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

EVALUATION REPORT

“THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA”

Adopted by GRECO at its 62nd Plenary Meeting
(Strasbourg, 2-6 December 2013)

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EXECUTIVE SUMMARY

1. "The former Yugoslav Republic of Macedonia" has a well-developed legal framework covering most of the areas under review in GRECO's Fourth Evaluation Round. The two main relevant pieces of legislation, namely the Law on the Prevention of Corruption (LPC) and the Law on Prevention of Conflicts of Interest (LPCI) are recent and give a fairly sound basis for integrity rules and standards. They apply to all public officials, including Members of Parliament (MPs), judges and prosecutors. They contain detailed rules which are more or less specific as regards conflicts of interest, incompatibilities, accessory activities, gifts and asset declarations. They confer a central role to the State Commission for the Prevention of Corruption (SCPC), an independent body, in supervising the implementation of these rules, developing awareness on integrity issues and preventing corruption.

2. Despite this good legal framework, the effective implementation and enforcement of legislation remains an issue of concern and needs to be addressed as a matter of priority. Much remains to be done to educate the members of the categories under review about integrity and conflicts of interest, to ensure a better implementation of the legal framework and to improve the public image of MPs, judges and prosecutors.

3. In so far as rules applicable specifically to Members of Parliament are concerned, those on transparency of the legislative process are good, but there is room for improvement as regards public participation processes. There are also clear and quite strict rules on incompatibilities and accessory activities, which appear to be well-known by those to whom they are applicable. MPs do comply with their obligations to submit statements on conflicts of interest and asset declarations, but there remain doubts on whether further changes in their situation are accurately reported. Current arrangements for monitoring the content of these statements need to be improved. Likewise, there are rules in place regarding gifts but compliance with these rules is not supervised. Moreover, there is not as yet a genuinely widespread culture of integrity, which contributes to the MP's negative public image. An initiative to introduce a set of rules of conduct was launched in 2012, but work on this issue stopped as a result of a grave incident between MPs from the majority and opposition, which occurred on 24 December 2012. Work on this issue needs to resume and a code of conduct needs to be adopted and accompanied by a mechanism of supervision and sanction for misconduct.

4. Although judges also suffer from a lack of trust by the public, it seems to be mainly the result of judicial backlogs and lack of a public relations policy as opposed to a systemic corruption problem. These problems have been addressed and judicial backlogs are decreasing in most courts as a result, although GRECO has doubts about the excessive weight given to productivity criteria in the appraisal of judges. This could be detrimental to the quality of judicial decisions and in turn, feed negative perceptions towards the judiciary. Lots of efforts have been devoted to ensuring that the selection, appraisal and disciplinary liability of judges are decided according to objective criteria, but the legislative provisions are not fully implemented and there are still concerns about undue interference and about the practice of the Judicial Council, decisions of which need to be more transparent. Concerns raised as regards MPs' compliance with the rules on gifts, asset declarations and statements on conflicts of interest apply accordingly to judges.

5. Prosecutors are subject to similar rules as judges. Their level of public confidence is also comparable, the main criticism addressed to them being a lack of transparency and poor communication with the public. A lack of resources also hampers, in particular, the action of the Council of public prosecutors and the necessary upgrade of IT infrastructure in prosecution offices. A similar lack of oversight on the implementation of rules on gifts, asset declarations and statement on conflicts of interest was observed as with the other categories under review.

6. The State Commission for the Prevention of Corruption plays an important role in the anti-corruption policy in “the former Yugoslav Republic of Macedonia”. Its ability to act concerning the prevention of corruption in respect of MPs, judges and prosecutors, however, is hampered in practice by budgetary and staff constraints and by a certain lack of proactivity, which need to be addressed and are instrumental to the implementation of several recommendations contained in this report.

I. INTRODUCTION AND METHODOLOGY

7. "The former Yugoslav Republic of Macedonia" joined GRECO in 2000. Since its accession, "the former Yugoslav Republic of Macedonia" has been subject to evaluation in the framework of GRECO's First (in December 2002), Second (in October 2005) and Third (in March 2010) Evaluation Rounds. The relevant Evaluation Reports, as well as the subsequent Compliance Reports, are available on GRECO's homepage (www.coe.int/greco).

8. 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 public administration, and the Third Evaluation Round, which focused on corruption prevention in the context of political financing.

9. 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.

10. 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.

11. In preparation of the present report, GRECO used the responses to the Evaluation Questionnaire (Greco Eval IV (2013) 4E) by "the former Yugoslav Republic of Macedonia", 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 "the former Yugoslav Republic of Macedonia" from 13 to 17 May 2013. The GET was composed of Mr Nenad KONSTANTINOVIC, Member of Parliament, Chair of the Administrative Committee (Serbia), Ms Anita LEWANDOWSKA, Judge – Deputy Director, Department of Courts, Organisation and Judicial Analysis, Ministry of Justice (Poland), Ms Helena PAPA, Inspector – Coordinator, Department of Internal Administrative Control and Anti-Corruption, Council of Ministers (Albania) and Mr Björn THORVALDSSON, Public Prosecutor, Special Prosecutor's Office (Iceland). The GET was supported by Ms Sophie MEUDAL-LEENDERS and Mr Suranga SOYSA from GRECO's Secretariat.

12. The GET met with members of Parliament representing the majority coalition and the opposition, as well as senior civil servants in Parliament. The GET also interviewed representatives of the Ministry of Justice, the State Commission for the Prevention of Corruption, the Public Revenue Office, the Judicial Council, the Council of Public Prosecutors and the Academy for Judges and Public Prosecutors. Moreover, the GET held interviews with Presidents, justices and/or judges of the Supreme Court, the High Administrative Court, the Court of Appeal of Skopje, the Administrative Court and the Basic Courts of Skopje 1 and Skopje 2, as well the Public Prosecutor of the Republic of Macedonia and representatives of his office and of the Basic Public Prosecutor's Office for

Organised Crime and Corruption. Finally, the GET spoke with the Ombudsman, an academician, representatives of the Macedonian Association of Journalists and the Alliance of Journalists, as well as representatives of the Association of Judges, the Association of Public Prosecutors, the Chamber of Lawyers, Transparency International, the Macedonian Centre for International Cooperation, the Delegation of the European Union to "the former Yugoslav Republic of Macedonia", the OSCE Mission to Skopje and USAID.

13. The main objective of the present report is to evaluate the effectiveness of measures adopted by the authorities of "the former Yugoslav Republic of Macedonia" 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 "the former Yugoslav Republic of Macedonia", which are to determine the relevant institutions/bodies responsible for taking the requisite action. "The former Yugoslav Republic of Macedonia" has no more than 18 months following the adoption of this report, to report back on the action taken in response.

II. CONTEXT

14. In recent years, the fight against corruption has been an important priority on the political agenda in "the former Yugoslav Republic of Macedonia". Many key steps have been undertaken in the pursuance of tackling the scourge, in part due to the commitments emanating from the European Union accession process. As a result, the past few years have seen a slight improvement in the public perception of corruption in "the former Yugoslav Republic of Macedonia". Notwithstanding the slight improvement, corruption is still perceived, after unemployment and poverty, to be the most important problem with which the country is faced. This general perception also affects judges, prosecutors and members of parliament (hereafter MPs).

15. In terms of the ambit of the Fourth Evaluation Round of GRECO, parliaments and political parties top the list of least trusted institutions in most of the countries surveyed for the European Commission's Euro barometer¹. This is also the case in "the former Yugoslav Republic of Macedonia", where according to the European Commission's survey on "Trust in Institutions", 78% of the respondents did not trust the political parties in 2012, as compared to 80% in 2007. Furthermore, 69% did not trust the national parliament in 2012 (EU average rate of belief that corruption is widespread among national politicians: 57%²).

16. By contrast to many European countries in which the judiciary enjoys higher levels of trust, the justice system in "the former Yugoslav Republic of Macedonia" shares similar levels of distrust as the parliament: 68% of the respondents questioned in 2010, did not trust the justice system (EU average rate of belief that corruption is widespread in the judiciary: 32%). It is worth noting that, although perception levels on overall corruption have improved slightly in recent years, this improvement did not extend to the level of trust in the national parliament and the justice system, which were 68% and 69% in 2007, respectively.

17. In the three preceding Evaluation Rounds, GRECO has issued in total 44 recommendations to "the former Yugoslav Republic of Macedonia", to bolster its capacity to fight corruption³. In this regard, and of pertinence to this round, GRECO has encouraged the authorities to pursue the on-going reform of the judiciary and prosecution with a view to effectively ensuring the independence of judges and prosecutors. This prompted legal and institutional measures aimed at strengthening the independence of the judges and prosecutors, among which the establishment of the Judicial Council and the Council of Public Prosecutors⁴.

18. During the on-site visit, several mentions were made of a grave incident which occurred in Parliament on 24 December 2012 and of the ensuing political crisis. Following the adoption of the 2013 budget under controversial circumstances, opposition MPs and journalists were forcibly removed from the Parliamentary chamber. This triggered a boycott of parliamentary sessions by the largest opposition party, which ended on 1 March 2013 with the conclusion of a Memorandum of Understanding between the political parties involved. This document establishes a cross-party consensus and commitment towards the country's EU integration and the establishment of a committee of enquiry on the incident. Parliamentary work resumed, but the political crisis delayed progress on several issues and affected political dialogue, as will be seen later in this report.

¹http://ec.europa.eu/public_opinion/cf/step1.cfm

²http://ec.europa.eu/public_opinion/archives/ebs/ebs_374_en.pdf

³In total, 35 recommendations have been implemented satisfactorily or dealt with in a satisfactory manner, 6 have been partly implemented, and 3 have not been implemented.

⁴See GRECO's First Evaluation Report, Addendum to the Compliance Report of 'the former Yugoslav Republic of Macedonia', document GRECO RC-I (2004) 15E, paragraph 20.

III. CORRUPTION PREVENTION IN RESPECT OF MEMBERS OF PARLIAMENT

Overview of the parliamentary system

19. "The former Yugoslav Republic of Macedonia" is a parliamentary republic. It has a unicameral Parliament, the Assembly (*Sobranie*), composed of 120 to 140 members elected for a four-year term by universal and direct vote (article 62, Constitution), following a model of proportional representation, stipulated in the Electoral Code. There are currently 123 MPs of whom 120 are elected according to a proportional electoral system, in six constituencies covering the whole territory of the country. Twenty MPs are elected in each constituency. The three remaining MPs represent citizens living abroad and are elected by majority representation, one in each of the three constituencies of Europe-Africa, North-South America and Australia-Asia. The last parliamentary elections took place in June 2011.

20. An MP loses his/her mandate if s/he resigns; if s/he is convicted of a criminal offence for which a term of imprisonment of at least five years is prescribed; if his/her mandate is revoked by a two-thirds majority vote of the Parliament, when sentenced for a criminal or other punishable offence making him/her unfit to perform the office of an MP, as well as for absence from the Assembly for more than six months for no justifiable reason.

21. The Assembly exercises legislative, voting and monitoring functions. As a legislative authority, it adopts constitutional amendments, laws, resolutions, etc. It also adopts its own internal rules, the State budget, ratifies international treaties, and calls for referendums. As a voting body, the Assembly elects the Government, the President of the National Assembly and up to three Vice-Presidents. It also elects judges to the Constitutional Court and elects, appoints and dismisses other holders of public offices, such as the Governor of the National Bank, the Ombudsman, the Public Prosecutor, certain members of the Judicial Council, etc. The supervisory function of the Assembly includes the launching of parliamentary inquiries, the holding of votes of no confidence in the government or ministers and motions of impeachment in the Constitutional Court against the President of the Republic. The Assembly sets up permanent and temporary working bodies, namely committees, councils and survey commissions⁵.

Transparency of the legislative process

22. Measures are in place to ensure early transparency of the legislative process. As soon as a draft legislative instrument is submitted to the Speaker of the Assembly, it is also posted on the Assembly's website⁶. Working sessions and meetings, both of the Assembly's plenary and of its working bodies are announced online and their agenda is published, with links to all working documents.

⁵ The Assembly has 21 permanent working bodies: Committee on Constitutional Issues, Legislative Committee, Committee on Defence and Security, Committee on the Political System and Inter-Ethnic Relations, Foreign Policy Committee, Committee on European Issues, Committee on Elections and Appointment Issues, Standing Inquiry Committee for Protection of Civil Freedoms and Rights, Committee for Supervising the Work of the Security and Counter-Intelligence Directorate and the Intelligence Agency, Committee for the Supervision of the Application of Communication Interception Techniques by the Ministry of the Interior and the Ministry of Defence, Finances and Budget Committee, Committee on Economy, Committee on Agriculture, Forestry and Water Resources Management, Committee on Education, Science and Sport, Committee on Culture, Committee on Health Care, Committee on Labour and Social Policy, Committee on Local Self-Government, Committee on Equal Opportunities for Women and Men, Committee on Rules of Procedure and Mandatory-Immunity Issues, Inter-Community Relations Committee. Besides these committees, there are also the following councils: National European Integration Council, Parliamentary Channel Council, Budget Council and Committee for Inter-Ethnic Relations.

⁶<http://www.sobranie.mk>

23. The sessions of the Assembly and its working bodies, are as a general rule, open to the public and broadcast on national television, radio and on the internet. A dedicated TV channel shows full live footage of the sessions of the Assembly and recorded footage of committee sessions. Video recordings and stenographic notes of the sessions are posted on the Assembly's website. The only exceptions refer to matters containing intelligence or classified information, dealt with by the relevant working bodies of the Assembly. As an exception to the principle of publicity, the Assembly and its working bodies may decide to work without the presence of the public by a decision taken by a two-thirds majority vote (article 70 of the Constitution and article 2 of the Rules of Procedure of the Assembly). This has not happened since 2002 for the plenary sessions of the Assembly. Votes of the MPs are published on the Assembly's website at the latest on the day after the voting took place. Records of all votes held have been kept there since 2002.

24. Public consultation may also be organised in the context of the drafting of a legislative instrument that is of a wider public interest (articles 145-148 of the Rules of Procedure of the Assembly). In such a case, after a first reading of the draft law, the Assembly tasks one of its working bodies with organising a public debate. The draft law is published in the daily press, along with a call for opinions and comments, within a set deadline. The working body collects the contributions and prepares a report, which is submitted to the Assembly together with the draft law for second reading. The working bodies of the Assembly also convene sessions for holding public debates on certain draft laws within their competence, although this is not expressly foreseen in the Rules of Procedure of the Assembly.

25. All of the GET's interlocutors concurred that the parliamentary process, both as regards plenary sessions and committee meetings, was fairly transparent in practice. The public and the media have easy access to meetings and working documents. Draft laws are obligatorily published on the Parliament's website as soon as they have been received by Parliament.

26. Views on public participation processes, however, were less positive. Consultation of the public on a draft law is optional and is seldom organised in practice. Mention was also made of a frequent use of summary or urgent procedures to adopt legislation, without proper justification being given for the choice of such procedures. The GET notes that the Action Plan (2011-2015) of the State Commission for the Prevention of Corruption (hereafter the SCPC) includes, as an objective, better consultation of relevant professional bodies on draft legislation. It encourages the authorities to pursue their work in this area and to include, in this framework, a review of the use of summary legislative procedures in order to ensure that it is not being abused.

Remuneration and economic benefits

27. Salaries of MPs are based on coefficients multiplying a salary base established by law for elected and appointment officials which currently amounts to 25,726 MKD: the coefficients are 3.5 for an MP, 3.7 for a coordinator of a parliamentary group or the chair of a working body, 4.0 for a vice-president of the Assembly and 4.5 for the President of the Assembly. The average monthly salary per MP in 2012 was 78,171 MKD (approximately 1277 €)⁷.

28. The Assembly is in permanent session – except for the month of August – and record of MPs' presence is kept. If an MP is absent from the sessions three times in a row without informing the President of the Assembly, 5% of his/her salary may be deducted

⁷ The average net salary in "the former Yugoslav Republic of Macedonia" in 2011 was 20,867 MKD (approximately 341 EUR. 1 MKD = 0.016 EUR)

for each day of absence, by decision of the Committee on Elections and Appointment⁸. Furthermore, only MPs listed on the attendance records are entitled to travel and daily allowances.

29. MPs may be entitled to additional benefits, as follows:

- reimbursement of travel expenses for MPs living outside Skopje, on the basis of the MP's attendance record, travel order and road pay toll invoices;
- right to use an official apartment or allowance for renting an apartment, for the MPs who are elected in constituencies outside the country's territory. The apartment lease contract is concluded by the Assembly, not the MP him/herself and the amount of the rent allowance is determined by a decision of the government. This right is not only enjoyed by MPs, but also by all officials who exercise their duties outside their place of residence.

30. Supervision over MPs' use of these benefits is exercised by the Department of Financial Affairs and the Unit for internal revision of Parliament, as well as by the State Audit Office and the Ministry of Finance. No misuse has been established so far.

31. The national budget comprises funds for the functioning of MP's offices, of 16,000 MKD per office (approximately 256 €). These funds are not administered by MPs directly, but by the services of the Assembly. In addition, the Law on the Assembly envisages that local self-government bodies are to provide equal assistance to the MPs in the performance of their functions, in particular they have to provide them with an office and conditions for contact with the citizens from their constituency.

32. MPs who were employed prior to their election are entitled, after their term of office, to return to their previous employment or an equivalent one (article 35, Law on Members of Parliament). After his/her term of office, an MP may also continue to receive his/her salary for up to 12 months, if this enables him/her to gain the right to an old-age pension, or to 18 months if s/he fulfils the right to pension in these additional six months. This right, as well as the right to return to prior employment, is also enjoyed by other holders of public functions.

Ethical principles and rules of conduct

33. MPs are subject to rules of conduct contained in different legislative and sub-legislative acts, such as the Constitution, the Criminal Code, the Law on Members of Parliament, the Law on Prevention of Corruption, the Law on Prevention of Conflicts of Interest and the Rules of Procedure of the Assembly. There is, however, no unified written code of conduct for MPs.

34. A code of ethical conduct of MPs has been under preparation for some time. A draft was prepared and submitted for comments to the coordinators of the parliamentary groups and to other political parties not represented in the Assembly. Two working meetings took place, the first on 14 March 2012, during which the need to adopt the code by consensus was agreed upon. However, work on the code then stopped, as opposition MPs ceased to participate in the coordination meetings in the framework of the above-mentioned political crisis between the parliamentary majority and opposition, which followed the incidents of 24 December 2012 (see paragraph 18). At the time of the on-site visit, work on this issue had not resumed, despite the Memorandum of Understanding signed in March 2013. The GET could not obtain a clear picture of the reasons for this prolonged deadlock. After a Committee of Inquiry established within Parliament to investigate the events of 24 December 2012 recommended by consensus on 26 August 2013 to adopt a Code of Ethics for MPs, work on this issue finally resumed.

⁸This happened once in the current legislature.

35. In the light of the events of 24 December 2012, of earlier incidents related to the conduct of MPs during Assembly sessions and of the widespread lack of public trust in the Assembly, the GET is convinced that the process of preparation and adoption of a code of conduct would be greatly beneficial to the work and public image of MPs and the Assembly. It welcomes the agreement reached by the political parties prior to and following the 2012 crisis on the need to adopt the code by consensus and hopes that work on the code will progress successfully. As regards the future code's content, at the very least it will have to mirror, explain and make more accessible the basic standards concerning the fundamental duties of MPs and restrictions on their activity. In order for it to be a meaningful tool in the hands of MPs, it is crucial that in addition to rules of conduct on the premises of the Assembly, this code also provides clear guidance on the prevention of conflicts of interest and on related issues, such as the acceptance of gifts and other advantages, incompatibilities, additional activities and financial interests, misuse of information and public resources, the obligation to disclose outside ties and contacts with third parties such as lobbyists (including elaborated examples). In order to embed the future code in the working culture of the Assembly, complementary measures such as the provision of specific training or confidential counselling on the above issues would be a further asset. Turning to the issue of the enforcement of provisions contained in a code of conduct, the GET stresses that such enforcement is an essential part of any integrity system. The effectiveness of a set of standards depends on the awareness of those at whom it is directed, on their willingness to comply with its provisions but also on appropriate tools to secure its implementation, i.e. ensuring that misconduct comes to light and attracts appropriate sanctions. In the GET's view, education and enforcement cannot be fully outsourced to the SCPC, even if this body has a clear responsibility in this area. Discipline and responsibility must come first from within the Assembly itself. **GRECO recommends (i) swiftly proceeding with the development of a code of conduct for members of the Assembly and ensuring that the future code is made easily accessible to the public; (ii) establishing a suitable mechanism within the Assembly, both to promote the code and raise awareness among its members on the standards expected of them, but also to enforce such standards where necessary.** In addition, the existing rules and procedures on conflicts of interest, the acceptance of gifts and the disclosure of contacts with third parties need to be further developed, as recommended below.

Conflicts of interest

36. Provisions on the prevention and resolution of conflicts of interest are contained in the Law on Prevention of Conflicts of Interest ("Official Gazette of the Republic of Macedonia", No. 70/2007, hereafter the LPCI), which applies to MPs as well as to other holders of public functions, in particular judges and prosecutors. Article 3, paragraph 1 of the law defines conflicts of interest as "*a conflict between the public authorisations and duties on the one hand with the private interests of officials, where the official has a private interest which has an impact or could have an impact on the performance of his/her public authorisations and duties*".

37. Possible types of conflicts of interest are described in the law (article 5, LPCI): the official must not:

- receive or require a benefit for the execution of his duties;
- realise or obtain a right in violation of the principle of equality before the law;
- abuse the rights arising from the exercise of his/her authority;
- receive a reward or other benefit for performing matters relating to public authorities and duties;
- ask or receive a reward, for him/herself or his/her close relatives, in order to vote or not to vote, or in order to influence the adoption of the decision of a body or person;

- promise an employment or any other right in connection with the promise or receipt of a gift; and
- influence a decision in public procurement or use his/her position in any other way in order to achieve a private interest or benefit for him/herself or his/her close relatives.

38. In case an MP suspects that a conflict may arise between his/her private interests and the public interest, s/he has to request an opinion from the SCPC, which is the authority in charge of overseeing implementation of the law. S/he is also obliged to undertake all necessary measures to prevent the private interest from influencing the performance of his/her duties (article 7, LPCI). Depending on the concrete cases, necessary measures foreseen by the law may be the delegation of management of the official's private activities to a person other than his/her spouse or relatives, a request for exemption from the activities causing the conflict, transfer of participation in trade companies or prohibition on the acceptance of gifts (articles 9-19, LPCI). The authorities mention that the number of such opinion requests has increased recently and they interpret this as signs of interest by the officials and the institutions in which they are employed in preventing situations of conflicts of interest.

39. In particular, when they learn about circumstances indicating the existence of a conflict of interest, officials are under an obligation to request their employing authority to disqualify them and to cease their action. The person shall be disqualified from the performance of certain action by a decision of his/her superior, even without his/her request or against his/her will if it is apparent that in the concrete case there is a conflict of interest (article 12, LPCI). MPs also have to declare any *ad-hoc* private interests when a body in which they sit discusses or decides on a related matter. Such declarations are to be recorded in the minutes of the meeting (article 13, LPCI).

40. MPs, as well as other officials subject to the law, also have to submit to the SCPC a statement "referring to the existence or non-existence of a conflict of interest" within 30 days of their election (article 20-a LPCI, see below).

41. The Law on Prevention of Corruption ("Official Gazette of the Republic of Macedonia", No. 28/2002, hereafter the LPC) also has some relevance, as it contains a chapter IV on "Preventing conflicts of interest". This chapter deals with the following issues: illegal requests of a superior; failure to report a crime; prohibition to exercise influence on another person; using discretionary authority; offering a bribe; procedure to be followed in case of charges of corruption. The law also contains other relevant provisions, namely rules on incompatibilities, prohibition for an official to use his/her influence in the employment or promotion of family members, prohibition to accept gifts, prohibition to acquire shareholder's rights, rules on the disposal of public property, use of public assets, rules on post-employment, misuse of official data and misuse of public procurements, which will be detailed further in this report. It used to contain articles providing for the disqualification of officials in case of a conflict between their personal and general interests, but these articles were repealed when the LPCI entered into force. This law applies to MPs, as well as to judges and prosecutors.

42. In 2008-2010, the SCPC implemented a State Programme and an Action Plan for the prevention and reduction of conflicts of interest. A number of measures both of a preventive and a corrective nature were implemented, aiming notably at raising awareness of the officials concerned about conflicts of interest with guidelines and training, as well as reviewing applicable legislation and sub-legislation.

43. The GET is of the opinion that the LPCI is quite comprehensive. It contains a number of important elements, such as a definition of conflicts of interest, an obligation for officials concerned – including MPs – to seek an opinion from the SCPC when they suspect they may be in a situation of conflicts of interest and to request their

disqualification in case of an actual conflict of interest. The law also foresees a disclosure regime, which will be presented in more detail below (see paragraphs 63-64). That said, it is apparent from the above description that the LPCI places a strong emphasis on cases of actual conflicts of interest as opposed to apparent or potential ones, i.e. cases in which it only appears that a MP's private interest could improperly influence the performance of his/her duties where this is not in fact the case, as well as situations which could give rise to a conflict of interest if the relevant circumstances were to change in the future. More attention could, in the GET's view, be devoted to such types of conflicts in the SCPC's awareness and prevention activities on conflicts of interest.

44. Moreover, despite the comprehensiveness of the law and the awareness activities carried out by the SCPC in the framework of the above-mentioned State Programme and Action Plan, a culture of prevention and avoidance of conflicts of interest has yet to take root among MPs. The interviews conducted by the GET confirmed that MPs tend to view their obligations in this framework from a formal point of view, as implying mostly the filing of a statement with the SCPC and taking measures in case one of the situations specifically described in the law occurs. They are largely unaware of the *rationale* behind the LPCI, of the notion of conflicts of interest itself and how it needs to inform their choices and decisions both in the course of their parliamentary work and as regards their private interests and those of their relatives.

45. In the GET's view, several factors contribute to this state of affairs. One of them pertains to the supervision exercised by the SCPC. The particular concerns of the GET in this regard will be dealt with below. Another factor lies in the fact that the Assembly considers that the SCPC has the sole competence for dealing with integrity and corruption prevention matters. The Assembly does not show much proactivity in addressing such matters in-house, as confirmed by the interviews on-site and by the SCPC in its introduction to the 2011-2015 State Programme for the Prevention and Reduction of Corruption and Conflicts of Interest, which encourages the Assembly to take a more active approach in the implementation of the Programme's activities pertaining to its competence⁹. This, in the GET's view, is a significant gap which prevents the emergence of a culture of prevention of conflicts of interest among MPs. It also notes in this connection that the provisions on exemption contained in articles 12-14 of the LPCI seem largely underused in practice. The GET draws attention in this connection to the recommendations contained in paragraphs 35 and 48, which call for the development of rules and standards, within the Assembly, on conduct expected from its members, in particular as regards possible conflicts of interest and the acceptance of gifts and other advantages; these standards need to be accompanied by a proper in-house monitoring and enforcement mechanism. Continued dialogue between the Assembly and the SCPC in the implementation and enforcement of legislation of conflicts of interest is also instrumental to the effectiveness of the mechanisms to be established.

Prohibition or restriction of certain activities

Gifts

46. Article 30 of the LPC, which applies to MPs, stipulates that an elected or appointed functionary, official or responsible person in a public enterprise or other legal person managing state capital may not receive gifts or promises of gift, except for gifts for a special occasion, such as books, souvenirs and similar objects, the value of which is defined by law. According to articles 77-78 of the Law on Use and Disposal with the Objects of State Bodies ("Official gazette of the Republic of Macedonia", no.8/2005), officials may receive personal gifts up to the value of 200 €, from a foreign country, body, institution or international organisation. These gifts may not take the form of

⁹ State Programme for Prevention and Repression of Corruption, State Programme for Prevention and Reduction of Conflicts of Interests with Action Plans for the period 2011-2015, p.14.

money or services. Any gift received above this amount has to be declared and becomes the property of "the former Yugoslav Republic of Macedonia".

47. The LPCI also contains a prohibition for officials to accept gifts, except in the cases defined by the Law on Use and Disposal with Objects of State Bodies referred to above. Under this law, a gift is defined as money, material goods or benefits received in connection with the (non)-performance of an official duty. An official who is offered a gift has to reject it and identify the offering party. If the gift cannot be returned, s/he has to inform without delay the competent body, note the witnesses and other evidence available to him/her and file a report to the SCPC about the case within 48 hours.

48. The GET notes that there are no specific mechanisms within the Assembly to give effect to the relevant provisions of the Law on Use and Disposal with Objects of State Bodies on the declaration of received gifts. It also learned during the on-site visit that there is no information available on how these rules on gifts are complied with in practice. MPs do not have to report gifts received to the services of Parliament and in the absence of a declaration/reporting mechanism, neither of these bodies actually controls whether MPs might have received gifts, legally or illegally. Moreover, the relevant legal provisions, in particular in the LPCI, link the receipt of a gift and the performance of official duties, in cases akin to bribery. They do not take into account the fact that gifts, hospitality and invitations may be given in a wide variety of contexts and not only in a *quid pro quo* agreement. Aside from the value of material gifts, there is at present little guidance available to MPs as to what kind of benefits are acceptable and under what circumstances, in the absence of a code of conduct. Taking into account also the similar concerns expressed above regarding the prevention of conflicts of interest, **GRECO recommends that internal mechanisms and guidance be further developed within the Assembly on the prevention of conflicts of interest and the acceptance of gifts, hospitality and other advantages and that compliance by parliamentarians with these rules be properly monitored.**

Incompatibilities

49. Article 21 of the LPC contains a general rule on incompatibilities, which prohibits elected or appointed officials from carrying any office, duty or activity incompatible with their functions. In particular, all profitable activities are forbidden.

50. Article 9 of the Law on Members of Parliament stipulates that the office of MP is incompatible with the function of President of the Republic, President of the Government, minister, judge, public prosecutor, attorney-general, ombudsman and other holders of functions that are elected or appointed by the Assembly and the Government. The office of a Member of Parliament is incompatible with the function of mayor and member of a Council of a municipality and the city of Skopje. The office of MP is also incompatible with the performance of expert and administrative tasks in the bodies of state administration, performance of economic or other profitable activities and membership in boards of directors of public enterprises, public institutions, funds, agencies, bureaus and other legal entities, and with the election as a representative of state and social capital in trade companies. The aforementioned persons' functions, employment or membership terminate on the date of verification of their mandate as an MP.

51. Other laws envisage a direct or indirect prohibition for MPs to perform certain activities. Among them, the Law on Broadcasting (Official Gazette of the Republic of Macedonia, no.100/2005) defines that political parties, state bodies, bodies of state administration, public enterprises, local self-government units, holders of public functions and members of their families may not perform broadcasting and be founders, cofounders or acquire shares in ownership of broadcasters (article 11). An MP may not be elected as a member of the Council on Broadcasting (article 25), nor a member of the Council of MRT (Macedonian Radio television – public broadcasting service) (article 128)

or of the Board of Directors of MRT (article 136). Furthermore, an MP cannot perform the functions of chief state auditor and his/her deputy, president and member of the Commission for Protection of Competition, president and member of the Agency for Regulation of the Railway Sector, president and member of the Commission of the Agency for Post Offices, non-executive member of the Council of the national Bank, president and member of the Commission for Electronic Communications, member of the Commission for Verification of Facts, etc., pursuant to the laws governing these bodies.

52. According to the information gathered by the GET, the list of positions and functions incompatible with the office of parliamentarian has been gradually expanding since 2002, as this office evolved into a professional position. Until recently, there was tolerance in practice regarding teaching and research activities, which were authorised upon request by the speaker of the Assembly. This tolerance ceased at the beginning of 2013 with the adoption of amendments to the law on higher education. At present, the office of MP is incompatible with any other activity except charitable ones. These rules seem to be relatively well implemented in practice, except in the field of media ownership and control, about which the GET heard allegations of circumvention of the rules. The case was mentioned of an MP having transferred his rights in media companies to a relative, in contravention of the applicable provisions. No action was apparently taken by the competent authorities to remedy this situation. The GET recalls in this connection the findings of GRECO's Third Round Evaluation Report (see Greco Eval III Rep (2009) 6, paragraph 90) about the links between some politicians and media companies and financial flows related to advertising, as well as continued concerns expressed by the European Union about media pluralism in "the former Yugoslav Republic of Macedonia"¹⁰.

Financial interests, contracts with State authorities

53. As explained above, article 9 of the LPCI envisages the management of a private company as a form of conflict of interest with official duties. Consequently, upon his/her election, an MP has to transfer the management of that company to a person other than those with whom s/he is "in close affiliation", namely his/her spouse or partner, blood and lateral relatives.

54. There is no specific prohibition on MPs entering into contracts with State authorities. According to the authorities, the incompatibility of the parliamentary mandate with the exercise of any other profitable activity automatically excludes the possibility of MPs entering into contracts with state authorities. The general legislation on public procurement is fully applicable in this context. Moreover, article 24 of the LPC obliges MPs to report to the SCPC every transaction involving state assets with a company owned or controlled by him/her or one of his/her relatives.

Post-employment restrictions

55. Article 27 of the LPC provides that an official who, within three years from the date of his/her end of office, establishes a trade company or begins a profitable activity in the field in which s/he used to work, has to inform the SCPC thereof. Article 28 of the same law establishes that an official may not, during his/her term of office or within three years after its termination, acquire shares or rights in an entity over which s/he has exercised supervision, except by way of inheritance.

56. The Law on Lobbying ("Official Gazette of the Republic of Macedonia", nos.106/08 and 135/11) prohibits elected officials from lobbying until one year after they have ceased to receive a salary.

¹⁰See http://ec.europa.eu/enlargement/pdf/key_documents/2013/package/mk_rapport_2013.pdf, p.12

Third party contacts

57. Contacts of MPs with lobbyists or other persons trying to influence their decisions remain unregulated. There is a Law on Lobbying ("Official Gazette of the Republic of Macedonia", nos.106/08 and 135/11), but it is only embryonic, providing that a register of lobbyists is kept by the Secretary-General of the Assembly. Registered lobbyists have to submit to the Secretary-General and to the SCPC a yearly report on their lobbying activities, which is to include information on MPs and other officials whom they have lobbied, the subjects of lobbying and the financial compensation they received for their lobbying activities. This allows them to have direct meetings with the officials they wish to lobby, to present their views to the working bodies of the legislative and executive powers and to organise and participate in public debates on topics within their remit.

58. The GET was informed that only one lobbyist is formally registered, and that the SCPC and the Secretary-General of the Assembly have no official data about unregistered lobbyists. Several of the GET's interlocutors did, however, confirm that lobbying by unregistered lobbyists is widespread in practice. Reasons given for this state of affairs were a lack of awareness on lobbying and the inadequacy of the current legal framework, which does not allow the SCPC to supervise unregistered lobbyists. The SCPC's Action Plan for the period 2011-2015 recognises the problems in this area and contains activities directed at raising awareness on lobbying, preparing a guide and a code of ethics for lobbyists, amending the Law on Lobbying and introducing a register of lobbyists at the SCPC with a view to strengthening its control. The GET takes the view that these activities need to be combined with a greater transparency on MPs' contacts with lobbyists and other third parties in connection with on-going legislative proposals outside the meetings of the Assembly and its commissions. Therefore, **GRECO recommends introducing rules on how Members of Parliament engage with lobbyists and other third parties who seek to influence the legislative process.**

Misuse of confidential information

59. Article 52 of the Rules of Procedure of the Assembly proclaims an obligation for MPs to keep top, official, military and business secrets. Secret information includes any information that an MP learns at a session of the Assembly or one of its working bodies, in connection with an issue that is being debated in camera, as well as any materials, which are designated as such, submitted to the Assembly and its working bodies. Handling and conservation of this material are regulated by a separate act adopted by the President of the Assembly. The handling of confidential data is regulated by articles 34-40 of the Law on Classified Information ("Official Gazette of RM", nos.9/04, 113/07, 145/10 and 80/12). Disclosure of secret information entails criminal liability (articles 281, 317, 349, 360, 360-a of the Criminal Code).

Misuse of public resources

60. Article 12 of the LPC prohibits the use of budgetary resources or public funds to finance election campaigns or other political activities. Article 25 of the same law states that the use of state resources for private goals or the transmission of such resources to other persons is prohibited.

Declaration of assets, income, liabilities and interests

61. Pursuant to article 33 of the LPC, elected or appointed officials, including MPs, judges and prosecutors, are required, after their election, to fill out an asset declaration. A statement, certified by a notary, is deposited along with the declaration, waiving the protection of bank secrecy for all accounts in domestic and foreign banks. The content

and the form of the declaration are prescribed by the SCPC and it is published in the Official Gazette¹¹ and on the SCPC's website. This obligation is also contained in article 15 of the Law on the Assembly of the Republic of Macedonia which requires MPs to declare – within 30 days of the verification of their mandate – their assets in a statement giving a detailed description of the real estate, movable property of greater value, securities, claims and debts, as well as other property in their ownership, or in the ownership of their family, noting the basis for the acquisition of the declared property and depositing a statement certified by a notary for waiving the protection of bank secrecy regarding all their accounts in domestic and foreign banks.

62. Changes to the assets of MPs and their relatives also have to be reported. Finally, another declaration is to be filled out by MPs within 30 days from the termination date of their mandate. MPs have to communicate their asset declarations to the SCPC and the Public Revenues Office, which are then published by the SCPC on its website¹² (articles 33-a and 34, LPC).

63. As explained above, MPs also have to submit to the SCPC a statement “referring to the existence or non-existence of a conflict of interest” within 30 days of their election (article 20-a, LPCI).

64. MPs, as well as other officials subject to the obligation to declare their assets and possible conflicts of interest, do comply with these obligations to a large extent, as confirmed by interlocutors on site and by the GET's consultation of the SCPC's website¹³. The GET is also pleased to note that this website provides for easy access by the public to asset declarations. However, the quality and level of detail of the information provided seems to vary significantly. Interviews with the officials concerned – MPs, but also judges and prosecutors – also revealed marked differences in the interpretation of the notion of “family member” and that of “movable property of greater value”. According to the authorities and the asset declaration model form, family members comprise the official's spouse, children, parents, siblings, adopters or adoptees who are members of the official's household. Some interlocutors, however, told the GET that they included information about family members who did not live in their household. Others said that they did not provide information about their relatives' property, as they did not have knowledge of it. The notion of “movable property of greater value” was also interpreted in different ways. Some interlocutors thought it included any property with a value higher than 20 average salaries (this amount is used in article 34 LPC which provides for the obligation to report changes in assets), some referred to article 122(34) of the Criminal Code, according to which a larger value corresponds to anything higher than 5 average salaries, yet others mentioned a fixed value of 500 or 1000 €. A recommendation to address these obvious difficulties of interpretation is contained in paragraph 250, in the section of this report dealing with transversal issues and the role of the SCPC.

Supervision

Statements of interests

65. Pursuant to amendments to the LPCI, the SCPC was entrusted in 2012 with a new task to review the content of the statements of interests of officials referred to in Article 20-a of the LPCI, amongst whom parliamentarians. In the period 2009-2012, 4361 statements of interests were submitted in total to the SCPC and the verifications are carried out by a department composed of two persons. According to its verification plan, the SCPC verified in April 2012 the content of 41 statements of interests submitted in the period January–March 2012 by officials newly elected/appointed or who had to

¹¹See http://www.dksk.org.mk/en/images/stories/PDF/assets_declaration.pdf

¹²http://www.dksk.org.mk/imoti_new/

¹³As of 9 September 2013, asset declarations of 119 of the 123 MPs had been posted on the SCPC's website.

report changes in their situation. This was followed, in the second quarter of 2012, by verification of the statements of interests of all 123 MPs. A conflict of interest was discovered in four cases, involving the exercise of functions incompatible with a parliamentary mandate. In three of these cases, the situation was resolved by the MP dropping the incompatible functions. In the fourth case, the MP received a warning from the SCPC, for failing to stop his teaching activities at the SCPC's request. Subsequently, the dean of the institution where he was teaching did not renew his contract for the next academic year.

66. Since the verification of the content of statements of interest was introduced in 2012, it is still too early to fully assess its efficiency. Yet, the GET heard concerns about statements' accuracy and it is unclear to what extent MPs report changes in their situation. The GET is also puzzled by the fact that the system of statements of interests seems to exist in total independence to the system of asset declarations. The former seems to be used primarily to discover cases of exercise of incompatible activities and the latter to detect possible unexplained increases in assets, as will be explained below. Supervision over the content of both sets of declarations is carried out by two different departments and cross-checks are apparently not performed between both sets of declarations. The GET believes that links could be built between both systems and the content verification of both sets of declarations could be co-ordinated, in order to create synergies and to make better use of the possibilities offered by applicable legislation. This could enable for instance the detection of the receipt of gifts or illegal benefits, which are forms of conflicts of interest according to the LPCI. Reference is made in this connection to the GET's assessment of the supervision over asset declarations and to the recommendation contained in paragraph 249 below. The authorities explained - after the visit - that there is a plan to connect both data bases, as foreseen in the IPA 2010 Twinning project on "Support for efficient prevention and fight against corruption". The GET welcomes this news and hopes that it will bear fruit.

Asset declarations

67. Upon receipt of the asset declarations from MPs and other officials, such as judges and prosecutors, the SCPC checks that they are complete and accompanied by the declaration waiving bank secrecy. If necessary, the SCPC asks the officials to provide the missing information/documents. Declarations are then entered in the SCPC's daily log and data base and published electronically, removing all data that is to remain private according to applicable data protection legislation. Since 2011, the SCPC also verifies the content of selected asset declarations in co-operation with the Public Revenue Office, according to a Memorandum of Understanding between both bodies. In 2012, the content of the asset declarations of all 85 mayors were verified. According to the information received by the GET, such a general verification has not yet been conducted for MPs. In 2011, the SCPC checked the content of asset declarations of eight MPs, and in all cases it was found that all assets had been declared.

68. Pursuant to the Memorandum of Understanding, asset declarations to be subject to a content verification are selected according to their registration number in the data base. The first stage of the verification is performed by the SCPC, which compares the content of the asset declarations with information contained in other relevant sources, such as the cadastre, the Ministry of Internal Affairs (as regards motor vehicles) and the central registries containing data on securities and shares. If this comparison reveals unexplained differences, the Public Revenue Office performs, at the request of the SCPC, a verification of the property status of the person concerned and of his/her relatives.

69. To perform this verification, the Public Revenue Office collects data from relevant sources, namely its own records, the cadastre, local government authorities, banks and central registries on securities and shares. These institutions are under a legal obligation to provide the Public Revenue Office with the information it requests. The value of the

assets of the official and his/her relatives is compared with their income, in order to detect any unexplained enrichment. If such a case is detected, after an interview of the person concerned, a decision is taken to apply a tax of 70% on the value of the unexplained assets. This decision is taken by the Public Revenue Office, but is not made public. It is subject to appeal to a second instance body within the Ministry of Finance and then to the Administrative Court. The Public Revenue Office informs the SCPC of its decision, but this does not appear to trigger any related decision or procedure by the latter. Finally, if the review carried out by the Public Revenue Office reveals suspicions of illicit enrichment or concealment of property (incriminated by article 359-a of the Criminal Code, see below) the PRO informs the competent prosecutor's office.

70. The GET was informed that in the period 2005-2012, the Public Revenue Office had concluded 27 verification procedures concerning MPs, judges or prosecutors. It was not made aware of any case in which the SCPC initiated a misdemeanour procedure for failure of an official to declare certain assets, further to information received from the Public Revenue Office or from its own review.

71. Verification of selected asset declarations' content has only recently been introduced and as such, it is still early to have a complete picture of how well it functions in practice. Nevertheless, the GET has serious concerns about the efficiency of the system for the review of asset declarations submitted by MPs (as well as judges and prosecutors). Although all the GET's interlocutors agreed that the formal obligation to declare assets was generally complied with, there is a widespread lack of public trust in the effectiveness of supervision over the content of the declarations, as well as related doubts about their quality and accuracy. The SCPC is competent to oversee the implementation of the provisions of the Law on the Prevention of Corruption and, in particular, to process and review asset declarations. The GET was told during the on-site visit that the department in charge of this task is composed of two persons. The GET's specific concerns about the SCPC's staff constraints will be dealt with below (see paragraph 250). Yet it is obvious that the SCPC's understaffing precludes it from carrying out anything more than a cursory examination of the content of the asset declarations received. The two employees dealing with asset declarations spend most of their time performing formal checks as to whether the declarations received are complete and entering them in the SCPC's data base, which contained more than 3700 declarations at the time of the visit. The GET was told that some declarations had been received, but not yet processed due to a lack of capacity.

72. There is no registry of elected and appointed officials, nor any other system to enable the SCPC to know how many MPs, judges and prosecutors are subject to a duty to declare their assets in any given year, following their election/appointment or the end of their office. Questions by the GET during the on-site visit on precise figures regarding asset declarations could not be answered by the staff of the SCPC: the total number of officials who have to fill in an asset declaration each year seems unknown, as is the number of declarations that undergo a full verification each year. Keeping track of officials' compliance with the obligation to report changes in their assets or that of their family members seems even more of a challenge. Indeed, several of the GET's interlocutors raised doubts as to whether changes in officials' assets were accurately reported.

73. Turning to the verification process itself, the GET notes that the sharing of responsibilities between the SCPC and the Public Revenue Office creates a degree of overlap in their review: both bodies compare the information contained in the asset declarations with the same sources, such as the cadastre or the register of securities and it seems that the purpose of their review, namely to discover unexplained increase in assets, is similar. This sharing of responsibilities also prevents any of these institutions from taking ownership of the process as a whole and this, in the GET's view, is detrimental to their proactivity.

74. The GET is of the opinion that the system would be more efficient and credible if the SCPC, as an independent institution, was in charge of the whole verification process. This would naturally imply an increase in its resources. The necessary conditions to allow the SCPC to better oversee compliance of MPs with their declaration duties also need to be created, for instance by developing adequate databases of the officials subject to declaration duties and/or by replacing the current declaration system by an annual one. This would make it easier to keep track of the officials' declaration duties, including those stemming from changes in their assets, and to follow their assets over a period of time, in order to detect possible illicit enrichment or concealment of property. The verification process needs to be streamlined and links be made with the statements of interest received by the SCPC. Finally, in order to ensure better compliance and create trust in the system, the SCPC will have to demonstrate its willingness and proactivity to exercise an effective supervision and to detect and sanction inaccurate and incomplete asset declarations. A recommendation to this effect is contained in paragraph 249, in the section of this report dealing with the role of the SCPC.

Enforcement measures and immunity

Sanctions

75. MPs are subject to the same sanctions as other officials under the LPCI, the LPC and the Criminal Code. Special rules do, however, apply as regards their immunity and the instigation of an investigation about them (see below).

76. In case of a violation of the provisions of the LPCI, article 25 of this law foresees that the SCPC can issue a public warning, take an initiative for the instigation of a disciplinary procedure or an initiative for dismissal (article 25) against the official concerned. A public reprimand is pronounced and published in the media in case of a first violation. An initiative to dismiss the official occurs in case of a second violation, after a public warning has already been pronounced (article 26). The law also foresees fines imposed by the competent court for misdemeanours, namely a fine in the amount of the MKD equivalent to 1,000 to 3,000 € if an MP fails to submit his/her statement of interests to the SCPC. This provision was applied once against an MP, who failed to submit a statement of interests and received a 100 € fine. The GET was also told during the on-site visit that the Constitutional Court had rescinded in 2010 the possibility for the SCPC to instigate a disciplinary procedure or initiate dismissal, leaving the public warning as the only available sanction for violation of the provisions of the LPCI.

77. The LPC foresees fines in the amount of the MKD equivalent to 500 to 1,000 € for violation of the prohibitions contained in the law, such as the performance of incompatible activities, and for failure to report assets or other requested information. In the period 2010-2012, the SCPC initiated procedures against two MPs for failure to submit an asset declaration after the end of their term of office. One was given a fine of 300 € by the competent court. The other case is still pending. There do not seem to be sanctions, however, for the ban on receiving gifts set out in article 30 LPC, nor for the intentional concealing of assets/provision of inaccurate information in asset declarations, except when a large value is at stake, under article 359-a of the Criminal Code.

78. If review of an asset declaration by the Public Revenue Office reveals an unexplained increase in assets, a tax of 70% of the value of these unexplained assets is calculated and applied by the Public Revenue Office (article 36, LPC).

79. Finally, article 359-a of the Criminal Code on "Illicit enrichment and concealment of property" stipulates that provision by an official of false or incomplete information about his/her property or that of his/her relatives, which significantly exceeds (50 average salaries) his/her legal income, carries a prison term of six months to five years and a fine; if the value of the concealed property exceeds the official's legal income

by a large extent (250 average salaries), it carries a prison term of one to eight years and a fine. The property in question is to be confiscated.

80. The GET is aware that the SCPC does initiate procedures to issue fines against officials who fail to submit their asset declarations or their statements of interests and considers that this, together with the online publication of asset declarations, is the main factor for the increased formal compliance of MPs and other officials with their declaration duties. The GET was also informed that the SCPC had issued public warnings in cases of unresolved conflicts of interests and that one of these cases involved an MP, as described above. The GET, however, takes the view that the sanctions available for other types of violations, such as the provision of false or incomplete information on the declarations, are not dissuasive enough. It also notes that fines imposed by the courts seem to be significantly lower than the amount foreseen in the relevant legal provisions. Taking into account concerns expressed above regarding the efficiency of supervision, the GET wishes to stress that it is at present relatively easy for officials to provide an incomplete picture of their assets or interests, with little probability of this coming to light and low sanctions, except in the most blatant cases, which would trigger the application of article 359-a of the Criminal Code – a case that has never occurred yet in practice. In view of the foregoing, **GRECO recommends ensuring (i) that sanctions are provided in the relevant laws for all infringements they contain and (ii) that appropriate enforcement action is taken in all cases of misconduct by Members of Parliament.**

Immunity

81. According to article 64 of the Constitution, MPs enjoy non-liability and procedural immunity. An MP may not be held criminally liable or be detained due to his/her views expressed in the Assembly or his/her votes. S/he may not be detained without the approval of the Assembly, unless found committing a criminal offence for which a prison sentence of at least five years is prescribed. The Assembly may decide to invoke immunity for an MP even without his/her request, should it be necessary for the performance of the MP's office.

82. Articles 53 and 54 of the Rules of Procedure of the Assembly specify that MPs' immunity last from the date of verification to the date of termination of their mandate. Requests for an MP's detention are submitted to the President of the Assembly, who transmits them for review to the Committee on Procedural, Mandate and Immunity Related Issues. The Committee has to review the request and submit a report to the President of the Assembly within two days. The final decision regarding immunity is taken by the Assembly, three days at the latest after the Committee has submitted its report. If an MP's immunity is lifted, regular criminal procedure applies. According to the information gathered by the GET, the immunity of MPs has been revoked so far in two cases (2005 and 2007), unrelated to the topics covered in the present report. Other requests have been rejected by the Committee.

Training and awareness

83. The Secretary General of the Parliament, who is responsible for notifying MPs about applicable rules, distributes at the start of every legislature written information on their conduct, work and status. No other awareness or training activity is carried out by the administration of Parliament. The SCPC informs MPs about their obligation to submit an asset declaration and conducted training in 2009-2010 for MPs on preventing conflicts of interest. It told the GET that there had been little interest from MPs in these trainings.

84. It is obvious that little emphasis is placed at present on awareness activities directed towards MPs. The GET also noticed during the on-site visit that the knowledge MPs had of their integrity-related duties is mostly limited to their legal obligations, in

particular to the need to declare their assets and possible conflicts of interest, as described in the law. When the GET tried to test practical examples, it received no clear answer as to the course of action to take in case a conflict of interest arose. In several cases, interviewees did not even realise that a potential conflict of interest was at stake when it was not specifically described in the law. Some practices that were reported to the GET, such as elected or candidate MPs signing blank resignation letters to the leader of their party, that may be used to put pressure on them, are a further source of concern for MPs' independence and integrity. The GET encourages the SCPC to continue and intensify its actions to inform, explain and raise awareness of MPs on ethics and conflicts of interest. It believes, however, that Parliament itself also needs to take responsibility in this area and to promote a culture of ethics among its members. The GET is convinced that for an ethics and conduct regime to work properly, MPs must themselves take a stake in the success of that regime. This calls for measures of a practical nature, specifically targeted towards MPs and the ethical challenges they face in their activity. These measures may include hands-on publication and guidance, induction and regular training, establishing a permanent source of advice for MPs through a dedicated counsellor or committee etc. The GET refers back to the second part of recommendation i (paragraph 35) and to recommendation ii (paragraph 48) which specifically call for the development of such in-house guidance and awareness mechanisms.

IV. CORRUPTION PREVENTION IN RESPECT OF JUDGES

Overview of the judicial system

Categories of courts and jurisdiction levels

85. The judicial power in “the former Yugoslav Republic of Macedonia” is exercised by the basic courts, the courts of appeal, the Administrative Court, the Higher Administrative Court, and the Supreme Court (article 22 of the Law on Courts, “Official Gazette of the Republic of Macedonia”, no.58/2006, amended in 2010). There are no extraordinary courts and no military courts.

86. According to the statistics available to the Ministry of Justice for 2012, there are a total of 654 judges working at the courts, of whom 270 are male and 384 are female. Among them, 494 judges work at the basic courts (204 male and 290 female), 103 judges at the courts of appeal (51 male and 52 female), 29 judges at the Administrative Court (6 male and 23 female), 12 judges at the Higher Administrative Court (1 male and 11 female) and 16 judges at the Supreme Court (8 male and 8 female). In addition, 1844 lay judges have been elected to sit in court panels in the basic courts and courts of appeal.

87. There are 27 basic courts, established for one or more municipalities. Basic courts adjudicate in first instance and are established as courts with basic competence and courts with extended competence. Within the basic courts with extended competence, depending on the type and volume of the court’s activity, specialised court departments may be set up to act upon specific types of disputes, such as criminal cases, juvenile criminality, civil and economic cases, labour disputes, and other characteristic disputes falling within the jurisdiction of the courts. Basic courts may have court divisions, adjudicate outside the seat of the court, and have court days outside the seat of the court. Two of the basic courts are specialised courts: the Skopje I Basic Court is a specialised criminal court, in which a division was established in 2008 to adjudicate criminal offences in the field of corruption and organised crime on the entire territory of the country. Skopje II Basic Court is a specialised civil court. There are four courts of appeal in Bitola, Gostivar, Skopje and Shtip.

88. One Administrative Court, established in Skopje, has a first instance competence over the entire territory of “the former Yugoslav Republic of Macedonia”. Its decisions may be appealed to the Higher Administrative Court, also established in Skopje, and which is also competent over the entire territory. The Supreme Court, seated in Skopje, is competent in third and final instance in criminal, civil and administrative cases.

89. In addition to these courts, there is also a Constitutional Court, which protects the constitutionality and legality, in accordance with the Constitution. Its decisions are final and enforceable.

Independence of the judiciary

90. The principle of independence of the judicial power is enshrined in article 98 of the Constitution, which sets out that the judicial power is exercised by the courts. Courts are autonomous and independent. Emergency courts are prohibited. The types of courts, their spheres of competence, establishment, abrogation, organisation and composition, as well as the procedure they follow are regulated by a law adopted by a two-thirds majority of the total number of Members of Parliament.

91. Under the Law on Courts, judges decide impartially on the basis of the law and of the free appraisal of the evidence. Any form of influence on any grounds or by any entity on the independence, impartiality and autonomy of a judge in exercising his/her judicial

office is prohibited (article 11). A court decision may be altered or revoked only by a competent court in a procedure prescribed by law (article 13). The enforcement of a final and enforceable court decision is to be carried out in the fastest and most efficient manner possible, and it may not be obstructed by the decision of any other state authority (article 16).

Constitutional Court

92. The Constitutional Court is composed of nine judges, elected by Parliament. Under the Constitution, the President of the Republic and the Judicial Council each propose two judges (the latter proposes candidates from the ranks of the judges). The remaining five judges are proposed by the Commission for Elections and Appointment within Parliament, from among the ranks of outstanding members of the legal profession. The term of office of the Constitutional Court judges is nine years without the right to re-election. The Constitutional Court elects a President from its own ranks for a term of three years without the right to re-election.

93. The office of a judge at the Constitutional Court is incompatible with the performance of any other public function and profession or membership in a political party. Judges at the Constitutional Court enjoy immunity defined by the Constitution. The Constitutional Court decides on their immunity. They may not be held criminally liable or be detained for an opinion or voting in the Court. A Constitutional Court judge may not be detained without the approval of the Court, unless caught committing a criminal offence for which a prison term of at least five years is prescribed. The Court may decide to invoke immunity for a judge even when s/he has not invoked it, if that is required for the performance of his/her office.

94. A judge at the Constitutional Court shall have his/her office terminated if s/he resigns. S/he shall be discharged from office if sentenced for a criminal offence to an unconditional prison term of at least six months, or if s/he permanently loses the capability of performing his/her office, as determined by the Constitutional Court.

Judicial Council

95. According to the Law on the Judicial Council, the Judicial Council is composed of 15 members, of which:

- the President of the Supreme Court and the Minister of Justice are *ex officio* members;
- eight members are elected by judges from their ranks. Three of them must be members of communities that do not constitute a majority in "the former Yugoslav Republic of Macedonia";
- three members are elected by the Parliament;
- and two members are nominated by the President of the Republic and elected by the Parliament, one of whom must be a member of communities that do not constitute a majority in "the former Yugoslav Republic of Macedonia".

96. Members of the Judicial Council elect a president from among them, who cannot be one of the *ex officio* members.

97. The term of office of the elected members of the Council is six years, renewable once. The election of the members from the ranks of judges is carried out by secret vote, under the supervision of a special election commission of three members, set up by the Council. A separate commission prepares the lists of candidates, who must have five years of experience as judges and must have received positive evaluation of their work performance for three consecutive years. The non-judicial members of the Council that are elected by the Assembly, either directly or upon the proposal of the President of the

Republic, are from the ranks of university professors of law, lawyers and other respectable legal experts.

98. The Judicial Council has wide-ranging competences over the appointment and career of judges: it is competent for the appointment and dismissal of professional judges, lay judges and presidents of courts, monitoring and evaluation of the work of judges, disciplinary measures and procedures, and revocation of judges' immunity.

99. In its pronouncements in respect of other countries, GRECO already stressed that judicial independence and the impartiality of judges are fundamental principles in a State governed by the rule of law; they benefit the citizens and society at large as they protect judicial decision-making from improper influence and are ultimately a guarantee of fair court trials. In this context, vesting an independent Judicial Council with a key decision-making role on the appointment, career and discipline of judges is, as such, in line with international standards and an appropriate method for guaranteeing the independence of the judiciary.

100. It is therefore with serious concern that the GET noted that the action of the Judicial Council was widely perceived as being subject to undue influence, in particular from the executive power. An anonymous survey¹⁴ performed in 2009 by the OSCE among more than 400 of the 650 judges in the country showed that 66% of judges surveyed doubted that the Judicial Council's action was independent and free from influence. This survey predates the entry into force of a judicial reform package introducing *inter alia* more objective requirements in the selection, evaluation and promotion of judges and public perception of the Judicial Council's operation may have evolved as a result. Nevertheless, the European Commission – in its 2013 progress report – still expressed concern over the implementation by the Judicial Council of the applicable legislative provisions on the recruitment, promotion and dismissal of judges (see below). Some of the GET's interlocutors questioned in particular, the fact that the Minister of Justice was an *ex officio* member of the Judicial Council, stressing that his mere presence allowed him to influence deliberations, even though he had no right to vote on the appointment of judges. The GET draws the attention of the authorities to Opinion No.10 (2007) of the European Council for European Judges on the Council for the Judiciary at the service of society¹⁵, which explicitly stresses that members of the Judicial Council should not be active politicians, in particular members of the government. In this connection, the GET also notes that the composition of the Council of Public Prosecutors was recently amended and that the Minister of Justice ceased to be an *ex officio* member of that body. The GET strongly believes that taking a similar measure is even more important for the Judicial Council, in order to increase this body's independence and help address its negative perception. Accordingly, **GRECO recommends that, in order to strengthen the independence of the judiciary from undue political influence, the *ex officio* membership of the Minister of Justice in the Judicial Council be abolished.**

Recruitment, career and conditions of service

101. Judges, presidents of courts and lay judges are appointed and dismissed by the Judicial Council according to articles 38-64 of the Law on the Judicial Council.

102. Judges are appointed without limitation of their term of office, until they reach the retirement age of 64 or another cause of termination of their office occurs, such as termination upon request, election/appointment to another office, disability or if they

¹⁴OSCE Spillover Monitor Mission to Skopje, Legal Analysis: Independence of the Judiciary, December 2009: <http://www.osce.org/skopje/67584>

¹⁵http://www.coe.int/t/dqhl/monitoring/greco/evaluations/round4/CCJE-opinion-10-2007_EN.pdf

have been sentenced by a final court judgment for a criminal offence to an unconditional prison term of at least six months (article 73, Law on Courts). Termination of office may also occur as a result of a disciplinary procedure (see below under enforcement).

103. The office of lay judges may be terminated upon their request, when they reach the retirement age of 60, if they permanently lose their ability to perform their duty, if they have been sentenced for a criminal offence to a prison term of at least six months or as a disciplinary measure, in case they perform their duty improperly or unethically (article 80, Law on Courts).

104. The recruitment and career of judges is regulated by the Law on Courts. This law was significantly amended in 2010 in order to introduce more objective criteria in the appointment and promotion of judges and minimise possibilities of nepotism and undue influence in the process. Among others, a psychological test and an integrity test were introduced in the selection of judges of basic courts, a career system was introduced for judges in higher courts and the liability of presidents of courts was increased.

105. Candidates to a position of judge have to fulfil the same general conditions, which include citizenship, active command of the Macedonian and the English language, computer literacy, a four-year university degree and to have passed the bar exam. They also have to enjoy social skills, a good reputation and integrity. The selection process of judges then differs depending on whether they are to become judges in a basic court or in a higher or administrative court.

Selection of judges of first instance courts

106. As from 2013, judges of first instance courts may only be selected from the ranks of graduates from the Academy of Judges and Public Prosecutors (hereafter the Academy). Until then, a transitional system was in place, by which 50% of candidates were selected from among Academy graduates and the other 50% from other legal experts.

107. According to the law, the Judicial Council defines the number of posts to be filled over a period of two years, taking into consideration the number of vacancies and a projection for future needs for posts to be filled in after new graduates from the Academy have completed their initial training. As a post becomes vacant or is created, the Judicial Council publishes a call for candidates in the Official Gazette and in at least two daily newspapers. The Council then elects a judge to the vacant post from the list of candidates submitted by the Academy who applied to the announcement. In order to guarantee objectivity, the Judicial Council has to follow the order based on the final rank list of graduates of the Academy. A vote at a two thirds majority of members occurs only in case two graduates have the same ranking. The actual selection of candidates is thus in effect delegated in theory to the Academy.

108. The Academy for Judges and Public Prosecutors is an independent institution established in 2006 by the Law on the Academy for Training of Judges and Public Prosecutors. It is responsible for selecting future judges and prosecutors in the first instance courts and prosecution offices, through entrance exams followed by an initial training programme. The Law on the Academy was significantly amended in 2010, with a strengthening of the conditions of selection and evaluation of candidates and an extension of the training period to 9 months of theoretical and 15 months of practical training.

109. Candidates have to pass an entry exam to the Academy, composed of a qualification test, a psychological test, an integrity test and an exam. The psychological and integrity tests are carried out by an independent psychology institution accredited by the Managing Board of the Academy. The integrity test used to contain also a

requirement for candidates to submit the details of 50 reference persons able to attest of their moral and ethical value. This component of the text was cancelled by the Constitutional Court for failing to offer sufficient guarantees of objectivity, impartiality and applicability (decision 156/2010-0-1 of 29 February 2012). The first entry exam comprising psychological and integrity tests took place in 2013.

110. Since 2006, four classes of students have been admitted for initial training, and a total of 80 candidates have completed their training, out of whom, at the time of the on-site visit, only 61 had been appointed as judges and prosecutors. The requirement that until 2013, 50% of newly appointed judges be chosen from the ranks of Academy graduates was not implemented in practice, wide preference being given by the Judicial Council to candidates from other backgrounds¹⁶. The GET also learned during the on-site visit that the implementation of the requirement that all new judges be graduates from the Academy as from 2013 had been delayed. Different and sometimes contradictory explanations were given for this situation: some interlocutors pointed out that until recently, candidate judges and prosecutors received a low remuneration during their training period at the Academy and that this had resulted in a lack of candidates. Others explained that there were usually many candidates to a judicial position in Skopje, but less or no candidates to a position in the rest of the country. This explanation was disputed by some interlocutors, who stated that there were several applications for each vacant post, even outside Skopje and this seems to be confirmed by the European Commission's progress reports. In any case, both factors were addressed in the 2010 amendments to the Law on the Academy: the level of remuneration of candidate judges and prosecutors during their initial training period was increased and only the top three graduates in a class can choose the court or prosecution office they wish to work in. Others have to apply to the available positions and lose their rights if they fail to apply to two positions.

111. The GET appreciates that efforts have been devoted to ensuring that judges of first instance courts are recruited according to a merit-based system, following criteria as objective as possible. It was given to understand, however, that in practice, a majority of basic court judges were still appointed by the Judicial Council from outside the ranks of Academy graduates, while some graduates were still waiting for a post, several years after they had completed their training period. **GRECO therefore recommends that the authorities of "the former Yugoslav Republic of Macedonia" ensure that the legal criteria and rules for the appointment of judges of first instance courts are effectively implemented in practice, in particular as regards the requirement that all new judges be graduates of the Academy for Training of Judges and Public Prosecutors.**

Lay judges

112. Lay judges are appointed and dismissed by the Judicial Council, on the proposal of the president of the basic court or the court of appeal where they are to carry out their function (article 46, Law on the Judicial Council). Candidates must have graduated from secondary education and respond to an open call for applications. As from 2016, they will have to have a university degree and they will be subject to the same integrity and psychological tests as professional judges. A person who is related lineally or collaterally to the third degree or is the spouse of a judge or lay judge may not be elected judge or lay judge in the same court.

¹⁶According to the 2011-2013 European Commission's progress reports on accession of "the former Yugoslav Republic of Macedonia", 26 posts were available for first instance judges in 2011 and only six were filled by Academy graduates; in 2012, out of 39 available posts, the Judicial Council appointed only four Academy graduates; in the first half of 2013, 13 first instance judges were adopted, only one of whom was an Academy graduate. The reports point out that this was done despite a "healthy rate of applications from AJP graduates". The 2013 progress report stressed that "13 of the 80 candidate judges and prosecutors who have graduated since 2009 are still waiting to be appointed to their first post". The authorities stated that as of the end of November 2013, 70 of the 80 graduates of the Academy have been appointed.

113. As indicated above, there are about three times more lay judges than professional judges in "the former Yugoslav Republic of Macedonia". As of 2012, there are 1844 elected lay judges and according to the information provided to the GET, 939 of them sit regularly in panels, together with professional judges, in first instance and appeal courts, both in civil and criminal cases¹⁷. They do not receive a salary, only a fee for their presence in court. Lay judges can exercise their functions until they reach the legal retirement age of 60 or if one of the causes for dismissal occurs.

114. Lay judges are formally subject to the same ethical and legal rules as professional judges as regards conflicts of interest, recusal, gifts etc. The only exception being that they do not have to fill in asset declarations nor statements on conflicts of interest. They do not undergo training and the GET heard on site that, given the great number of lay judges, the Academy for the Training of Judges and Prosecutors would not have a sufficient capacity to train them in addition to its other tasks regarding professional members of the judiciary. It also found that in general, little specific attention is paid to lay judges and to the fact that they are potentially more at risk than professional judges regarding corruption, conflicts of interest and perceived lack of impartiality, all the more since, unlike professional judges, they do not enjoy security of tenure and they do not receive a salary. In the GET's view, this lack of specific attention and appropriate training raises concerns, not only from the point of view of integrity risks, but also from that of quality of justice. Consequently, **GRECO recommends that appropriate measures be taken with a view to strengthening the independence, impartiality and integrity of lay judges, *inter alia*, by introducing specific guidelines and training on questions of ethics, expected conduct, corruption prevention and conflicts of interest and related matters.** The authorities explained after the visit that the Academy for the Training of Judges and Prosecutors had organised some training activities on ethics and conflicts of interest for lay judges in 2013 and that more were foreseen in 2014. These are welcome measures. However, given the great number of lay judges already highlighted in this report, the GET stresses that the Academy needs to be provided with sufficient resources to allow it to carry out these additional tasks in an appropriate manner.

Promotion

115. Judges of higher and administrative courts need not be graduates from the Academy. They have to fulfil a series of specific conditions and criteria set out in the Law on Courts, designed to ensure the greatest possible objectivity in the process. Vacant positions are advertised by the Judicial Council in the same manner as for judges of first instance courts. Candidates with the relevant degree of professional experience¹⁸ and whose work performance has been evaluated with the highest grade by the Judicial Council can apply.

116. The candidate with the highest professional qualities and reputation is selected on the basis of an opinion from the court/body in which s/he works and, if s/he is a judge, an anonymous survey of the employees in the court. The court's opinion takes into account *inter alia* the candidate's education, diligence in the observance of legal deadlines, ability to resolve legal issues, maintenance of his/her own reputation and that of the court, etc. The Judicial Council then decides on the appointment of a judge by a

¹⁷ The authorities indicated that, in November 2013, the Judicial Council adopted a decision reducing the total number of lay judges to 1400, taking into account the latest needs analysis carried out in all the courts in the country.

¹⁸ Basic court judges with four years' experience, judges of the Administrative Court or the Higher Administrative Court may apply for a position of judge in a court of appeal; appeal court judges with six years' experience, judges of the Administrative Court or the Higher Administrative Court may apply to a position of judge in the Supreme Court; basic court judges with four years' experience as well as legal experts with five years' experience in a state body may apply for a position of judge at the Administrative Court; Administrative Court judges with three years' experience as well as legal experts with six years' experience in a state body may apply for a position of judge at the Higher Administrative Court.

two-thirds majority of its members, the Minister of Justice having no right to vote. If no candidate is elected, the procedure starts again with a new vacancy announcement.

117. The President of a court, including the President of the Supreme Court, is elected by the Judicial Council for a four-year term of office, renewable once, from among the judges of that court, under the same conditions and according to the same procedure as the one described above for senior judges.

118. Despite these commendable attempts at introducing a merit-based career system for senior judges and relying on objective criteria for their selection, the GET was informed from various sources that nepotism and political influence still played an important role in practice. The manner in which this was done was by judges trying to persuade a member of the Judicial Council to propose their candidacy to a post and other members to support it. As a result, only candidates having acquired such support were short-listed and considered by the Judicial Council, while the suitability of other candidates was not reviewed. Some interlocutors also pointed out that, although judges could not formally be members of political parties, some still had known political affiliations and were supported by political parties. The GET also recalls its concerns expressed earlier about undue political influence exerted by the executive on the Judicial Council and notes that the European Commission in its 2013 progress report stressed that the "Judicial Council continued to ignore the legislative requirements" and expressed concern about "the effectiveness of the new legislation and the commitment to the principle of merit-based recruitment"¹⁹. The GET believes that the selection process and the reasoning behind the choice of a candidate need to be made more transparent, so that judges can ascertain whether the objective criteria set out in law are effectively applied in practice. It recalls that Opinion No.10 (2007) of the European Council for European Judges on the Council for the Judiciary at the service of society calls for decisions of Judicial Councils, including on appointment and promotion of judges, to contain an explanation of their grounds and be subject to judicial review. These conditions are not currently satisfied by the Law on the Judicial Council. **GRECO therefore recommends that decisions of the Judicial Council on the promotion of judges be accompanied by a statement of reasons and be subject to judicial review.**

Appraisal of a judge's performance

119. The evaluation and monitoring of the work of the judges is also among the competences of the Judicial Council. Significant changes occurred in this area with the adoption of the above-mentioned amendments to the Law on the Judicial Council in 2010. A Rulebook and a template for judges' evaluations were also adopted by the Judicial Council in 2011.

120. The appraisal of judges is based on so-called quantitative and qualitative criteria, which are translated into a point-based system. The quantitative criteria are data obtained through the Automated Court Case Management Information System (ACCMIS) on the number and type of cases decided by a judge each month, compared to an approximate target number of cases, which is determined for each type of court by the Judicial Council. The qualitative criteria take into account the judge's attitude towards the work and points are allocated or subtracted in consideration of the observance of legal deadlines, the ratio between the number of confirmed, repealed or modified decisions vis-à-vis the total number of decided cases, any disciplinary measures pronounced against the judge and any judgment by the European Court of Human Rights finding a violation of the right to a fair trial in a case tried by the judge. Some additional criteria pertaining to the organisation of the court and the performance of certain administrative tasks are also taken into account. An evaluation committee is set up within each court by

¹⁹See http://ec.europa.eu/enlargement/pdf/key_documents/2013/package/mk_rapport_2013.pdf, p.40

its president. It prepares yearly opinions about the court's judges and sends it to the Judicial Council. This new evaluation system was implemented in 2011 and 2012 and in both years, approximately 77% of the judges who underwent evaluation received the mark "very good". About 19% of judges received a "good" mark, 2% a "satisfactory" mark and less than 1% an "unsatisfactory" mark. As to the presidents of the courts, in 2011, 13 out of 30 presidents received a "very good" mark, 15 a "good" mark and 2 a "satisfactory" mark. In 2012, out of 29 presidents, 4 received a "very good" mark, 17 a "good" mark and 8 a "satisfactory" mark.

121. The GET understands that this new appraisal system, about which a certain dissatisfaction was expressed during the on-site visit, was introduced as an element of a strategy to address the problem of excessive length of court proceedings, which affects the judicial system in "the former Yugoslav Republic of Macedonia" and has resulted in a number of decisions by the European Court of Human Rights of violation of article 6 of the European Convention on Human Rights. The GET notes that the system relies almost exclusively on elements of productivity, even among the so-called "qualitative" criteria of the evaluation of judges. It points out in this connection that, if productivity is certainly a necessary element of the evaluation of judges' work, it must not be the only one. Elements of a more qualitative character, like the quality of the reasoning and its contribution to the development of case-law, or the behaviour of the judge and his/her adherence to values of ethics and integrity, also have an important role to play.

122. The GET also notes with concern that the current system seems to automatically deduct points from a judge's grade when one of his/her decisions is overturned on appeal or found to be in violation of the right to trial in a reasonable time. Yet, such decisions are often not the result of a judge's disregard of his/her professional obligations but rather of other dysfunctions in the judicial system as a whole, for which the judge cannot be held responsible. The system as it is currently designed seems to reverse the burden of proof regarding a judge's possible misconduct and could be regarded as detrimental to a judge's internal independence. Moreover, it appears to be in clear contradiction with Recommendation Rec(2010)12 of the Committee of Ministers to members states on judges: independence, efficiency and responsibilities, which states that any assessment system "cannot compel judges to report on the merits of cases they are dealing with" and that "judges should not be held personally accountable where their decision is overruled or modified on appeal"²⁰. In view of the above, **GRECO recommends that, with due regard to the principle of judicial independence, the system of appraisal of judges' performance be reviewed to (i) introduce more qualitative criteria and (ii) remove any automatic lowering of a judge's grade resulting from the reversal of his/her decisions.**

Transfer of a judge

123. The mobility of judges without their consent is foreseen as an exception, for a maximum period of one year, when necessary because of an increase in the workload of a court or when the regular operation of a court has been jeopardised. The decision of transfer to another court department is taken by the president of the court, upon prior opinion of the Supreme Court and accompanied by a written justification. The decision of transfer to another court is taken by the Judicial Council. In both cases of transfer, the judge has a right of appeal before the Judicial Council (article 39 of the Law on Courts).

Salaries and benefits

124. A special law regulates judges' salaries and allowances ("Official Gazette of the Republic of Macedonia No. 110/2007"). Judges' salaries are calculated according to coefficients depending on the types of functions carried out. The authorities point out

²⁰Paragraph 70 of the Recommendation and paragraph 47 of its Explanatory Memorandum.

that despite the global economic crisis, the salaries of the judges and court administration personnel have not been reduced.

125. The gross annual salary of judges of the first instance courts in “the former Yugoslav Republic of Macedonia” in 2010 was 17,219 € and the net annual salary, 11,451 €.

126. The following table provides the salaries of the different categories of judges in 2012, on a monthly basis, in MKD²¹:

Type of court	President	Judge	President of department	President of sector	President of the council
court with basic jurisdiction	77.178	72.033	77.178	77.178	74.605
court with expanded jurisdiction	82.323	74.605	79.751	79.751	77.178
court with over 50 judges	87.468	72.033	77.178	77.178	74.605
Appeal Court	90.041	82.323	87.468	87.468	84.896
Administrative Court	92.614	84.896	90.041	90.041	87.468
Higher Administrative Court	93.900	86.182	91.327	91.327	88.755
Supreme Court	95.186	87.468	92.614	92.614	90.041

127. Judges are entitled to some compensation, *inter alia* for travel and daily expenses for business trips, transport between their home and workplace, food etc.

Case management and court procedure

Allocation of cases

128. Each court has a working body on the management of court cases, composed of the court administrator and the heads of the court’s departments/sections. This body is responsible for preparing an annual plan to reduce judicial backlogs and delays, internal procedures for case-flow management and submitting monthly reports to the president of the court (Law on the management of flows of the court cases, Official Gazette of the Republic of Macedonia No. 171/2010).

129. Since January 2010, cases are allocated in practice by the Automatic Court Case Management Information System (ACCMIS), which is in use in all the courts of the country. In case a judge has to withdraw from a case allocated to him/her, the case is re-allocated automatically to another judge through the ACCMIS system. This is, in the GET’s view, a positive feature of the judicial system of “the former Yugoslav Republic of

²¹1 MKD = 0.016 EUR

Macedonia”, as it guarantees that no one can tamper with the rules on random case assignments to judges.

Trial in a reasonable time

130. The principle of trial in a reasonable time is a constitutional principle. The law on criminal procedure (article 4) establishes that a person suspected of a crime has a right to a fair and public trial, in reasonable time, before a competent, independent and impartial court, established by law. However, in practice, the excessive length of judicial proceedings is a major issue of concern and represents the main cause of citizens’ complaints before the European Court of Human Rights; they also account for more than half of the Court’s violation judgments against “the former Yugoslav Republic of Macedonia”²².

131. This problem has been addressed among others by the introduction of monthly targets of decided cases by the Judicial Council and the incorporation of productivity criteria in the appraisal of judges, as described above. Amendments to the Law on Courts also added a “lack of achievement of the expected results in the work for more than eight months without any justified reasons”, as a new ground for serious disciplinary breach. In such a case, the president of the court has to inform the Judicial Council in writing and a procedure for dismissal of the judge may be initiated (see below).

132. As a result, progress has been made in reducing judicial backlogs in all courts. Four judges were temporarily transferred from the Higher Administrative Court to the Administrative Court in 2012 to address the problem of a remaining backlog at the level of that court²³. While it agrees that measures need to be taken to reduce delays and backlogs in courts, the GET recalls its concerns expressed earlier about the excessive weight of productivity criteria in the appraisal of judges and warns again that no procedures or consequences ought to automatically follow from a judge’s failure to meet his/her expected results.

Public hearing

133. Like the principle of trial in reasonable time, the principle of public hearing is one of the basic pillars of the judicial procedure. As foreseen in the articles 303-306 of the Law of criminal procedure, the trial is public. The court may at any time *ex officio* or on proposal of the parties exclude the public from the trial or from a part of it, if it is necessary to protect public order, the morality, the personal and private life of the accused, the witness or the victim, or in the interest of minors. Very similar provisions regarding public hearings are prescribed by the Law on civil procedure and by the Law on general administrative procedure.

134. All the courts in “the former Yugoslav Republic of Macedonia” have functional websites, where they publish courts’ decisions and data on their work. The function of spokesperson is also being introduced in the courts. It is carried out by one of the judges, competent for communication with the public. In addition, offices for public relations are being established, which have to provide the interested parties with a copy of the court decisions. The GET agrees that such measures are important tools to increase transparency and the public’s confidence in the justice system.

Ethical principles and rules of conduct

135. In 2006, the Association of Judges adopted a Code of Ethics for Judges defining the ethical principles and rules of conduct that they should observe during the

²²http://www.echr.coe.int/Documents/Stats_violation_1959_2010_ENG.pdf

²³http://ec.europa.eu/enlargement/pdf/key_documents/2012/package/mk_rapport_2012_en.pdf

performance of their office. The Code contains five basic ethical principles: 1. Independence; 2. Impartiality; 3. Honesty (Integrity); 4. Decency; 5. Professionalism and Diligence. It also applies to the lay judges in "the former Yugoslav Republic of Macedonia". The Code does not include any provisions concerning its monitoring and is not meant to be used directly as a basis for disciplinary action or enforcing a judge's liability. However, a severe violation of its rules, damaging the reputation of the court and the judicial function, may constitute an "unprofessional and unethical exercise of the judicial office" under article 75 of the Law on Courts and give rise to sanctions (see below). Two judges were sanctioned under this article, in 2008 and 2011, for violation of the provisions of the Code of Ethics. The first case was an unequal treatment of the parties to a case and the second was an unexplained absence from court, while on duty. Both judges were dismissed following a disciplinary procedure.

136. The GET was informed that a working group was set up at the beginning of 2013, consisting of members from the Academy for Judges and Public Prosecutors, the Association of Judges, the Judicial Council and the State Commission for Prevention of Corruption, with the aim of updating the Code of Ethics, in line with the more recent anticorruption standards on issues such as conflicts of interest, outside activities, gifts, post-employment, etc. The authorities stated that their intention was also to include standards and good practices stemming from the Fourth Evaluation Round of GRECO. The new draft Code of Ethics would be sent for consultation to all courts of the country, which are represented in the Association. The GET welcomes the intention of the authorities of "the former Yugoslav Republic of Macedonia" to update the Code in light of recent standards and good practices stemming from the work of GRECO. That said, it notes that the current Code of Ethics only applies directly to the members of the Association of Judges. The scope of the future Code of Ethics needs therefore to be widened to cover all judges. The GET also wishes to stress that, in order to be of full value, such a Code needs to be conceived as a "living" document and be updated as needed. It would also be helpful if the ethical principles were complemented with explanations, interpretative guidance and/or examples which is not the case at present. In view of the above, **GRECO recommends that a set of clear standards/code of professional conduct, accompanied by explanatory comments and/or practical examples, be established which will apply to all judges.**

137. There is also a Code of Ethics for the members of the Judicial Council, which was adopted in December 2010 by the Council. Unlike the Code of Ethics for Judges, there is no link between the provisions of the Code for the Judicial Council and a possible liability of its members.

Conflicts of interest

138. The legal framework for the prevention and the resolution of conflicts of interest for judges is provided by the relevant provisions of (1) the procedural laws, which contain rules on recusal and self-withdrawal in individual cases; (2) the Law on Courts, as regards incompatibilities and accessory activities; (3) the Law on Prevention of Conflicts of Interest and the Law on the Prevention of Corruption, as judges are deemed as public officials for the purposes of these laws and (4) the Code of Ethics for Judges, which will contain updated provisions on conflicts of interest in the future.

139. As explained in relation to members of Parliament, a conflict of interest is defined as "*a conflict between the public authorisations and duties on the one hand with the private interests of officials, where the official has a private interest which has an impact or could have an impact on the performance of his/her public authorisations and duties*" (article 3 paragraph 1 LPCI). The law describes specific types of conflicts of interest and obliges judges, in case a possible conflict arises, to seek an opinion from the SCPC and to cease the activity causing the conflict. Judges also have to submit to the SCPC a statement "referring to the existence or non-existence of a conflict of interest" at the

beginning of their term of office. For further details regarding the provisions of the LPCI, the LPC and the GET's assessment of these provisions, reference is made to paragraphs 36-45 above.

Prohibition or restriction of certain activities

Incompatibilities and accessory activities

140. The functions of judge and prosecutor are incompatible with membership in a political party and with the performance of other public functions and professions determined by law (articles 100 and 106 of the Constitution).

141. Incompatibilities and accessory activities are further regulated by article 52 of the Law on Courts. The judicial function is incompatible with the function of Member of Parliament, member of a municipal council, member of the Council of the City of Skopje and the functions in state authorities. A judge cannot perform any other public function or profession, except functions as defined by law, and which are not in conflict with the independence and autonomy in the exercise of the judicial function. A judge cannot be a member of the management or supervisory board of a company or any other legal entity that is established in order to gain profit. The only accessory activities allowed are teaching activities at the Academy for Training of Judges and Prosecutors and in higher education institutions, as well as participation in certain research projects, subject to approval by the Judicial Council. According to the information gathered by the GET, these rules are well respected in practice.

Recusal and routine withdrawal

142. Judges and lay judges can be exempted from certain cases, at their own request or that of the parties, for reasons laid out in article 36 of the new Law on criminal procedure ("Official Gazette of the Republic of Macedonia" No 150/2010), which include *inter alia* family relationship at any degree with an accused, plaintiff, lawyer or plenipotentiary, prior participation in the case at a lower level or in any other quality (such as investigative judge, prosecutor, expert etc.) and being affected personally or in his/her rights by the criminal act. Aside from these reasons, a judge or a lay judge may be excluded from a case if any circumstances put his/her impartiality in doubt. Similar grounds for recusal are foreseen in the Law on civil procedure (articles 64-69) and the Law on administrative procedure (articles 40-45).

143. The President of the court is the one who decides on the exemption request. If the request concerns him/her, the decision is taken by the President of the court at the next level of jurisdiction, and if there is an exemption request for the President of the Supreme Court, the decision is taken during a general session of that court. A decision refusing the exemption is subject to appeal within three days, while a decision granting the exemption may not be challenged.

144. Statistics²⁴ were provided to the GET showing that exemptions occur frequently in practice, both at the initiative of the parties and the judge him/herself. The GET also heard allegations that recusal requests were sometimes abusively used in practice to exert pressure on judges.

²⁴At national level, in 2010, 1535 requests for exemption were submitted and 989 were accepted.

At the Basic Court Skopje I (largest criminal court in the country), in 2011, 83 requests for exemption were submitted (25 by the judges and 58 by the parties) and 24 were accepted. In 2012, 88 requests were submitted (40 by the judges and 48 by the parties) and 36 were accepted.

At the Basic Court Skopje II (largest civil court in the country), in 2011, 193 requests for exemption were submitted (84 by the judges and 109 by the parties) and 88 were accepted. In 2012, 169 requests were submitted (49 by the judges and 120 by the parties) and 53 were accepted.

Gifts

145. As explained in relation to MPs, the LPCI contains a prohibition for the officials it applies to, including judges, to accept gifts, except in cases specified by the Law on Use and Disposal with Objects of State Bodies. The law stipulates the obligation of the official who has been offered a gift to refuse it, and to determine the identity of the offering party. If the gift cannot be returned, s/he has to inform without delay the competent authority, to state the witnesses and other evidence in his/her possession, and within 48 hours of the receipt, to report it to the SCPC (article 15, LPCI). According to article 3, LPCI, the term gift covers: money, securities, property, rights and other services. By exception to these rules, the receipt of gifts from a foreign country, body, institution or international organisation is authorised up to the value of 200 €. Such gifts may not take the form of money or services (articles 77-78 of the Law on Use and Disposal with Objects of State Bodies).

146. The Law on Courts (article 58) also stipulates that a judge may not receive gifts or use other benefits and incentives in the performance of judicial function.

147. The GET notes, as it already did in relation to MPs, that the relevant provisions of the Law on Use and Disposal with Objects of State Bodies lack precision regarding the mechanisms of declaration of received gifts. There is no mechanism obliging judges to report gifts received to a person or body within their court, nor is there any information available on how rules on gifts are complied with in practice. The Code of Ethics for Judges, which the GET recalls is currently being updated, does not so far contain any specific guidance on gifts. It hopes that the opportunity of this update will be used to give specific guidance to judges regarding the acceptance of gifts. Such guidance needs to take into account not only material gifts and their value, but also hospitality, invitations and other benefits, as well as the context in which such benefits are offered. **GRECO therefore recommends that rules and guidance be developed for judges on the acceptance of gifts, hospitality and other advantages and that compliance with these rules be properly monitored.**

Post-employment restrictions

148. There are no post-employment restrictions applicable to judges, nor is there any reference to it in the Code of Ethics for Judges. The GET notes that articles 28 and 29 of the LPC oblige public officials to inform the SCPC if, after the end of their office, they undertake certain commercial activities in the field in which they used to work. However, no mention was made of these rules being applicable to judges, either during or after the visit, nor does the law foresee any sanction in case officials concerned do not respect these provisions.

149. The authorities explained that the rules on recusal and withdrawal exposed above were sufficient to address any case of possible conflict of interest arising from a judge's departure to the private sector. The GET disagrees with this analysis. The rules on exclusion contained in the different laws on procedure deal mainly with conflicts of interest arising from current judges' family relations or prior involvement in a case. It is true that these laws do contain a general provision foreseeing recusal due to any circumstances putting the judge's impartiality in doubt. In the GET's view, however, this provision is too general to address possible concrete situations, such as a former judge appearing as a lawyer in front of his/her former colleagues. This lack of specific practice-related provisions is unsatisfactory, as it opens clear possibilities for conflicts of interest through inside information and former professional connections and acquaintances. It also gives the appearance of a lack of objectivity, which may further fuel the negative perception from which the judiciary already suffers. The GET refrains from issuing a recommendation on this issue as it would seem that in practice, there are not many judges who leave the judiciary for the private sector. Nevertheless, it encourages the

authorities to address this issue, for instance in the framework of the on-going update of the Code of Ethics for Judges, and to introduce clear rules/guidelines for – even rare – situations where judges move to the private sector.

Third party contacts, confidential information

150. The Code of Ethics for Judges contains a provision on contact of judges with parties, but it only states that judges must “foster proper relationships” with all parties and endeavour to ensure the presence of both parties to a case whenever s/he meets them outside the courts. There are no special rules for communication outside the formal procedures that would regulate the conduct of judges with third parties. In the GET’s view, it would be helpful if more guidance was provided on this issue in the future new Code of Ethics for Judges.

151. Regarding confidential information, the Law on Courts (articles 94-95) stipulates that judges and lay judges are obliged to keep from unauthorised disclosure classified information with the appropriate degree of protection stipulated by law. The President of the Court may release the judge of his/her obligations in this regard, in accordance with law. Unauthorised disclosure of classified information by a judge is one of the bases for determining his/her unprofessional performance of the judicial function, which represents one of the grounds for dismissal of judges (article 75).

Declaration of assets, income, liabilities and interests

152. According to the LPC, judges are subject to a duty to submit an asset declaration to the SCPC, within 30 days of their entry into office, as well as 30 days after their office is terminated. They also have to inform the SCPC of any change in their property status. Under the LPCI, they also have to submit to the SCPC a conflicts of interest statement within the same deadlines. The elements of this system have been described under the section on MPs (see paragraphs 61-64).

153. During the on-site visit, judges expressed the same interpretation doubts as MPs on the notion of “family member” and that of “movable property of greater value”. In particular, some judges told the GET that they interpreted this notion by reference to article 122(34) of the Criminal Code, according to which a larger value corresponds to anything higher than 5 average salaries, rather than by referring to the provisions of the LPC. Written clarification on these notions, as per the recommendation contained in paragraph 248, also needs to be disseminated among judges.

Supervision

154. The elements of the supervision system on asset declarations and statements on conflicts of interest by the SCPC, described above in relation to MPs, apply in the same manner to judges (see paragraphs 65-70). The GET learned that overall, judges do comply with their declaration duties. According to a press release issued by the SCPC in June 2013, random verification of the content of asset declarations revealed that 26 judges had given incomplete information and failed to report changes in their assets. The SCPC consequently referred these cases to the Public Revenue Office, for it to check possible unexplained increases in assets. Procedures have been completed in six cases and the other cases are still on-going.

155. The GET recalls its serious concerns expressed earlier about the efficiency of the system for the review of asset declarations submitted by MPs, judges and prosecutors (see paragraphs 71-74) and draws attention in this respect to the recommendation contained in paragraph 250.

156. The Judicial Council also controls the proper performance by judges of their duties through the already described appraisal system and through enforcement measures (see below).

Enforcement measures and immunity

Sanctions

157. As explained in relation to MPs, judges are subject to sanctions under article 359 of the Criminal code on "Illicit enrichment and concealment of property" in case they provide false or incomplete information on their asset declarations. Provision by an official of false or incomplete information about his/her property or that of his/her relatives, which significantly (50 average salaries) exceeds his/her legal income, carries a prison term of six months to five years and a fine; if the value of the concealed property exceeds the official's legal income by a large extent (250 average salaries), it carries a prison term of one to eight years and a fine. The property in question is to be confiscated.

158. Under the Law on Courts, failure to declare assets or interests and concealment of property also constitute disciplinary violations for which the judge may be held accountable in a disciplinary procedure. Other disciplinary violations include *inter alia* violation of the rules on case handling, indecent and undignified behaviour in public places, acceptance of gifts and other advantages in connection with the judicial office, exercise of an activity incompatible with the judicial office, failure to undergo compulsory continuous education. The disciplinary measures that may be pronounced in such a case are a written notice, a public reprimand or a salary reduction in the amount of 15% to 30% of the monthly salary of a judge for a period of one to six months.

159. More severe misconduct may entail dismissal of a judge. Under the Law on the Judicial Council, there are two sets of reasons and two parallel procedures, one for "severe disciplinary violation" (article 74) and another for "unprofessional and unethical exercise of the judicial office" (article 75).

160. The following reasons are considered serious disciplinary violations:

- serious violation of the public law and order damaging the reputation of the judge and the court;
- severe violation of the rights of the parties and of other participants in the procedure, damaging the reputation of the court and the judicial office;
- violation of the rules of non-discrimination on any grounds;
- failure to achieve the results expected in his/her work for more than eight months without justified reasons, as established by the Judicial Council through the number of decided cases vis-à-vis the target number of cases that the judge should decide monthly.

161. The following reasons entail an unprofessional and unethical exercise of the judicial office:

- lack of efficiency and promptness during one calendar year, which is established by the Judicial Council in case the judge, upon his/her fault, has exceeded the legal deadlines for procedural actions or for the preparation, adoption or announcement of his/her own decisions in more than five cases, or if during one calendar year more than 20% of the total number of decided cases have been repealed or if more than 30% of the total number of decided cases have been modified;
- unprofessional, untimely or inattentive exercise of the judicial office in the conduct of the court proceedings on specific cases;
- partial conduct of court proceedings, especially in view of the equal treatment of the parties;

- delays of the court proceedings without legal grounds;
- unauthorised disclosure of classified information;
- public presentation of information and data on pending cases;
- deliberate violation of the rules for a fair trial;
- misuse of position or violation of official authorisations;
- violation of the regulations or some other violation of the independence of judges during trial;
- severe violation of the rules of the Code of Ethics for Judges, inflicting damage on the reputation of the judicial office; and
- if a decision on violation of the right to a trial within a reasonable time, as a result of the action of a judge, was rendered by the Supreme Court or the European Court of Human Rights.

162. Additional grounds for dismissal of the president of a court from his/her office of president are foreseen in article 79 of the Law on Courts), namely:

- misuse of position and violation of official authorisations;
- illegal and non-earmarked disposal of the funds of the court;
- failure to exercise or untimely exercise of the work of judicial administration;
- influencing the independence of judges in their decision-making on specific cases;
- causing severe disruption in the court relations, which significantly influences the work of the court;
- violation of the rules with regard to case assignment;
- failure to implement the work programme;
- appraisal with a negative mark; and
- failure to inform the Judicial Council about a severe violation committed by a judge.

Disciplinary procedures

163. As already mentioned, the Law on the Judicial Council foresees two parallel procedures for establishing the liability of a judge for a disciplinary violation or for unprofessional and unethical performance of the judicial office. Both procedures are initiated on the basis of a request of a member of the Judicial Council, the president of the court where the judge works, the president of the higher court or the general session of the Supreme Court. Both procedures are urgent, confidential and conducted *in camera*. The Council may decide to conduct the procedure in open court, upon the request of the judge against whom the procedure is conducted.

164. Both procedures are vastly similar, the only difference being that the procedure for unprofessional and unethical performance of the judicial office is time-barred if more than five years have elapsed from the date the violation was committed, except if a judgment was issued by the European Court of Human Rights or the Supreme Court on grounds of a violation of the right to a trial within a reasonable time. The procedure for disciplinary violation is time-barred when more than three years have elapsed since the violation was committed.

165. The Judicial Council sets up a Disciplinary Commission or a Commission for the Establishment of Unprofessional and Unethical Performance of the Judicial Office from its ranks. These commissions are composed of the President of the Judicial Council and four members and their composition changes for every case, in order, according to the authorities, to increase the objectivity of the decisions. In both procedures, the judge against whom the procedure is initiated may answer in writing or orally and is entitled to a defence attorney.

166. The commission prepares within 30 days a preliminary report with a proposal on the merits of the case. On the basis of this report, the Judicial Council decides on

continuing or suspending the procedure. If the procedure continues, the accused judge and the person who initiated the procedure are summoned to a hearing before the commission. After the hearing, the commission prepares another report for the attention of the Judicial Council, with a proposal to discontinue the procedure if no violation is established, pronounce a disciplinary measure or dismiss the judge. Decisions on disciplinary measures are taken with a simple majority of the members of the Judicial Council, while decisions on a judge's dismissal are taken with a two-thirds majority.

167. The judge subject to a disciplinary sanction or dismissal may appeal the decision of the Judicial Council to an Appeal Council, which is set up within the Supreme Court. It is composed of nine members, of whom three are judges of the Supreme Court, four are appeal court judges and two are judges from the dismissed judge's own court. The president of the Supreme Court may not be a member of this Council. The final decision is posted on the Judicial Council's website.

168. Over the course of its assessment and the on-site visit, the GET came across severe criticism of the system for establishing the accountability of a judge. It has several misgivings about this system, both regarding how it is conceived in the relevant laws and how it is implemented in practice. It is obvious from the description above that there are numerous grounds for dismissal of a judge, either for a severe disciplinary violation or for unprofessional and unethical performance of the judicial office. Several of these grounds are formulated in a very vague manner. It is, for example, difficult to differentiate between a "severe violation of the rights of the parties", which would lead to a procedure for serious disciplinary violation and a "partial conduct of court proceedings, especially in view of the equal treatment of the parties", which is one of the grounds for determining the unprofessional exercise of the judicial office, also leading to possible dismissal. The GET is also concerned by the lack of proportionality in the judges' disciplinary regime, both on paper and in practice. There is a marked lack of gradation in the available sanctions under the Law on Courts and the Law on the Judicial Council, with any violation which is deemed serious, including failure to meet the expected quotas of cases processed, leading to a procedure for dismissal. However, although the law contains numerous grounds for dismissal, the GET noticed that there is one that is mostly used in practice, namely the "unprofessional, untimely or inattentive exercise of the judicial office". Concerns were expressed about a lack of proportionality of the Judicial Council in disciplinary procedures against judges and about political pressures exercised to dismiss certain judges²⁵. Cases were mentioned to the GET in which judges had been dismissed because of one single decision considered inappropriate, which raises serious concerns from the point of view of the independence and the irremovability of judges. Furthermore, the GET wishes to stress that according to European standards and, in particular, paragraph 70 of Recommendation Rec(2010)12 of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities, which was already referred to in relation to judges' appraisal, "judges should not be personally accountable where their decision is overruled or modified on appeal". Dismissal following a decision of the Supreme Court or the European Court of Human Rights finding a violation of the right to a trial within a reasonable time could well be contrary to these standards. Against this background, **GRECO recommends (i) that disciplinary infringements applicable to judges be clearly defined and that the range of sanctions be extended to ensure better proportionality and (ii) that dismissal of a judge only be possible for the most serious cases of misconduct, ensuring, in particular, that the possibility to dismiss a judge solely in case one of his/her decisions is found to be in violation of the right to a trial within a reasonable time be abolished.**

²⁵See http://ec.europa.eu/enlargement/pdf/key_documents/2013/package/strategy_paper_2013_en.pdf, p.39 and http://www.transparency.org.mk/en/images/stories/eu_anti-corruption_requirements.pdf, p.19

169. Another of the GET's concerns relates to the fact that a member of the Judicial Council may initiate a disciplinary procedure against a judge, sit in the commission established by the Judicial Council that investigates the case and then decide on a disciplinary sanction, along with the other members of the Council. This lack of separation between the authority to initiate proceedings and to investigate on the one hand and the authority to decide on sanctions on the other hand may be conducive to a lack of impartiality and does not fulfil all guarantees of a fair trial, which disciplinary proceedings against judges ought to offer, according to paragraph 69 of Recommendation Rec(2010)12. Moreover, the fact that there are two parallel, but widely similar, procedures leading to a judge's dismissal is, in the GET's view, unnecessary and clearly conducive to legal uncertainty. **GRECO therefore recommends that the disciplinary proceedings applicable to judges be reviewed so that (i) infringements are subject to one single disciplinary procedure and, (ii) with due regard to the principle of judicial independence, the authority to initiate proceedings and to investigate be separated from the authority to decide on sanctions.**

Immunity

170. Judges enjoy immunity in the exercise of their judicial office (article 100 of the Constitution and article 65 of the Law on Courts). A judge may not be held criminally accountable for an opinion held in court or a ruling. A judge may not be detained without approval of the Judicial Council, unless found perpetrating a crime that is sanctioned by a penalty of imprisonment of at least five years. The revocation of the immunity of judges is decided by the Judicial Council with a two-third majority of the total number of its members, following an urgent procedure. The Judicial Council also decides upon requests for custody of a judge. If it decides against custody, the judge has to be released immediately. The Judicial Council may also decide to apply the immunity of a judge even if the judge has not invoked it, if the Council considers that it is necessary for the execution of the judicial function.

171. If there are grounds for suspicion that a judge has committed a criminal act for which it is prosecuted upon official duty, the same criminal procedure applies as for any other perpetrator of a crime.

Statistics

- Statements of interests

172. In 2010, the SCPC initiated ten requests for misdemeanour procedures in front of the competent courts against judges who had failed to submit a conflict of interest statement. Seven procedures were completed, out of which a fine of 150 € was pronounced against two judges, two procedures resulted in a warning and in three cases, no sanction was pronounced. The last three procedures are still pending.

173. Pursuant to its new obligation to verify the statements of interest of public officials, the SCPC prepared a review schedule, according to which all statements of interests by judges are to be reviewed in 2013. Verification for the first three quarters of the year was completed by the end of September 2013 and the SCPC initiated 20 requests for misdemeanour procedures. Seven procedures have been completed and the others are still on-going.

- Asset declarations

174. Since 2004, the SCPC submitted requests for initiation of misdemeanour procedures against 44 judges who had not submitted asset declarations. 37 of these procedures were concluded. Fines were imposed in 13 cases and a warning was issued in

seven cases. It also submitted 42 requests to the Public Revenue Office for verification of judges' property situations, out of which 19 have been completed. In three cases, a decision was taken to apply the personal income tax on unexplained assets.

175. In the period 2010-2012, the SCPC submitted the following requests:

- 16 requests for initiation of misdemeanour procedure against judges who had not submitted asset declarations. The competent court decided in 15 of these cases: seven cases resulted in fines between 100-300 €, in four cases a warning was given and in four cases no sanctions were pronounced; and
 - 30 requests were submitted to the Public Revenue Office for verification of judges' property situations. The Public Revenue Office completed five procedures and in one case, a judge was taxed in the proportion of 70% of the value of his unexplained assets, for an amount of 551,334 MKD.
- Procedures for unprofessional and unethical performance of the judicial office:

176. In 2011, the Judicial Council decided on 11 procedures for unprofessional and unethical performance of the judicial office, whereby it decided to dismiss eight judges and discontinue the proceedings in two cases. One procedure is still pending. The appeal council at the Supreme Court confirmed six of these dismissal decisions and appeal is still pending in two cases. In 2012, two procedures for unprofessional and unethical performance of the judicial office were initiated.

- Disciplinary procedures:

177. In 2011, one disciplinary procedure was initiated against a judge by a member of the Judicial Council, who had refused on two occasions to handle a case assigned to him. A disciplinary measure was pronounced against him.

178. From January until the end of September 2012, four judges were dismissed, after their appeal had been rejected by the appeal council of the Supreme Court. In addition, one judge was dismissed, further to a final court decision which sentenced him for a criminal offence to an unconditional prison term of at least six months.

Training and awareness

179. The Academy for Judges and Prosecutors in an independent institution which, as explained above, is responsible for organising the selection of future judges and prosecutors through entry and final exams into the judiciary and the prosecution service, as well as initial, mandatory and voluntary in-service training for judges and prosecutors. According to law, 2.5% of the budget of the judiciary is allocated to the Academy for these purposes and funds intended for financing the judiciary cannot be decreased in case of a re-balance of the national budget.

180. Since its establishment (2007-2012), the Academy has organised in total 88 training events in the field of anticorruption, conflicts of interest and ethics of judges and public prosecutors, with a total attendance of 2016 participants, of whom 943 judges and 508 public prosecutors. Other participants included legal staff from the courts and prosecution offices and representatives from other institutions.

181. Topics covered in 2012, for instance, included "Anticorruption measures", in cooperation with the British Embassy, "Fight against bribery and corruption", in cooperation with the SCPC, "Conflict of interest (GRECO recommendations)", also in cooperation with the SCPC and "Ethics - national and international regulations and international documents for an independent judiciary". These topics were also covered in

the training sessions in the initial and mandatory training courses for newly elected judges and public prosecutors. Trainers in these sessions included not only judges and public prosecutors, but also representatives of other relevant institutions, such as the SCPC, Public Revenue Office, Ministry of the Interior etc. The catalogue of training for 2013 includes ten training events on corruption, conflicts of interest and integrity-related topics. The authorities add that two training events on ethics and conflicts of interest will be organised in 2013 for lay judges sitting in civil and criminal law court chambers. Training of lay judges will be pursued in 2014.

182. The GET takes the view that the Academy for Judges and Prosecutors, through its extensive work for a proper selection and training of judges and prosecutors, is one of the assets of the judicial system of "the former Yugoslav Republic of Macedonia". It encourages it to pursue its important task of raising the awareness of the members of the judiciary, particularly on the integrity-related topics covered in the present Evaluation and stresses that sufficient resources need to be allocated to this end.

V. CORRUPTION PREVENTION IN RESPECT OF PROSECUTORS

Overview of the prosecution service

183. The organisation of the public prosecution service in “the former Yugoslav Republic of Macedonia” mirrors that of the courts. It is regulated by articles 11-16 of the Law on public prosecution (hereafter the LPP), according to which:

- The Public Prosecution Office of the Republic of Macedonia, headed by the Chief Public Prosecutor, is competent for the whole territory of the country and acts before the Supreme Court on extraordinary legal remedies;
- Four higher public prosecution offices are competent in second instance before the courts of appeal in Skopje, Bitola, Shtip and Gostivar;
- One basic public prosecution office for prosecuting organised crime and corruption is competent to proceed in first instance before the organised crime and corruption department of the Basic court Skopje 1 in Skopje. This office is composed of specialised prosecutors;
- Basic public prosecution offices have a regional competence in first instance and are established next to one or several basic courts. There are 22 basic public prosecution offices, out of which ten have an extended competence – for prosecution of criminal acts for which an imprisonment sentence of over five years is prescribed – and twelve basic public prosecution offices.

184. Public prosecution offices (hereafter PPOs) with a large number of cases may create specialised departments. For instance, the Skopje basic PPO has five departments: commercial crime and tax abuses, cybercrime, violent crime, crime related to property and minors. In every basic PPO with extended competence, there has to be a specialised minor unit.

185. The prosecution service is a single and autonomous state body (article 106 of the Constitution). It forms part of the judicial system. Its institutional independence and functional autonomy are guaranteed by the Constitution and by law. According to article 6, paragraph 1, of the LPP, the prosecution service is based on the principles of hierarchy and subordination, but respecting these principles must not threaten the independence of the public prosecutors in the execution of their functions.

186. The Chief Public Prosecutor and the higher public prosecutors have the right to give general written instructions, which are compulsory. These instructions are not intended to solve concrete cases but aim at implementing certain measures for the protection of the basic rights and freedoms of the citizens, protection of the state interests and the rights of other legal subjects, more efficient detection and prosecution of criminal acts and their perpetrators and also to ensure a uniform application of the law. No person or authority is allowed to instruct prosecutors to prosecute or to discontinue prosecution in an individual case.

187. A new Law on criminal procedure (Official Gazette of the Republic of Macedonia No. 150/2010) will enter into force in “the former Yugoslav Republic of Macedonia” in December 2013. It will bring important changes in the respective roles and relations between all the participants in the criminal procedure. Some of the main points of the reform are: an extended application of the principle of opportunity in criminal prosecution; an extension of out-of-court settlements and simplified procedures; a shift of the burden of proof towards the parties and an abolition of the judicial investigation system; a more active, leading role for the public prosecutor in the pre-investigative and investigative procedure, with efficient control over the police and better co-operation with the police and other law enforcement bodies; the establishment of a new operational and managerial structure of the prosecution service.

188. In particular, this law foresees the possibility that the higher instance public prosecutor confirms or revokes decisions of the lower instance public prosecutors, in the following cases:

- in case a public prosecutor does not undertake criminal prosecution, the victim of the reported act has a right of appeal to the higher instance public prosecutor, who may confirm the decision of the lower instance prosecutor or accept the appeal and order the lower instance prosecutor to proceed with criminal prosecution (article 288, Law on criminal procedure);
- in case the public prosecutor stops the investigative procedure, the victim has a right of objection to the higher instance public prosecutor, who may decide to confirm the order for stopping the investigative procedure or accept the objection and oblige the lower level public prosecutor to continue the investigative procedure (article 304, Law on criminal procedure).

Council of public prosecutors

189. The Council of public prosecutors is an independent body, which guarantees the independence of public prosecutors in the execution of their functions. It was established in 2007 by the Law on the Council of public prosecutors ("Official Gazette of the Republic of Macedonia" No. 150/2007).

190. The Council is composed of eleven members, out of which:

- The Chief Public Prosecutor is an *ex officio* member²⁶;
- One member of the Council is elected by the public prosecutors in the basic public prosecution offices from within their ranks;
- Public prosecutors from the districts of the Higher Public Prosecution Offices in Bitola, Gostivar, Skopje and Shtip each elect one Council member from within their ranks;
- One member of the Council is a member of a community that does not constitute a majority in "the former Yugoslav Republic of Macedonia" and is elected by all public prosecutors from within their ranks; and
- Four members of the Council are elected by the Parliament, from the ranks of university law professors, attorneys and other renowned lawyers, of which two shall be members of the communities that do not constitute a majority in "the former Yugoslav Republic of Macedonia".

191. The term of office of the elected members of the Council of public prosecutors is four years, with right of re-election. The Council has a President, elected by the members of the Council, by secret ballots and majority votes. His/her term of office is two years, with no right of re-election. The Council also elects a Deputy President, who replaces the President in his/her absence.

192. The Council of public prosecutors has similar competences as the Judicial Council, with regard to the appointment and career of prosecutors: it is competent for the appointment and dismissal of prosecutors, monitoring and evaluation of their work, disciplinary measures and procedures, and revocation of prosecutors' immunity.

193. The GET learned that for the implementation of its missions, the Council of public prosecutors is currently assisted by a small staff of four public officials. Its table of functions foresees seven additional positions, which are vacant due to an insufficient budget to fill them. Several interlocutors criticised the lack of human and financial resources of the Council of public prosecutors and the negative impact this has on the efficiency of this body and of the prosecution service more in general. The GET

²⁶The Minister of Justice used to be an *ex officio* member too, but his membership in the Council of public prosecutors was abolished by amendments to the LPP adopted in 2011.

underlines the need for the Council of public prosecutors to be equipped with adequate resources, in order to be able to fulfil its missions in an adequate manner.

Recruitment, career and conditions of service

194. The Chief Public Prosecutor is appointed by the Parliament upon the proposal of the government, on the basis of a previously obtained opinion of the Council of public prosecutors, for a term of office of six years, with right to re-election. If the Council gives a negative opinion on a candidate, the government has to propose another one.

195. Public prosecutors are elected by the Council of public prosecutors with no limitation on their term of office, until they reach the retirement age or if another cause of termination of their office occurs, such as termination upon request, disability or if they have been sentenced for a criminal offence to an unconditional prison term of at least six months (article 58, LPP). Termination of office may also occur as a result of a disciplinary procedure (see below under enforcement). The heads of the PPOs are elected by the Council of public prosecutors for a term of office of four years, renewable.

196. The conditions and criteria for the recruitment of public prosecutors are determined by the LPP, articles 43-46. Candidates to all positions have to fulfil the same general criteria, namely to have an active command of the Macedonian language, physical ability, a university degree in law in "the former Yugoslav Republic of Macedonia" or an equivalent foreign degree, to have passed the bar exam and to have completed training at the Academy for Judges and Prosecutors. As for judges, the selection process then differs for prosecutors at the beginning of their career and for promotion.

Selection of prosecutors of basic public prosecution offices

197. The selection process for beginning of career posts mirrors that of judges (see paragraphs 106-110). As from 2013, prosecutors in basic PPOs may only be selected from the ranks of graduates from the Academy of Judges and Public Prosecutors (hereafter the Academy). Until then, a transitional system was in place, by which 50% of candidates were selected from among Academy graduates and the other 50% from other legal experts.

198. The number of posts to be filled is defined by the Council of public prosecutors, in cooperation with the Academy, taking into account the number of vacancies and the projection of needs for posts for future graduates of the Academy. According to articles 36-42 of the Law on the Council of public prosecutors, the Council then announces a vacancy immediately after a post becomes vacant or the need for a new post is established. The call for candidates is published in the "Official Gazette of the Republic of Macedonia" and in at least two daily newspapers, one of which in a language other than Macedonian spoken by at least 20% of the citizens in "the former Yugoslav Republic of Macedonia". Candidates have 15 days after publication of the vacancy to apply for the post.

199. According to the transitional system that has been applied so far, the Council of public prosecutors conducts interviews with the candidates and then votes by a simple majority on their appointment during a session attended by at least two-thirds of the members of the Council. In the new system, the Council will be obliged to follow the order based on the final rank list of graduates of the Academy.

200. The GET recalls that since 2006, 80 graduates have completed their training at the Academy, out of whom, at the time of the on-site visit, only 61 had been appointed as judges and prosecutors. It was informed that further appointment of graduates occurred after the visit and that in total, fourteen Academy graduates were appointed as

prosecutors in basic prosecution offices in 2013. It is therefore satisfied that the legal criteria and rules for the appointment of prosecutors of basic prosecution offices appear to be implemented in practice.

Promotion

201. Like judges, candidates to promotion within the prosecution service need not be graduates from the Academy. Besides the general criteria for entry into the prosecution service exposed above, they have to fulfil specific requirements regarding in particular their working experience. These requirements have been strengthened in January 2012. Candidates to the function of Chief Public prosecutor have to have ten years of work experience and three to eight years of experience are required for other public prosecutors, depending on the office to which they apply. Vacant positions are advertised by the Council of public prosecutors in the same manner as for prosecutors of basic PPOs.

202. The candidate with the highest professional qualities and reputation is then selected by the Council of public prosecutors on the basis of an interview, of his/her past work appraisals, and if s/he does not yet work for the prosecution service, of an opinion from the body in which s/he works. Criteria to be taken into account by the Council of public prosecutors include *inter alia* the candidate's education, attitude and diligence at work, ability to resolve legal issues, maintenance of his/her own reputation and that of the PPO, etc. (article 45, LPP). The Council then elects one of the candidates by a simple majority, during a session attended by at least two-thirds of its members. The GET did not come across allegations of nepotism and undue influence in the promotion of prosecutors. It is also aware that a new system is about to be introduced for the appraisal of prosecutors' performance, which will inevitably have a bearing on their promotion. This system and the GET's views about it are exposed below.

Appraisal of a prosecutor's performance

203. Each prosecutor has to report monthly to the higher PPO on the number of cases s/he processed and the decisions s/he took. An appraisal of his/her performance has so far been carried out every two years by a prosecutor of the higher PPO, according to a Rulebook adopted by the Council of public prosecutors in 2008. Work appraisal of prosecutors of basic PPOs is thus performed by higher public prosecutors. Their work, as well as the work of prosecutors of the basic PPO for prosecuting organised crime and corruption is in turn evaluated by the Chief Public Prosecutor. The Chief Public Prosecutor also assesses the work of the prosecutors in his office. He, in turn, is responsible before Parliament.

204. The appraisal is carried out on the basis of a direct examination of the prosecutors' case work and an interview. During the interview, the following aspects are discussed: number of criminal charges, cases and petition requests; number of criminal charges and cases solved within the legal deadlines; number of unsolved criminal charges and cases and the reasons therefore; quality of decisions; respect of the legal formulations; ability for written expression and clear and precise explanation of the decisions. The prosecutor's ethics, reputation and dignity, communication and organisational skills and efforts towards continuous education and professional improvement are also taken into account.

205. The evaluation results in a grade, which can be positive or negative. The positive grade can be expressed as: satisfactory, good, very good and excellent. The results of the evaluation are communicated to the Council of public prosecutors and the prosecutor concerned. If the public prosecutor is not satisfied with the grade, s/he can submit a written request to the Council of public prosecutors to repeat the grading procedure. If

the Council agrees with this request, it orders the evaluating prosecutor to repeat the assessment and gives him/her concrete directions. The second grade is final.

206. A new evaluation system will soon enter into force, according to a new Rulebook adopted by the Council of public prosecutors. Changes will include the following: (1) the appraisal will be carried out on a yearly basis for each prosecutor by his/her head of office instead of a prosecutor from a higher office; (2) the results of the appraisal will expressly be linked to promotion; (3) criteria will be broadly the same as before, but will be translated into a point-based system similar to that which is applied for judges; (4) an appraisal interview will not take place in every case, but only if necessary; (5) the prosecutor will have the right to object twice on the result of his/her appraisal to the Council of public prosecutors. The first objection may lead to a re-evaluation by the same evaluator, following concrete instructions from the Council; further to a second objection, the Council will proceed itself to the appraisal of the prosecutor, the result of which will be final.

207. The GET is of the opinion that the new appraisal system offers on paper appropriate guarantees for a fair and objective assessment of prosecutors' work performance. It does contain criteria of a quantitative nature, among which elements aimed at measuring prosecutors' productivity, but it seems that these criteria will not be given a disproportionate weight in the overall grading. Elements of a qualitative character, like the legal drafting of decisions, the correct application of the law, the impartiality or the behaviour of the prosecutor and his/her commitment to rules of an ethical nature, will also be taken into account in the grading. The GET also notes that in the Rulebook, some criteria correspond to a range of points, which seems to indicate that it will be possible to fine-tune the appraisal according to individual situations. In this connection, the GET stresses that interviews ought to remain an integral part of the appraisal process, as they offer the possibility to set up a dialogue between prosecutors and their superiors on respective expectations. This is all the more relevant since appraisals will in future be carried out by a prosecutor's head of office, which is a sensible development. The addition of a second possibility to object the grading is also welcome. Whether these guarantees for a fair assessment are indeed in place in practice will depend, of course, on how this new system is implemented.

Transfer of a prosecutor

208. As is the case with judges, the transfer of a prosecutor is only foreseen in exceptional cases (article 17, paragraph 2 and article 19 of the LPP), as a result of a reorganisation of PPOs or when a prosecutor is unable to carry out his/her functions for certain reasons, among which an increased workload. In the latter case, the Council of public prosecutors, upon the proposal of the Chief Public Prosecutor, announces a public call for candidates to a temporary transfer to another PPO, for a period of six months. If no candidates apply, the Council of public prosecutors, on the proposal of the Chief Public Prosecutor, decides on the transfer of a public prosecutor, with his/her approval, for a period of six months, renewable.

Salaries and benefits

209. Public prosecutors' salaries and other benefits are regulated by the Law on salaries of public prosecutors. Prosecutors are classified in five different salary groups. The amount of the salary is determined *inter alia* according to the department and the type of the cases prosecutors work on, internal duties in the PPO, scientific and professional titles and specialisation and results achieved in the performance of their function (article 52, paragraph 1 of the LPP). The annual gross salary of a prosecutor at the beginning of his/her career (public prosecutor in a Basic PPO) is 868000 MKD (approximately 14 114 €) without the bonus for his/her past years of service. The annual

gross salary of the Chief Public Prosecutor is 1 142232 MKD (approximately 18566 €) without the bonus for his/her past years of service.

210. Prosecutors are entitled to the same kind of additional benefits as judges, *inter alia* for travel and daily expenses for business trips, transport between their home and workplace, food etc.

Case management and procedure

211. The heads of PPOs are responsible for the management of their office's work. They enact an annual work schedule at the beginning of each calendar year, which is approved by the Council of public prosecutors (article 18, paragraph 1, LPP).

212. Cases are currently allocated to prosecutors according to a mixed system that combines random allocation for about 80% of the total number of cases and allocation upon a decision of the head of the office for the 20% more complex cases, which are given to the most competent and experienced prosecutors within the office.

213. An automated case-management system, similar to the ACCMIS system used by judges (see paragraph 129) and linked to that system, is supposed to be introduced as from December 2013. However, the GET heard on-site that budgetary constraints were causing delays in the introduction of this automated system. The current budget of the prosecution service is insufficient to cover the necessary IT infrastructure upgrade that is necessary to implement the new system and link it to the ACCMIS²⁷. Some prosecutors met on site also expressed doubts about the suitability of a fully random system of allocation of cases for the more complex ones.

214. It is the GET's opinion that random methods of case allocation are to be preferred, but that a degree of specialisation is sometimes necessary to ensure the most efficient management of cases. This proper balance ought to be found within the new automated case-management system, which will be able to ensure objectivity in the assignment of cases and avoid any appearance of arbitrariness. The GET notes, however, that the deployment of this new system is contingent on the allocation of the necessary budgetary resources. It recalls in this connection paragraph 4 of Recommendation Rec(2000)19 of the Committee of Ministers to member states on the role of the prosecution service in the criminal justice system, which stipulates that "states should take effective measures to guarantee that public prosecutors are able to fulfil their professional duties and responsibilities under adequate legal and organisational conditions as well as adequate conditions as to the means, in particular budgetary means, at their disposal".

Ethical principles and rules of conduct

215. The Code of Ethics of public prosecutors was adopted on 15 November 2004 by the Association of public prosecutors. This Code regulates the work of the public prosecutors with the aim of providing respect for the standards and principles of impartiality, honesty, independence, confidentiality, responsibility and integrity. Similarly to the Code of Judicial Ethics, the Code of Ethics of public prosecutors is currently being updated, in order to include new provisions on anti-corruption issues, such as conflicts of interest, accessory paid and unpaid activities, gifts, etc. The idea is for the provisions of the Code to have an educational value, but also to serve as a basis for possible disciplinary proceedings. The GET welcomes the intention of the members of the Association of public prosecutors to update the Code in light of recent standards and good practices. It notes, however, that the current Code of Ethics only applies directly to

²⁷See http://ec.europa.eu/enlargement/pdf/key_documents/2013/package/strategy_paper_2013_en.pdf, p.41

the members of the Association of public prosecutors. Its scope needs therefore to be widened to cover all prosecutors. The GET also wishes to stress that, in order to be of full value, such a Code needs to be conceived as a "living" document and be updated as needed. It would also be helpful if the ethical principles were complemented with explanations, interpretative guidance and/or examples which is not the case at present. In view of the above, **GRECO recommends that a set of clear standards/code of professional conduct, accompanied by explanatory comments and/or practical examples, be established which will apply to all prosecutors.**

Conflicts of interest

216. The legal framework for the prevention and the resolution of conflicts of interest for prosecutors is provided by the relevant provisions of (1) the Law on criminal procedure, which contains rules on recusal and self-withdrawal in individual cases; (2) the Law on public prosecution, as regards incompatibilities and accessory activities; (3) the Law on prevention of conflicts of interest and the Law on the prevention of corruption, as prosecutors are deemed public officials for the purposes of these laws and (4) the Code of Ethics of public prosecutors, which will contain updated provisions on conflicts of interest in the future.

217. As explained in relation to members of Parliament, a conflict of interest is defined as "*a conflict between the public authorisations and duties on the one hand with the private interests of officials, where the official has a private interest which has an impact or could have an impact on the performance of his/her public authorisations and duties*" (article 3, paragraph 1, LPCI). The law describes specific types of conflicts of interest and obliges prosecutors, in case a possible conflict arises, to seek an opinion from the SCPC and to cease the activity causing the conflict. Prosecutors also have to submit to the SCPC a statement "referring to the existence or non-existence of a conflict of interest" at the beginning of their term of office. For further details regarding the provisions of the LPCI, the LPC and the GET's assessment of these provisions, reference is made to paragraphs 36-45 above.

Prohibition or restriction of certain activities

Incompatibilities and accessory activities

218. Similarly to judges, the function of prosecutor is incompatible with membership in a political party and with performance of other public functions and professions determined by law (article 107 of the Constitution).

219. Incompatibilities and accessory activities are further regulated by article 52 of the LPP. The function of prosecutor is incompatible with the function of Member of Parliament, member of a municipal council, member of the Council of the City of Skopje and the functions in state authorities. A prosecutor cannot perform any other public function or profession, except functions as defined by law, and which are not in conflict with the exercise of his/her judicial function. A prosecutor cannot be a member of the management or supervisory board of a company or any other legal entity that is established in order to gain profit. The only accessory activities allowed are teaching activities at the Academy for Training of Judges and Prosecutors and in higher education institutions, as well as participation in certain research projects, subject to approval by the Council of public prosecutors. According to the information gathered by the GET, these rules are well respected in practice.

Recusal and routine withdrawal

220. Prosecutors may request to withdraw from a case, according to article 26, paragraph 1 LPP and article 41 of the new Law on criminal procedure. The latter article stipulates that the provisions of that law regarding the exemption of judges and lay judges apply *mutatis mutandis* to prosecutors. Exemption can thus occur, on the request of the prosecutor him/herself or the parties for reasons, *inter alia*, of family relationship at any degree with an accused, plaintiff, lawyer or plenipotentiary, prior participation in the case at a lower level as a prosecutor or in any other quality, and if s/he is being affected personally or in his/her rights by the criminal act. Aside from these reasons, a prosecutor may be excluded from a case if any circumstances put his/her impartiality in doubt. The decision on exemption of a prosecutor is taken by the head of his/her office and, if the request concerns a head of office, by his/her immediate superior.

221. The Code of Ethics also contains a relevant provision, according to which prosecutors “do not participate or give opinion on cases in which their spouses and relatives in direct and lateral line up to the fourth generation have any financial interest”. The GET recalls that this Code is currently undergoing an update.

Gifts

222. The rules on gifts contained in the LPCI and the Law on Use and Disposal with Objects of State Bodies, already described in relation to MPs and judges, apply in the same manner to prosecutors. Accordingly, prosecutors may not accept a gift. A prosecutor who has been offered a gift has to refuse it and to determine the identity of the offering party. If the gift cannot be returned, s/he has to inform without delay the competent authority, to state the witnesses and other evidence in his/her possession, and within 48 hours of the receipt, to report it to the SCPC (article 15 LPCI). According to article 3LPCI, the term gift covers: money, securities, property, rights and other services. By exception to these rules, the receipt of gifts from a foreign country, body, institution or international organisation is authorised up to the value of 200 €. Such gifts may not take the form of money or services (articles 77-78 of the Law on Use and Disposal with Objects of State Bodies).

223. Article 63 of the LPP also contains a prohibition for prosecutors to accept gifts, promises of gifts or to use other conveniences and perks, in relation to the performance of their functions. This prohibition also extends to the prosecutor’s spouse and relatives living in the same household. Finally, the Code of Ethics for public prosecutors also contains a prohibition to accept gifts or a donation from persons seeking to influence their decisions.

224. The GET notes, however, the same lack of precision of the relevant legal provisions that it already noted in relation to MPs and judges. There is no mechanism obliging prosecutors to report gifts, nor is there any information available on how rules on gifts are complied with in practice. The prosecutors met on-site confirmed that no one was supervising the implementation of the rules regarding gifts, except in case of a complaint of a party that the prosecutor had acted improperly. The Code of Ethics for public prosecutors does contain a prohibition on accepting gifts, but the GET takes the view that further elaboration of these rules, in the framework of the current update of the Code, would be helpful, to draw prosecutors’ attention to the different types of gifts and benefits that may be offered, but also to the context in which such benefits may be given. **GRECO therefore recommends that rules and guidance be developed for prosecutors on the acceptance of gifts, hospitality and other advantages and that compliance with these rules be properly monitored.**

Post-employment restrictions

225. There are no post-employment restrictions applicable to prosecutors, nor is there any reference to it in the Code of Ethics of public prosecutors. The GET notes that articles 28 and 29 of the LPC oblige public officials to inform the SCPC if, after the end of their office, they undertake certain commercial activities in the field in which they used to work. However, as was the case with judges, no mention was made of these rules being applicable to prosecutors, nor does the law foresee any sanction in case officials concerned do not respect these provisions.

226. It would seem that in practice, there are not many cases of prosecutors leaving their office to work in the private sector. Nevertheless, some of the GET's interlocutors mentioned that this issue might be addressed in the framework of the update of the Code of Ethics. The GET strongly supports this idea and the introduction of clear rules/guidelines for situations where prosecutors move to the private sector, in order to address possible conflicts of interest or the use of insiders' information resulting from former acquaintances within the prosecution service.

Third party contacts, confidential information

227. According to article 61 of the LPP, public prosecutors have to safeguard the reputation of their office. Prosecutors and other employees of the prosecution service have to respect the confidentiality of any information acquired from the parties in the exercise of their office, as well as of any personal data. The Chief Public Prosecutor and heads of PPOs may relieve a public prosecutor or an employee of the prosecution service from their obligations as regards confidentiality. Additional specific rules are contained in the Law on the national criminal intelligence database, which also foresees penalties for unauthorised processing of data, ranging from imprisonment for a duration of six months to five years. If a person has suffered damage as a result of the unauthorised processing of personal data in the database, the competent national authority that processed those data will compensate the damage.

228. The LPP (article 71) also provides that unauthorised disclosure of classified information is one of the types of unprofessional and unethical performance of the prosecutorial office and represents one of the grounds for dismissal of the prosecutors. Finally, the Code of Ethics contains a relevant provision, according to which prosecutors are to respect the confidentiality of information they come across in the course of their office and are not to use it for their personal needs.

Declaration of assets, income, liabilities and interests

229. According to the LPC, prosecutors, like MPs and judges are subject to a duty to submit an asset declaration to the SCPC, within 30 days of their entry into office, as well as 30 days after their office is terminated. They also have to inform the SCPC of any change in their property status. Under the LPCI, they also have to submit to the SCPC a conflicts of interest statement within the same deadlines. The elements of this system have been described under the section on MPs (see paragraphs 61-64).

230. The same interpretation doubts already exposed on the notion of "family member" and that of "movable property of greater value" were also voiced by prosecutors. Therefore, written clarification on these notions, as per the recommendation contained in paragraph 248, also needs to be disseminated among prosecutors.

Supervision

231. The elements of the supervision system on asset declarations and statements on conflicts of interest by the SCPC, described above in relation to MPs, apply in the same manner to prosecutors (see paragraphs 65-70). Like MPs and judges, prosecutors do comply overall with their declaration duties.

232. In 2011, the SCPC carried out a random check of the asset declarations of 19 public prosecutors and determined that 8 prosecutors did not report their overall property. The files were transmitted to the Public Revenue Office for a verification of their property situation. The GET also recalls that the Public Revenue Office concluded 27 verification procedures against MPs, judges or prosecutors in the period 2005-2012. The GET was not made aware of any case in which the SCPC initiated a misdemeanour procedure for failure of an official to declare certain assets, further to information received from the Public Revenue Office or from its own review.

233. The same concerns expressed earlier by the GET regarding the efficiency of the system for the review of asset declarations apply *mutatis mutandis* to prosecutors (see paragraphs 71-74). These concerns relate to the quality and accuracy of the declarations, in particular as regards changes in assets, to the efficiency of supervision, due in part to a lack of capacity of the SCPC, as well as to the sharing of responsibilities between the SCPC and the Public Revenue Office. A recommendation to address these concerns is contained in paragraph 249.

Enforcement measures and immunity

Sanctions

234. As explained in relation to MPs, prosecutors are subject to sanctions under article 359 of the Criminal Code on "Illicit enrichment and concealment of property" in case they provide false or incomplete information on their asset declarations. Provision by an official of false or incomplete information about his/her property or that of his/her relatives, which significantly (50 average salaries) exceeds his/her legal income, carries a prison term of six months to five years and a fine; if the value of the concealed property exceeds the official's legal income by a large extent (250 average salaries), it carries a prison term of one to eight years and a fine. The property in question is to be confiscated.

235. Under the LPP, failure to declare assets or interests and concealment of property also constitute disciplinary violations for which the public prosecutor may be held accountable in a disciplinary procedure. Other disciplinary violations include *inter alia*, unbecoming behaviour in public places, acceptance of gifts in connection with the prosecutorial functions or non-fulfilment of the professional education duties. The disciplinary measures that may be pronounced in such a case are a written warning, a public reprimand, a salary reduction in the amount of 15% to 30% of the prosecutor's monthly salary for a period of one to six months or suspension.

236. More severe misconduct may entail dismissal of a prosecutor. As is the case for judges, the LPP and the Law on the Council of public prosecutors foresee two sets of reasons, one for "serious disciplinary violations" (article 59, LPP) and another for "unprofessional and unsatisfactory performance of the function of public prosecutor" (article 60, LPP).

237. The following reasons are considered serious disciplinary violations:

- serious violation of the public law and order damaging the reputation of the public prosecution service;
- violation of the non-discrimination principle on any grounds;

- serious violation of the rights of the parties and of other participants in the procedure, damaging the reputation of the prosecutor's function;
- improper conduct towards individuals, state organs or other legal entities in relation to the performance of the functions or otherwise;
- precluding the Higher Public Prosecution Office from exercising oversight of the work of public prosecutors.

238. The following reasons, inter alia, entail an unprofessional and unsatisfactory performance of the function of public prosecutor:

- unprofessional, unethical or incompetent performance of official duties;
- unjustified refusal to perform official duties, i.e. not following instructions issued in accordance with the provisions of the law;
- violation of the regulations on the protection of state secret and classified information.

239. The dismissal of the Chief Public Prosecutor is a competence of the Parliament, upon the government's proposal and following an opinion of the Council of public prosecutors, for the reasons of unlawful, inefficient or unprofessional exercising of his/her function, if his/her behaviour indicates that s/he is not able to exercise his/her function, if s/he does not submit a request for initiation of the criminal procedure in cases determined by law or for the reason of damaging the reputation of the function.

Disciplinary procedure

240. The procedure for the establishment of a serious disciplinary violation and an unprofessional and unsatisfactory performance of functions by a public prosecutor is conducted by a Commission, composed of five members, established by the Chief Public Prosecutor (article 72 of the LPP). This Commission decides in first instance on dismissal. The Council of public prosecutors decides upon any appeal against the decision of the Commission. If the Chief Public Prosecutor disagrees with the outcome of this appeal, s/he has a right to initiate an administrative dispute against the decision of the Council of public prosecutors before the competent court.

241. The public prosecutor who is subject to a criminal or disciplinary procedure may be suspended from his/her functions during the proceedings. S/he has the right to appeal to the Council of public prosecutors against the decision of suspension. The Chief Public Prosecutor has a right to initiate an administrative dispute against the decision of the Council of public prosecutors before the competent court.

242. The GET has a more positive view of the system for the disciplinary accountability of prosecutors than that of judges, both on paper and in practice. There are fewer grounds for dismissal and the GET did not come across any indication that the Council of public prosecutors would make use of dismissal procedures in a disproportionate manner, or be subject to political pressure in order to do so. That said, both systems do share some common traits, which raise similar misgivings by the GET. Some of the grounds for the dismissal of prosecutors, such as the "improper conduct towards individuals, state organs or other legal entities in relation to the performance of the functions or otherwise" or the "violation of the non-discrimination principle on any grounds" are formulated in a very vague manner and the same lack of gradation in sanctions may be observed as for judges, with misconduct of a relatively minor nature leading to a procedure for dismissal. Consequently, **GRECO recommends that the disciplinary regime applicable to prosecutors be reviewed so that (i) infringements are clearly defined and that (ii) the range of available sanctions be extended to ensure better proportionality ensuring, in particular, that dismissal of a prosecutor is only possible for the most serious cases of misconduct.**

Immunity

243. Public prosecutors enjoy immunity in the exercise of their office (articles 107 of the Constitution and article 48, LPP). They may not be held criminally liable or detained for their actions, opinions expressed or decisions made while performing their prosecutorial duties. If they commit a crime, however, they are held liable in the same manner as ordinary citizens. The revocation of the immunity of prosecutors is decided by Parliament, following an opinion of the Council of public prosecutors, an urgent procedure.

244. If there are grounds for suspicion that the public prosecutor has committed a crime which is prosecutable upon official duty, a criminal procedure is initiated, as for any other perpetrator of a criminal act.

Statistics

245. In the period from 2009 to June 2011, no disciplinary procedures were conducted nor disciplinary measures pronounced. In 2011, there were no procedures conducted for unprofessional and unethical exercise of duties. The GET learned that in 2012, one prosecutor was dismissed because he was drunk outside working hours. Appeal on this case is currently pending before the Higher Administrative Court.

Training and awareness

246. The training system described above in relation to judges (see paragraphs 179-182), provided by the Academy for Judges and Prosecutors, applies accordingly to prosecutors. The GET recalls that in the period 2007-2012, the Academy has organised in total 88 trainings in the field of anticorruption, conflicts of interest and ethics of judges and public prosecutors, with a total attendance of 2016 participants, out of which 508 public prosecutors. Specific training was provided in 2012 and 2013 on topics related to corruption, conflicts of interest and integrity-related topics, including international standards in this area, among which GRECO's current evaluation round and recommendations. The GET also recalls its positive assessment of the awareness and training activities carried out by the Academy.

VI. CORRUPTION PREVENTION IN RESPECT OF ALL CATEGORIES UNDER REVIEW – THE ROLE OF THE STATE COMMISSION FOR THE PREVENTION OF CORRUPTION

247. The State Commission for the Prevention of Corruption has a central role with regard to many of the issues described in this report and to all three categories of persons under the present evaluation. It is responsible for raising awareness of all public officials – among which MPs, judges and prosecutors – on conflicts of interest, lobbying, gifts, assets and interests. It also has supervisory tasks as regards statements on conflicts of interest and asset declarations.

248. The GET highlighted earlier in this report that interviews during the on-site visit with members of all categories of persons under review revealed marked differences in the interpretation of the notions of “family member” and of “movable property of greater value” (see paragraphs 64, 153 and 230). In view of these obvious difficulties of interpretation, **GRECO recommends that further written clarification concerning the notions of “family member” and of “movable property of greater value” be made available in the context of asset declarations.**

249. The GET also described above its serious concerns regarding the efficiency and credibility of the current system for the review of statements of interest and asset declarations submitted by MPs, judges and prosecutors (see paragraphs 66 and 71-74). **GRECO consequently recommends that appropriate legal, institutional and operational measures be put in place to ensure a more in-depth scrutiny of statements of interest and asset declarations submitted by Members of Parliament, judges and prosecutors, in particular by streamlining the verification process under the aegis of the State Commission for the Prevention of Corruption.**

250. It is obvious to the GET that the human and budgetary resources currently available to the SCPC do not enable it to carry out its tasks in a sufficiently efficient manner. The Commission is composed of seven members, assisted by a staff of 17 persons. In the period 2009-2012, it received 4361 asset declarations and the department in charge of the processing and verification of these declarations is composed of two persons. Similarly, two persons are in charge of the processing and verification of declarations of interest, whereas about 1000 declarations were received in the first quarter of 2013 alone, due to the local elections. If these systems have to be streamlined and scrutiny over the declarations reinforced, as per the recommendation contained in the paragraph above, the provision of adequate resources will be critical. Besides these budgetary constraints, several of the GET’s interlocutors pointed out that the action of the SCPC has been hampered in recent years by an insufficient proactivity in tackling corruption and helping a culture of integrity and avoidance of conflicts of interest emerge in “the former Yugoslav Republic of Macedonia”. Measures such as needs and impact assessment studies in order to concentrate efforts and available resources in the most problematic areas could usefully be considered. Moreover, concerns were expressed regarding the dismissal of the former president of the SCPC without a clear legal basis and the criteria used by the Assembly in the selection of some of the current members of this body. The GET also came across allegations of a (perceived) lack of impartiality of the SCPC in its implementation of enforcement measures²⁸. Addressing these issues is, in the GET’s view, essential to the implementation of other recommendations formulated in this report and to the credibility of the system of prevention of corruption among MPs, judges and prosecutors. In view of the above, **GRECO recommends (i) that the financial and personnel resources of the State Commission for the Prevention of**

²⁸See http://ec.europa.eu/enlargement/pdf/key_documents/2011/package/mk_rapport_2011_en.pdf, pp.14 and 61 and http://ec.europa.eu/enlargement/pdf/key_documents/2013/package/strategy_paper_2013_en.pdf, p.42.

Corruption in the areas of conflicts of interest, lobbying and asset declarations be increased as a matter of priority and that (ii) the Commission demonstrate a more balanced and proactive approach in these areas.

VII. RECOMMENDATIONS AND FOLLOW-UP

251. In view of the findings of the present report, GRECO addresses the following recommendations to "the former Yugoslav Republic of Macedonia":

Concerning Members of Parliament:

- i) (i) swiftly proceeding with the development of a code of conduct for members of the Assembly and ensuring that the future code is made easily accessible to the public; (ii) establishing a suitable mechanism within the Assembly, both to promote the code and raise awareness among its members on the standards expected of them, but also to enforce such standards where necessary (paragraph 35);**
- ii) that internal mechanisms and guidance be further developed within the Assembly on the prevention of conflicts of interest and the acceptance of gifts, hospitality and other advantages and that compliance by parliamentarians with these rules be properly monitored (paragraph 48);**
- iii) introducing rules on how Members of Parliament engage with lobbyists and other third parties who seek to influence the legislative process (paragraph 58);**
- iv) ensuring (i) that sanctions are provided in the relevant laws for all infringements they contain and (ii) that appropriate enforcement action is taken in all cases of misconduct by Members of Parliament (paragraph 80);**

Concerning Judges:

- v) that, in order to strengthen the independence of the judiciary from undue political influence, the *ex officio* membership of the Minister of Justice in the Judicial Council be abolished (paragraph 100);**
- vi) that the authorities of "the former Yugoslav Republic of Macedonia" ensure that the legal criteria and rules for the appointment of judges of first instance courts are effectively implemented in practice, in particular as regards the requirement that all new judges be graduates of the Academy for Training of Judges and Public Prosecutors (paragraph 111);**
- vii) that appropriate measures be taken with a view to strengthening the independence, impartiality and integrity of lay judges, *inter alia*, by introducing specific guidelines and training on questions of ethics, expected conduct, corruption prevention and conflicts of interest and related matters (paragraph 114);**
- viii) that decisions of the Judicial Council on the promotion of judges be accompanied by a statement of reasons and be subject to judicial review (paragraph 118);**
- ix) that, with due regard to the principle of judicial independence, the system of appraisal of judges' performance be reviewed to (i) introduce more qualitative criteria and (ii) remove any automatic lowering of a judge's grade resulting from the reversal of his/her decisions (paragraph 122);**

- x) **that a set of clear standards/code of professional conduct, accompanied by explanatory comments and/or practical examples, be established which will apply to all judges** (paragraph 136);
- xi) **that rules and guidance be developed for judges on the acceptance of gifts, hospitality and other advantages and that compliance with these rules be properly monitored** (paragraph 147);
- xii) **(i) that disciplinary infringements applicable to judges be clearly defined and that the range of sanctions be extended to ensure better proportionality and (ii) that dismissal of a judge only be possible for the most serious cases of misconduct, ensuring, in particular, that the possibility to dismiss a judge solely in case one of his/her decisions is found to be in violation of the right to a trial within a reasonable time be abolished** (paragraph 168);
- xiii) **that the disciplinary proceedings applicable to judges be reviewed so that (i) infringements are subject to one single disciplinary procedure and, (ii) with due regard to the principle of judicial independence, the authority to initiate proceedings and to investigate be separated from the authority to decide on sanctions** (paragraph 169);

Concerning Prosecutors:

- xiv) **that a set of clear standards/code of professional conduct, accompanied by explanatory comments and/or practical examples, be established which will apply to all prosecutors** (paragraph 215);
- xv) **that rules and guidance be developed for prosecutors on the acceptance of gifts, hospitality and other advantages and that compliance with these rules be properly monitored** (paragraph 224);
- xvi) **that the disciplinary regime applicable to prosecutors be reviewed so that (i) infringements are clearly defined and that (ii) the range of available sanctions be extended to ensure better proportionality ensuring, in particular, that dismissal of a prosecutor is only possible for the most serious cases of misconduct** (paragraph 242);

Concerning all categories:

- xvii) **that further written clarification concerning the notions of "family member" and of "movable property of greater value" be made available in the context of asset declarations** (paragraph 248);
- xviii) **that appropriate legal, institutional and operational measures be put in place to ensure a more in-depth scrutiny of statements of interest and asset declarations submitted by Members of Parliament, judges and prosecutors, in particular by streamlining the verification process under the aegis of the State Commission for the Prevention of Corruption** (paragraph 249);
- xix) **(i) that the financial and personnel resources of the State Commission for the Prevention of Corruption in the areas of conflicts of interest, lobbying and asset declarations be increased as a matter of priority and that (ii) the Commission demonstrate a more balanced and proactive approach in these areas** (paragraph 250).

252. Pursuant to Rule 30.2 of the Rules of Procedure, GRECO invites the authorities of "the former Yugoslav Republic of Macedonia" to submit a report on the measures taken to implement the above-mentioned recommendations by 30 June 2015. These measures will be assessed by GRECO through its specific compliance procedure.

253. GRECO invites the authorities of "the former Yugoslav Republic of Macedonia" 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.
