rules under substantive and procedural law and the relevant administrative rules and other norms. Based on the result of the evaluation, the applicant prosecutor may be employed for an indefinite term. Moreover, the evaluation mechanism, as regulated in Articles 50-52 APGSGPC, provides regular evaluations of prosecutors throughout their careers. Also these regular assessments are carried out by the "person exercising the employer's rights" and have the objective to assess the prosecutor's compliance with the given normative framework. Should particular misconduct be discovered, disciplinary proceedings may follow, see paragraph 211. The results of the evaluations can be appealed to a court of law. Ultimately, it is the Prosecutor General who appoints, promotes and dismisses all prosecutors. It is also the Prosecutor General who decides on transfers of prosecutors from one service to another. The GET was concerned to learn that the Prosecutors' Councils were not involved in this process in practice.

185. Prosecutors' salaries are regulated in law. According to Section 60 APGSGPC the basic salary is to be established on the basis of grades and will step up one grade every three years. The salary also depends on the position in the hierarchy, managerial functions etc., all stipulated in detail in the same law, Articles 60-74. Furthermore, prosecutors are entitled to a number of other benefits, such as training grants, family support, security support and housing support etc. The Section 63 APGSGPC provides for the possibility to give a prosecutor a higher pay grade as a consequence of an excellent evaluation. The GET has less of a problem with such a construction in the Prosecution Service, considering its hierarchical structure (contrary to that of the judiciary, see paragraph 117).

186. The basic gross salary in 2014 of a newly recruited prosecutor is 391 600 HUF (€ 1 200) per month, to which a 10% supplement is to be added (Section 64(1) APGSGPC). The Prosecutor General receives a similar basic gross salary as do the President of the Kúria.

#### Case management and procedure

187. As already mentioned, the Prosecution Service is based on a strict hierarchical relationship. Cases are assigned to prosecutors by superior prosecutors in accordance with Article 13(1) APS. There is no special provision which would regulate the conditions of this assignment. Such a decision is based on the interest of the Office. That said, Article 31 of the Criminal Procedure Code may have an impact on the distribution of cases as this provision restricts prosecutors from acting in a case in which s/he has been involved as an official or in a private capacity. Furthermore, a superior prosecutor may review the decisions or procedural measures taken by subordinate prosecutors; s/he may take over any case or may appoint another prosecutor to handle the case. Such a decision can be made *ex officio* or on the request of the prosecutor acting in the case.

188. According to Article 13 APS, superior prosecutors may issue instructions to subordinate prosecutors, reserve the right to take over any case from them or may appoint another subordinate prosecutor to handle the case. When acting on an instruction, those instructed are to notify their immediate superiors, unless the

instruction was issued by the superior or the instruction pertains to processing a case from which the superior has been excluded. Moreover, Article 14 APS provides that superior prosecutors are to take responsibility for the content of the decisions and for securing that a specific structural unit functions lawfully.

189. Article 53 ASPGPC contains guarantees related to the instructions given by the superiors, such as:

- At the request of the prosecutor, an oral instruction has to be provided in writing as well. In this case, the prosecutor is not obliged to follow the oral instruction until it is issued in writing.
- The prosecutor is to refuse to execute an instruction if s/he were to commit a crime or contravention. If the prosecutor does not refuse the execution of a similar instruction s/he is to assume criminal, disciplinary or contraventional responsibility.
- The prosecutor may refuse to execute an instruction if the execution thereof were to directly and grossly endanger his/her life, health or physical state. If prosecutors do not refuse the instruction in a similar case, this fact does not affect the liability of the Prosecution Service and the person issuing the instruction.
- If the prosecutor finds the instruction incompatible with the rule of law or his/her legal conviction, s/he may request exemption from the administration of the given case in writing with an explanation of his/her legal position. Any such request may not be refused; in this case, the administration of a given case shall be entrusted to another prosecutor or the superior prosecutor may take over the case himself.
- Whenever the superior prosecutor issues an instruction or reserves the right to act instead of a district prosecutor, the superior chief prosecutor (chief prosecution office) shall be notified simultaneously.

190. The GET welcomes the safeguards provided for in Article 53 ASPGPC, in relation to instructions given to a subordinate prosecutor. That said, it is concerned that the wide powers of superior prosecutors to take over cases, or to transfer a case to another prosecutor can be done without providing any explanation. The GET learned on-site that these measures are used from time to time, for example, in a situation when a superior prosecutor is of the opinion that the handling prosecutor interprets the law incorrectly. There is logic for allowing such measures in a hierarchical system like the one in Hungary in which the individual prosecutor is not independent. However, such decisions ought to be guided by strict criteria and be justified in writing in order to avoid arbitrary decisions<sup>24</sup>. In view of the foregoing, **GRECO recommends that the removal of cases from subordinate prosecutors be guided by strict criteria and that such decisions are to be justified in writing.**

#### Ethical principles, rules of conduct and conflicts of interest

191. The authorities submit that the most important ethical rules and standards of prosecutors' conduct are enshrined in the Fundamental Law (Constitution), the cardinal acts, APS and ASPGPC as well as the Code of Ethics and Standards of Professional Conduct for Prosecutors (Code of Ethics). Section 47 APS states that prosecution employees are to report without delay if any conflict of interest emerges in respect of their person and are not entitled to carry out their work while the conflict remains.

192. The Code of Ethics, which was adopted on 3 December 2014 (after the on-site visit of the GET) by the National Meeting of Chief Prosecutors, is formulated as a "Recommendation of the Prosecutor General". It is stated that the Code is based on Recommendation Rec(2000)19 of the Committee of Ministers of the Council of Europe on the Role of Public Prosecution in the Criminal Justice System and on the reviewing document thereof, the draft of Opinion No. 9. (CCPE-GT (2014)) of the Working Group of

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<sup>24</sup> Cf. Venice Commission, CDL-AD(2012)008, paragraph 32

the Consultative Council of European Prosecutors as well as on the European Guidelines on Ethics and Conduct for Public Prosecutors known as "The Budapest Guidelines".

193. The GET welcomes the adoption of the Code of Ethics/Conduct which provides for a catalogue of general principles, to a large extent based on existing legislation as well as international standards, divided into "Fundamental duties", "General standards of professional conduct", "Standards of professional conduct in criminal proceedings" and "Private conduct". At the same time, the GET urges the authorities to allow the Code to become a "living instrument" which may evolve over time and be complemented with a more practice orientated approach to difficult ethical situations, for example, to include various forms of conflicts of interest and - not least - that it be accompanied by dedicated training and counselling (see also paragraph 221).

#### Prohibition or restriction of certain activities

##### *Incompatibilities and accessory activities, post-employment restrictions*

194. The Fundamental Law of Hungary states that prosecutors may not be members of political parties or engage in political activities (Article 29.6). The APS provides that a prosecutor may not be a member of parliament, a member of the European Parliament, a local municipality board representative, mayor or state leader (Section 44). Furthermore, prosecutors may not engage in gainful activities beyond the fulfilment of their office, not including academic and teaching work, artistic activities and activities under copyright protection, proof-reading and editorial work and creative technical work, provided that these do not jeopardise their independence and impartiality and do not hinder them in the fulfilment of their official obligations. Prosecutors may not be senior officers or members obliged to participate in business associations, cooperation companies and cooperatives etc. Prosecutors may only engage in any other work-related legal relationship affecting their working hours in their entirety or partly with the prior consent of the person exercising the employer's rights, and they are to report the establishment of any other work-related legal relationship to the person exercising the employer's rights (Article 45).

##### *Recusal and routine withdrawal*

195. A prosecutor is obliged to declare any conflict of interest (Section 7.3.b APS) and employees of the Prosecution Service are to report without delay any conflict of interests that emerges in respect of their person.

196. Detailed rules on the exclusion of a prosecutor (and his/her investigators and assistants) are contained in Sections 31-34 in the Criminal Procedure Act. Grounds for exclusion are, for example, previous involvement in the case in another role or that the prosecutor cannot be expected to form an unbiased opinion for other reasons. Section 32 calls for an immediate notification to his/her superior.

197. Moreover, the new Code of Ethics (Chapter II. I) states that "Prosecutors shall not act as prosecutors in cases in which they, their family or business associates have a private or financial interest or personal associations". The GET takes the view that the Code could have been more detailed and concrete in respect of how to handle such situations as a complement to the law.

##### *Gifts*

198. According to Section 7.3 APS prosecutors are not to request or accept gifts, donations or other advantages in connection with their activities.

199. Furthermore, according to the newly adopted Ethical Code (Chapter V. e)) "Prosecutors in their private life may not accept any gifts, prizes, benefits or the promises thereof in connection with their official duties and shall refuse any benefits given or promised to third persons with regard to them; moreover, they shall not carry out any tasks which may be seen to compromise their integrity or fairness, and shall possibly abstain from any foreseen situations or conduct which may lead to a similar perception".

200. In addition, the acceptance of a gift as an inducement in relation to a case in which a prosecutor was exercising a function would constitute a criminal offence of corruption.

#### *Third party contacts, confidential information*

201. The Code of Ethics contains various guidelines in respect of prosecutors' contacts with third parties, for example, to perform their tasks without external influence, how to perform contacts with media representatives and how to behave in respect of parties, witnesses and victims in criminal procedure.

202. The management of classified data occurring in the public prosecution service is primarily regulated in Section 36 APS, which provides that prosecutors, junior prosecutors, prosecutorial clerks and deputies are to manage data revealed to them in the course of performing their official duties in compliance with the rules governing the protection of classified data, personal secrets and the protection of personal data, statistics and the publicity of public data observing the exceptions provided in this Act. The general frame is set by the Act on the Protection of Classified Data, which describes the classification of data. Among others, the Prosecutor General and the leader of the Head of the Prosecutor's Office are entitled to classify data and to delegate this mandate to subordinates. Moreover, Section 13 sets out that classified information can exclusively be used by the person who appropriately justifies this requirement for the fulfilment of state or public responsibility. The implementation of the Act is further detailed in Decree 90/2010 and the Instruction of the Prosecutor General 1/2012 on the Code of Management of Classified Data contains focused regulation on personal, physical and administrative security. It sets a controlling mechanism protecting the safety of the data-protection system. To sum up, in case data become available to unauthorised persons, or the risk occurred thereof, the security manager shall report to the National Security Authority and at the same time the creator of that classified data. In addition, the security manager of the prosecution service arranges for the assessment and mitigation of damages arising from a breach of security of classified data, and - if possible - the restoration of the lawful state. The person who committed the breach of security of classified data has a criminal responsibility according to the Criminal Code. In case a perpetrator is a prosecutor, a specialised prosecutorial authority - the Central Investigative Prosecution Service - has the right to conduct the investigation..

203. There are also some references in the new Code of Ethics to the principle of confidentiality; it contains, for example, a reminder of the confidentiality of investigations (II. k) while, at the same time, prosecutors are to safeguard the principle of equality of arms by disclosing information to the accused and his/her counsellor (III.i).

#### Declaration of assets, income, liabilities and interests

204. All prosecutors in Hungary are obliged to submit declarations of assets, according to Act CLII of 2007 on the Obligation to Make Asset Declaration. This Act determines the format and the content of the declarations. There is also a supplementary regulation, a Decree of the Prosecutor General 6/2008 on Special Issues Related to Asset Declaration. Members of the family (spouse, partner, children, the child of the spouse) living in the same household as the prosecutor are also obliged to submit asset declarations. The

declarations are to contain the actual financial status and to cover incomes and liabilities which were procured during the five preceding years.

205. The GET notes that only incomes, assets and liabilities are to be included in the asset declarations. There may be other forms of interest which are not necessarily financial in character, which will not be screened in the declarations. The GET understands that the declarations are mainly aimed at revealing matters, such as "illicit enrichment" etc., but notes that any other forms of conflict of interests are to be reported without delay, in accordance with Section 7.3.b APS and Section 47 ASPGPC. The GET was satisfied that the system provides for these *ad hoc* declarations.

206. Prosecutors are to submit their first asset declarations upon appointment (Section 11(4)h of ASPGPC). Asset declarations are to be submitted to the person exercising employer's rights (hierarchical chief). This person is to keep a record of the declarations. In this register the identification number, name, date of the next obligation, any statement concerning the asset declaration, initiation of an inspection concerning the income's growth, other data. The register of asset declarations is not public.

#### Supervision and enforcement

207. As far as criminal proceedings are concerned, Section 3(5) APS provides that the Prosecutor General and all other prosecutors have similar immunity as members of Parliament. The scope of immunity of members of parliament and the procedures for lifting this immunity are laid down in Act No XXXVI of 2012 on the National Assembly. According to Section 3(6) APS, the Prosecutor General is subject to the same rules of procedure as are applicable in respect of MPs. The suspension of this immunity is voted by Parliament and the Speaker of Parliament is to take the necessary measure upon the breach of immunity.

208. According to Section 3.7 APS the Prosecutor General is entrusted with the discretionary power to suspend the immunity of any prosecutor and to take the necessary measure upon a prosecutor's breach of immunity. According to Section 551(1) of the Criminal Procedure Code (CPC), persons enjoying immunity due to holding a public office are defined by separate laws. According to Section 29.1.g of the CPC, investigations against these persons fall within the competence of the prosecutors and a special prosecutorial organ, the Central Investigating Prosecutor's Office, has the exclusive competence to investigate and prosecute this type of crime.

209. Persons enjoying immunity may only be heard as suspects after suspension of their immunity, and before that – with the exception of being caught during the commission of a crime – no coercive measure may be applied against them. In accordance with Section 552.12 CPC, in case the immunity is not lifted the proceedings are to be terminated. Unless provided for otherwise by law, the termination of the proceedings on such grounds shall not prevent the conduct of criminal proceedings after the cessation of the personal immunity. The GET was informed that between 2004 and 2015, procedures to lift immunity were conducted against 21 prosecutors. In one case the Office of the Prosecutor General found the motion unfounded. The immunity was asked to be lifted for the following suspected crimes: passive bribery of public official committed through breach of duties, abuse of authority, bribery, abuse of function, fraud, protecting a criminal, causing a road accident through negligence, forgery of private documents, forgery of public documents, unlawful detention, vandalism, driving under the influence of alcohol etc. In 11 cases legally binding court decision were made. In four cases probation was used. The prosecution service terminated the investigations in three cases and gave reprimand, in two cases the investigations were terminated following a mediation mediatory procedure. In the rest of the cases the procedure was terminated because of lack of evidence or the absence of a criminal offence. There is one pending case.

210. The GET recalls its position in respect of the broad immunities provided to members of parliament and judges in Hungary and is of the firm opinion that such privileges need to be limited to the extent possible for prosecutors too in order not to hinder an efficient enforcement of criminal provisions. Even if the immunities are regularly waived by those authorised to do so, they represent a clear obstacle for the law enforcement to act rapidly in various situations, such as to secure evidence and the like, and they can be used as a shield to avoid criminal investigations. The GET accepts that prosecutors may need some form of protection from inappropriate disturbance when carrying out their duties. However, a form of immunity that is strictly limited to their functions would certainly appear more appropriate than the current broad protection. To conclude, the GET is of the firm view that the current broad immunity provided to prosecutors is particularly disturbing in a prosecutorial system, like the Hungarian one, where the hierarchical structure is very strong and the external accountability is weak. Such broad protection therefore needs to be limited to the extent strictly necessary. In view of the foregoing and with reference to Guiding Principle 6 of Resolution (97) 24 of the Committee of Ministers of the Council of Europe on the twenty guiding principles for the fight against corruption, **GRECO recommends that the immunity of public prosecutors be limited to activities relating to their participation in the administration of justice ("functional immunity").**

211. The ASPGPC contains detailed rules on disciplinary procedures. According to Section 82.1 a prosecutor who a) culpably violates his/her official obligations or b) curtails or jeopardises the prestige of his/her profession with his/her lifestyle or conduct commits a disciplinary offence. If the violation is considered as minor, the person exercising disciplinary power may dispense with the institution of disciplinary proceedings and the imposition of a disciplinary sanction. The person exercising disciplinary powers may in this case submit a written warning to the prosecutor. If the violation is not minor, the following disciplinary sanctions are possible:

- a) reprimand;
- b) censure;
- c) revocation of formal acknowledgement awarded by the Prosecutor General, including a title;
- d) demotion by one pay grade;
- e) demotion to a lower position or exemption from managerial position;
- f) forfeiture of office.

212. Statistics submitted by the Hungarian authorities indicate that since 2008, 59 disciplinary proceedings have ended up in disciplinary sanctions, most of which led to "censure", "reprimand" and various forms of "demotion".

213. No disciplinary proceedings may be instituted if three months have elapsed since discovery of the disciplinary breach or three years have elapsed since commission of the disciplinary breach (Section 83(1) ASPGPC).

214. The person exercising disciplinary powers may engage a disciplinary commissioner to investigate the alleged disciplinary breaches. However, the prosecutor subjected to the proceedings is always to be heard. (Section 88.2 ASPGPC).

215. In accordance with Section 86 ASPGPC disciplinary proceedings are to be ordered by the person exercising disciplinary powers, namely the Prosecutor General in respect of senior prosecutors; the Deputy Prosecutor General in respect of the prosecutors serving at his/her secretariat; the head of department in respect of the prosecutors of the department and so on. That said, the Prosecutor General may always take over any disciplinary proceedings.

216. Furthermore, Section 92(3) ASPGPC provides that the disciplinary proceedings are to be handled and assessed by the relevant superior prosecutor and in proceedings

against the Prosecutor General, these are to be handled by him/herself. The GET takes the view that a collective impartial body, for example, a prosecutorial council, would be better placed to deal with such proceedings. It also understood and welcomes that this matter is currently being discussed within the Prosecution Service. In this connection, the GET recalls that the current Prosecutors' Council is available to give opinions in respect of appointments, promotions and exemptions of prosecutors as well as in respect of any further issues where a superior prosecutor requires advice. The GET wishes to stress that, ideally, such a council could well be given an important role in the handling of disciplinary matters, as well having a stronger say in the procedures of appointments and promotions of prosecutors as referred to above (paragraph 183). In addition, the GET would see clear benefits in respect of accountability and transparency should such a council be provided with external representation, as appropriate. In view of the foregoing, **GRECO recommends that disciplinary proceedings in respect of prosecutors be handled outside the immediate hierarchical structure of the Prosecution Service and in a way that provides for enhanced accountability and transparency.**

217. According to Section 96, a prosecutor remains under the effect of a disciplinary sanction for three years; in the case of a disciplinary sanction of exemption from a managerial office, demotion, downgrading or the revocation of official acknowledgement, the prosecutor shall remain under the effect of the disciplinary sanction for two years, while in the case of a censure, the prosecutor is to be under the effect for one year. If another disciplinary sanction is imposed on the prosecutor on a final and absolute basis prior to the expiry of the effect of the previous sanction, the effect of the sanction is to be extended by the term prescribed with respect to the new sanction.

#### Advice, training and awareness

218. Prosecutors can request advice on ethical conduct, including in situations concerning conflicts of interests and related issues from his/her superior. In case of doubt a senior prosecutor (person exercising the employer's rights) may turn to the competent department of the Prosecutor General's Office for further clarifications. In addition to this possibility, the GET would suggest that one of the prosecutorial councils be given an advisory role in respect of ethical conduct.

219. The Hungarian Training Centre for Prosecutors, staffed with nine persons, was established in 2012 as a replacement for the previous judicial training institution. It provides for induction training for the new recruits during the initial three years of service. This training is obligatory. Moreover, in-service training is also provided in respect of certain subject matters, such as new legislation whenever necessary, often organised over 3-5 days. Some other in-service training is not obligatory; however, the training has been connected to a score-system and prosecutors are obliged to obtain a certain score over a period of five years, which is also to be reflected in their evaluations.

220. The authorities submit that in the period of 2012-2014 some training events were organised on ethics (lecture of 45 minutes, 1-2 times/year, compulsory for all trainee prosecutors). Moreover, there was training in the form of discussion on the ethics for prosecutors (lecture of 4 hours, 1-2 times/year - compulsory for all junior prosecutors) and a number of training sessions for prosecutors dealing with corruption related investigations, on cross-border bribery, international cooperation and questions of evidence in corruption related cases and organised crime.

221. The GET is pleased that a dedicated organisational framework has been established. It discussed training needs on-site and is convinced that more could be done in order to extend the ethics training beyond the existing one that appears to be limited to the newly recruited and junior prosecutors. This would appear particularly pertinent considering that the new Code of Ethics for prosecutors entered into force only on 1

January 2015. Furthermore, such a document would be of limited value without a dedicated training connected thereto, also to make it a “living instrument” that evolves over time. Consequently, **GRECO recommends that appropriate training and counselling on ethics and integrity matters be made available to all public prosecutors on a regular basis, in particular for the implementation and development of the Code of Ethics and Standards of Professional Conduct for Prosecutors.** The GET was informed that the Prosecution Service envisages important continued in-service training to this end for 2015 and beyond.

## **VI. RECOMMENDATIONS AND FOLLOW-UP**

222. In view of the findings of the present report, GRECO addresses the following recommendations to Hungary:

### *Regarding members of parliament*

- i. (i) to ensure that all legislative proposals are processed with an adequate level of transparency and consultation and, (ii) that rules be introduced for members of parliament on how to interact with lobbyists and other third parties seeking to influence the parliamentary process (paragraph 43);**
- ii. that a code of ethics/conduct for members of parliament be adopted, including in respect of their staff as appropriate – covering various situations of conflicts of interests (gifts and other advantages, third party contacts, lobbyists, accessory activities, post-employment situations etc.) and that it be complemented by practical measures for its implementation, such as dedicated training and counselling (paragraph 54);**
- iii. that a requirement of *ad hoc* disclosure be introduced for members of parliament for situations of personal conflicts of interest which may emerge during the parliamentary proceedings and that rules for such situations be developed (paragraph 57);**
- iv. to ensure (i) that the obligation upon members of parliament to disclose outside occupations and activities of a non-financial character are applied in practice; and (ii) that all declarations as submitted follow a format, which allows for adequate public scrutiny over time, preferably by using electronic means (paragraph 74);**
- v. that appropriate measures be taken in order to ensure that the procedures of lifting the immunity of parliamentarians do not hamper criminal investigations in respect of members of parliament suspected of having committed corruption related offences (paragraph 76);**
- vi. that appropriate measures be taken to ensure effective supervision and enforcement of the existing and yet to be established rules on the conduct, conflicts of interest and interest declarations of members of parliament and that adequate and proportionate sanctions be introduced to that end (paragraph 83);**
- vii. that the parliamentary authorities establish dedicated and regular training for members of parliament on issues such as ethics and conduct in situations of conflicts of interest and corruption prevention (paragraph 87);**

### *Regarding judges*

- viii. that the powers of the President of the National Judicial Office to intervene in the process of appointing and promoting candidates for judicial positions be reviewed in favour of a procedure where the National Judicial Council is given a stronger role (paragraph 111);**
- ix. that the evaluation system of judges employed for an indefinite period of time be reviewed in order to provide for equal treatment of all judges and**

**to disconnect these evaluations from consequences that may have a negative impact on judicial independence and integrity, such as disciplinary proceedings, dismissal and salary adjustments** (paragraph 118);

- x. **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 character** (paragraph 119);
- xi. **that the Code of Ethics for Judges be subject to further considerations and revision, with a view to enhancing the guidance in respect of conflicts of interest and other integrity related matters, such as gifts, recusal, third party contacts, etc.** (paragraph 130);
- xii. **that the immunity of ordinary judges be limited to activities relating to their participation in the administration of justice ("functional immunity")** (paragraph 154);
- xiii. **that training on ethics for judges (including lay judges as appropriate) be introduced as a follow-up to the adoption of the Code of Ethics for Judges** (paragraph 164);

*Regarding prosecutors*

- xiv. **that i) the possibility to re-elect the Prosecutor General be re-considered and ii) the possibility to maintain the Prosecutor General in office after the expiry of his/her mandate by a minority blocking of the election in Parliament of a successor be reviewed by the Hungarian authorities** (paragraph 177);
- xv. **that the removal of cases from subordinate prosecutors be guided by strict criteria and that such decisions are to be justified in writing** (paragraph 190);
- xvi. **that the immunity of public prosecutors be limited to activities relating to their participation in the administration of justice ("functional immunity")** (paragraph 210);
- xvii. **that disciplinary proceedings in respect of prosecutors be handled outside the immediate hierarchical structure of the Prosecution Service and in a way that provides for enhanced accountability and transparency** (paragraph 216);
- xviii. **that appropriate training and counselling on ethics and integrity matters be made available to all public prosecutors on a regular basis, in particular for the implementation and development of the Code of Ethics and Standards of Professional Conduct for Prosecutors** (paragraph 221).

223. Pursuant to Rule 30.2 of the Rules of Procedure, GRECO invites the authorities of Hungary to submit a report on the measures taken to implement the above-mentioned recommendations by 30 September 2016. These measures will be assessed by GRECO through its specific compliance procedure.

224. GRECO invites the authorities of Hungary 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.



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### 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](http://www.coe.int/greco).

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