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Follow-up to the Ad hoc Report on SLOVENIA (Rule 34)

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I. INTRODUCTION

1. During its 83rd Plenary Meeting (17-21 June 2019), GRECO was alerted by the Head of the Slovenian delegation about possible political interference by the legislative branch in respect of public officials, prosecutors and judges in Slovenia. This information was based on a letter, dated 17 June 2019, from the Head of the Criminal Law Department of the State Prosecutor General's Office, to the Head of the Slovenian delegation to GRECO, on an "*inadmissible political interference on the political responsibility of public officials who participated in the prosecution and trial of a politician for corruption offences*".

2. The issue at stake was that the National Council of Slovenia had requested the National Assembly (Parliament) to establish a parliamentary inquiry regarding judicial proceedings against a politician (a member of the National Council and former mayor of a Slovenian city). He, together with other persons, had been investigated and prosecuted for corruption offences in a number of cases, some of which had been adjudicated while other were pending. The parliamentary inquiry requested was aimed at investigating possible politically motivated decisions of the public officials, prosecutors and judges involved in the criminal justice process in respect of the politician.

3. Against this background GRECO decided at its 83rd Plenary Meeting (21 June 2019) to apply Rule 34 of its Rules of Procedure in respect of Slovenia. This Rule provides for an *ad hoc* procedure which can be triggered in exceptional circumstances, such as when GRECO receives reliable information concerning institutional reforms, legislative initiatives or procedural changes that may result in serious violations of anti-corruption standards of the Council of Europe. In its decision, GRECO recalled that corruption prevention in respect of members of parliament, judges and prosecutors was the topic of its Fourth Evaluation Round.

4. The *Ad hoc* Report on Slovenia was adopted by GRECO at its 84th plenary meeting (6 December 2019) and made public on 18 February 2020, following authorisation by the authorities of Slovenia. GRECO invited the authorities of Slovenia to submit information on further developments of the specific situation at forthcoming plenary meetings. Several updates were provided to GRECO in 2020 and 2021, the most recent situation reports were received by GRECO on 26 October and 5 November 2021.

5. The current Follow-up Report, was drawn up by Mr David Meyer (United Kingdom) and Ms Monika Olsson (Sweden), assisted by the GRECO Secretariat.

II. CONTEXT AND BACKGROUND INFORMATION

6. At its 19th session of 12 June 2019, the National Council requested the National Assembly of Slovenia to order a parliamentary enquiry[1] "*to establish the political responsibility of public-service holders to participate in the preparation and execution of prosecution against the former Mayor of the municipality of Maribor and member of the National Council of the Republic of Slovenia, (…) and other persons, with the suspicion that the proceedings against* [them] *severely infringed (…) the provisions of the* [European Convention of Human Rights (ECHR)]*, the Constitution of the Republic of Slovenia, the Criminal Procedure Act, the Criminal Code and the National Council Act"*, as well as *"conclusions of the alleged management of certain records of the police".* The National Council submitted that the persons concerned had been subject to politically motivated criminal prosecutions and violations of their fundamental rights by the prosecutors, police and judges involved in the criminal proceedings against them. They referred to a number of serious alleged dysfunctions in various procedures.

7. In a letter of 28 June 2019, the President of the National Assembly justified the setting up of the parliamentary inquiry commission, referring to the Constitution which provides for such a measure and to the Rules of the Assembly which provide, according to their opinion, a mandatory duty for the Assembly to set up such an inquiry commission when so requested by the National Council. On 12 July 2019 the National Assembly discussed the proposals for ordering the parliamentary enquiry. There was no vote, but the Commission for Public Office and Elections was requested to prepare a proposal in respect of membership of the Parliamentary Inquiry Commission. Some of the parliamentary groups expressed themselves in favour of the parliamentary inquiry. Other parliamentary groups expressed views against the inquiry and would not nominate any representatives for the inquiry commission, highlighting *inter alia* the principle of separation of powers.

8. On 12 September 2019 the State Prosecutor General and the Supreme State Prosecutor's Office filed a request for constitutional review and a constitutional complaint with regard to the National Assembly's Order as well as the Parliamentary Inquiry Act. The main emphasis of the request was on the unlawfulness of such intervention done by the legislative branch with regard to the judicial branch. In the request, the State Prosecutor General underlined that the decision adopted by the National Council to request the National Assembly to investigate and establish political responsibility of prosecutors was "*constitutionally inadmissible and is an*

[1] According to the Parliamentary Inquiries Act, parliamentary inquiries are conducted in order to determine and assess factual situations which can serve the National Assembly as a basis for determining political accountability of public office holders, for amending legislation, in particular area and for other decisions that fall within the scope of the competence of the Assembly. The investigations are conducted under procedures close to judicial proceedings, including search and presentation of evidences, hearings with witnesses and expert witnesses; witnesses can be forced to appear to hearings if they do not want to do so, and they are criminally responsible for their statements. The parliamentary inquiry commission may decide to ask for the court files of pending cases and its request is mandatory for the court. The investigations are to result in a report to be presented to the National Assembly. Practice has shown that such reports may include individual decisions.

unlawful interference in the constitutional and legal framework of the judicial authorities, in particular political responsibility of state prosecutors and judges". According to his analysis, state prosecutors cannot be questioned through a parliamentary enquiry on issues that have been the subject of judicial decisions. It is recalled that the independence and autonomy of the prosecution service constitutes an indispensable corollary to the independence of the judiciary. This position was supported by the Slovenian Association of Public Prosecutors.[2] The Supreme Court of the Republic of Slovenia joined the request and the constitutional complaint of the Prosecution Service by submitting a separate motion pointing out the unlawfulness and the unconstitutionality of the parliamentary inquiry in respect of the judiciary.

9. On 24 October 2019 the Constitutional Court issued a temporary decision by which it put on hold the implementation of the Parliamentary Inquiry Act and of the Rules on parliamentary inquiry in respect of judges. A similar decision was adopted on 12 November 2019 by the Constitutional Court as regards prosecutors. The Court highlighted that the act ordering the parliamentary inquiry impedes the constitutional principle of independence of the judiciary and, therefore, any activities to be taken against judges or prosecutors in order to establish their political accountability were put on hold until a final decision was reached by the Constitutional Court.

10. On 6 December 2019, GRECO adopted its Ad hoc Report on Slovenia (based on the above information), strongly reaffirming "*that the independence of the judiciary is a cornerstone of the rule of law and that all branches of a democratic state need to respect this principle. Complaints against judicial rulings are as a principle to be dealt with through appeal within the judiciary itself and not through interventions by the other branches of state power"*. GRECO noted that the Constitutional Court had put on hold the implementation of the parliamentary inquiry but that no final decision had been rendered. It was therefore premature for GRECO to draw firm conclusions at that stage. Following GRECO's request for information, it has been kept informed on a regular basis by the Slovenian authorities in respect of further developments in this respect.

11. On 3 March 2020, the President of the Parliamentary Inquiry Commission (PIC) confirmed that the Commission was acting in accordance with the temporary decisions taken by the Constitutional Court by not carrying out any investigative activities and not taking any evidence (hearing of witnesses) in relation to judges and prosecutors.

12. On 7 January 2021, the Constitutional Court ruled (I-I-246/19) that the Parliamentary Inquiry in respect of the judges was unconstitutional and the inquiry was annulled. In summary, the Court held that the status of the judiciary does not exclude it completely from the supervision of the National Assembly. The Assembly may investigate issues relating to the operation of judicial authorities as a whole as well as trends in the judiciary, etc. However, the Assembly may not permit inquiries to encumber or in any way influence the decisions of judges in

[2] Letter from the Slovenian Association of Public Prosecutors to the President of the National Assembly, dated 11 June 2019.

specific judicial proceedings or in respect of the conduct of judicial proceedings. The Court found that the inquiry in the particular cases pertained to the assessment of the correctness of specific judicial decisions and the establishment of responsibility of judges. This was incompatible with the principle of judicial independence of judges (Article 125 of the Constitution). The Constitutional Court also concluded that there was a need for procedural protection of judicial independence, a legal remedy, to prevent a parliamentary inquiry from unconstitutionally infringing on judges' independence, and obliged the national Assembly to remedy the situation within one year. Until then, the Constitutional Court would have the competence to deal with such matters.

13. On 8 July 2021, the Constitutional Court held that the Parliamentary Inquiry as regards prosecutors was unconstitutional and the inquiry was annulled. The Court stated that a parliamentary enquiry is not allowed to influence any decision taken by public prosecutors with regard to a particular case. It pointed out that while the prosecution service is part of the executive branch, it is independent vis-a-vis other bodies of the that branch as well as in relation to the other two branches of power. The Constitutional Court further explained that prosecutors could not be subjected to political control and political accountability. The independence of public prosecutors, as stipulated in the Constitution (Articles 3 and 135), prohibits any political interference in the activities of public prosecutors in individual cases and this should be respected when parliamentary enquiries are established. However, this does not mean that any parliamentary enquiry in regard to the work of the prosecution service is prohibited by the Constitution. Similar to the ruling in respect of judges, the Constitutional Court also called for procedural safeguards, a legal remedy, to protect prosecutorial independence when initiating unconstitutional parliamentary inquiries. It called on the National Assembly to remedy the situation within one year, and until then, the Constitutional Court would have the competence to deal with such matters at the request of the prosecutor General.

III. CONCLUSIONS

14. GRECO takes note of the information provided by the Slovenian authorities. It recalls that the initiation of the Rule 34 procedure, decided by GRECO on 21 June 2019, was based on information indicating that certain parliamentary inquiries in respect of specific judicial proceedings could possibly violate judicial independence in Slovenia. Judicial independence is part of GRECO's Fourth Evaluation Round, dealing with corruption prevention in respect of members of parliament, judges and prosecutors.

15. GRECO wishes to reaffirm its position that the independence of the judiciary is a cornerstone of the rule of law and that all branches of a democratic state need to respect this principle. Complaints against judicial rulings are as a principle to be dealt with through appeal within the judiciary itself and not through interventions by the other branches of state power.

16. GRECO has closely followed the developments in Slovenia and welcomes the final decisions taken by the Constitutional Court, which make it clear that parliamentary inquiries into judicial proceedings and related decisions by judges and prosecutors in respect of particular cases, are not compatible with the Constitution of Slovenia, as it would violate the independence of the judges and prosecutors. The foreseen parliamentary inquiries in this respect have been annulled. GRECO also notes that the Constitutional Court has called on the Slovenian Parliament to establish additional procedural safeguards, remedies, in order to prevent such unconstitutional inquiries in the future. The Constitutional Court has also ruled that it maintains the competence to deal with such cases, should they arrive.

17. As the principal issue leading to the initiation of the current Rule 34 procedure in respect of Slovenia has been dealt with by the Constitutional Court in an exhaustive way, by annulling the inquiries concerned and clarifying the principle of judicial independence in this respect under the Constitution of Slovenia, it is no longer necessary to continue the current Rule 34 procedure.

18. The adoption of the current Report terminates the Rule 34 procedure against Slovenia. That said, the Slovenian authorities may wish to keep GRECO informed of further developments in this area.

19. GRECO invites the authorities of Slovenia to authorise, at their earliest convenience, the publication of this report, and to make a translation of it into the national language available to the public.