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FOURTH EVALUATION ROUND

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

ADDENDUM TO THE SECOND COMPLIANCE REPORT SERBIA

Adopted by GRECO at its 95th Plenary Meeting
(Strasbourg, 27 November – 1 December 2023)

I. INTRODUCTION

1. This Addendum to the Second Interim Compliance Report assesses the measures taken by the authorities of Serbia to implement the outstanding recommendations issued in the Fourth Round Evaluation Report on Serbia (see paragraph 2) covering "Corruption prevention in respect of members of parliament, judges and prosecutors".
2. The [Fourth Evaluation Round Report on Serbia](#) was adopted by GRECO at its 68th Plenary Meeting (19 June 2015) and made public on 2 July 2015, following authorisation by Serbia. The first [Compliance Report](#) was adopted at GRECO's 77th Plenary Meeting (20 October 2017). GRECO concluded that the very low level of compliance with the recommendations was "globally unsatisfactory" within the meaning of Rule 31, paragraph 8.3 of its Rules of Procedure, and therefore decided to apply Rule 32, paragraph 2.i) in respect of members not in compliance with the recommendations contained in the mutual evaluation report. The [Interim Compliance Report](#) was adopted at GRECO's 82nd Plenary Meeting (22 March 2019). It concluded that the overall level of compliance with the recommendations was no longer "globally unsatisfactory" as ten recommendations had been partly implemented.
3. The [Second Compliance Report](#) was adopted at the 86th Plenary (26-29 October 2020) and made public on 26 November 2020, following authorisation by Serbia. As only two recommendations had been implemented satisfactorily, it concluded that the situation was again "globally unsatisfactory" in the meaning of Rule 31, paragraph 8.3 of the Rules of Procedure, and applied again Rule 32, paragraph 2.i) of its Rules of Procedure. The [Second Interim Compliance Report](#) was then adopted at the 90th Plenary (25 March 2022) and made public on 30 March 2022. It concluded that the situation was no longer "globally unsatisfactory". Therefore, GRECO decided not to continue applying Rule 32 and asked the Head of delegation of Serbia to provide a report on the progress made in implementing the outstanding recommendations by 31 March 2023. The Situation report was received on 14 March 2023 and served as the basis for this Addendum to the Second Compliance Report, drawn up by the rapporteurs, Mr Jens-Oscar NERGARD (Norway) and Ms Katarzyna NASZCZYŃSKA (Poland), with the assistance of GRECO's Secretariat.
4. This [Addendum to the Second Compliance Report](#) assesses the implementation of the outstanding recommendations since the adoption of the Second Compliance Report and provides an overall assessment of Serbia's level of compliance with these recommendations.

II. ANALYSIS

5. It is recalled that GRECO addressed 13 recommendations to Serbia in its Evaluation Report. In the Second Interim Compliance Report 8 recommendations had been implemented satisfactorily or dealt with in a satisfactory manner. Compliance with the remaining recommendations is dealt with below.

Corruption prevention in respect of members of parliament

Recommendation i

6. *GRECO recommended that the transparency of the legislative process be further improved (i) by ensuring that draft legislation, amendments to such drafts and the agendas and outcome of committee sittings are disclosed in a timely manner, that adequate timeframes are in place for submitting amendments and that the urgent procedure is applied as an exception and not as a rule and (ii) by further developing the rules on public debates and public hearings and ensuring their implementation in practice.*
7. It is recalled that in the Second Interim Compliance Report, this recommendation was partly implemented. More precisely, GRECO acknowledged that progress has been achieved in order to disclose parliamentary work in a more timely manner, but noted that concrete timeframes remained to be introduced in the rules. It also noted that the use of the urgent procedure for adopting laws had decreased significantly, but that the corresponding parliamentary rules had not evolved, which still left a too wide space to introduce late amendments without appropriate public information and debate.
8. The Serbian authorities now reiterate that urgent procedure is used in Parliament only in a limited number of cases as regards the adoption of laws (9 % during the 12th legislature - August 2020 / February 2022) and in a moderated way as regards other acts such as strategies, decisions, conclusions, authentic interpretations (32 % during the 12th legislature). They indicate that no changes have been made to the parliamentary rules.
9. As no developments have taken place to improve the formal parliamentary rules aimed at framing both the timing to disclose parliamentary work and the use of urgent procedure, GRECO can only conclude that recommendation i remains partly implemented.

Corruption prevention in respect of judges

Recommendation iv

10. *GRECO recommended (i) changing the composition of the High Judicial Council, in particular by excluding the National Assembly from the election of its members, providing that at least half its members are judges elected by their peers and abolishing the ex officio membership of representatives of the executive and legislative powers; (ii) taking appropriate measures to further develop the role of the High Judicial Council as a genuine self-governing body which acts in a pro-active and transparent manner.*
11. It is recalled that in the Second Interim Compliance Report, this recommendation remained partly implemented. GRECO found that the first part of the recommendation was implemented through the amendments to the Constitution. Regarding the second part of the recommendation, it noted that the amended Constitution established the High Judicial Council (HJC) as an independent body which was to guarantee the independence of courts and judges, and that further measures had been implemented to strengthen the transparency of its activity, but that measures remained to be taken to ensure its budgetary autonomy.
12. The Serbian authorities now report that Article 4 of the new Law on the HJC¹ organises a detailed procedure for preparing the Council's budget proposal, under the exclusive jurisdiction of the HJC. The proposal is only submitted for an opinion to

¹ Official Gazette N° 10/23.

the Minister of Finances, who can organise consultations with the President of the HCJ and the Budget Commission to reach an agreement in case of objections. If no agreement is reached, the HJC's proposal is included as such in the draft budgetary law if the proposal complies with the financial framework determining expenses.

13. GRECO notes that the new Law on the HJC provides for a specific procedure which guarantees that the HJC participates effectively in the determination of its budget and benefits from a budgetary autonomy. Together with other constitutional and legislative amendments which have fostered the operational role of the HJC, this budgetary procedure contributes to strengthening the HJC as a genuine self-governing body, acting in a pro-active and transparent manner. This is in line with the second part of the recommendation.
14. GRECO concludes that recommendation iv has been implemented satisfactorily.

Corruption prevention in respect of prosecutors

Recommendation viii

15. *GRECO recommended (i) changing the composition of the State Prosecutorial Council (SPC), in particular by excluding the National Assembly from the election of its members, providing that a substantial proportion of its members are prosecutors elected by their peers and by abolishing the ex officio membership of representatives of the executive and legislative powers; (ii) taking appropriate measures to strengthen the role of the SPC as a genuine self-governing body which acts in a pro-active and transparent manner.*
16. It is recalled that in the Second Interim Compliance Report, this recommendation remained partly implemented. As regards the first part of the recommendation, GRECO noted that, in spite of the constitutional amendments, Parliament continued to be involved in the appointment of some members of the High Prosecutorial Council (HPC)² and that the Minister of Justice remained one of its *ex-officio* members. The second part of the recommendation was considered as implemented satisfactorily.
17. The Serbian authorities now report that, according to the new Law on the HPC, the Council is composed of 11 members, of which 5 are public prosecutors elected by their peers, and 4 are prominent lawyers (with at least ten years of experience) elected through a qualified 2/3 majority by the National Assembly from a list of 8 candidates established by the parliamentary committee responsible for the judiciary. The Supreme Public Prosecutor (elected by a qualified 3/5 majority in Parliament) and the Minister of Justice remain *ex-officio* members. However, the Minister of Justice cannot vote in disciplinary proceedings. The President of the HPC is elected for five years among the members elected by the prosecutors, and the Vice-President is elected among the members elected by the National Assembly.
18. GRECO notes that the new Law on the HPC has modified the composition of the Council and that a substantial proportion of its members (5 out of 11) are now prosecutors elected by their peers. It also notes that the 4 members designated by Parliament are elected by a 2/3 majority, from a list of 8 prominent lawyers established by the relevant parliamentary committee, which strengthens the pluralism of opinions and ensures a certain depoliticization in these appointments. The President of the Council is elected from among the prosecutors appointed by their peers. As regards the *ex-officio* membership of the Ministry of Justice, GRECO notes that s/he cannot vote in disciplinary proceedings anymore, which limits the

² The former "State Prosecutorial Council" has been re-named into "High Prosecutorial Council" by the constitutional amendments and the revised Law on High Prosecutorial Council (Official Gazette N° 10/23).

impact of the executive on public prosecutors. However, this impact continues to be significant as regards the appointment and promotion of prosecutors, and even through his/her possible participation in disciplinary proceedings.

19. GRECO welcomes the constitutional and legislative changes as regards the composition of the HPS and the powers of the Minister of Justice within this Council, which limits the risks of undue interference of the executive and legislative powers over the prosecution service, and then contributes to serve the purpose of the first part of its recommendation. However, it regrets that Parliament continues to play as such a role in appointing a substantial part of the members of the HPC and that the Minister of Justice remains an active member of this Council, which do not fully eliminate such risks and then raises threats of conflicts of interest, corruption or other integrity-related issues. Therefore, GRECO cannot consider that the first part of the recommendation has been fully implemented.
20. GRECO concludes that recommendation viii remains partly implemented.

Recommendation ix

21. *GRECO recommended reforming the procedures for the recruitment and promotion of public prosecutors and deputy public prosecutors³, in particular by excluding the National Assembly from the process, limiting the discretion of the government and ensuring that decisions are made on the basis of clear and objective criteria in a transparent manner and that positions of public prosecutors (i.e. heads of office) are occupied on an acting basis only for a short period of time.*
22. It is recalled that in the Second Interim Compliance Report, this recommendation remained partly implemented. GRECO noted that Parliament was excluded from the process of recruiting and promoting prosecutors, and that the procedure for appointing the Supreme Public Prosecutor, though elected by Parliament, was in line with the purpose of the recommendation. It also noted that the first term recruitment period had been abolished. However, the transparency of the procedure for appointing and promoting prosecutors remained to be strengthened, and the process for fulfilling acting positions remained to be finalised.
23. The Serbian authorities now indicate that the new Law on Public Prosecutor's Office⁴ completes the appointment requirements, including expertise (possession of the theoretical and practical knowledge necessary for the performance of the public prosecutor's function), qualifications (skills that enable the effective application of specific legal knowledge in solving the public prosecutor's cases) and worthiness (moral qualities such as honesty, conscientiousness, fairness, dignity, awareness of social responsibility) - in the previous law, such criteria were only used for ranking candidates. The new law provides for the prohibition of discrimination, and introduces the publicity of the vacancies for appointing chief public prosecutors and public prosecutors – this publicity must be regulated by the HPC. The appointment decision must be reasoned and published on the HCP's web site and in the Official Gazette. The decision can be appealed to the Constitutional Court within 15 days from the day of publication, and the Constitutional court must decide within 30 days - its decision is made public in the Official Gazette.
24. The authorities also report that on 19 June 2023, the HPC appointed 19 chief public prosecutors - to date, 17 of them have taken up their duties. Therefore, chief public prosecutors now perform their duties in 55 public prosecutor's offices. For the remaining 35 public prosecutor's offices, where acting officials are currently

³ The new laws on High Prosecutorial Council and on Public Prosecutor's office have re-named "public prosecutors" into "chief public prosecutors" and "deputy public prosecutors" into "public prosecutors".

⁴ Official Gazette N° 10/23.

appointed, a public announcement is underway. In accordance with the new Law on Public Prosecutor's office (Article 41), there are no more managers in public prosecutor's offices. The vacancies are only covered by acting prosecutors, appointed by the SPC for a maximum period of one year.

25. GRECO notes that the new legislation, following the adoption of the constitutional amendments, has introduced appropriate provisions ensuring that the decisions for appointing and promoting chief public prosecutors and public prosecutors are made on the basis of clear and objective criteria in a transparent manner. Together with the exclusion of the National Assembly from the procedure and the abolition of the first term recruitment procedure, this limits the discretion of the political power in appointing and promoting prosecutors and is in line with the purpose of the recommendation. GRECO also notes that 19 chief prosecutors have recently been appointed. However, a significant number of prosecutor offices are still occupied by acting prosecutors and remain to be fulfilled by prosecutors to be appointed according to the above-mentioned procedure. As long as this situation has not evolved, GRECO will not be able to consider that the recommendation has been fully implemented.
26. GRECO concludes that recommendation ix remains partly implemented.

Recommendation x

27. *GRECO recommended that the system for appraising the performance of public prosecutors and deputy public prosecutors be reviewed (i) by revising the quantitative indicators and ensuring that evaluation criteria consist principally of qualitative indicators and (ii) by abolishing the rule that unsatisfactory evaluation results systematically lead to dismissal and ensuring that prosecutors have adequate possibilities to contribute to the evaluation process.*
28. It is recalled that in the Second Interim Compliance Report, this recommendation remained partly implemented. GRECO encouraged the authorities to effectively review the system for appraising the performance of prosecutors, including the results of "unsatisfactory" evaluations, which had been made possible by the recent constitutional amendments.
29. The Serbian authorities now report that the rule according to which unsatisfactory evaluation results systematically lead to the dismissal of public prosecutors has been abolished by the new Law on the Public Prosecutor's Office.⁵ Public prosecutors can now be dismissed only when they are sentenced by a final court decision for a criminal offence to a prison sentence of at least six months or by the HCP for a serious disciplinary offence which seriously damages the reputation of the public prosecutor's function and the trust of the public in the prosecution service.
30. Furthermore, the authorities indicate that this new legislation ensures that qualitative indicators, which are listed, are the main evaluation criteria in the system for appraising the performance of prosecutors. These indicators include expert knowledge and ability to its application; abilities of analytical opinion, resolving legal issues and taking decisions within appropriate deadlines; discussion and listening skills; oral and written expression and argumentation ability; ability to organise and manage public prosecutor's work; capacity of undertaking additional works and duties. The criteria and indicators for the evaluation, as well as the method and procedure of evaluating the work of the chief public prosecutors and the public prosecutors are regulated in detail by the HCP. The evaluation is now carried out by a three-member commission appointed by the HPC, and the chief public prosecutors or the public prosecutors can appeal to the HCP on the reasoned decision of the commission.

⁵ Official Gazette N° 10/23.

31. GRECO notes the substantial changes introduced by the new legislation as regards the system for appraising the performance of public prosecutors. It welcomes the abolition of the rule that unsatisfactory evaluation results systematically lead to their dismissal. It also notes that qualitative indicators have been detailed as the main criteria for the evaluation and that the evaluating system has been strengthened to ensure a more transparent and fair process. The purpose of the recommendation has therefore been taken into account by appropriate measures.
32. GRECO concludes that recommendation x has been implemented satisfactorily.

III. CONCLUSIONS

33. **In view of the foregoing, GRECO concludes that Serbia has implemented satisfactorily or dealt with in a satisfactory manner ten of the thirteen recommendations contained in the Fourth Round Evaluation Report.** Three recommendations remain partly implemented.
34. More specifically, recommendations ii, iii, iv, v, vi, vii, x, xi, xii and xiii have been implemented satisfactorily or dealt with in a satisfactory manner. Recommendations i, viii and ix have been partly implemented.
35. With respect to members of parliament, most recommendations have now been complied with satisfactorily. Transparency on the law drafting process has been further improved, state bodies disclose draft laws in a timely manner via public websites, amendments to legislative proposals are made public online, a more effective process of public participation in the legislative process at a preliminary stage has been established and public hearings are organised at Parliament on important laws. Concrete timeframes remain to be introduced in the Rules of procedure of the National Assembly. The use of urgent procedures has decreased significantly, though clearer rules have not been introduced so far to frame this practice more strictly. The Law on Lobbying is supported by a set of secondary legislation and by training and awareness raising activities. The adoption of a Code of conduct for parliamentarians, together with Guidelines for its implementation, awareness raising and training are major steps forward. An Ethics Commission has been established and a Confidential Advisor has been appointed.
36. As regards judges and prosecutors, the adoption of constitutional reforms has made it possible to implement most of GRECO's recommendations. The composition of the High Judicial Council (HJC) now comprises a majority of judges elected by their peers and the *ex officio* membership of representatives of the executive and legislative powers has been abolished. The HJC has been recognised as an independent body under the Constitution, which is to guarantee the independence of courts and judges. Measures have been taken to strengthen the transparency of its activities and its budgetary autonomy. A substantial proportion of the members of the High Prosecutorial Council (HPC) are now prosecutors elected by their peers, and the members designated by Parliament are appointed through a procedure which strengthens the pluralism of opinions and ensures a certain depoliticization in these appointments. However, GRECO regrets that Parliament continues to play as such a role in the appointment of some HPC's members, and the Minister of Justice remains an *ex officio* member of the HPC - though s/he does not vote in disciplinary proceedings anymore. The normative framework and the methods to improve the objectivity and transparency of the recruitment and promotion procedures of judges and prosecutors are welcomed. Training and awareness raising activities have been organised for a large number of judges and prosecutors, in particular through the Judicial Academy. The system for appraising the performance of judges and prosecutors has been strengthened to ensure a more transparent and fair procedure.

The adoption of "Guidelines for the prevention of undue influence on judges" go in the right direction, and the Ethics Committee of the HJC plays a role as regards judicial ethics, including through the appointment of a Confidential Advisor. The adoption of the Code of ethics for prosecutors is to be welcomed, as well as the setting up of the Ethics Committee of the HPC and the appointment of its Confidential Advisor.

37. The Law on Corruption Prevention, amended according to GRECO's recommendations, as well as relevant manuals and guidelines aimed at public officials, improve the rules on conflicts of interest that apply to parliamentarians, judges and prosecutors. They provide some basis for resolving conflicts of interest.
38. The adoption of this Addendum to the Second Compliance Report terminates the Fourth Round Compliance procedure in respect of Serbia. The Serbian authorities may, however, wish to inform GRECO of further developments with regard to the implementation of the outstanding recommendations, namely i, viii and ix.
39. Finally, GRECO invites the authorities of Serbia to authorise, as soon as possible, the publication of the report, to translate it into the national language and to make this translation public.