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

EVALUATION REPORT

MONTENEGRO

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EXECUTIVE SUMMARY

1. Montenegro has taken constructive steps in recent years upgrading its legislation to meet the commitments arising from its membership in the Council of Europe, as well as EU accession requirements. Despite the positive legislative changes introduced in the system, corruption continues to be an important concern in Montenegro, resulting in disquieting figures as to citizens' trust in some of their key institutions, notably the political class and the judiciary. The lack of effective investigations and successful convictions for certain types of crimes (in particular, war and corruption-related crimes), as well as the sense of impunity for high-level officials, is a further impediment to public confidence in the system.

2. The Law on the Prevention of Conflicts of Interest (LPCI) is applicable to the different categories of professionals under review: parliamentarians, judges and prosecutors. The Commission for the Prevention of Conflicts of Interest is the body in charge of its implementation. Although the law contains good safeguards to prevent conflicts of interest, it lacks teeth, and repeated criticism has been expressed regarding the effective independence and enforcement capability of the Commission. It is foreseen that, as of 1 January 2016, the Agency for the Prevention of Corruption takes over integrity and anticorruption matters, including implementation of the conflicts of interest regime.

3. The Parliament in Montenegro has taken a positive approach in opening up its work and facilitating public access to information regarding the legislative process; the introduction of modern communication techniques has created new possibilities for capturing and reporting parliamentary proceedings (e.g. audio/video recording, live web streaming, parliament's own website, etc.). Likewise, practical measures have been implemented in recent years to improve interaction with civil society organisations and the public in general. An Anticorruption Committee, in charge of supervising the work of the State bodies in the area of the fight against organised crime and corruption, was established by Parliament in 2012. Work is ongoing in Parliament to further clarify procedural and integrity matters in house, including through a Law on Parliament, a Code of Ethics, an Integrity Plan and an amended Law on Lobbying. The content of the ethical and integrity questions could remain words on paper if not adequately communicated and instilled. Furthermore, while the reinforcement of the integrity system in Parliament should primarily be oriented towards awareness-raising and internalisation of a parliamentary ethos, sanctions may be used as a last resort measure to enhance accountability and to preserve the credibility of the enforcement mechanisms available in Parliament.

4. As regards efficiency, accountability and transparency of the judiciary, some decisive steps have been taken in recent years. A reform of the judiciary started as early as in 2000; its latest update is articulated in the Strategy for the Reform of the Judiciary for the period 2014-2018. The courts have been reducing the backlog of cases. Transparency has been improved via dedicated websites on court organisation and decisions, as well as the appointment of media officers. The prosecution service regrettably suffers from higher opacity in its work and is frequently criticised for its lack of proactivity. A Special Prosecution Office for Organised Crime and Corruption has been created; it is reportedly aimed at improving capacity to deal with most serious crimes and high-level corruption.

5. Constitutional changes were adopted in July 2013 to reduce political influence on the appointment of high-level judicial officials through more transparent and merit-based procedures, as well as the introduction of qualified majorities and anti-deadlock mechanisms where the Parliament is involved. The Judicial and Prosecutorial Councils have in their hands a broad scope of responsibilities ranging from the selection, appointment, promotion, transfer, discipline and dismissal of judges and prosecutors.

They consist of judicial and non-judicial members. The presidency of the different working groups of the respective Councils is given to non-judicial members appointed by Parliament. This casts doubt regarding the effective de-politicisation of the system, as originally intended by the reform, as well as the prevention of conflicts of interest when the same persons are involved in all decisive aspects of the judicial/prosecutorial profession.

6. Codes of ethics are in place for both prosecutors and judges, but more needs to be done to enhance integrity and accountability mechanisms within the judiciary. Although legislative reform has also been pursued to strengthen the discipline regime over judges and prosecutors, doubts remain as to the quality and effectiveness of the control performed over misconduct and conflicts of interest in the judiciary. This represents a challenge *per se* in the context of highly articulated personal and family relations in Montenegro and requires the development of more targeted guidance on integrity and conflict of interest prevention matters in the judiciary. The system of training of judges and prosecutors has been largely possible because of international assistance, but, starting 1 January 2015, the Judicial Training Centre has now been allocated a clear budget line for its activities.

7. With all these reforms underway, time and experience will test the effectiveness of the revamped legislative and institutional frameworks. GRECO is hopeful that the new features reported will improve the system significantly and that their operability will be consolidated through practice. This requires perseverance, a strong political will and a proactive approach by the professionals covered in this report. It is crucial that the momentum gained throughout the EU accession process constitutes a solid, stable and enforceable roadmap to fight corruption in the country and to secure institutional credibility.

I. INTRODUCTION AND METHODOLOGY

8. The State Union of Serbia and Montenegro joined GRECO on 1 April 2003. Following the referendum organised in Montenegro on 21 May 2006 and the declaration of independence adopted by the National Assembly of Montenegro on 3 June 2006, and in accordance with Article 60 of the Constitutional Charter of the State Union of Serbia and Montenegro, the State Union of Serbia and Montenegro ceased to exist. Subsequently, the Republic of Montenegro became an independent and sovereign State[1]. Since its accession, Montenegro has been subject to evaluation in the framework of GRECO's Joint First and Second (in October 2006) and Third (in December 2010) Evaluation Rounds. The relevant Evaluation Reports, as well as the subsequent Compliance Reports, are available on GRECO's homepage (www.coe.int/greco).

9. 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.

10. 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.

11. 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.

12. In preparation of the present report, GRECO used the responses to the Evaluation Questionnaire (Greco Eval IV Rep (2014) 8 REPQUEST) by Montenegro, 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 Montenegro from 3 to 7 November 2014. The GET was composed of Ms Aneta ARNAUDOVSKA, Judge, Director of the Academy for Judges and Public Prosecutors ("The former Yugoslav Republic of Macedonia"); Mr James HAMILTON, Retired as Director of Public Prosecutions, President of the International Association of Prosecutors (Ireland); Mr Jens-Oscar NERGÅRD, Senior Adviser, Ministry of Local Government and Modernisation (Norway); and Mr Yuksel YILMAZ, Chief Inspector, Deputy Head of Prime Ministry Inspection Board (Turkey). The GET was supported by Ms Laura SANZ-LEVIA from GRECO's Secretariat.

[1] The Committee of Ministers of the Council of Europe agreed in its 967th meeting (14 June 2006) that the Republic of Montenegro's declaration of succession to the Criminal Law Convention on Corruption (ETS No. 173) made it *ipso facto* a member of GRECO.

13. The GET held interviews with representatives of the Ministry of Justice, the Directorate for Anticorruption Initiative (DACI). the Commission for the Prevention of Conflicts of Interest, the Judicial Council, the Prosecutorial Council, judges and prosecutors of the various jurisdiction levels in Montenegro, the Judges' Association, the Prosecutors' Association and the Judicial Training Centre. The GET also spoke with members of parliament and representatives of the parliamentary service. Finally, the GET met with NGO representatives (MANS and CGO) and journalists.

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

II. CONTEXT

15. The EU accession process has significantly pushed forward anticorruption reform in Montenegro[2]. The policy framework for the fight against corruption was further strengthened, in May 2013, when a new Action Plan for implementation of the Strategy for Fight against Corruption and Organised Crime (2013-2014) was issued resulting, *inter alia*, in the adoption of the Law on the Prevention of Corruption, as well as the establishment of an Agency for the Prevention of Corruption (to be operative as of 1 January 2016) and a Special Prosecution Office for the Fight against Corruption and Organised Crime. Likewise, new action plans were adopted in June 2013, and subsequently amended in February 2015, responding to EU demands in the fields of the judiciary and fundamental rights (Chapter 23 of the EU *acquis*), and justice, freedom and security (Chapter 24 of the EU *acquis*). Civil society organisations are regularly involved in the oversight of national strategic documents in the area of corruption, through their participation in the relevant councils and committees.

16. While legislative and policy measures can be considered strong on paper, their practical effectiveness continues to be put into question. The EU has expressed continued criticism, in its annual monitoring reports, over the lack of results when it comes to prosecuting cases of high-level corruption; investigations of these cases generally do not end in indictments and are often annulled on procedural grounds in appeal. While GRECO has positively assessed the sustained efforts made by Montenegro to support anticorruption reform – with nearly all recommendations implemented satisfactorily in the First, Second and Third Evaluation Rounds; it has also repeatedly urged the authorities to step up implementation and enforcement of the laws on the ground.

17. In January 2015, the Parliamentary Assembly of the Council of Europe (PACE) decided to close the monitoring procedure in respect of Montenegro and to engage in post-monitoring dialogue in the light of the progress made by the country since 2012. Nevertheless, PACE warned that Montenegro will have to complete a series of anticipated reforms, including regarding the independence of the judiciary and the fight against corruption, by the end of 2017, in order to avoid being subjected to the full monitoring procedure[3].

18. The challenges ahead in the fight against corruption are mirrored in public polls which show disquieting levels of mistrust of Montenegrin citizens in some of their key institutions. According to the 2014 Transparency International report on the perception of corruption, Montenegro stands at 76th position out of 175 countries (where 1 = least corrupt); this represents some retrogression as compared to the preceding year, when Montenegro was ranked 67th. According to a 2011 survey by the United Nations Development Programme (UNDP), corruption was the second most important issue to be addressed at national level after poverty and low standards of living[4].

19. With particular reference to the categories of professionals under evaluation in the present report, according to the European Commission's 2014 survey on "Trust in Institutions", 45% of the respondents did not trust the judiciary (EU average: 45%) and 50% the Parliament (EU average: 62%)[5].

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[2] Accession talks with Montenegro were opened in June 2012. Negotiations began through a screening process, starting with the review of policy measures in the areas of the judiciary and fundamental rights (chapter 23 of the EU *acquis*) and justice, freedom and security (chapter 24 of the EU *acquis*). Benchmarks in these areas were set thereafter. See also Action Plan for Chapter 23 Judiciary and Fundamental Rights (2013): http://www.gov.me/en/news/129083/Government-adopts-action-plans-on-chapters-23-and-24.html.

[3] Resolution 2030/2015: http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=21499&lang=en

[4] Corruption in Montenegro: bribery as experienced by the population: http://www.unodc.org/documents/data-and analysis/statistics/corruption/Montenegro_corruption_report_web.pdf.

[5] European Commission, Eurobarometer. Trust in institutions (EB82, November 2014). Montenegro Factsheet: http://ec.europa.eu/public_opinion/archives/eb/eb82/eb82_fact_me_en.pdf.

20. The Montenegrin NGO, Centre for Democracy and Human Rights (CEDEM), in its public survey ahead of the 2013 elections, stressed that only 36.5% of citizens trust Parliament, the percentage decreases to 23% regarding public trust in political parties[6]. In the CEDEM's research, the scoring of public confidence in the judicial system is lower than the figures shown in the EU's survey, with around 36.9% of Montenegrin citizens trusting the judiciary. The research underscores that the negative perception of citizens of judicial efficiency, with a significant backlog of cases in court, is influenced by problems of nepotism, incompetence and lack of professionalism. A reform of the judiciary started as early as in 2000; its latest update is articulated in the Strategy for the Reform of the Judiciary for the period 2014-2018[7]. The Council of Europe European Commission for Democracy through Law (Venice Commission) has been assisting the authorities of Montenegro to strengthen its judicial structure. It has, in particular, issued several opinions regarding key legislation in this field[8].

[6] Annual Research on Corruption 2013, Centre for Democracy and Human Rights (CEDEM). http://www.cedem.me/en/programmes/empirical-research/political-public-opinion/finish/42-political-public-opinion/384-political-public-opinion-march-2013.html.

[7] Strategy for the Reform of the Judiciary (2014-2018). http://www.gov.me/en/search/138241/Strategy-for-the-reform-of-the-judiciary.html.

[8] Opinion on two sets of draft amendments to the constitutional provisions relating to the judiciary of Montenegro. CDL-AD(2012)024. http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2012)024-e.
Opinion on the draft amendments to three constitutional provisions relating to the Constitutional Court, the Supreme State Prosecutor and the Judicial Council of Montenegro. CDL-AD(2013)028. http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2013)028-e.
Opinion on the Draft Laws on Courts and on Rights and Duties of Judges and on the Judicial Council. CDL-AD(2014)038. http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2014)038-e.
Opinion on the Revised Draft Law on Special Public Prosecutor's Office of Montenegro CDL(2015)002. http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2015)002-e.
Opinion on the Revised Draft Law on the Public Prosecution Office of Montenegro, CDL(2015)003. http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2015)003-e.

III. CORRUPTION PREVENTION IN RESPECT OF MEMBERS OF PARLIAMENT

Overview of the parliamentary system

21. Montenegro has a unicameral Parliament of 81 deputies, who are elected for four-year terms in a single nationwide constituency under a proportional, closed-list system. The latest parliamentary elections were held in 2012. There are 14 women in Parliament (this represents a 17.3% ratio in Parliament's membership). Parties have the obligation to put at least 30% female candidates on party lists. The parliamentary mandate is representational, i.e. members of parliament (hereinafter MPs) are free to decide and vote according to their own convictions (Article 85, Constitution). The internal organisation and conduct of work of Parliament is articulated in its Rules of Procedure[9]. The GET was informed of plans underway to adopt a Law on Parliament (including provisions to better regulate daily work, e.g. invitation of experts, participation of NGOs in committee work, etc.) by the end of 2015.

Caucus of delegates (as of 21 April 2015)	**Number of MPs**
Democratic Party of Socialists MP Group	30
Democratic Front MP Group	16
Socialist People's Party MP Group	6
Social-Democratic Party MP Group	8
Positive Montenegro MP Group	4
Albanian parties MP Group (FORCA, DP), HGI and LPCG	4
Bosniak party MP Group	3
Club of independent MPs	6
MP's without the club	4

22. The Montenegrin Parliament works in regular and extraordinary sittings. The regular sittings are convened twice a year, namely: the first regular session starts on the first working day in March and lasts until the end of July, and the second one starts on the first working day in October and lasts until the end of December. Extraordinary sessions may be convened at the request of not less than one third of the total number of MPs, or at the request of the President or the Prime Minister, in the period from the first working day in January until the last working day in February, as well as from the first working day in August until the last working day in September. The oversight role of the Parliament in respect of the Government has been repeatedly put into question, including by international organisations[10]; hence, a number of measures have been developed in recent years to strengthen the control and oversight role of Parliament (e.g. use of parliamentary questions, parliamentary inquiry, control and consultative hearings, etc.). The GET also heard of additional measures underway to ensure that conclusions and recommendations made by Parliament were given proper follow-up at committee level, something that has been missing until now.

23. The mandate of an MP is terminated before its expiry in the following circumstances: (i) by resignation; (ii) if convicted, by a finally-binding court decision, to an unconditional prison sentence of no less than six months; (iii) if stripped of business capacity by a finally-binding court decision; and (iv) by revocation of Montenegrin citizenship.

[9] Rules of Procedure: http://www.skupstina.me/images/documents/rules_of_procedure_00-63-2.pdf.

[10] See for example, the specific remarks in this respect included in the European Commission Progress Reports since 2012, which have triggered, *inter alia*, the adoption of an Action Plan for Strengthening the Legislative and Oversight Role of Parliament.

Transparency of the legislative process

24. Legislative provisions are in place to assure transparency of the legislative process. Information on bills proposed, laws adopted, law amendments and other parliamentary activity (e.g. reports and minutes of working bodies, listings of voting, etc.) is published on the Parliament's website (www.skupstina.me). Parliamentary debates are broadcast on television and the internet. The results of (generally electronic) voting are also published on the Parliament's website.

25. Plenary and committee meetings are, as a rule, open to the public, unless in case of security or defence matters, or in relation to EU accession negotiations (in the latter case, closed meetings take place only when the Committee for European Integration discusses "internal" documents, e.g. draft negotiating positions, in accordance with the Law on Data Confidentiality). The Parliament may decide, without debate, to close the sitting or a part of the sitting for the public upon a reasoned proposal by the Government or at least ten MPs. There are 14 standing committees in Parliament[11]. The Parliament amended its rules of procedure in 2012 to introduce more regular hearings and two parliamentary committees on European integration and anticorruption, which are chaired by opposition MPs. The Anticorruption Committee examines issues and problems in the implementation of laws relating to the fight against corruption and organised crime and proposes amendments on draft laws on corruption-related matters, as necessary.

26. In order to provide for greater transparency of its work, the Parliament publishes an Annual Report on its activity, as well as an Action plan for Strengthening the Legislative and Oversight Role of the Parliament of Montenegro (including a legislative work plan which is then coupled with implementation reports at regular intervals, twice a year) to facilitate public oversight as regards the anticipated activities and their implementation throughout the year. In March 2011, a Memorandum of Cooperation was signed between the Parliament and the Network of Civil Society Organisations for Democracy and Human Rights; several projects with civil society have been launched since then (e.g. "Democracy Workshops", "Open Parliament" programme, "Children's Parliament", "Women's Parliament", internships, etc.).

27. All interlocutors met (including journalists and civil society representatives) acknowledged the positive transparency measures introduced by Parliament in recent years. They were, however, not as conclusive regarding the openness of Government when drafting legislative or policy proposals. Although there is a detailed system of public consultation when legislation is being prepared by the Government, and a regular obligation for the latter to report on the results of the relevant consultations carried out, the GET was told that these legal requirements were not always followed in practice and that the timeframes for public comments were generally way too tight (e.g. three days for public comments). Given that a great majority of the legislative initiatives come from the Government, the GET can certainly understand the concerns raised by civil society from the point of view of transparency and accountability. GRECO encourages the authorities to seek ways to improve openness and to facilitate public consultation processes in the preparation of draft legislation by Government (e.g. by introducing adequate time frames for consultations).

[11] Constitutional Committee; Legislative Committee; Committee on Political System; Judiciary and Administration; Security and Defence Committee; Committee on International Relations and Immigrants; European Integration Committee; Committee on Economy, Finance and Budget; Committee on Human Rights and Freedoms; Gender Equality Committee; Committee on Tourism, Agriculture, Ecology and Spatial Planning; Committee on Education, Science, Culture and Sports; Committee on Health, Labour and Social Welfare; Anti-Corruption Committee; and Administrative Committee.

Remuneration and economic benefits

28. The average gross salary in 2014 in Montenegro was € 723, representing € 477 in net terms[12].

29. Salaries of MPs are fixed on the basis of the Law on Wages and other Remuneration of State and other Public Officials. The average net salary for the current 25th legislature is set at € 1 300 a month and increases (i) when additional functions are performed by the MP in question in Parliament (e.g. if chairing a committee, if member of the Collegium, if participating in other working bodies, etc.); (ii) upon seniority in service. MPs are covered by a pension scheme. The GET heard that it is common for MPs to be involved in different committees and up to a maximum of three (participation in one committee is paid at € 150; in two or three committees it increases to € 225; and the Chair receives € 300) and that this involvement raises *de facto* the average net salary above mentioned. This was allegedly creating an imbalance in MPs' remuneration to the advantage of parties in power. The additional compensation received for participation in parliamentary committees or working groups needs to be disclosed in financial declarations.

30. MPs have the right to receive additional benefits and compensation for expenditures in connection with their duties, including housing (max. € 330/month upon submission of rental agreement), vehicle/travel allowance (not applicable if receiving housing allowance) and telephone costs (max € 100/month). MPs are also entitled to compensation upon termination of the mandate and until they start a new job or reach retirement age. Although MPs are entitled to benefit from the end of term allowance in the two years following termination of their mandate, this period has never been exhausted in practice. Once MPs find a new job, their employment book, which is kept by the parliamentary services is passed on to the new employer and the compensation upon termination of the parliamentary mandate ceases to apply.

31. All data pertaining to wages and benefits received by MPs fall under free access to information provisions and are, therefore, publicly accessible (data are presented in aggregate figures in the semi-annual and annual reports submitted by the Secretary General of Parliament to the Committee on Economy, Finance and Budget; and can also be accessed upon individual request).

Ethical principles and rules of conduct

32. There are some provisions on conduct contained in the Rules of Procedure, but these only refer to acting in a respectful manner in the chamber, i.e. to observing parliamentary order and decorum. Breaches of these rules may entail deprivation of rights (censure, order to withdraw) or temporary suspension (removal from the sitting); sanctioning pronouncements are recorded in the minutes of the sitting in which the relevant measure was taken. The administrative personnel of Parliament are covered by the Code of Ethics for Civil Servants and State Employees; an Integrity Plan assessing and tackling corruption risks in their daily work was adopted on 27 June 2014.

33. Work started in 2013 to issue a Code of Ethics for MPs; it is an aspirational document aimed at enhancing parliamentary ethos and strengthening citizens' trust in their elected representatives. It includes provisions on impartiality, loyalty, neutrality, professionalism, confidentiality, prevention of conflict of interest, incompatibilities, access to information, misuse of property, gifts and other deontological principles. The drafting process started with the carrying out of comparative research of codes in the region and beyond, which was then followed by discussion in a working group, composed of MPs with long standing experience and high reputation in Parliament. The Code of Ethics was

[12] Source: Statistical Office Montenegro (2014).

being drafted at the time of the on-site visit and was adopted in December 2014. Infringements of the provisions of the Code may give rise to sanctions consisting of "name and shame" measures (reprimand and public reprimand) and fines up to 30% of the monthly salary received by an MP. The GET considers this to be a step forward and an internal instrument of added value for both parliamentarians themselves and their public image. Having said that, the GET firmly believes that, for this initiative to be operational, it requires additional measures of a practical nature. In particular, more needs to be done to provide additional support to orient parliamentarians concerning the rules and expectations of Parliament and the challenging matter of dealing with potential or actual conflicts of interest (see, for example, the considerations made later in this report concerning the disclosure of outside ties, the acceptance of gifts, relations with third parties, etc.).

34. Whilst the GET generally welcomes the planned establishment of an Agency for the Prevention of Corruption, with key responsibilities on conflicts of interest and integrity matters for public officials (including parliamentarians), it notes that the experience of MPs in resorting to the Commission for the Prevention of Conflicts of Interest (other than submitting financial declarations) has been limited. Once the Agency for the Prevention of Corruption is up and running, improved coordination channels must be developed with Parliament. Furthermore, the GET deems it crucial that parliamentarians themselves think expansively regarding opportunities for ongoing dialogue on issues on ethics and integrity, and for promoting greater self-governance and compliance. Self-control and responsibility must come first from within the House for the system to be meaningful and effective. Ownership among parliamentarians is critical for truly embedding the newly developed Code into the working culture of the Montenegrin Parliament; it will also demonstrate to the public that parliamentarians are willing themselves to take determined action to instil, maintain and promote integrity in the parliamentary mandate.

35. Lastly, while the GET understands that the system is oriented primarily towards awareness-raising and internalisation of a parliamentary ethos, sanctions may be used as a last resort to enhance professional accountability and to preserve the credibility of the enforcement mechanisms available in-house. The effectiveness of ethical standards largely relies on the awareness of those to whom is directed, on their willingness to comply with their provisions, but also on proper tools to secure its implementation, i.e. consultative mechanism ensuring that misconduct comes to light and attracts appropriate enforceable sanctions. Therefore, **GRECO recommends ensuring there is a mechanism both to promote the Code of Ethics for parliamentarians and raise their awareness as regards the standards expected from them and enforcing such standards where necessary.**

Conflicts of interest

36. The Law on the Prevention of Conflict of Interest, as amended (hereinafter LPCI), applies to MPs in so far as they are considered to be public officials specifically covered under the *personae* scope of the law (Article 3, LPCI). The Commission for the Prevention of Conflicts of Interest (CPCI) is responsible for monitoring its implementation.

37. The LPCI was adopted in 2004 and has been amended several times since then[13]. It covers approximately 16,000 persons (4,000 officials – including MPs, 4,000 spouses and 8,000 children). A conflict of interest is defined in Article 2 LPCI as a situation in which private interests collide with public ones and put into question the required impartiality of public administration. The GET is of the view that, other than clarifying that conflicts of interest may refer to both interests of material or immaterial nature, the

[13] The last amendment dates from December 2014 and was made to cover the transitional period running until the Agency for the Prevention of Corruption becomes operational.

definition provided by law is somehow vague. The GET further notes that the LPCI covers a broad spectrum of public officials (their spouses and minor children, who live in the same household) and, therefore, it fails, at times, to establish clear guidance tailored to the different persons concerned. The GET considers that there is certainly room for improvement as to the way in which the LPCI is interpreted and applied in relation to the parliamentary function. Clear guidance in this respect is therefore needed, as well as practical examples of conflict of interest situations that may be encountered by MPs. It is for this reason that GRECO recommends intensified coordination and cooperation between the CPCI (and later on, the Agency for the Prevention of Corruption once it replaces the CPCI in its functions) and the responsible instances in charge of integrity and ethical matters within Parliament (recommendation iii, paragraph 58).

38. MPs are exempted from the requirement by which public officials, under the LPCI, must declare any private interest they may have in a decision-making process (Article 12, LPCI). This issue was referred to as a source of concern, by both civil society representatives and parliamentarians alike, who considered that further thought had to be given to the potential and perceived impact of personal and professional relationships on the parliamentary function, particularly by determining how to declare and address ad-hoc conflicts of interest as they arise in relation to an MP's parliamentary work. In particular, the GET was told that ad-hoc disclosure and eventually self-recusal possibilities were not developed in the Montenegrin Parliament and that there was no established practice in this respect. The Code of Ethics does not include any provision on this matter. The GET recalls that GRECO had already pointed at this lacuna during its Joint First and Second Round compliance procedure on Montenegro[14]. The GET also considers that the disclosure of outside ties prior to a decision-making process would further assist the public in monitoring and determining when and how the interests of parliamentarians may be perceived to influence such a process. **GRECO recommends that a requirement of ad-hoc disclosure be introduced when a conflict emerges between the private interests of individual members of parliament and a matter under consideration in parliamentary proceedings.**

Prohibition or restriction of certain activities

Gifts

39. MPs are prohibited from accepting benefits (including foreign trips, scholarships and other type of advantages) or gifts; more particularly, the acceptance of money, any other security (e.g. shares, bonds, etc.) or precious metal are specifically banned (Article 6(5), Law on the Prevention of Corruption and Manual on Integrity).

40. The LPCI provides that officials are only allowed to keep (i) protocol gifts; or (ii) occasional gifts of minor value, i.e. gifts valued at less than € 50 received from the same donor in a given year or gifts valued at less than € 100, if received from several donors in the same year. Any gift that exceeds the afore-mentioned threshold has to be reported and subsequently becomes State property. The Parliament keeps a register of the gifts received and their value (if in excess of € 30) and submits information to the Commission for the Prevention of Conflicts of Interest (CPCI) on an annual basis; this information is then published on the Commission's website. The rules on gifts extend to the MP's spouse and dependent children. Failure to respect the ban on gifts is punished with fines; confiscation of gifts may also be ordered. The Code of Ethics transposes *verbatim* the provision on gifts established in the LPCI. The GET discussed this issue with the parliamentarians met on-site. It noted that, despite the training sessions organised by the CPCI, and the anticorruption manuals issued by DACI, there was some confusion over the interpretation of the gift provision and its particular coverage. This is clearly an area,

[14] Addendum to the Compliance Report on Montenegro, GRECO RC-I/II(2008) 5E, paragraph 28. http://www.coe.int/t/dghl/monitoring/greco/evaluations/round2/GrecoRC1&2(2008)5_Add_Montenegro_EN.pdf

as per considerations in paragraphs 35 and 61, where parliamentarians can benefit from further tailored guidance.

Incompatibilities and accessory activities

41. The principle of exclusive dedication applies. Derogations to this principle are possible for the performance of scientific, teaching, sporting, cultural and artistic activities, as well as for income resulting from copyright, patent and related intellectual and industrial property rights.

42. Membership of an MP in permanent, interim or mixed working bodies/commissions of Parliament is not considered to amount to the discharge of two or more public offices in the sense of the LPCI. MPs are to inform the CPCI whenever discharging additional activities, as allowed by law.

Financial interests, contracts with State authorities

43. Membership in the supervisory and management boards of business entities is banned. Within 30 days of assuming office, the relevant management rights must be transferred and information passed thereafter to the CPCI on the person to whom managements' rights have been transferred as well as proof of such a transfer. It is possible for an MP to be the president or a member of a management/supervisory body of scientific, humanitarian, sports or similar association, unless otherwise prescribed by special regulation.

44. Membership in the supervisory and management boards of publicly owned companies is also banned, as recommended by GRECO, which, in one of its former reports, anticipated risks in connection with the incompatibility of holding both executive and legislative functions and, thus, the effective oversight role that Parliament is to play over Government in the system[15].

45. An MP cannot simultaneously discharge official duties in the executive branch of Government, whether at central or local level (dual mandate is not allowed in Montenegro).

Post-employment restrictions

46. There is a two-year "cooling-off" period, following termination of public office, during which public officials are banned from: (i) appearing before a public authority in which s/he exercised public office in the capacity of a representative or attorney of a legal entity that has entered into or is entering into a contractual or business relationship with that authority; (ii) entering into employment/establishing business cooperation with the legal entity, entrepreneur, international or other organization that, may derive a benefit on the basis of the decisions of the public authority in which the public official discharges official duties; (iii) representing a legal or natural person before a public authority in which s/he exercised public office in the case in which s/he participated in decision-making as a public official; (iv) performing the activities of management or auditing in the legal entity where, at least a year before termination of his/her public office, his/her duties were connected to supervisory or control activities; (v) entering into a contractual relationship or any other form of business cooperation with the public authority in which s/he exercised public office; and (vi) using, for the purpose of acquiring benefit for himself/herself or another person or for the purpose of harming another person, the information and notifications s/he obtained while exercising public office unless such information and notifications are available to the public. Failure to

[15] Addendum to the Compliance Report on Montenegro, GRECO RC-I/II(2008) 5E, paragraph 28. http://www.coe.int/t/dghl/monitoring/greco/evaluations/round2/GrecoRC1&2(2008)5_Add_Montenegro_EN.pdf

observe this cooling-off period entails sanctions consisting of fines and eventual disciplinary measures (e.g. suspension, dismissal, etc.). The GET was told that the real risk was not so much related to MPs moving to the private sector, but rather to MPs perceiving their parliamentary function as a stepping-stone for key decision-making positions in Government.

Misuse of confidential information and third party contacts

47. The Code of Ethics places an obligation on MPs to explain every decision they make upon justifiable request by the public. If the information is confidential, they would need to explain the reason behind its confidentiality. MPs do not have the right to disclose information regarding the private lives of other MPs or other persons, as well as information falling under the Law on Data Confidentiality. Rules are also in place to assure confidentiality of "classified information" (i.e. information whose disclosure could entail damaging consequences for the security, defence, foreign affairs, monetary and economic policy of Montenegro)[16] for those MPs who can access this type of data. They have to sign a confidentiality statement to this effect. The disclosure of confidential data is punished under Article 369 of the Criminal Code with up to fifteen years' imprisonment.

48. The issue of politicians being lobbied by professional lobbying firms was not recognised as particularly sensitive area in Montenegro, as yet. A Law on Lobbying was adopted in November 2011. It defines lobbying and specifies the activities that fall under the definition of lobbying, the rights and duties of lobbyists, their registration, as well as sanctions for illegal lobbying. Lobbying may be exercised by natural or legal persons, business associations, and non-governmental associations that are registered as lobbyists. A Registry of Lobbyists is to be kept by the Directorate for the Anti-corruption Initiative (DACI). Despite all these regulatory elements, the Law has never been applied since it lacked the very essential lobbyists' registration requirement for its actual implementation. A new law was adopted in December 2014, which main novelties are the establishment of a public register of lobbyists and the requirement for public authorities to publish in website meetings they have held with lobbyists. The GET welcomes this development since, although the role played by lobbyists in Montenegro, at present, is not prominent, it is nevertheless important to lay down a basis to institute transparency in dealings between third parties and public decision-makers.

Misuse of public resources

49. There are no specific rules on misuse of public resources by MPs, but the criminal law provisions of abuse of office, under Article 416 of the Criminal Code with a punishment of imprisonment of up to twelve years, are applicable.

Declaration of assets, income, liabilities and interests

50. The disclosure regime laid out in the LPCI is quite comprehensive. MPs are required to declare assets and their sources, and to identify the source of income from professional and non-professional activities. They are also required to declare the assets and income of their spouses and minor children, who live in the same household. The latter do not file separate declarations, but are part of the primary declarer's file.

[16] Law No. 14/08 on Classified Information, as amended.

Contents of standardised financial declarations

Personal data
Details on public office post
Property and income
Proprietary rights on immovable and lease right on immovable for a duration exceeding one year, in the country and abroad
Proprietary rights over movables the value of which exceeds € 5 000 or for which the obligation of registration is prescribed with the competent bodies (motor vehicles, vessels, aircraft etc.)
Proprietary rights over immovable and movables of a company, institution or any other legal entity of which the owner or founder is a public official
Deposits in banks and other financial organisations, in the country and abroad
Stocks and shares in a legal entity
Cash and securities exceeding the value of € 5 000
Rights arising from copyright, patent and similar rights of intellectual and industrial property
Debts (capital, interest and repayment deadline) and claims
Source and amount of income from performance of scientific, teaching, cultural and sports activities

51. Declarations are to be submitted on an annual basis every March. The first submission must be made within 30 days of an MP's election. While in office, MPs must also declare any significant change (in excess of € 5 000) to the value of their income and assets within 30 days once the change occurs. A submission is also to follow within 30 days of leaving office, and, finally, a last declaration is to be filed two years after leaving office.

52. Data from the aforementioned reports are recorded in the Register of Income and Property kept by the Commission for the Prevention of Conflicts of Interest. Since 2005, the CPCI has its own database where all public officials are registered; it comprises details on individual officials' financial situation, decisions on violations of the LPCI, gifts, notifications on court decisions, etc. This information is published on the CPCI website (www.konfliktinteresa.me). The GET was told that an electronic tool is being developed to better process and cross-check the information compiled in financial declarations.

Supervision and enforcement

53. As indicated before, main supervision over conflicts of interest rules currently lies with the Commission for the Prevention of Conflicts of Interest (CPCI). The status, composition and work of the Commission are regulated in its Rules of Procedure, as well as in the LPCI. In particular the CPCI is competent to: (i) conduct proceedings and give decisions on the violation of the LPCI; (ii) give opinions on the existence of conflicts of interest; (iii) record received gifts; (iv) record and publish financial declarations; (v) give opinions on draft law, other regulations and general acts, if it deems it necessary to prevent conflicts of interest; (vi) provide cooperation to other States and international organisations dealing with cases of conflict of interest; (vii) submit requests for the initiation of misdemeanour proceedings. The CPCI management is composed of one president and six members, elected by the members of parliament, through a public competition, for a period of five years. The CPCI is required to annually submit to the Parliament of Montenegro a report on its work.

54. Regarding financial disclosure verification competencies, amendments to the LPCI have followed in recent years to vest the CPCI with greater attributions. At present, the Commission can perform four types of checks: (i) technical (administrative) check; (ii) check upon notification; (iii) full check (since 1 March 2012); and (iv) check determining reasons for disparity between an increase in the value of the property and the officials declared income (since December 2014). The GET was told that, for the time being, the CPCI has no statutory powers to check the origin of assets; it can only verify the accuracy of the data provided as compared to that gathered or held by other institutions. The non-compliance with the LPCI constitutes a misdemeanour which is punishable with fines (between € 500 and € 2 000 – physical persons, and up to € 20 000 – legal persons) and professional bans of up to one year. Where acts of corruption are suspected

or revealed in the course of the CPCI's action, it refers the case to the prosecution service. The decisions of the CPCI are published on its website, and may be subject to appeal before the Administrative Court and then before the Supreme Court. In 2014, the CPCI issued 710 decisions; it initiated 733 procedures for violations of the LPCI (575 investigations ex-officio, and 158 upon individual request, respectively). In 2014, a total of 7 verdicts for LPCI misdemeanours against MPs were issued (out of a total of 300 verdicts for LPCI misdemeanours issued against public officials in that same period). The GET was, however, told that one of the key challenges in implementing the law was enforcing sanctions for members of parliament, who are elected representatives and, as such, cannot be revoked from their function.

55. The CPCI also organises training sessions on the LPCI provisions; it holds an average of nine of such events per year, where MPs, judges and prosecutors are also invited[17]. During the on-site visit, the GET had the opportunity to discuss with the aforementioned professionals several aspects of the LPCI. The GET was puzzled to hear, more than once, that some of these professionals were overwhelmed with work and "had no time to think about conflicts of interest". Most interlocutors equated the law provisions to asset disclosure, and the understanding of other prevention tools included in the law, or the mere reflection of the corruption and conflicts of interest risks within the different professionals in the public sector targeted by the law, was clearly lagging behind.

56. At the time of the onsite visit, they were ten persons working in the CPCI (five lawyers and five administrative staff) who recognised that their administrative capacity was limited given the considerable amount of work they had in their hands (including the cumbersome tasks of checking financial declarations and carrying out misdemeanour proceedings, within very strict and short timeframes). Moreover, the GET was made aware that the term of office of the CPCI members expired in the summer 2014 and no new members had been appointed until December 2014. The GET notes that the CPCI was often criticised during the onsite visit for its lack of teeth and the threats to its independence. The civil society sector was quite incisive as to the alleged political influence under which the CPCI operates (with certain of its members having been former politicians) and, as a result, the absence of any meaningful sanction for infringers of the LPCI. It emerged from the interviews carried out on-site, that the checks carried out by the CPCI were more of a pro-forma nature, and the sanctions rather low on paper and seldom applied in practice. The Action Plan for the Implementation of the Strategy for the Fight against Corruption and Organised Crime sets as specific goals the reinforcement of the efficiency and independence of the CPCI, including by hiring additional staff, introducing risk assessment criteria for verification purposes and implementing swifter information exchange mechanisms with other institutions to better check financial declarations.

57. It is planned that the Agency for the Prevention of Corruption takes over supervision of conflicts of interest rules once it starts to operate in 2016. In order to dispel doubts and public criticism on the way in which the Agency is to function, once the CPCI ceases to exist, several improvements are in the pipeline regarding the composition and scope of activity of the Agency. First of all, the Agency will centralise a substantial range of prevention activities on different fronts and will have more competencies in their respect, including by (i) preventing conflicts of interest; (ii) checking asset declarations; (iii) recording gifts, sponsorship and donations; (iv) protecting whistleblowers; (v) monitoring the implementation of the integrity plans that all public institutions are to prepare and assess their efficiency and effectiveness every second year; (vi) ensuring implementation of the Law on Lobbying; (vii) monitoring the Law on Financing of Political Parties and Election Campaigns. Secondly, an electronic communication system and database will be developed to better process the information gathered (e.g. asset

[17] From 2013 to 2014 the CPCI organised a total of 79 training events which were attended by around 2,630 public officials, media and NGO representatives. As of the first half of 2015, four seminars have already been held.

disclosures, lobbying register, integrity plans, etc.) and to link the information required by the Agency with that held by other authorities (e.g. tax authorities, real estate registries, Ministry of Interior, Ministry of Transport, banks, etc.). Thirdly, the human resources of the Agency would be increased to around 40 employees. Additional safeguards have been included in the Law on the Prevention of Corruption to decrease political influence in its work and management structures. While the members of the Council will continue to be elected by Parliament, the election is subject to certain conditions: a public competition, merit-based requirements including at least five years of working experience in the field of the fight against corruption or the protection of human rights, pre-selection by a Commission composed of two representatives of the Parliament – one from the parliamentary majority and one from the opposition, a representative of the Judicial Council, a representative of the Prosecutorial Council and an NGO representative.

58. The GET believes that, as the new system is built-up and progressively matures, it will be important to enhance communication between the Agency and Parliament, as well as the other professions covered in this report, i.e. judges and prosecutors, concerning the implementation of legislation on the prevention of conflicts of interest and the development of integrity tools; this is instrumental to the effectiveness of the newly introduced integrity regime. The GET further considers that the current financial disclosure system needs to be streamlined. As highlighted before, it is a comprehensive system covering up to 16,000 persons. The GET encourages the authorities to develop a risk assessment methodology in order to perform more efficient and meaningful checks. The GET is also aware of the challenges that emanate from such a wide-ranging system, regarding, for example, the privacy rights of the individuals concerned (and their families), the need to ensure that the applicable bans and requirements do not operate as an obstacle to attract the best people to the profession, and the extensive, and at times conflictive, catalogue of advisory, monitoring and enforcement powers conferred to the Agency for the Prevention of Corruption. A fair balance must be sought in the interest of transparency and proportionality. **GRECO recommends that (i) appropriate measures are put in place to streamline the financial disclosure system with a view to ensuring its proportionality and effectiveness; (ii) the authority in charge of its supervision is adequately equipped to perform its tasks with respect to MPs, judges and prosecutors; (iii) tailor-made communication and advisory channels with the aforementioned professionals are further developed.**

59. MPs enjoy immunity for opinions expressed and votes cast in the exercise of their functions. MPs also benefit from inviolability from criminal procedure during their mandate: notably, no penal action can be taken against, nor detention assigned to an MP, without the consent of Parliament. The President of Parliament requests the Administrative Committee on a proposal for the initiation of criminal proceedings or the determination of detention; the proposal is then decided by simple majority of the House (Article 58, Rules of Procedure of Parliament). An exception exists in the event of *flagrante delicto*, when the offence carries a penalty of imprisonment of more than five years, in which case the beneficiaries of the immunity can be arrested (Article 86, Constitution). The President of Montenegro, the Prime Minister and members of the Government, the President of the Supreme Court, the President and judges of the Constitutional Court, and the Supreme State Prosecutor enjoy the same immunity as MPs.

60. When looking into the functioning of parliamentary inviolability, the GET notes that there is no established practice regarding the lifting of immunity from criminal procedure regarding corruption-related offences. In recent years, there have only been three requests of this sort: in two cases the Parliament did not lift immunity (2007), and in one case Parliament did honour the request of the prosecution service to lift immunity (2010). Moreover, the reading of the rather vague rules on the procedure – and the non-existent rules on the criteria for lifting of inviolability, leave the GET with sound

misgivings as to the fairness, objectiveness and equal treatment of inviolability requests Whilst recognising that there are no common international or European rules that prohibit inviolability, the fact is nevertheless that the latter impinges upon the principle of equality before the law and introduces political considerations into the conduct of criminal proceedings which can well depart from an objective and impartial approach. The main justification for inviolability is to protect parliamentary work from undue pressure from the executive. As a matter of fact, the GET considers that the basic presumption should be that inviolability be lifted in all cases in which there is no reason to suspect that the charges against the MP concerned have been politically motivated; immunity cannot be tantamount to a shield protecting any MP from exposure to the general criminal law that applies to all other citizens[18]. **GRECO recommends considering the introduction of guidelines containing clear and objective criteria to be applied when deciding on requests for lifting inviolability of parliamentarians.**

Advice, training and awareness

61. At the start of a new session of Parliament, MPs are informed of their duty to declare interests and activities; a so-called welcoming book has now also been prepared to better guide new MPs upon their entry to Parliament. The GET was told that the Parliament itself does not organise any other additional training or awareness raising activities on integrity, conflicts of interest or corruption prevention. The Law on the Prevention of Corruption establishes the obligation for all public institutions to adopt an integrity plan (identification of corruption/unethical risks and measures to tackle them) and appoint an integrity manager. Guidelines and forms have been issued by the Directorate for Anticorruption Initiative (DACI) to this effect. The GET welcomes the efforts made to date by DACI to lead the way so that the relevant authorities understand their obligations under the law, as well as the obligation to appoint an integrity manager in each institution, who is meant to serve as an internal auditor of integrity within the institution concerned. The Guidelines for the Development of Integrity Plans (Article 24(2)) provide that an integrity manager should be a member of the management staff with adequate experience in the functioning of the institution where s/he serves. The GET encourages the authorities to pay further attention to the issue of appointment of integrity managers given the key role they are to play in their respective institutions. In the GET's view more detailed criteria (including integrity requirements) could be provided for the selection and appointment of the relevant integrity managers. As already mentioned, the parliamentary service of Parliament developed its integrity plan in 2014; it remains to be seen how Parliament itself is going to implement the law's requirements.

62. When submitting financial declarations, or more generally, whenever confronted with a conflict of interest dilemma, MPs are encouraged to seek advice from the Commission for the Prevention of Conflicts of Interest (CPCI). The latter organises regular training events as already detailed in paragraph 55; it also distributes brochures and other informative materials to keep officials abreast of their obligations in this area (including whenever a legislative update occurs, providing guidance on declaration forms, etc.). A Booklet on Integrity and Corruption, with questions and answers was recently issued by DACI with the support of the European Commission. It includes practical examples and case studies, but these are generally targeted to officials working in the executive, rather than the parliamentary or judiciary branches.

63. As already stressed, much more can be done to enhance awareness activities on ethical matters and conflict of interest prevention directed towards MP; this is a specific component included in recommendation i (paragraph 35) – training and advice provided in-house, and recommendation iii (paragraph 58) – advisory channels to be intensified

[18] See also Study No. 714/2013 of the Venice Commission. CDL-AD(2014)011. http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2014)011-e.

with the CPCI (the Agency for the Prevention of Corruption as it starts to operate). MPs must themselves take a stake in the success of the anticorruption legislative and institutional frameworks. Putting values into effect needs proactive engagement and discussion on integrity matters and possible ways to confront and then solve ethical dilemmas. The content of the recently issued Code of Ethics and the LPCI could remain words on paper if not properly communicated and inculcated in practice. This is a particularly sensitive risk in the context of Montenegro, given the recurrent criticism the country has received, by both its NGO sector as well as international society, as to laws and institutions that never take off completely in their concrete implementation.

IV. CORRUPTION PREVENTION IN RESPECT OF JUDGES

Overview of the judicial system

64. Montenegro has a multi-tiered judicial system, which comprises: basic courts (fifteen basic courts that are exclusively the first instance courts); high courts (two high courts deciding on certain criminal proceedings at first instance and deciding at second instance on appeals against decisions rendered by the basic courts); a commercial court with its seat in Podgorica which decides on commercial cases at the first instance; Appellate Court (which exclusively decides at second instance on appeals against first-instance decisions of high courts and commercial courts); Administrative Court (deciding about administrative disputes on the legality of administrative acts of state bodies and public administration bodies); and Supreme Court of Montenegro (third instance court, deciding on extraordinary legal remedies. There are 260 judges of whom 117 are men (45%) and 143 are women (55%)[19]. There are no lay judges in Montenegro.

65. According to the Constitution, the judiciary is an autonomous and independent body (Article 118). The Law on Courts enshrines the principle of judicial independence so that, in performing their duties, judges are bound to abide only by the Constitution, laws and international treaties. The key provisions regulating in detail the professional life of judges are contained in the Law on Courts and the Law on the Judicial Council and Judges, as adopted in March 2015.

66. The GET notes that there are 60 judges adjudicating in misdemeanour courts. Misdemeanour courts may impose sanctions (warnings, fines and imprisonment) for minor violations of the law. Until 1992, misdemeanour courts fell under the same conditions and requirements as other regular courts; in 1992, they became administrative-judicial bodies. The persons adjudicating in the misdemeanour courts are not hired under the same conditions as other judges: they are appointed by government and have contracts of five-years subject to periodical renewal. In practice, this has resulted in a situation where bodies in charge of misdemeanour procedures do not have the status of courts, although in such procedures sentences of imprisonment may be passed. In the GET's view, such a state of affairs raised concerns regarding the requirements of independence and impartiality of misdemeanour courts given the important sanctioning powers they are entrusted with, including imprisonment sentences and the imposition of substantial fines.

67. The authorities indicated that plans were underway to make misdemeanour courts part of the regular judicial structure with equivalent recruitment and tenure conditions (including training programmes). According to the recently adopted Law on Courts, the new system would comprise three misdemeanour courts (in Bijelo Polje, Budva and Podgorica) and a High Misdemeanour Court. To become a misdemeanour judge, the candidate (whether or not s/he had prior experience in misdemeanour courts) will have to undergo a selection processes, conducted by the Judicial Council with the same level of due independence which is applicable to judges in basic courts (Articles 82 and 83, Law on Courts). The GET welcomes that the issue has now been tackled.

68. The Supreme Court is the highest court in Montenegro. It assures the uniform application of laws. The President of the Supreme Court is elected (for a period of five years, which can be renewed once) and relieved from duty by the Judicial Council (two-thirds majority of its members), at the proposal of the Supreme Court general bench. The position is open for both judges (with at least 15 years of experience) as well as persons with at least 20 years of experience as a prosecutor, lawyer, notary, deputy notary or law professor, or at least 20 years of experience in other jobs in the field of law

[19] Fourth Evaluation Report on European Judicial Systems, European Commission for the Efficiency of Justice (CEPEJ), 20 September 2012.

after having passed a judicial exam. The GET takes note of the constitutional amendments introduced in 2013 to address concerns on politicisation of the post, notably, by supressing the role of Government and Parliament in the appointment of the President of the Supreme Court. The GET further points at the vast number of responsibilities of the Supreme Court and its President in the functioning of the judiciary in Montenegro (e.g. power to supervise work of courts, involvement in advisory, evaluation and disciplinary matters) and the risks that such a concentration of powers in a person and institution may entail.

69. The Judicial Council was first established in 2008 to assure the autonomy and independence of the judicial branch in Montenegro. A number of legislative changes have been made (including constitutional amendments in 2013, as developed by legislation in 2014 and 2015) to better ensure that the Council fulfils the aforementioned objectives and to address recurrent concerns of its alleged politicisation. The Judicial Council is composed of ten members: five judges (three judges from higher courts, one judge from basic courts and the President of the Supreme Court who is an ex officio member) who are elected and released from duty by the Conference of Judges, four non-judicial members (reputable persons with 15 years of experience in law) who are elected and released from duty by Parliament upon public call, through a two-thirds majority (three-fifths majority in a second vote, if necessary), and the Minister of Justice. Members of the Judicial Council are elected for a four-year term and can be re-elected once. Gender balanced representation is to be taken into account when proposing and then electing Judicial Council members.

70. The President of the Judicial Council is elected from among its non-judicial members by a two-thirds majority. In the event of absence or inability of the President of the Judicial Council to perform his/her functions, and upon his/her proposal, the Judicial Council is to designate a substitute from among its non-judicial members; the Minister of Justice cannot be elected President of the Judicial Council. The authorities indicated that the mixed composition of the Judicial Council (judges and non-judges members) was aimed at bringing different expertise into the institution, as well as helping to avoid the perception of self-interest, self-protection and cronyism. The vote of the President of the Judicial Council is decisive in case of an equal number of votes. The current rules on the composition of the Judicial Council deviate from international standards in this domain, which call for a system where judges elected by their peers make up not less than half the members of councils for the judiciary and where the latter are presided by a judicial member.[20]

71. The Judicial Council appoints, promotes and transfers judges and relieves them of judicial duty, as well as deciding on their disciplinary responsibility. It also holds a number of responsibilities concerning general management of the judiciary, e.g. gives opinions on draft legislation regarding the judiciary, proposes guiding measures for determining the number of judges and other court officials and employees, keeps and maintains records on judges, organises training, develops the information system in courts, etc.

72. At the start, the GET wishes to positively acknowledge the legislative developments that have taken place in recent years to minimise undue political interference over the work of the Judicial Council, and to consolidate this institution as the guardian of judicial independence. That said, the GET has reservations as to the *ex officio* participation of the Minister of Justice as a member of the Judicial Council; all the more given past claims of politicisation of the judiciary in Montenegro. The GET draws the attention of the authorities to Opinion No.10 (2007) of the European Council for European Judges, which explicitly stresses that members of the Judicial Council should

[20] Recommendation Rec(2010)12 of the Committee of Ministers of the Council of Europe to member States on judges: independence, efficiency and responsibilities: https://wcd.coe.int/ViewDoc.jsp?id=1707137.

not be active politicians, in particular members of the government[21]. In this connection, the GET also notes that the composition of the Prosecutorial Council does include a representative from the Ministry of Justice, but not the Minister him/herself.

73. The GET has further concerns as to the selection of the non-judges members of the Judicial Council. The law requires them to have at least 15 years' experience on legal affairs, to enjoy personal and professional reputation and to have clean criminal records. The GET is of the view that more can be done to specify objective and measurable criteria supporting the vague requirement of "enjoying personal and professional reputation". Moreover, there are no guarantees that the non-judicial members are not politically engaged in the absence of provisions prohibiting them to do so; this is all the more important given that the position of President (and substitute President) of the Judicial Council is reserved for a non-judicial member who will have a casting vote in the case of an equal number of votes. Although the authorities stress that the latter issue has not posed a problem in practice since, until now, all decisions of the Judicial Council have been adopted by majority vote, the GET again draws the attention of the authorities to Opinion No. 10(2007) of the Consultative Council of European Judges (CCJE) clearly stating that it is necessary to ensure that the Chair of the Council is held by an impartial person who is not close to political parties. This state of affairs calls for further adjustments in the composition of the Judicial Council (see also remarks made in paragraph 70).

74. Furthermore, the GET notes that the Judicial Council is not only to safeguard the independence of the judicial system as a whole, but also of individual judges. In this connection, there may be conflicts between the different responsibilities that the Council members are to perform, ranging from appointment to promotion, transfers and reassignments, ethics and discipline which could have an impact on the effective independence in the work of individual judges. At the end of the day, it is the same people in the Council (in different committee composition) who have a say over the entire professional life of individual judges; this can well give rise to conflicts of interest for the members of the Council, who are to decide on the different matters that conform a judge's career and can well interfere in the work of individual judges. Opinion No. 10(2007) of the Consultative Council of European Judges (CCJE) on the Council for the Judiciary recognises the fact that there may be conflicts in the different functions performed by judicial councils, and that, therefore, it is important to provide a proper separation of roles in such cases. Moreover, the law is not always clear as to where the dividing line between the competences of the Judicial Council and other bodies lies, e.g. regarding ethics (Judicial Council – Ethics Committee), or organisation and supervision of court administration (Judicial Council – Ministry of Justice).

75. There are certainly implementation challenges ahead as the new system starts to operate. The GET understands that it is too early to assess the effects of the recent changes introduced in the functioning of the Judicial Council; it however takes the view that this matter deserves close follow-up. **GRECO recommends (i) taking additional measures to strengthen the Judicial Council's independence – both real and perceived – against undue political influence, including by abolishing the ex-officio participation of the Minister of Justice in the Council, by providing for no less than half of the Council's membership to be composed of judges who are elected by their peers and by ensuring that the presiding function is given to one of those judicial members; (ii) establishing objective and measurable selection criteria for non-judicial members which would endorse their professional qualities and impartiality; and (iii) setting in place operational arrangements to avoid an over-concentration of powers in the same hands**

[21] Opinion No.10 (2007) of the Consultative Council for European Judges on the Council for the Judiciary at the service of society: http://www.coe.int/t/dghl/monitoring/greco/evaluations/round4/CCJE-opinion-10-2007_EN.pdf.

concerning the different functions to be performed by members of the Judicial Council.

76. The Constitutional Court is separate from the judicial pyramid. It is competent to examine the compatibility of legislation with the Constitution and decide on appeals on alleged breaches of fundamental rights and freedoms. Constitutional amendments were introduced in 2013 regarding the composition and election of members of the Constitutional Court to address criticisms on their politicisation and self-perpetuation. Pursuant to the amendments, the Constitutional Court is composed of seven judges appointed by Parliament (two judges at the proposal of the President of Montenegro and five judges at the proposal of the competent parliamentary committee on the basis of a public call) for a non-renewable twelve-year term. The President and the members of the Constitutional Court cannot be members of parliament or hold any other public duty or professional activity. Despite the legislative requirements on paper, the media reported that that some of the judges appointed to the Constitutional Court in 2013 had been active in different political parties[22].

77. Since 2000, the judiciary in Montenegro has been subject to an intensive reform process. The latest Strategy for the Reform of the Judiciary (2014-2018) was adopted in March 2014; it recognises that some spheres of the reform undertaken to date are still facing shortcomings and insufficient systemic performance. Among its strategic goals, it places key importance on strengthening (i) independence, impartiality and accountability; (ii) efficiency; and (iii) accessibility, transparency and public trust in the judiciary[23]. The rationalisation of Montenegro's judicial network is also a priority nowadays: the European Commission for the Efficiency of Justice (CEPEJ) has repeatedly highlighted that the country ranks high on the number of courts per inhabitants (as compared to other EU countries), as well as in relation to geographical court locations.

Recruitment, career and conditions of service

78. Judges in Montenegro have life-tenure (Article 121, Constitution). They are elected and dismissed by the Judicial Council. A judge can be dismissed only if convicted for a criminal offence which renders him/her unfit for performing judicial office, if s/he performs the office unprofessionally and unconscientiously or permanently loses the ability to perform judicial office.

79. Important changes were introduced in 2014 in the system of appointment of judges. A single nationwide recruitment system for judges and prosecutors has been introduced which is initiated through the publication of a vacancy notice, followed by a written test (80 points) and a personal interview (20 points) with the Judicial Council. The selection process takes into account the professional merits and experience of the candidates (results of bar exam, work experience, types of assignments and performance, motivation and attitude towards work, relations with colleagues, communication skills). Proof of clean criminal records is also required. Appointment decisions are to be published in the Official Gazette of Montenegro.

80. The candidate then follows a one-year training period (theoretical courses organised by the Judicial Training Centre and practical experience to be acquired through mentoring arrangements in court) which is remunerated at 70% of the monthly salary of a basic court judge. Following this training period, the candidate will receive a either satisfactory or non-satisfactory grade. If a satisfactory grade is given, then the recruitee is granted permanent tenure. The refusal to confirm a judge in office is made according

[22] See Vijesti Online, 27 December 2013, http://www.vijesti.me/vijesti/predlozi-sudije-prosli-ilic ; and Dan Online, 29 December 2013, http://www.dan.co.me/?nivo=3&rubrika=Politika&datum=2013-12-29&clanak=413257.

[23] Strategy for the Reform of the Judiciary (2014-2018). http://www.gov.me/en/search/138241/Strategy-for-the-reform-of-the-judiciary.html.

to objective criteria and with the same procedural safeguards as apply where a judge is to be removed from office.

81. Judges can be assisted by advisers who help drafting decisions and performing other specialised tasks, either independently or under the supervision of and on the instructions of the judge. Judicial decisions remain under the direct responsibility of judges. The employment contract of advisers is governed by the relevant regulations on civil servants and State employees.

82. A system of periodic evaluation (every three years) has been introduced and follows both quantitative and qualitative criteria. The evaluation of judges is carried out by an Evaluation Committee of the Judicial Council (composed of four judge members of the Judicial Council and the President of the Supreme Court) on the basis of a proposal by an evaluation panel (composed of the president of the court in which the judge serves and four judges from higher instance courts). Promotion is based on merit and takes into account the results of periodic evaluations as well as seniority criteria. Judges of the Supreme Court are excluded from the evaluation system.

83. Judges cannot be redeployed without their consent. By way of exception, a judge may be transferred or sent to another court, upon decision of the Judicial Council, for organisational/restructuring reasons.

84. The salary of judges is regulated under the Law on the Salaries and other Emoluments of Judges and Other Holders of Judicial Functions; salaries vary depending on the rank of the court and the years of experience of the office holder. By way of example, the gross annual salary of a first instance judge at the beginning of career (basic court) is € 18 516; it amounts to € 22 956 – € 24 930 for judges of the Supreme Court. Judges who do not own or rent an apartment in their place of work are entitled, for official use and for the duration of their office, to a rent allowance amounting to € 165 net. Judges are also covered by life insurance and may receive an unemployment compensation of up to one month's salary (and exceptionally two months' salary). Control over the legality of the use of the aforementioned facilities is entrusted to the Ministry of Finance.

85. The Ministry of Finance is also responsible for authorising the release of the budgetary funds allocated to the judiciary (judges and prosecutors). Judicial bodies are not recognised in the budget allocated to the courts and public prosecution offices as separate spending units, as a result of which courts and public prosecution offices do not know which amount of funds is allocated to a specific court or prosecution office in a specific fiscal year. This situation is to change in 2016, given that the recently adopted Law on Courts (Article 74) establishes that each court has a separate spending unit in the budget. Despite the competence of the Judicial Council to propose the draft annual budget for its work to the Government, and despite the right of the Council to participate in the parliamentary session when this budget proposal is discussed, the authorities acknowledge that more needs to be done to allow for greater external and internal financial independence of judicial bodies, a matter which is taken up in the new Strategy for the Reform of the Judiciary (2014-2018).

Case management and procedure

86. The principle of random allocation of cases is developed within the Law on Courts and the Court Rules and it is applied through the electronic allocation of cases by the judicial information system. The reasons for removal of a judge from a case s/he has been allocated is strictly defined by law, namely, only if it has been found that the judge in question has not been making any progress in the case, or if the judge has been unable to perform judicial duties pertaining to his/her post for more than three months.

87. As stated before, the principle of independence in the work of the judiciary is enshrined in the Constitution. As regards external independence, the schedule of assignments and allocation of cases is designed to exclude external interference; the Ministry of Justice is vested with supervisory responsibility regarding general court administration, it cannot take any action susceptible to influence decision-making by the court in court cases (Articles 28, 49 and 50, Law on Courts).

88. Concerning internal independence, in their decision making, judges should be independent and impartial and able to act without any restriction, improper influence, pressure, threat or interference, direct or indirect, from any authority, including authorities internal to the judiciary. Hierarchical judicial organisation should not undermine individual independence[24]. The authorities explained that the principle of internal independence is respected in Montenegro: when it comes to monitoring the work of courts, such monitoring relates to the overall efficiency of the relevant court, but not the content of the decisions issued by a particular judge; the control of the legality and regularity of judicial decisions is only possibly through legal remedies procedures established by law. However, in reading the Law on Courts, the GET has misgivings as to the degree of "supervision" performed by high level courts in Montenegro. More particularly, Article 62 of the Law on Courts on relations between courts establishes that, at a request of the higher instance court, a court shall submit data and information to the higher instance court, and shall enable it to directly "inspect" the work of the court, with a view to monitoring and studying the case-law and "controlling" the work of courts. The GET can understand the need for consistency of legal interpretation and implementation, but it has misgivings as to the notions of "inspection" and "control" used in the law to describe the relation between higher instance and lower instance courts. This issue may prove to be controversial in practice as it can result in a chilling effect on the independence of the individual judge and calls for close monitoring in its application.

89. The Constitution prescribes that everyone is entitled to fair and public trial within a reasonable time before an independent and impartial tribunal. The Constitution also establishes the principle of publicity of judicial proceedings, unless provided by law for justified reasons, e.g. for the sake of private life of parties, in marriage cases and in cases connected with custody and adoption, for the protection of military, professional or business secrets, for the protection of national safety and defence interests, but only in the measure that is according to the opinion of the court, unconditionally indispensable in special circumstances where the presence of the public might damage the interests of justice. The backlog of cases has been substantially reduced in recent years.

90. Positive transparency measures in the work of courts have been implemented in recent years; for example, the practice of regular media conferences was introduced, during which the work done by courts is presented through spokespersons/ public relations officers. Court decisions are available online (www.sudstvo.me), but more remains to be done to ensure that they are published in a timely manner. Activity reports on courts are submitted to Parliament for review. The GET notes that virtually all interlocutors interviewed during the on-site visit gave credit to the measures introduced to better assuring transparency of judicial work (of individual courts and also of the Judicial Council).

91. The Association of Judges carried out a survey, in 2013, to sound the reasons for citizens' mistrust in the justice system. This survey evidenced that the low confidence results were rooted on perception rather than negative individual experiences or corruption episodes when dealing with courts. There is currently a technical assistance project financed by the Netherlands, which covers the period 2016-2017 and is aimed at improving the communication policy of the judiciary.

[24] Recommendation Rec(2010)12 of the Committee of Ministers of the Council of Europe to member States on judges: independence, efficiency and responsibilities. https://wcd.coe.int/ViewDoc.jsp?id=1707137.

Ethical principles, rules of conduct and conflicts of interest

92. Judges must take an oath on appointment. In July 2008, the Conference of Judges adopted the Code of Judicial Ethics; it was reviewed in 2014[25]. A Commission for the Code of Ethics was first set up in October 2011. It is composed of a president and two members. The president is elected by the Judicial Conference from among the non-judicial members of the Judicial Council, one judicial member is elected by the extended session of the Supreme Court and the other judicial member is the president of the Association of Judges of Montenegro. Members serve for a four-year term. The Commission is responsible for establishing whether there has been an infringement of the Code. Anyone is entitled to bring a complaint before the Commission. If the latter finds a violation which may tarnish the reputation of the judicial office, it terminates its procedure and passes on the file to the Disciplinary Commission for further disciplinary action. The Commission for the Code of Ethics has found no violations of the Code of Judicial Ethics hitherto. The 2014-2018 Strategy for the Reform of the Judiciary sees room for improvement with regard to the integrity and accountability system of the judiciary, including by providing guidance and training on the Code, developing integrity plans and better assuring enforcement of the Code.

93. The rules on conflicts of interest of judges are set out in the Law for the Prevention of Conflicts of Interest (LPCI), which applies to all public officials, including judges. The Code of Judicial Ethics also contains key provisions aimed at enshrining the independence and impartiality of the judicial function, e.g. gifts ban, confidentiality obligation, incompatibilities, financial interests, etc. The Code constitutes a guiding instrument for the Judicial Council as the latter takes decisions on conflict of interest and incompatibilities issues. Integrity plans have now been developed and adopted in all courts.

94. As to advice on ethical dilemmas, individual judges may turn to the president of the court, to the Judicial Council of the Commission for the Code of Ethics and the Commission for the Prevention of Conflicts of Interest (the Agency for the Prevention of Corruption from 2016). There was virtually no evidence on-site that these possibilities were actually used in practice. In the GET's view, the existing counselling system for judges on ethics, integrity and the prevention of conflicts of interest need to be stepped up. This represents a challenge *per se* in the context of highly articulated personal and family relations in Montenegro. The development of appropriate guidance on these matters, which are specifically targeted to judges, can only assist in better advising judges in case of integrity-related dilemmas, in bringing coherence to the courts integrity policies and in developing best practice across the profession. **GRECO recommends significantly strengthening and further developing mechanisms to provide guidance and counselling on ethics and the prevention of conflicts of interest for judges.**

Prohibition or restriction of certain activities

Incompatibilities and accessory activities, post-employment restrictions

95. Judges are subject to a strict regime of incompatibilities: as a general rule, judges cannot perform any other service or job. Activities in the scientific, educational or artistic sectors, as well as work protected by copyright, are allowed. Judges are also banned from membership of political parties as well as involvement in political activities, but they have the right to form professional associations (at present there is one single Association of Judges in Montenegro). Judges are not banned from engaging in financial activities (they can acquire shares), but they are required to report those in their asset disclosure forms. As per post-employment restrictions, the two-year cool-off period

[25] Official Gazette No. 16/14 of 28 March 2014.

described under paragraph 46 also applies to judges. Individual incompatibility instances are resolved by the Judicial Council. The GET was told that it was very rare that a judge would leave his/her position; the majority of judges leave service when they have reached retirement age.

Recusal and routine withdrawal

96. The general rule is that a judge assesses his/her own qualification to hear a case but that a party may also call for his/her disqualification. The party is to file the request for disqualification as soon as s/he learns the reason for disqualification; it is for the court president to decide on the reassignment of the case to another judge.

97. The reasons for disqualification are enumerated in procedural law (Article 69, Civil Procedure Act; Article 38, Criminal Procedure Act), including *inter alia* conflicts of interest due to marital, extended family and other type of relationships with the parties, financial interests, earlier involvement of the adjudicating judge in that case, and existence of circumstances that raise suspicion of impartiality.

Gifts

98. Judges are banned from receiving gifts or any other free service which may compromise the development of the judicial function. This prohibition extends to his/her family, court employees or anyone else who is subordinated to his/her authority.

Misuse of confidential information and third party contacts

99. While court proceedings are, as a general rule, public, confidentiality obligations apply concerning the handling of information in a case. Breach of professional confidentiality is punishable by Article 369 (disclosure of confidential data) and Article 416 (abuse of office) of the Criminal Code; sanctions consist of imprisonment of up to fifteen and twelve years, respectively. Further professional requirements concerning the disclosure of information acquired in office are included in the Code of Judicial Ethics, the Law on Courts and the Court Rules of Procedure. Accordingly, the disclosure of confidential information may also entail disciplinary consequences.

Declaration of assets, income, liabilities and interests

100. The Law on the Prevention of Conflicts of Interest (LPCI) establishes the obligation for judges to submit financial declarations to the Commission for the Prevention of Conflicts of Interest (CPCI) in the same terms as other public officials (for details see paragraphs 50 to 52); infringements of the obligations emanating from the Law on the Prevention of Conflicts of Interest (including the requirement to file financial declarations) give rise to the sanctioning system described before in this report (paragraphs 53 to 58).

Supervision and enforcement

101. Judges enjoy functional immunity (Article 122, Constitution), which implies that they cannot be held liable for the opinion and voting expressed upon passing judicial decisions, except if the judge commits a violation of the law which constitutes a crime. This means that judges are not protected by immunity if they commit a criminal offence. The Judicial Council is to be asked for the approval of the detention of a judge, only in case of criminal offences made in the performance of judicial duties; this has happened in two occasions (2009), one of them regarding a corruption-related offence. In both cases the Judicial Council authorised detention.

102. The procedure for determining disciplining responsibility has been significantly upgraded following the latest amendment of the Law on the Judicial Council and Judges. A judge is held disciplinarily responsible if s/he seriously misconducts or impedes judicial office. Disciplinary proceedings are initiated by a Disciplinary Prosecutor, who is elected by the Judicial Council for a two-year period from among judges with at least 15 years' experience, upon the proposal of the General Session of the Supreme Court. A disciplinary panel is responsible for adjudicating in minor and severe disciplinary infringements (e.g. absence, failure to attend mandatory training courses, repeated delays in judgements, acceptance of gifts, conflicts of interest, etc.). It is composed of two judges and one non-judicial member of the Judicial Council who acts as the Chairman of the panel; the members of the disciplinary panel are appointed by the Judicial Council, on a proposal from its President. The Judicial Council decides when the most serious disciplinary matters are concerned, e.g. upon criminal conviction, if receiving repeated underperformance assessments, if twice disciplined for committing a severe disciplinary offence, if discharging judicial office unprofessionally or unconscientiously (Article 121, Constitution). Decisions on disciplinary measures can be reviewed before the Supreme Court.

103. Disciplinary measures consist of reprimand, salary reduction for up to 20%-40% in a six month period, limitations to professional promotion, suspension and ultimately dismissal. Dismissal is the most severe punishment available and the process leading to this sanction is vested with a number of procedural guarantees (e.g. right of the concerned judge to be present and heard during the disciplinary proceeding, a proposal for dismissal must be justified and contain a legal remedy, etc.). So far, there has been no disciplinary measure imposed on a judge for an infringement of ethical or conflict of interest-related obligations.

104. The GET welcomes the steps taken to introduce more objectivity into disciplinary procedures (e.g. by detailing grounds for disciplinary liability and dismissal, determining criteria for graduated sanctions, etc.). The GET recalls that one of the corollaries of the independence of the judiciary is irremovability; the existence of exceptions to this principle, particularly those deriving from disciplinary sanctions, calls for careful consideration of, not only the basis upon which, but also the body and method by which, judges may be disciplined. In this connection, the GET considers that certain structural defects remain regarding the impartiality and independence of such a system, given that the initiation, investigation and adjudication of disciplinary cases all fall, in one way or another, under the competence of the Judicial Council. Moreover, the reworked appeal regime, before the Supreme Court, gives no room for a genuine external review. The GET refers again to the misgivings it has regarding risks deriving from a concentration of powers in the hands of the Supreme Court and its President.

105. The GET acknowledges the channels in place for citizens to submit complaints regarding the work of the court to the president of the court where the judge serves, to the Judicial Council and to the Supreme Court. As recognised previously in this report, the judicial system has significantly improved transparency of its work in recent years; however, the civil society representatives interviewed during the on-site visit underscored that the information available to citizens regarding the internal accountability regime is rather limited and this has given rise to perceptions of judicial corporatism and has further breed public mistrust in the quality and effectiveness of the control performed over misconduct and conflicts of interest in the judiciary. There is a legal requirement to publish disciplinary decisions on the website of the Judicial Council, but there appears to be no public record on complaints received, disciplinary action taken and sanctions applied. Moreover, the dissemination of case law on matters of discipline can be a valuable tool for judicial practice. In order to further improve the existing disciplinary process, **GRECO recommends (i) further developing the disciplinary framework for judges with a view to strengthening its objectivity, proportionality and effectiveness; and (ii) publishing information on complaints**

received, disciplinary action taken and sanctions applied against judges, including possible dissemination of the relevant case-law, while respecting the anonymity of the persons concerned.

Advice, training and awareness

106. A Law on Education in the Judiciary is currently being drafted and is expected to be adopted in the second quarter of 2015. The Judicial Training Centre provides initial and continuous training to both judges and prosecutors. This is both a right and a duty for judges and prosecutors. Initial training is now a mandatory requirement for election of both judges and prosecutors. The duty of judges to attend in-service training was not followed by law with a sanction in case of failure to do so, but it has a say in promotion opportunities.

107. The GET was told that the Commission for the Code of Ethics and the Judicial Training Centre have organised training sessions on ethical matters and that, under the Action Plan for Chapter 23, they were intending to organise more of these in the future. The Judicial Training Centre, however, recognised that more had to be done to elaborate joint programmes on integrity matters and the prevention of conflicts of interest with the Commission for the Prevention of Conflicts of Interest (and in the future with the Agency for the Prevention of Corruption), which is also responsible for providing guidance and advice to judges on these matters. This view is shared by the GET as stressed in paragraph 58, giving rise to recommendation iii.

108. The administrative and financial capacity of the Judicial Training Centre has been somewhat limited; its budget being part of that of the Supreme Court, without a separate line for training. The Centre has organised most of its training sessions via international assistance funds (e.g. UNDP, OSCE, bilateral donors). Owing to the lack of resources, the current training system has had to date a piecemeal approach rather than being needs-driven in a more comprehensive manner. The GET was told that this unsatisfactory state of affairs is expected to ameliorate in the near future since the Judicial Training Centre has, since 1 January 2015, have a clear budget line for its activities. The GET welcomes this development since training is an essential element for the objective, impartial and competent performance of judicial functions, and to protect judges from inappropriate influences[26].

[26] See also Opinion No. 4 (2003) of the Consultative Council of European Judges (CCJE) on Appropriate Initial and In-Service Training for Judges at National and European levels: http://www.coe.int/t/dgi/hr-natimplement/Source/CCJE(2003)OP4_en.pdf.

V. CORRUPTION PREVENTION IN RESPECT OF PROSECUTORS

Overview of the prosecution service

109. The independence of the Public Prosecution Office (PPO) is enshrined in the Constitution (Article 134) and further guaranteed by the Law on Public Prosecution Office (Article 3) which establish that the PPO is an independent public body which prosecutes the perpetrators of criminal offences and, in performing its duties, it proceeds according to the Constitution, laws and international treaties. The Law on PPO (as amended in February 2015) prescribes that the office of prosecutor must be exercised in an impartial and objective manner. The organisation of the public prosecution service in Montenegro mirrors that of the courts (Supreme Prosecution Office, Special Prosecutor's Office, High Prosecutor's Offices, and Basic Prosecutor's Offices). There are 129 prosecutors, of whom 61 are men and 68 are women[27].

110. The Supreme State Prosecutor is elected and released from duty by the Parliament of Montenegro, at the proposal of the Prosecution Council, upon public call. The term of office lasts five years. The only ground for dismissal of the Supreme State Prosecutor is if sentenced to imprisonment. To be elected Supreme State Prosecutor the candidate should have at least 15 years of work experience as a prosecutor, or 20 years in other duties in the field of law. With a view to further strengthening the prosecution's service independence, some constitutional changes, in July 2013, brought forward a new appointment procedure for the Supreme State Prosecutor.

111. The Prosecutorial Council is entrusted with key responsibilities regarding the career of the prosecutorial corps; these are enumerated in the Constitution (e.g. appointments, transfers, suspension and dismissal, proposal of annual budget to Government, submission of annual report concerning the work of the prosecution service to the Parliament, etc.). The Law on the State Prosecution Service has been amended to provide for greater autonomy and impartiality of the prosecution service. The Prosecutorial Council is composed of a president and ten members, including, the Supreme State Prosecutor (who is the president of the Prosecutorial Council, except in disciplinary proceedings), five prosecutors (four from the Supreme State Prosecution Office, Special State Prosecution Office and high state prosecution offices, and one from basic prosecution offices, to be elected and released from duty by the Prosecutorial Council), four eminent lawyers who are elected and released from duty by Parliament upon public call, and a representative of the Minister of Justice. Gender balanced representation is to be taken into account when proposing and then electing Prosecutorial Council members.

112. The GET has the same concerns as those already noted in paragraph 74 for the Judicial Council, notably regarding its very wide, and at times conflicting, competencies. The GET notes that, in matters such as conducting examinations to determine appointments, issuing opinions on incompatibility, dealing with disciplinary matters, etc., the Prosecutorial Council would operate through small commissions consisting normally of three members. This confers important powers to a small group of individuals and thereby increases risks of potential undue pressure or interference vis-à-vis these powerful commissions. It is to be noted that, in principle, it is possible that the same member acts for different commissions in conflicting roles such as advising on ethics and deciding on discipline. It is highly questionable whether the powers in relation to appointments, promotion and discipline should be exercised by the same small group of people. **GRECO recommends setting in place operational arrangements to avoid an over-concentration of powers in the same hands concerning the different functions to be performed by members of the Prosecutorial Council.**

[27] Fourth Evaluation Report on European Judicial Systems, European Commission for the Efficiency of Justice (CEPEJ), 20 September 2012.

113. Plans are underway to establish a Special Prosecution Office for the Fight against Corruption and Organised Crime, within the office of and under the authority of the Supreme State Prosecutor, and legislation has been passed to set in place the Office. It will handle high-level corruption cases, including the criminal offences of abuse of office, fraud at work, illicit influence, inciting illicit influence, active and passive bribery committed by public officials, as well as the criminal offences of abuse of position in business undertakings and abuse of authority in economy resulting in obtaining of the pecuniary gain exceeding the amount of € 4 000. The GET was told that this Office has been designed following the model of the USKOK in Croatia. The Chief Special Prosecutor is to submit semi-annual reports on his/her work to the Supreme State Prosecutor and once a year to the Prosecutorial Council. Special or more periodic reports are to be submitted by the Chief Special Prosecutor, upon request of the Supreme State Prosecutor or the Prosecutorial Council. The GET considers this law as a workable framework which, nevertheless, should be kept under review for the purpose of remedying any shortcoming which may arise as the Office starts to operate, paying due attention to the need to minimise the potential risks of abuse and/or political pressure to which this Office is particularly exposed given the sensitivity of the cases it is responsible for, as well as the need for further improvements in the law. The GET considers it crucial that appropriate ways are sought to monitor the ability of the newly created Office to act in an independent and impartial manner without succumbing to any political or other outside pressure which may arise.

Recruitment, career and conditions of service

114. In Montenegro, the careers of prosecutors have similar or very close features as those of judges. Public prosecutors are elected and dismissed by the Prosecutorial Council. The appointment procedure is preceded by a vacancy advertisement, followed by a written examination, and interview before the Prosecutorial Council and a one-year training period (theoretical and practical). The new Laws on the Public Prosecution Office and on the Special Public Prosecutor's Office have now opened up appointments to positions in the prosecution service to outside lawyers, including judges, and the GET considers that this may help to contribute to a greater openness in the prosecution service in the future.

115. Prosecutors enjoy life tenure, with the exception of those elected for the first time in the Basic PPO who are elected for a trial period of four years prior to their permanent appointment. The authorities were of the view that the initial four year appointment is useful for assessing the suitability of the person for permanent appointment. The GET has some misgivings as to this trial period. The GET notes that although the selection and appointment process for prosecutors are the same as those required for judges, the latter are not subject to any probationary period. The GET is aware that, at European or international level, there is no uniform rule as to the term of office of a prosecutor other than the Prosecutor General. Having said that, the GET sees certain risks in this relatively long probationary period: insecurity about employment might encourage decisions that are more influenced by employment continuity than the circumstances of the case. The GET draws the attention of the authorities to the steps taken in other countries in the region to opt for a stricter selection process of prosecutors (as Montenegro itself is doing following the latest reform of the Law on the State Prosecution Service, see details below) and the abolishment of trial periods for newly recruited prosecutors as a threat to their autonomy and independence.

116. A system of triennial evaluation, identical to that of judges has been recently introduced. During the trial period, prosecutors are subject to an interim appraisal (two years after the start of the contract) and a final evaluation at the end of the fourth year of the contract, following which, if satisfactorily assessed, the contract becomes indefinite. The prosecutors in the Special Prosecution Office also fall under the evaluation requirement, but the prosecutors working at the Supreme State Prosecution Office are

exempted from the system. The authorities indicated that this exemption aims at enhancing their independence.

117. Transfers generally take place at the request of the prosecutor concerned. Reassignments may take place for organisational purposes; a prosecutor who is being seconded against his/her will is allowed to file a non suspensive protest to the Prosecutorial Council. The withdrawal of cases is possible for reasons of undue delay by the responsible prosecutor; it is for the head of office to decide on withdrawal. These decisions may be appealed via internal hierarchical channels.

118. Prosecutors may be dismissed if they are sentenced for a criminal offence which renders them unfit for the exercise of office, if they exercise the office unprofessionally or in an unconscionable manner or have permanently lost the ability to exercise the office. The law further includes a number of matters on what is meant by acting unprofessionally and negligently, in particular to deal specifically with the situation where a corrupt prosecutor may decide to interfere with a prosecution simply by failing to prosecute it in a timely or efficient manner. The dismissed prosecutor can challenge the decision before the Administrative Court.

119. The gross annual salary of a prosecutor at the beginning of career equals that of a judge and therefore amounts to € 20 494; it amounts to € 30 519 for the Supreme State Prosecutor. Prosecutors benefit from the same additional facilities as judges (e.g. life insurance, rent allocation, etc.). Control over the legality of the use of such facilities is ensured by the Ministry of Finance. Concerns have been raised as to the underfunding of the prosecution service: a total of € 20.3 million is allocated to the judiciary and € 5.8 million to prosecution.

Case management and procedure

120. Case files are randomly allocated (sorted in chronological order of receipt and then distributed in alphabetical order by the surnames of prosecutors in the respective prosecution offices), but also paying attention to special competence or specialisation as well as the workload of each prosecutor.

121. The public prosecution service is hierarchically organised. That said, mechanisms are in place in the Law on PPO to guarantee the prosecutor's professional independence within the hierarchy of the prosecution service by establishing that general and individual instructions addressed to prosecutors are issued in writing and, if deemed unlawful or ill-founded, they can be appealed to the higher hierarchical level.

122. The Ministry of Justice exercises supervision over the activities of the prosecutorial management, including that of the Special State Prosecutor Office. In addition, the Ministry of Justice, through judicial inspectors, exercises inspection supervision in state prosecution offices. The authorities stressed that, according to law (Article 158, Law on State Prosecution Service), this supervision cannot involve any actions likely to have an impact of the prosecutor's decision in individual cases. The new law as finally enacted has been amended to make it clear that supervision relates only to organisational and administrative matters and not to prosecutorial decision-making.

123. There are safeguards in place to ensure that prosecutors deal with cases without undue delay, including statutory deadlines (one month for summary procedures and three months in all other cases, exceptionally extensible to six months in complex cases). Delays must be explained and communicated to the head of office in writing.

Ethical principles, rules of conduct and conflicts of interest

124. The Code of Ethics for Prosecutors was drafted and adopted by the profession itself in 2006; it was updated in May 2014. The Code recognises its aspirational and dynamic value, and foresees its review on a biannual basis, as necessary. To supervise adherence to and interpretation of the Code of Ethics for Prosecutors a Commission for the Code of Ethics of prosecutors was established in October 2011. It is composed of three members: two prosecutors (one elected by the extended session of the Supreme State Prosecution Office, and the other being the president of the Association of Prosecutors) and a non-prosecutor of the Prosecutorial Council, the latter chairing the Commission. The Commission can act upon individual petition/complaint or on its own initiative. The GET notes that since its establishment three years ago, the Commission has not dealt with a single case, public complaint or request for advice. It was obvious from the discussions held on-site that the activity of the Commission has been rather limited since it was first established and no advice has been given on concrete ethical dilemmas or the practical implementation of the principles enshrined in the Code of Ethics. Prosecutors were of the view that the law and the Code provisions were very clear and they stressed that, given their high workload and the many novelties having been introduced in criminal legislation and proceedings in recent years, they hardly had time to reflect on ethical issues. The GET was both puzzled and concerned as it heard these remarks which rather show a certain lack of awareness, or at the very least marked apathy, about the issue of conflicts of interest and its relevance for everyday choices and decisions of prosecutors, both within and outside their functions. The GET has already explained throughout this report its reasons to believe that the issues of professional deontology and the prevention of conflicts of interest, in the particular context of Montenegro, merit further discussion and the development of more targeted preventive actions. More needs to be done to develop specialised and dedicated counselling within the prosecution service, in order to provide prosecutors at all levels, whether new or experienced, with confidential advice on such questions, to raise their awareness and to thus prevent risks of conflicts of interest. Moreover, ethical values change over time, new ethical problems arise and ethical questions need continued attention. **GRECO recommends significantly strengthening and further developing mechanisms to provide guidance and counselling on ethics and the prevention of conflicts of interest for prosecutors.**

125. Integrity plans have started to develop for prosecutors, the first one being adopted for the Supreme State Prosecutor Office in March 2014. Integrity officers are to be nominated to oversee implementation of these plans. As recommended before, it would be pivotal to ensure that the Agency for the Prevention of Corruption, in charge of monitoring implementation of these plans, works in close cooperation with the institutions concerned in order for these plans to be internalised by the relevant professionals.

Prohibition or restriction of certain activities

Incompatibilities and accessory activities, post-employment restrictions

126. As a general rule, prosecutors cannot perform any other service or job which may tarnish the reputation of the prosecution service. In particular, prosecutors are banned from membership of political parties as well as involvement in political activities. A prosecutor cannot use his/her official position to pursue his/her own interest. Prosecutors are not banned from engaging in financial activities (they can acquire shares), but they are required to report those in their financial disclosure forms. Prosecutors must inform their superior in line on any additional activity in which they may engage. As per post-employment restrictions, the two-year cool-off period described under paragraph 46 also applies to prosecutors.

Recusal and routine withdrawal

127. Prosecutors must recuse themselves for the same reasons as judges. The reasons for disqualification are enumerated in procedural law (Articles 38 to 43, Criminal Procedure Act), including *inter alia* conflicts of interest due to marital, extended family and other type of relationships with the parties, financial interests, earlier involvement of the adjudicating judge in that case, and existence of circumstances that raise suspicion of impartiality. It is possible for an individual (an interested party in the case at stake) to call for a prosecutor's disqualification. It is the responsibility of the superior prosecutor to reassign the case to another prosecutor.

Gifts

128. Prosecutors are banned from receiving gifts and free services which may compromise or raise doubts about their impartiality and objectivity. The provisions of the Law on the Prevention of Conflicts of Interest apply in this respect (see paragraphs 39 and 40).

Misuse of confidential information and third party contacts

129. While court proceedings are, as a general rule, public, confidentiality obligations apply concerning the handling of information in the case, as well as that of classified data (Articles 125-127 Law on PPO). Breach of professional confidentiality is punishable under Article 369 (disclosure of confidential data) and Article 416 (abuse of office) of the Criminal Code; sanctions consist of imprisonment of up to fifteen and twelve years, respectively. Further professional requirements concerning the disclosure of information with respect to their parties who approach a prosecutor about a case under his/her purview are included in the Rulebook on Internal Management of the PPO (Articles 91 to 96), as well as in the Code of Ethics. The representatives from civil society met during the on-site visit, including members of the media, indicated that the prosecution service was frequently resorting to confidentiality as a way to hinder access to otherwise public information (see also paragraph 136 in this respect).

<u>Declaration of assets, income, liabilities and interests</u>

130. The Law on the Prevention of Conflicts of Interest (LPCI) establishes the obligation for prosecutors to submit financial declarations to the Commission for the Prevention of Conflicts of Interest (CPCI) on the same terms as other public officials (for details see paragraphs 50 to 52).

<u>Supervision and enforcement</u>

131. Prosecutors enjoy identical <u>functional immunity</u> as that of judges (paragraph 101). Likewise, disciplinary liability (and the corresponding sanctioning regime) of prosecutors is regulated in similar terms as that of judges. The investigation is conducted by a Disciplinary Plaintiff and a Deputy, who are elected for a two-year term by the Prosecutorial Council, upon the proposal of the session of the Supreme State Prosecutor's Office, from among prosecutors with at least ten years of experience. Upon the motion to indict issued by the Disciplinary Plaintiff, the procedure for establishing and deciding disciplinary liability is conducted by either a Disciplinary Panel (for minor and severe disciplinary offences) or the Prosecutorial Council (for most severe offences). The members of the Disciplinary Panel comprise three members of the Prosecutorial Council, two prosecutors and one non-prosecutor, the latter being the president of the panel.

132. Infringements of the obligations emanating from the Law on the Prevention of Conflicts of Interest (e.g. submission of financial declarations) give rise to the sanctioning

system described before in this report (paragraphs 53 to 58) since prosecutors are considered public officials in the meaning of the law. So far, there has been no disciplinary measure imposed on a prosecutor for an infringement of ethical or conflict of interest-related obligation.

133. The GET acknowledges the improvements made in legislation, notably, with a view to ensuring that different authorities are in charge of the various stages of the disciplinary process. The GET also welcomes the appeal channels provided against the final decisions on discipline made by the Disciplinary Panel/Prosecutorial Council, i.e. before a judicial and impartial panel composed of three Supreme Court Judges. However, as was the case with judges, the GET is of the view that there is still room for improvement of the current rules. More particularly, the GET considers that members of the Disciplinary Panel being appointed on the nomination of the Supreme Public Prosecutor is in itself problematic and raises questions as to the independence and impartiality of the disciplinary procedure. Further clarification is needed as to the authority and criteria which will ultimately determine whether a hearing is to be held by the Disciplinary Panel or the Prosecutorial Council.

134. Finally, it is possible for citizens to submit petitions regarding the work of a prosecutor with whom they enter into a professional relationship. Complaints are to be filed with the chief of office (Articles 92 and 93, Rulebook on Internal Management PPO). The website page of the Supreme State Prosecutor Office has been publishing certain decisions on disciplinary liability (including details on temporary suspension and removal cases), but there is no public record on the number of public complaints filed, for which type of misconduct and which type of action has been taken thereafter. The GET strongly believes that transparency is an essential tool for fostering citizens' trust in the functioning of the prosecution service and is a guarantee against any public perception of self-interest or self-protection within the profession. The foregoing considerations call for further refinement of disciplinary procedures. Consequently, **GRECO recommends (i) further developing the disciplinary framework for prosecutors with a view to strengthening its objectivity, proportionality and effectiveness; and (ii) publishing information on complaints received, disciplinary action taken and sanctions applied against prosecutors, including possible dissemination of the relevant case-law, while respecting the anonymity of the persons concerned.**

<u>Advice, training and awareness</u>

135. The Judicial Training Centre is responsible for providing training courses to prosecutors. The GET refers back to the remarks made in paragraph 58 as to the resources and functioning of the Centre and the limited coordination of its activities with the Commission for the Prevention of Conflicts of Interest insofar integrity and deontological matters are concerned. As it is the case with other public institutions, the appointment of integrity managers who oversee implementation of the different prosecution offices' integrity plans is underway, but much work remains ahead. The GET encourages the prosecution authorities to step up their endeavours in this respect. More generally, as already noted, the GET is of the view that there is a clear need for strengthening the current advisory channels for prosecutors in order to develop a general understanding and a unified practice with regard to preventing and resolving conflicts of interest.

136. Finally, the GET repeatedly heard criticism, throughout the onsite visit, concerning the opacity of the prosecution service. Most interlocutors agreed that, from the different categories covered in the present report, the ones who were least transparent in their work were by far the prosecutors. Prosecutors are not trained to communicate with the media and civil society and they are not always certain about what information they can disclose to the public on concrete cases. There is no declared communication strategy and no indication that any guidance is provided to prosecutors on what, when and how to

communicate about their activity. This poor communication and the opacity with which the prosecution service operates give the latter the image of a closed and non-transparent body. In part, the poor communication reflects the lack of clarity in the law concerning disclosure of information by prosecutors. The GET recognises that confidentiality of information is a crucial element of criminal procedure, which plays an important role in protecting the efficiency of criminal investigation and the rights of the persons under investigation. Yet, it needs to be balanced with the requirements of transparency, which are critical to building citizens' confidence in law enforcement and the justice system. Prosecution services are accountable to the public they serve and as such they should be in a position to inform and explain actions they have taken in the administration of justice. Inability to explain decisions taken by prosecutors and their grounds feeds a perception that these decisions could be the result of corrupt dealings. The GET is aware that relations with the media are challenging for untrained professionals. On a positive note, the GET was told that the recently appointed Supreme State Prosecutor has anticipated measures to improve this deficient situation, including, through the appointment of media officers, the online publication of follow-up to NGO complaints, creation of a dedicated website for the prosecution service (including information on decisions of prosecutors in concrete cases), etc. Additional expected improvements concern the possibility for managers of the prosecution service to make available information regarding the work of the prosecution service and the establishment of a department in the Secretariat of the Prosecutorial Council which will provide information on the State Prosecutor's Office. These are all moves in the right direction that need to be operative in practice and its existence conveyed to the general public. **GRECO recommends significantly increasing transparency of the work of the prosecution service, notably by (i) adopting a public communication strategy based on clear rules on how far the prosecution service can go in providing information to the public, and (ii) developing relevant training thereafter.**

VI. RECOMMENDATIONS AND FOLLOW-UP

137. In view of the findings of the present report, GRECO addresses the following recommendations to Montenegro:

Regarding members of parliament

i. **ensuring there is a mechanism both to promote the Code of Ethics for parliamentarians and raise their awareness as regards the standards expected from them and enforcing such standards where necessary** (paragraph 35);

ii. **that a requirement of ad-hoc disclosure be introduced when a conflict emerges between the private interests of individual members of parliament and a matter under consideration in parliamentary proceedings** (paragraph 38);

iii. **that (i) appropriate measures are put in place to streamline the financial disclosure system with a view to ensuring its proportionality and effectiveness; (ii) the authority in charge of its supervision is adequately equipped to perform its tasks with respect to MPs, judges and prosecutors; (iii) tailor-made communication and advisory channels with the aforementioned professionals are further developed** (paragraph 58);

iv. **considering the introduction of guidelines containing clear and objective criteria to be applied when deciding on requests for lifting inviolability of parliamentarians** (paragraph 60);

Regarding judges

v. **(i) taking additional measures to strengthen the Judicial Council's independence – both real and perceived – against undue political influence, including by abolishing the ex-officio participation of the Minister of Justice in the Council, by providing for no less than half of the Council's membership to be composed of judges who are elected by their peers and by ensuring that the presiding function is given to one of those judicial members; (ii) establishing objective and measurable selection criteria for non-judicial members which would endorse their professional qualities and impartiality; and (iii) setting in place operational arrangements to avoid an over-concentration of powers in the same hands concerning the different functions to be performed by members of the Judicial Council** (paragraph 75);

vi. **significantly strengthening and further developing mechanisms to provide guidance and counselling on ethics and the prevention of conflicts of interest for judges** (paragraph 94);

vii. **(i) further developing the disciplinary framework for judges with a view to strengthening its objectivity, proportionality and effectiveness; and (ii) publishing information on complaints received, disciplinary action taken and sanctions applied against judges, including possible dissemination of the relevant case-law, while respecting the anonymity of the persons concerned** (paragraph 105);

Regarding prosecutors

viii. **setting in place operational arrangements to avoid an over-concentration of powers in the same hands concerning the different functions to be performed by members of the Prosecutorial Council** (paragraph 112);

ix. **significantly strengthening and further developing mechanisms to provide guidance and counselling on ethics and the prevention of conflicts of interest for prosecutors** (paragraph 124);

x. **(i) further developing the disciplinary framework for prosecutors with a view to strengthening its objectivity, proportionality and effectiveness; and (ii) publishing information on complaints received, disciplinary action taken and sanctions applied against prosecutors, including possible dissemination of the relevant case-law, while respecting the anonymity of the persons concerned** (paragraph 134);

xi. **significantly increasing transparency of the work of the prosecution service, notably by (i) adopting a public communication strategy based on clear rules on how far the prosecution service can go in providing information to the public, and (ii) developing relevant training thereafter** (paragraph 136).

138. Pursuant to Rule 30.2 of the Rules of Procedure, GRECO invites the authorities of Montenegro to submit a report on the measures taken to implement the above-mentioned recommendations by 31 December 2016. These measures will be assessed by GRECO through its specific compliance procedure.

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

About GRECO

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

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

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