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## **First Evaluation Round**

### **Compliance Report on Romania**

Adopted by GRECO  
at its 19<sup>th</sup> Plenary Meeting  
(Strasbourg, 28 June – 2 July 2004)

## **I. INTRODUCTION**

1. GRECO adopted the First Round Evaluation Report on Romania at its 8<sup>th</sup> Plenary Meeting (4-8 March 2002). This Report (Greco Eval I Rep (2001) 13E) was made public by GRECO, following authorisation by the Romanian authorities on 28 March 2002.
2. In accordance with Rule 30.2 of GRECO's Rules of Procedure, the Romanian authorities submitted their Situation Report (RS-report) on 30 January 2004 on the measures taken to follow the recommendations on.
3. At its 13<sup>th</sup> Plenary Meeting (24-28 March 2003), in accordance with Rule 31.1 of its Rules of Procedure, GRECO selected the United Kingdom and "The former Yugoslav Republic of Macedonia" to provide rapporteurs for the compliance procedure. The Rapporteurs appointed were Mrs Anna HODGSON on behalf of the United Kingdom and Ms Mimoza KIKOVSKA on behalf of "The former Yugoslav Republic of Macedonia". The Rapporteurs were assisted by the GRECO Secretariat in drafting the Compliance Report (RC-Report).
4. The RC-Report was adopted by GRECO, following examination and debate pursuant to Rule 31.7 of the Rules of Procedure, at its 19<sup>th</sup> Plenary Meeting (28 June – 2 July 2004).
5. Under Article 15 para. 6 of the GRECO Statute and Rule 30.2 of the Rules of Procedure, the objective of the RC-Report is to assess the measures taken by the authorities of Romania and, wherever possible, their effectiveness in order to comply with the recommendations contained in the Evaluation Report.

## **II. ANALYSIS**

6. It is recalled that GRECO in its Evaluation Report addressed 13 recommendations to Romania. Compliance with these recommendations is dealt with below.

### **Recommendation i.**

7. *GRECO recommended to obtain more precise information about the scale of corruption in the country, by conducting the relevant research in order to understand how this phenomenon affects two key state institutions, such as the police and the judiciary, and its possible causes, with the intention of adopting specific solutions to eliminate it or at least restore it to acceptable levels.*

8. The authorities of Romania have stated that:

- In accordance with the Government Programme for 2001-2004, Romanian Government Decision No. 722 of 18 July 2002 established the National Crime Institute (NCI). The Institute has adopted a general strategy for the period 2003-2007 that has involved the preparation of a study on "corruption trends in Romania between 1998 and 2002 and the way persons involved in criminal cases during that period perceive corruption". The study is designed to obtain more precise information about the scale of corruption in Romania and particularly its impact on key state institutions such as the police and the judiciary. The study is in two parts. The first contains a comparison of statistical data for 1998-2002 provided by the General Police Inspectorate, the Public Prosecution Department attached to the Supreme Court of Cassation, the Prosecution Service's Anti-Corruption Unit and the Ministry of Justice concerning the number of corruption offences established, persons investigated and persons found guilty. The

second part concerns the way in which persons involved in successfully concluded criminal cases during the period 1998-2002 perceive corruption and is being carried out in 2004.

- Government Decision No. 763 of 26 July 2001 established the National Crime Prevention Committee (NCPC). The Committee's tasks include drawing up, in partnership with the relevant institutions, local crime prevention strategies and programmes; identifying practical methods and measures for implementing them and publishing an annual report on crime trends. In addition, at the International Anticorruption Donors' Conference in Bucharest on 15 and 16 April 2003, on the theme "investing in the fight against corruption", which was attended by most of the international organisations active in combating corruption, the Committee proposed six projects concerning legislative reform, the integrity of the judicial system, means of strengthening institutional capacity to prevent and combat corruption, relations with civil society, civic and legal education and scientific research into corruption.
  - Another Institute, for Crime Research and Prevention (ICRP), operates under the auspices of the Romanian General Police Inspectorate. To establish the extent of the phenomenon the Institute has conducted a study of corruption in the Romanian police force, entitled "Corruption in Romania: trends, vulnerable areas, aetiology". In accordance with the 2003 sectoral plan against corruption in the Romanian Police Force, the study identifies factors of influence, foreseeable risks and changing trends in corruption in the Romanian police.
  - The Ministry of Justice has devised a questionnaire to assess integrity in the judicial system, to be completed by all judges. The questionnaire is designed to identify solutions, resources and measures to prevent corruption. It can also be used to assess the judiciary's integrity and resistance to corruption. Three thousand four hundred and three judges took part in the assessment. The results of the study were examined and published in May 2004 and can be consulted on the site of the Ministry of Justice: [www.just.ro](http://www.just.ro). A similar survey is being conducted among prosecutors and will be gradually extended to other legal professions.
  - In October 2003, the Ministry of Justice, in partnership with the National Monitoring Office, established a system for the quantitative and qualitative evaluation of the efficiency of measures to prevent and combat corruption, based on information supplied by public institutions. Weekly progress reports are submitted to the Government on the implementation of the National Anti-Corruption Strategy, of Act No. 161/2003 on certain measures to ensure openness in public administration, the civil service and business, and the prevention and punishment of corruption, and of the Plan setting out priority measures for accession to the European Union.
9. GRECO took note of the information supplied by the Romanian authorities. It welcomed the measures taken, which enhance knowledge of the phenomenon of corruption. However it noted that the studies and research launched have not yet been completed, particularly the National Crime Institute (NCI) study into the perception of corruption, which is being carried out in 2004, the results of the National Crime Prevention Committee (NCPC) proposals and the questionnaires to assess integrity in certain legal professions. The studies initiated must therefore be continued and must cover all the sectors deemed to be vulnerable to corruption, to provide a detailed picture of the nature and extent of corruption and of vulnerable sectors, as specified in the recommendation. The Romanian authorities may wish to inform GRECO of the results of these studies, once they are available.
10. GRECO concluded that Recommendation i. has been implemented satisfactorily.

## **Recommendation ii.**

11. *GRECO recommended that an explicit and detailed programme be introduced to:*
  - *raise public awareness of the danger that corruption poses for the stability of democratic institutions and for economic and social progress;*
  - *inform the public about the measures taken to fight corruption, the sanctions that may be imposed in corruption cases and the institutions involved in fighting corruption, which the public may contact;*
  - *involve the media and non-governmental organisations in a co-ordinated awareness-raising campaign;*
  - *raise awareness of the Civil Service Law (n° 188/1999) among all civil servants in order to make them more aware of its requirements on corruption;*
  - *reduce the scope of administrative powers and enhance the transparency of administrative procedures.*
  
12. The authorities of Romania state that:
  - To improve the prevention of corruption, the National Crime Institute co-operates with non-governmental organisations and the media. As part of its general strategy for 2003-2007 the Institute is publicising its programmes and activities in the media, including those concerned with informing the public of the dangers of corruption and the measures taken to counter it. Detailed programmes are being developed in 2004 as part of an anti-corruption campaign. Act No. 115/1996 on the declaration and supervision of the assets of senior officials, judges, prosecutors, officials and managers, as amended by Act No. 161/2003, requires declarations of assets to be published on the Internet sites of Parliament and Government, ministries, other public institutions, or in the Official Gazette of Romania.
  
  - The Prosecution Service's Anti-Corruption Unit has set up its own website ([www.pna.ro](http://www.pna.ro)) to inform the public about its activities and as a means of communicating with the public. The prosecution service has also set up a direct telephone line to enable members of the public and foreign investors to report acts of corruption.
  
  - The Ministry of Justice also has an Internet site to encourage public debate on the most important legislation and practical measures taken to prevent and combat corruption, which are published on the site. Moreover, the section entitled "combating corruption" is systematically updated.
  
  - The Ministry of Administration and the Interior is drafting a citizen's handbook, indicating which public institutions are responsible for issuing various administrative documents. An anti-corruption hotline free of charge has been created for the use of investors, companies, private institutions and members of the public.
  
  - Since February 2003, the border police have been operating an emergency telephone helpline. Anyone can obtain information about current legislation and border controls, or report any abuses of authority or corruption offences committed by border police staff. At the various border crossing points, information leaflets are available in three languages and the languages of neighbouring countries.

- As part of its collaboration with the OECD, Romania has drawn up programmes concerned with ways of combating corruption at government level; awareness-raising and information campaigns; strengthening institutional capacity to combat corruption; and increasing the transparency of the tax system and the business world. In 2003 the Ministry of Justice and the League for the Defence of Human Rights launched a "human rights and combating corruption" programme. In addition, the United States Embassy in Bucharest has financed a CASA NATO project on anti-corruption education.
  - The Civil Service Act, No. 188/1999, has been supplemented by Act No. 161/2003 on certain measures to ensure openness in public administration, the civil service and business, and the prevention and punishment of corruption. The new legislation has been particularly drawn to the attention of staff of the Ministry of Finance and of subordinate regional bodies. Finally, the Parliament adopted the code of ethics for public officials by virtue of Law No. 7/2004.
13. GRECO took note of the information supplied by the Romanian authorities. It welcomed the numerous steps taken to make the public more aware of the dangers of and damage caused by corruption and to prevent and combat corruption within government by making administrative procedures more transparent. GRECO also welcomed the establishment of the Prosecution Anti-Corruption Unit and the introduction of emergency telephone lines. It recalled that the Romanian authorities have adopted a National Anti-Corruption Strategy (the National Programme for the Prevention of Corruption and the National Anti-Corruption Action Plan: Government Decision No. 1065/2001), sectoral plans and measures for speeding up the implementation of the National Anti-Corruption Strategy approved by the Government on 12 December 2002, and Act No. 161/2003 on certain measures to ensure openness in public administration, the civil service and business, and the prevention and punishment of corruption, passed on 19 April 2003 (see recommendation i). GRECO noted that "explicit and detailed" programmes are being developed in 2004 by the National Crime Institute (NCI) as part of an anti-corruption campaign, to meet the objectives of the recommendation. For example, the Romanian authorities will be able to bring the Civil Service Law (No. 188/1999) to the attention of all civil servants to make them more aware of its requirements on corruption. Public administration and corruption is in any case one of the specific topics for consideration in the Second Evaluation Round. The GRECO evaluation team responsible for Romania could establish whether steps have been taken to bring the civil service charter and, if appropriate, the code of conduct to the attention of all civil servants. The Romanian authorities may wish to inform GRECO of the results of the anti-corruption programmes, prepared by the National Crime Institute (NCI) in 2004.
14. GRECO concluded that Recommendation ii. has been implemented satisfactorily.

**Recommendation iii.**

15. *GRECO recommended to consider the possibility of preventing conflicts of interest by placing limitations on the functions of lawyer when a person is elected to representative office (deputy or senator) at national level.*
16. The authorities of Romania have stated that:
- Act No. 51/1995 on the organisation and exercise of the profession of lawyer has been supplemented by Emergency Government Decree No. 77/2003,<sup>1</sup> section 44<sup>1</sup> of which

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<sup>1</sup> This EGD has been adopted by the Parliament by vote of the Act No. 280/2004.

introduces new provisions concerning representation and legal assistance offered by lawyers serving as deputies or senators.

- Lawyers in any of the situations specified may not provide legal assistance to defendants or represent them in any court, regardless of instance, in criminal cases involving:
  - corruption or related offences, and offences against the financial interests of the European Community specified in Act No. 78/2000;
  - offences specified in Act No. 143/2000 on combating drug trafficking and the illegal consumption of drugs;
  - offences related to human trafficking;
  - money laundering offences;
  - offences against state security (Arts. 155-173 of the Criminal Code);
  - offences which pervert the course of justice (Arts. 259-272 of the Criminal Code);
  - offences against peace and humanity (Arts. 356-361 of the Criminal Code).

These restrictions do not apply where the lawyer is a party to the proceedings or is assisting or representing his or her spouse or a relative up to and including the fourth degree.

- Lawyers serving as deputies or senators may not act in civil or commercial cases against the state or any other public or state institution.

17. GRECO took note of the information supplied by the Romanian authorities and welcomed the progress achieved.

18. GRECO concluded that Recommendation iii. has been implemented satisfactorily.

#### **Recommendation iv.**

19. *GRECO recommended to consider the possibility of increasing, within budgetary restrictions, the salaries of police officers responsible for administrative checks and judicial investigations. However, this measure would have to be extended to all disadvantaged civil servants, insofar as the budget will permit.*

20. The authorities of Romania have stated that:

- New legislation on police pay appeared after the adoption of the evaluation report in March 2002. Government Decree No. 38/2003 on the salaries and other rights of police officers lays down:
  - the salaries of public officials with special status (police officers);
  - certain allowances, increments, bonuses and other financial benefits;
  - fiscal advantages for police undergoing training and retired police officers.

The decree introduces pay rises and loyalty increments of 20% of basic salary and holiday allowances. Police officers whose activities have generated funds for the State budget may be rewarded with bonuses of 1% of the sum raised, provided these do not exceed their gross annual income.

- Two new statutes affecting police officers were enacted in 2004: Act No. 129/2004 on pay and other entitlements for police officers, which increases officers' pay if they have a university degree, and Act No. 179/2004 on pensions and social insurance entitlements of police officers.
  - Moreover, Emergency Government Decree No. 43/2002 on the Prosecution Service's Anti-Corruption Unit has established a public prosecutor's office specialising in corruption attached to the Supreme Court of Justice. Officers of the Judicial Police appointed by the Anti-Corruption Unit enjoy police officers' statutory rights, including a 30% increase in the monthly starting salary.
21. GRECO took note of the information supplied by the Romanian authorities and welcomed the progress achieved, which should help to prevent and combat corruption.
22. GRECO concludes that Recommendation iv. has been implemented satisfactorily.

#### **Recommendation v.**

23. *GRECO recommended to set up training centres for customs officials, to ensure initial and in-service training and to develop a sense of professional ethics.*
24. The authorities of Romania have stated that:
- Measures to "improve vocational training in the Romanian customs authorities" and a "vocational training strategy" have been presented to the European Commission. These documents also provide for the establishment of regional vocational training centres. The centres have already been set up and are now in operation at regional customs directorates and subordinate customs offices, where they are responsible for in-service and specialised vocational training programmes. Each month, 1 500 customs officials receive training at these centres, often from their hierarchical superiors.
  - Moreover, the Customs Directorate has drawn up a Programme of action against corruption in the Romanian customs authorities. Other steps have also been taken to train customs officials in professional ethics:
    - A code of conduct and discipline for customs officials has been approved. The code is clearly displayed in all customs offices, to inform the public about how customs staff should behave. The public are also supplied with a form to record complaints about customs officials who breach ethical standards;
    - Customs officials must wear a badge bearing their staff identification number at work;
    - Customs officials must declare how much Romanian and foreign currency is in their possession when they start and finish work;
    - Posters are displayed at customs offices to warn the public of the dangers of bribing customs officials.
  - In June 2004, Parliament approved Emergency Government Decree No. 10/2004 on the status of customs personnel.
25. GRECO took note of the information supplied by the Romanian authorities and welcomed the progress achieved.

26. GRECO concluded that Recommendation v. has been implemented satisfactorily.

**Recommendation vi.**

27. *GRECO recommended to maintain and strengthen the prosecution service's specialised unit for fighting organised crime and corruption, by assigning it the necessary extra financial and human resources, especially in terms of specialised staff seconded from other public bodies whose secondment shall be extended in order to ensure more stability. This strengthening of the prosecution service's specialised unit should take place in those parts of the country where, due to the number of cases pending and reasonable predictions, the number of prosecutors is already inadequate.*

28. The authorities of Romania have stated that:

- Emergency Government Decree No. 43/2002 of 11 April 2002 established a Prosecution Service National Anti-Corruption Unit as an autonomous body with legal personality and its own budget, independent of the courts and the public prosecutor's offices, and in its relations with other public authorities, to deal with large and medium-scale corruption offences. The Anti-Corruption Unit comprises a central office in Bucharest and 15 regional offices in major urban centres with courts of appeal. It is staffed by specialist prosecutors, a detachment of police officers and specialists from various fields, appointed for a fixed period, who therefore reinforce the specialist skills of the Unit itself.
- Acts Nos. 503/2002 (on the appointment procedure for the national state prosecutor) and 161/2003 (establishing certain new posts and setting up a liaison office for international co-operation and a department to combat Community fraud, and laying down criteria for large and medium-scale corruption<sup>2</sup>), and Emergency Government Decrees Nos. 102/2003 and 24/21.04.2004 have made significant additions and changes to the Anti-Corruption Unit's structure and functioning, clarifying its responsibilities and strengthening its human and financial resources, its independence and its specialist skills.
- The Unit's central office and eleven of its fifteen regional offices have their own premises. They are all equipped with technical and computer facilities that are constantly being improved. The Unit's budget has been increased.
- The Unit's establishment (central and regional offices) includes 130 prosecutors' posts, 170 police officers, 45 specialists, 85 specialist auxiliary staff and 80 financial and administrative personnel. The number of posts therefore rose steadily between 2002 and 2004: from 75 to 130 prosecutors, 150 to 170 police officers, 35 to 45 specialists, 50 to 85 specialist auxiliaries and 10 to 80 financial and administrative personnel. Of a total of 510 posts, 370 are currently filled. In the regional offices, there are generally 3-4 prosecutors, 3-4 police officers and 1 or 2 specialists, according to needs determined by the volume and nature of the cases.
- The Unit's staff are appointed in accordance with the laws and regulations governing each category of staff. Detached police officers and specialists are appointed by the Unit's chief prosecutor for a period of six years, compared with one year formerly (with the possibility of one renewal of the term of office by mutual agreement). Professional specialisation is ensured, in particular, through training in specialist skills undertaken under the auspices of various PHARE

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<sup>2</sup> The amount of damage; the value of the object of the offence (the bribe) and the status of the perpetrator. Small-scale corruption is thus no longer the Anti-Corruption Unit's responsibility.



programmes and projects, co-operation with European and American donors and the Unit's own training programmes.

29. GRECO took note of the information supplied by the Romanian authorities and welcomed the progress made. It noted that the Anti-Corruption Unit now only deals with corruption offences whereas the previous specialist prosecution unit also covered cases of organised crime. The new Unit has 130 prosecutors' posts, compared with 140 in its predecessor, but they are exclusively concerned with cases of large and medium-scale corruption. Moreover the former unit did not have the services of specialist police officers or ready access to specialists. Additional specialist posts have therefore been included in the Prosecution Service's new Anti-Corruption Unit since GRECO's First Round evaluation, in accordance with the needs created by the volume and nature of the cases concerned. However, numerous posts in the Unit (140 out of 510) are still unfilled, including 37 prosecutors, 40 police officers and 13 specialists.

30. GRECO concluded that Recommendation vi. has been implemented satisfactorily.

#### **Recommendation vii.**

31. *GRECO recommended to strengthen the capacity of the Public Procurement Department of the Ministry of Finance or, preferably, to create an independent Public Procurement Office.*

32. The authorities of Romania have stated that:

➤ The general rules and procedures governing invitations to tender for and the award of public contracts and appeals against such decisions are laid down in Emergency Government Decree No. 60/2001 on public procurement, as approved and amended by Act No. 212/2002, itself amended by Act No. 386/2003 of 3 October 2003. Government Decree No. 20/2002 on public procurement via electronic tenders and the inclusion, currently under way, of all administrative services of government, including prefectures, in the electronic public tendering system of the Ministry of Administration and the Interior have made procedures more transparent and helped to save money.

➤ In 2003, under the auspices of the Ministry of Finance, the new Directorate for regulating public procurement and prioritising public investments carried out technical assistance programmes funded by PHARE on the theme "improving the competitiveness and transparency of working procedures for the award of public contracts". In view of the establishment of this new specialist body, whose staffing has been increased from 8 to 16, it has not been considered necessary to strengthen the Public Procurement Department of the Ministry of Finance or create an independent public procurement office.

➤ In 2003 training was provided to 10 staff of the Ministry of Finance and 1400 other persons involved in public contracts.

33. GRECO took note of the information supplied by the Romanian authorities and welcomed the progress made. In support of this recommendation, the evaluation report referred to the absence of clear rules and transparency with regard to public contracts. The legislation enacted since GRECO's evaluation and the increase in the staffing of the new directorate for regulating public procurement and prioritising public investments are therefore positive developments.

34. GRECO concluded that Recommendation vii. has been implemented satisfactorily.

### Recommendation viii.

35. *GRECO recommended that in order to better guarantee the necessary independence for the judicial bodies responsible for judging corruption offences, the Romanian authorities introduce the legislative reforms to restrict the Minister of Justice's powers to intervene in the supervision of judges, and to provide guarantees regarding the immovability of the judges at the Supreme Court of Justice, without affecting the possibility of placing a time-restriction on the post of president or deputy president of this Court.*
36. The authorities of Romania have stated that:
- The Romanian Constitution was amended by Act No. 426/2003. Art. 133 para. 1 of the revised Constitution now stipulates that "the Judicial Service Commission shall guarantee the independence of the judicial system". The Status of Judges Act, No. 303/2004, adopted by the Parliament in June 2004, clarifies Article 134 of the Constitution. The Act lays down the conditions for the appointment of judges. Thus, judges and prosecutors are appointed by the President of Romania, on the advice of the Judicial Service Commission (Article 30). Trainees are appointed by the Commission (Article 20). The Minister of Justice no longer has the authority to recommend the appointment of judges. The Minister is one of the members of the Commission (Article 133.2.c of the Constitution), and now has one vote. Previously he chaired appointment proceedings for judges and prosecutors, with no voting rights. Nevertheless, under the Law on the JSC adopted by the Parliament on 28 June 2004, the Minister of Justice no longer chairs the Commission's sessions, has no voting rights in its disciplinary proceedings, no longer has any power to recommend the appointment, promotion or transfer of judges or to make any other proposals to the Commission concerning judges' careers or the organisation of the courts, and no longer exercises any disciplinary powers.
  - The Organisation of the Judiciary Act, No. 304/2004, which was also adopted by Parliament in June 2004, gives the Judicial Service Commission an exclusive role in judges' career progression. The abolition of the Minister of Justice's responsibilities in this field means that the Commission will play an active role in organising and conducting judges' recruitment examinations, aptitude tests, promotion and performance appraisal, selecting candidates for management positions, appointing people to those positions and drafting regulations for adoption. The Judicial Service Commission will also be responsible for disciplining judges.
  - Judges of the Supreme Court of Justice are now guaranteed security of office by Art. 125 para. 1 of the revised Constitution, which states that all judges, including those of the Supreme Court of Justice, are irremovable, thus ending their six-year term of office, as stipulated in Art. 124 para. 1 of the Constitution before revision. Under the Constitution, judges are irremovable, "according to the law". Pursuant to this article, the Status of Judges Act lays down precise conditions under which judges may be suspended or excluded from the judiciary and also specifies that delegation, transfer, secondment and promotion are only possible with the express consent of the individual concerned. Judges' final conviction for any offence entails their exclusion from the judiciary (Section 63.1.f). If judges are accused of an offence (including corruption or other serious offences) they are suspended *ex officio* from their duties (Section 60.a). In 2003, five judges were convicted of corruption, after appeal. Two others were the subject of criminal inquiries in 2003 and another in 2004.

- When drawing up the three bills, the Ministry of Justice received co-operation and technical assistance from the Council of Europe.
- 37. GRECO took note of the steps taken by the Romanian authorities to safeguard judicial independence. It welcomed the significant progress accomplished by Romania with the adoption of laws on judicial organisation, on the status of magistrates and on the Judicial Service Commission. It is understood that, according to the Romanian authorities, this independence is strengthened by virtue of the three new Acts, which exclude any undue influence by the Minister of Justice in judges' appointment procedures
- 38. GRECO concluded that Recommendation viii. has been implemented satisfactorily.

**Recommendation ix.**

- 39. *GRECO recommended to undertake the necessary legislative reforms so as to reduce appropriately the Minister of Justice's powers of intervention vis-à-vis prosecutors in order to guarantee the necessary independence of the authorities responsible for investigating and prosecuting corruption cases.*
- 40. The authorities of Romania state that:
  - Under the new Organisation of the Judiciary and Status of Judges Acts, approved by Parliament in June 2004, the Minister of Justice may no longer intervene in criminal investigations or in the careers of public prosecutors. The existing provisions of Section 34 para. 5 of Act No. 92/1992, according to which the Minister of Justice could, either directly or through the National State Prosecutor, give written instructions to the relevant public prosecutor to begin criminal proceedings in accordance with the law for offences brought to the Minister's attention and to take any court action necessary to protect the public interest, have been abolished.
  - The new Status of Judges Act offers additional guarantees of judges' and public prosecutors' independence. Section 74 para. 1 stipulates that the Judicial Service Commission, as guarantor of the independence of the judiciary, shall be entitled and obliged to defend the judiciary and its members against any attack which might jeopardise or create suspicion about the independence or impartiality of a judge in the pursuit of justice. According to para. 2, any judge who considers that his or her independence and impartiality have been harmed in any way through interference with his or her judicial activities or career may appeal to the Judicial Service Commission to take the necessary measures to remedy the situation.
- 41. GRECO noted the progress made by the Romanian authorities to implement this recommendation, particularly through the new Organisation of the Judiciary and Status of Judges Acts.
- 42. GRECO concluded that Recommendation ix. has been implemented satisfactorily.

**Recommendation x.**

- 43. *GRECO recommended to speed up the process of adopting the draft law on the protection of witnesses, and including the protection of experts in it, in criminal proceedings, and making possible the use of undercover agents during the investigation of corruption cases.*

44. According to the authorities of Romania, two important pieces of witness protection legislation have been passed: the Witness Protection Act, No. 682/2002, and Act No. 281/2003 amending and amplifying the Code of Criminal Procedure and certain special laws.
45. The Witness Protection Act, No. 682/2002, contains a full range of provisions offering protection and assistance for witnesses whose life, physical integrity or freedom is threatened because they have possessed or possess information on the commission of serious crimes which they have passed on or agreed to pass on to the judicial authorities and who have a key role in the identification of criminals and the detection and solution of certain cases. The Act provides for the inclusion in the witness protection programme of witnesses who require protection; the establishment, under the auspices of the Ministry of Administration and the Interior, of the National Office for the Protection of Witnesses, answerable to the Romanian General Police Inspectorate; the drafting of protection agreements between the National Office for the Protection of Witnesses and witnesses, family members or partners, setting out the obligations they are under and a support programme; and the withdrawal of protection and assistance.
46. Measures for the protection and assistance of witnesses include: protection of personal data concerning protected persons; protection of their statements; protected witnesses to appear before judicial bodies under a different identity or with their appearance and voice disguised; protection of witnesses held in police custody, under arrest or in prison, in co-operation with the authorities in charge of places of detention; increased protection measures at home and during transit; change of home, identity or appearance; relocation to a different social environment; vocational retraining; change or protection of workplace; guaranteed income until employment is found.
47. Under the Act, it is an offence to deliberately disclose the real identity, address or place of residence of protected witnesses and to reveal any other information which may lead to their identification, if it endangers their lives, physical integrity or health. The Act also makes provision for the penalty provided for by law to be reduced by half in the case of a witness who has committed a serious offence but who, either before or during criminal proceedings, including the trial, reveals the identity of, facilitates the identification of or renders criminally liable other persons who have committed serious offences.
48. Under Act No. 281/2003 amending and amplifying the Code of Criminal Procedure and certain special laws, published in Official Gazette No. 468 of 1 July 2003, the Code of Criminal Procedure was supplemented with special provisions concerning the protection of witnesses and experts (Sections 86<sup>1</sup>-86<sup>5</sup>), particularly the protection of personal data concerning witnesses. If evidence or clues exist which depend on the disclosure of the real identity, address or place of residence of a witness and if the life, physical integrity or freedom of that witness or another person is endangered, the public prosecutor may, during the criminal proceedings or trial, permit the witness to withhold such information and adopt a different identity when appearing in court (Section 86<sup>1</sup> para. 1). In such situations, special arrangements are laid down for the hearing of witnesses, for example the use of modern techniques such as closed-circuit television with distorted pictures and voice (Section 862-864), and protection for the transit of witnesses (Section 86<sup>5</sup>). Section 86<sup>1</sup> para. 8 states that the provisions concerning the protection of witnesses also apply to experts.
49. The use of undercover agents during investigations is provided for in several pieces of legislation, including Act No. 218/2002 on the organisation and operation of the Romanian

police, the Code of Criminal Procedure, as amended and supplemented by Act No. 281/2003 and Act No. 39/2003 on preventing and combating organised crime. Act No. 218/2002 on the organisation and operation of the Romanian police stipulates that the latter may use informers and undercover police officers to gather information to be used as evidence during court proceedings in corruption cases. They may only do so for a limited time, and only on the advice of the General Inspector of Police and with the approval of the Minister of Administration and the Interior and the authorisation of the public prosecutor appointed by the Principal Prosecutor to the Court of Appeal. Act No. 281/2003 has added special provisions to the Code of Criminal Procedure (Arts. 224<sup>1</sup>-224<sup>4</sup>) on preliminary action taken by undercover investigators at the start of criminal proceedings. The undercover investigators are specially appointed agents of the Ministry of Administration and the Interior or of other specialised State bodies as provided for by the CPC. Their activities are strictly circumscribed by law, and may only be used to investigate certain crimes - including those specified in Act No. 78/2000 on the prevention, detection and punishment of corruption offences - which cannot be solved or whose perpetrators cannot be identified by any other means.

50. GRECO took note of the information supplied by the Romanian authorities and welcomed the progress made.
51. GRECO concluded that Recommendation x. has been implemented satisfactorily.

**Recommendation xi.**

52. *GRECO recommended to undertake legislative and administrative reforms in order to guarantee an adequate system of conservation and archiving of the administrative documents and files and to prevent their destruction.*
53. The authorities of Romania have stated that:
  - The National Archives Act, No. 16/1996, has been amended and supplemented by Act No. 358/2002. It stipulates that "the authors and holders of documents shall register and keep a record of all incoming documents, of documents produced for internal use and of those sent out, in accordance with the law". Section 12 para. 1 stipulates that: "the authors and holders of documents shall preserve those documents in appropriate conditions, protecting them from destruction, deterioration, removal or commercialisation under conditions other than those laid down by law". According to para. 2, "legal persons who produce and hold documents shall preserve them in places specially designed for archives...". The Act also contains a specific chapter on civil, criminal and administrative liability and the sanctions applicable. Each public authority and various other institutions have made arrangements to preserve and archive files and prevent their destruction. The Ministry of Justice, by order of the Minister, has set up an archives register of documents together with pre-established documentation belonging to the courts. During rebuilding work in the courts of justice the Ministry of Justice has taken responsibility for storing and archiving court documents.
  - In addition, the legislation on the protection of classified information and on data protection includes provisions on the quality and integrity of data and on technical and organisational measures to secure their conservation.
54. GRECO took note of the information supplied by the Romanian authorities and welcomed the progress made.

55. GRECO concluded that Recommendation xi. has been implemented satisfactorily.

**Recommendation xii.**

56. *GRECO recommended to amend the national legislation to restrict the categories of people entitled to immunity from criminal prosecution (genuine inviolability, guaranteed inter alia to former ministers, seems incompatible with the standards set out in guiding principle 6)*

57. The authorities of Romania have stated that:

➤ The Romanian Constitution was amended by the Constitutional Revision Act, No. 429/2003 of 29 October 2003. Under Art. 109 of the revised Constitution (previously Art. 108), only the Chamber of Deputies and the President of Romania have the right to demand that criminal proceedings be brought against members of the government for offences committed in the exercise of their office. In such cases the President of Romania may suspend the member of the government from office. Under Act No. 115/1999 on the liability of ministers, as later amended and supplemented, the President of Romania may be asked to call for criminal proceedings to be brought against members of the Government by the Prime Minister, the Principal Public Prosecutor at the Supreme Court of Justice or the public prosecutor in the Prosecution Service's Anti-Corruption Unit. Any citizen with evidence that a member of the Government has committed a criminal offence in the exercise of his or her office may ask the Prime Minister, the Principal Public Prosecutor at the Supreme Court of Justice or the public prosecutor in the Prosecution Service's Anti-Corruption Unit to refer the matter to the President of Romania. The matter is then debated in the Chamber of Deputies or the Senate on the basis of a report drafted by a standing committee that has, under its own terms of reference, conducted an investigation into the activities of the Government, by a ministry or by a special investigative committee set up for this purpose. Once criminal proceedings have started, members of the Government who are deputies or senators may only be taken into custody, be arrested, have their homes searched or be indicted with the consent of the chamber of which they are a member.

➤ Consideration is currently being given to amending Act No. 115/1999 on the liability of ministers to abolish the procedure pertaining to former government members. Notaries are also regulated by virtue of a special law which is currently being amended.

➤ Under the Act on the status of judges and prosecutors, judges will be criminally liable under the conditions set out in the Criminal Code. According to Section 100 para. 2 of the Act, the arrest and detention of judges and prosecutors and the searching of their homes may only be ordered with the consent of the Judicial Service Commission. The approval of the Minister of Justice has been retained only until the Judicial Service Commission is set up in its new form.

58. GRECO welcomed the progress represented by the constitutional amendment and the Organisation of the Judiciary and Status of Judges Acts. Nevertheless, it noted that there has been no change to the inviolability of former ministers and notaries. GRECO invited the Romanian authorities to supply additional information concerning the continuation of the system of inviolability for former ministers and with regard to the legislation on notaries.

59. GRECO concluded that Recommendation xii. has been partly implemented.

### **Recommendation xiii.**

60. *GRECO recommends to amend the national legislation to guarantee that the decision to initiate the procedure to withdraw parliamentary immunity or to begin criminal proceedings is based on the Prosecution Service's conclusions.*
61. The authorities of Romania have stated that:
- The constitutional provisions that referred to immunity from criminal proceedings for deputies and senators have been modified by the Constitutional Revision Act. The current Article 72, paragraphs 2 and 3, limits parliamentarians' immunity from criminal prosecution exclusively to actions carried out in accordance with their parliamentary mandate. They may be subject to criminal proceedings and indicted for any acts that are not connected with votes cast or political opinions expressed in the exercise of their office. However, they may not be taken into police custody, arrested or have their premises searched without the prior agreement of the chamber of which they are a member and after being heard, when they are caught in flagrante in which case the Minister of Justice is informed and he in turn informs the president of the relevant chamber.
  - The decision to begin criminal proceedings against members of parliament is based solely on the conclusions of the public prosecutor.
  - Under the revised Constitution and the rules of procedure of the two chambers, the indictment of members of parliament no longer requires the authorisation of their chamber or the intervention of the Minister of Justice (Decision No. 23 of 11 November 2003 of the Chamber of Deputies and Decision No. 20 of 18 November 2003 of the Senate). The Anti-Corruption Unit is currently undertaking inquiries that involve members of parliament.
62. GRECO took note of the information supplied by the Romanian authorities. According to this information, the lifting of the parliamentary immunity procedure only applies to votes cast or political opinions expressed by members of parliament in the exercise of their office, or requests for them to be taken into police custody, arrested or have their premises searched. Finally, the decision to begin criminal proceedings against members of parliament is based solely on the conclusions of the public prosecutor.
63. GRECO concluded that Recommendation xiii. has been implemented satisfactorily.

### **III. CONCLUSIONS**

64. GRECO concluded that Romania has implemented all the recommendations of the First Round Evaluation Report with the exception of one which has been partly implemented.
65. Recommendations i., ii., iii., iv., v., vi., vii., viii., ix., x., xi. and xiii. have been implemented satisfactorily. Recommendation xii. has been partly implemented.
66. GRECO invited the Romanian authorities to supply further information and, where appropriate, relevant legislation concerning the implementation of recommendation xii.
67. The Romanian authorities may also wish to supply GRECO with the additional information on the implementation of recommendations i. and ii.

68. GRECO invited the Head of delegation of Romania to submit a further report, by 31 December 2005, on the information pertaining to paragraphs 66 and 67.