



Group of States against Corruption
Groupe d'États contre la corruption

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

Adoption: 8 December 2017
Publication: 21 December 2017

Public
GrecoRC4(2017)15

FOURTH EVALUATION ROUND

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

COMPLIANCE REPORT

ARMENIA

Adopted by GRECO at its 78th Plenary Meeting
(Strasbourg, 4-8 December 2017)

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I. INTRODUCTION

1. The Compliance Report assesses the measures taken by the authorities of Armenia to implement the recommendations issued in the Fourth Round Evaluation Report on Armenia which was adopted at GRECO's 69th Plenary Meeting (16 October 2015) and made public on 25 February 2016, following authorisation by Armenia ([Greco Eval IV Rep \(2015\) 1E](#)). GRECO's Fourth Evaluation Round deals with "Corruption prevention in respect of members of parliament, judges and prosecutors".
2. As required by GRECO's Rules of Procedure, the authorities of Armenia submitted a Situation Report on measures taken to implement the recommendations. This report was received on 25 April 2017 and served, together with the additional information submitted on 5 and 31 October 2017, as a basis for the Compliance Report.
3. GRECO selected Georgia and Hungary to appoint Rapporteurs for the compliance procedure. The Rapporteurs appointed were Ms Gulisa KAKHNIASHVILI, on behalf of Georgia and Mr Bálint VARRÓ on behalf of Hungary. They were assisted by GRECO's Secretariat in drawing up the Compliance Report.
4. The Compliance Report assesses the implementation of each individual recommendation contained in the Evaluation Report and establishes an overall appraisal of the level of the member's compliance with these recommendations. The implementation of any outstanding recommendation (partially or not implemented) will be assessed on the basis of a further Situation Report to be submitted by the authorities 18 months after the adoption of the present Compliance Report.

II. ANALYSIS

5. GRECO addressed 18 recommendations to Armenia in its Evaluation Report. Compliance with these recommendations is dealt with below.
6. The authorities of Armenia indicate on a general note that shortly after the adoption of the Evaluation Report, a constitutional referendum was held (December 2015). As a result the Constitution of the Republic of Armenia was amended, in particular, regarding the parliamentary and judicial systems. Subsequently, a number of new laws are being developed, regulating the National Assembly, the judiciary and the Public Prosecutor's Office. A working group, chaired by the Minister of Justice, was set up to develop the "Institutional package" of laws, including the recently adopted law on a new preventive anti-corruption body.

Corruption prevention in respect of members of parliament

Recommendation i.

7. *GRECO recommended that the transparency of the legislative process in the National Assembly be secured and further improved (i) by ensuring that the requirement to carry out public discussions on draft laws is respected in practice and that drafts submitted to the National Assembly as well as amendments are disclosed in a timely manner and (ii) by taking appropriate measures to ensure disclosure of information on the content of and participants in committee sittings, as well as more active use by committees of the possibility to organise parliamentary hearings.*
8. The authorities of Armenia report in respect of part (i) of the recommendation that the government institutions have long been required to publish draft legal acts on

their own websites for public discussions¹. Generally proposals from interested stakeholders can be submitted during at least 10 days after publication. Furthermore, in accordance with the Decree of the Government, No. 1134 of 2 September 2016, "bodies established by the Constitution or law", including the National Assembly², are now also required to publish all draft legal acts they develop on a unified dedicated website - e-draft.am³, to enable public discussions. The draft laws (as well as draft decisions, statements and addresses) are mandatorily recorded in the register of pending issues of the National Assembly (accessible on its official website) within two working days of their submission. All draft laws considered by the National Assembly (those on the agenda, those not included and the adopted texts), including all amendments and changes, are published under the section "History of the Draft" on the official website of the National Assembly. The authorities add that public discussions may be held⁴ on the initiative of the developing body, through meetings, open hearings, surveys, and exchanges through various communication means.

9. As regards part (ii) of the recommendation, the authorities specify that the Constitutional Law on Rules of Procedure of the National Assembly (LRoP), which was adopted on 12 December 2016 and entered into force on 18 May 2017, provides for mandatory public sessions of the standing committees. Sessions of the standing committees can only be held behind closed doors in particular situations (amnesty, State budget execution etc.). In practice, only 3 out of 124 issues were discussed behind closed doors during the 2016 autumn session. The authorities submit that during the current (autumn) session of 2017 just 1 out of approximately 100 issues was discussed behind closed doors. According to LRoP (Article 165, part 2), the sittings of the standing committees, as well as parliamentary hearings should be broadcast online on the official website of the National Assembly. The sittings of the Standing Committee on State and Legal Affairs and Human Rights have been broadcast since September 2017. The authorities specify that the sittings of all standing committees are now broadcast. The new LRoP together with the Operations Procedure of the National Assembly (adopted on 16 December 2016) regulate the issue of parliamentary hearings and expand the scope of entities competent to initiate them, including the Chair and the factions of the National Assembly. The authorities also indicate that the organisation of parliamentary hearings by the standing and *ad-hoc* committees of the National Assembly is not an obligation. Nine hearings were held by parliamentary committees during the 2016 autumn session regarding issues of major importance and during the 2017 autumn session 3 parliamentary hearings were held and at least 4 are planned to be held till the end of December, 2017. The authorities add that so far the newly elected National Assembly has discussed only one issue according to the so called "urgent procedures", i.e. that of increasing the number of acting judges.
10. Moreover, the authorities submit that according to paragraph 7 of the Operations Procedure of the National Assembly, draft agendas should be published at least three working days before the sitting. Also the minutes of the sittings are to be published, once signed by the chair.
11. GRECO recalls that the reason for the current recommendation was that the application of the legal framework needed to be further developed towards

¹ Decision of the Government of the Republic of Armenia No 296-N of 25 March 2010 "On approving the procedure for organising and holding public discussions", amended by Decision of the Government of the Republic of Armenia No 1134 of 2 September 2016.

² The draft laws proposed by MPs and factions of the National Assembly are published on the unified dedicated website for discussions.

³ The Ministry of Justice coordinates the work of the platform and carries out monitoring.

⁴ It is not mandatory.

transparency of the legislative process, to increase the possibility of public consultations, to make less use of so called “urgent procedures”, to provide draft legislation to the public at an early stage, to provide for more transparency at committee meetings and during hearings etc. GRECO notes that the obligation to make public draft legislation on the newly established website “e-draft.am” serves the purpose of providing more transparency to the legislative process. Moreover the draft laws registered in Parliament are reportedly published on the parliamentary website that enables any interested body (registered user) to comment on the draft laws. GRECO welcomes the new LRoP, which has improved the regulation on standing committee sittings, in particular by specifying conditions for closed door sittings. In addition, GRECO notes that the possibility to initiate parliamentary hearings has increased (Article 125 / 3 LRoP). Furthermore, the authorities have indicated that the use of closed doors in respect of committee meetings has decreased in recent years. Even though the authorities have taken a number of adequate measures aiming at more transparency around the legislative process, the revised legal framework is fairly new and the actual practices will have to be further assessed once the system has been operational for some time. In particular, the actual practices of timely disclosure of draft laws, involvement of the public in the law making process, use of “urgent procedures”, disclosure of committee sittings documents and adequate supervision should be given priority.

12. GRECO concludes that recommendation i has been partly implemented.

Recommendation ii.

13. *GRECO recommended (i) that a code of conduct for members of parliament be adopted and made easily accessible to the public, which provides clear guidance on conflicts of interest and related areas – including notably the acceptance of gifts and other advantages, incompatibilities, additional activities and financial interests, misuse of information and of public resources and contacts with third parties such as lobbyists; (ii) that it be complemented by practical measures for its implementation such as dedicated training, counselling and awareness-raising.*
14. In respect of part (i) of the recommendation, the authorities report that the Law on Guarantees of Activities of Deputies (LoGAD), which was adopted on 16 December 2016 and entered into force on 18 May 2017, is a comprehensive code of conduct for MPs, containing general rules on ethics (Articles 2-4) and regulating the issues of incompatibility and conflicts of interest. The Law on Public Service (LPS) also contains general ethics requirements for public servants. In addition, it contains provisions on financial disclosure of public officials and on gifts.
15. Furthermore, the authorities indicate that the Law on Commission for the Prevention of Corruption (LCPC), adopted on 9 June 2017, but not enacted so far, indicates that the Commission for Prevention of Corruption (CPC) has a clear mandate to observe the compliance with incompatibility requirements and other restrictions, including restriction on gifts for all high ranking officials. The regulation of ethics and *ad hoc* conflicts of interest remains decentralised. For MPs the supervision is ensured by *ad hoc* Ethics Committee of the National Assembly.
16. As regards part (ii) of the recommendation, the authorities indicate that the NGO International Center for Human Development has been implementing the project “Support to the National Assembly of the Republic of Armenia in improving parliamentary oversight and communication with electorate” since 12 September 2017. Several events (incl. induction and orientation sessions and a strategic planning retreat) have been organised for MPs, covering among other issues incompatibilities, parliamentary ethics and conflict of interests. The project aims in particular at enhancing the transparency and accountability of Parliament, including

its standing committees and factions. Guidelines for MPs containing general ethics principles, information on the *ad hoc* Ethics Commission of the National Assembly etc. have been prepared.

17. GRECO notes that the authorities refer to several legal acts, which deal with a range of matters that are important for the legal and ethical framework to which members of parliament and other public officials are to adhere. In particular, GRECO welcomes the adoption of LoGAD, which deals with general ethical principles, incompatibilities, accessory activities and conflicts of interest. However, GRECO notes that it does not contain, for example, provisions on gifts or detailed specific restrictions. As stated in the Evaluation Report, a code of conduct should provide a comprehensive overview of existing standards in one document with the aim of providing further guidance for their application. Although work has started, the first part of the recommendation remains to be fully addressed. Regarding the second part of the recommendation, GRECO notes that some practical measures, covering *inter alia* awareness raising on ethics for MPs, have started recently. However the dedicated training and counselling remain to be put in place.
18. GRECO concludes that recommendation ii has been partly implemented.

Recommendation iii.
19. *GRECO recommended taking appropriate measures to prevent circumvention of the restrictions on members of parliament holding office in commercial organisations and on their engagement in entrepreneurial activities or other paid occupation in entrepreneurial activities.*
20. The authorities refer to the Constitution of Armenia, the Law on Public Service (LPS) and the Law on Guarantees of Activities of a Deputy of the National Assembly (LoGAD) stipulating that the deputies of the National Assembly are not permitted to run any business activities (“entrepreneurial activities”). The LoGAD further specifies that an MP, within one month from the beginning of his/her mandate, is to register him/herself as a sole proprietor; quit his or her position within any trade organisation; quit any trade organisation or put his/her shares in the mentioned organisation to an accredited management etc. The authorities also refer to strengthened regimes for asset declarations and state that the LoGAD requires parliamentarians to disclose any conflict of interests prior to a speech or voting in Parliament or in a committee or during the process of a legislative initiative. The new Constitutional Law on Rules of Procedure (LRoP, Article 157) provides for a mechanism of addressing the Constitutional Court to terminate the powers of MPs in case of breach of the constitutional incompatibility requirement (Articles 95 and 98 of the Constitution). Moreover, the authorities refer to the establishment of the Commission for Prevention of Corruption (CPC), which is to be an independent body overseeing incompatibilities.
21. GRECO takes note of the information provided. It recalls that several legal provisions, such as the prohibition on engaging in commercial activities etc provided for in the Constitution and in different laws were already in place at the time of the adoption of the Evaluation Report. The Report noted that the rules appeared “strict on paper” and emphasised the need to address the excessive overlap between political and economic interests, by making the legislative provisions work in practice. GRECO takes note of the mandate of the existing Commission on Ethics for High Ranking Officials and the on-going preparations for the establishment of the CPC, which is to monitor the area of MPs incompatibilities. It also acknowledges that the LoGAD and the new LRoP have introduced a mechanism to enforce the constitutional regulations on incompatibilities. These measures appear appropriate, while their impact remains unknown. GRECO wishes

to further assess the situation once these measures have been made operational for some time as the practical implementation of the incompatibility rules was the main reason for the recommendation.

22. GRECO concludes that recommendation iii has been partly implemented.

Recommendation iv.

23. *GRECO recommended that the mechanism for monitoring compliance by members of parliament with standards of ethics and conduct be significantly strengthened so as to ensure (i) independent, continuous and pro-active supervision of the rules of ethics and rules on incompatibilities and secondary activities, conflicts of interest and gifts (ii) enforcement of the rules through adequate sanctions.*
24. The authorities report that in addition to the current structure of the *ad hoc* Ethics Committee of the National Assembly (referred to in the Evaluation Report), the “Institutional package” of laws, more precisely the Law on Commission for the Prevention of Corruption (LCPC), adopted on 9 June 2017, but not enacted so far, provides for a new preventive anti-corruption body (CPC) to be established on the basis of the existing Commission on Ethics of High-Ranking Officials. It is expected to be an independent institution, with adequate staff and its own budgetary resources. The Commission will be competent for checking asset declarations of high ranking officials (including parliamentarians, judges and prosecutors) and for reviewing the opinions of and providing assistance to the relevant ethics commissions. It will deal with incompatibility requirements and other restrictions, but not with ethics and *ad hoc* conflicts of interests of MPs. It will be vested with powers to sanction administratively. The members of the new Commission are still to be selected by the National Assembly.
25. Furthermore, the authorities specify that the new LRoP (Article 16) provides that the *ad hoc* Ethics Commission of the National Assembly now will deal solely with the rules of ethics of MPs and that Article 17 provides that it is to submit its opinions to Parliament for publication on the parliamentary website. It can make inquiries and request documents with State and local self-government bodies. It can also order an expert examination of factual circumstances in a case. As a rule, the information and documents requested are to be provided within two weeks, including the information containing State, official or commercial secrets.
26. As regards the second part of the recommendation, the authorities report that the opinions of the Commission on Ethics of High-Ranking Officials / future Commission for Prevention of Corruption regarding violations of incompatibility requirements provide ground for the Constitutional court to terminate a parliamentary mandate. Violations of other restrictions and of the code of ethics may lead to administrative or criminal sanctions. The Commission on Ethics of High-Ranking Officials has been empowered to impose administrative sanctions since July 2017. The authorities also submit that “illicit enrichment” was criminalised by an amendment to the Criminal Code in 2016. Moreover, amendments to the Administrative Offences Code providing for administrative sanctions in respect of violations related to the regulations on asset declarations and on whistle-blowers were adopted on 9 June 2017 and entered into force on 1 July 2017.
27. GRECO notes that the *ad hoc* Ethics Committee of the National Assembly is presently competent for the rules of ethics and *ad hoc* conflicts of interest of MPs. Previously, at the adoption of the Evaluation Report, an *ad hoc* ethics committee had already been in place, but GRECO had serious doubts about its effectiveness. GRECO notes now that the LCPC provides for a new general monitoring mechanism to be established on the basis of the current Commission on Ethics for High-

Ranking Officials. GRECO understands that the future Commission for Prevention of Corruption (CPC) is expected to be the supervisory authority in charge of incompatibilities, gifts and assets declarations of public officials, including in respect of MPs. This new Commission is expected to be an independent institution, with adequate staff and its own budgetary resources. However, it has not become operational as yet. This part of the recommendation has been partly complied with.

28. Regarding part (ii) of the recommendation, GRECO takes note of the legislative measures reported, i.e. criminalisation of illicit enrichment, administrative sanctions for violations of rules on assets declarations and whistleblowers and empowerment of the current Commission on Ethics for High-Ranking Officials to impose administrative sanctions. These recent developments meet the requirements of this part of the recommendation.
29. GRECO concludes that recommendation iv has been partly implemented.

Corruption prevention in respect of judges

Recommendation v.

30. *GRECO recommended that the reform of judicial self-governance be continued, with a view to strengthening the independence of the judiciary, securing an adequate representation of judges of all levels in self-governing bodies and reducing the role of court chairs, in particular the chair of the Court of Cassation.*
31. The authorities report that the 2015 constitutional amendments have led to several changes in the justice sector. The Constitution (Article 173) now provides that the Supreme Judicial Council is an independent state body that is to guarantee the independence of courts and judges. It is composed of 10 members, including five judges of all levels, with at least 10 years' experience, elected by the General Assembly of Judges; as well as five members from among academic lawyers and other prominent lawyers, elected by the National Assembly by at least three fifths of votes of the total number of Deputies. The members of the Supreme Judicial Council are elected for a term of five years, without the right to be re-elected. The Judicial Council elects its chair among its members.
32. The Supreme Judicial Council is tasked to select and propose candidate judges for appointment and promotion; to decide on secondment of judges to another court; to give consent for initiating criminal proceedings against a judge; to decide on disciplinary sanctions and to terminate the powers of a judge; to prepare and submit budget proposals to the Government etc. Furthermore, the authorities specify that a new Judicial Code is being drafted by a working group to implement the new constitutional requirements. The draft Code indicates that the self-governing bodies include the Supreme Judicial Council and the General Assembly of Judges.
33. GRECO welcomes the constitutional amendments that have reformed judicial self-governance in Armenia by creating the Supreme Judicial Council. GRECO notes that half of the members of the Supreme Judicial Council are composed of judges of all levels - elected by their peers – by the General Assembly of Judges. Moreover, the role of court chairs has been reduced, as requested in the recommendation. In conclusion, it would appear that the establishment of the Supreme Judicial Council is an important reform that goes in the right direction.
34. GRECO concludes that recommendation v has been implemented satisfactorily.

Recommendation vi.

35. *GRECO recommended abolishing the possibility for the Council of Court Chairs to temporarily re-assign judges without their consent either for the purpose of ensuring an even workload for judges/courts or for the purpose of remedying a shortfall in the number of judges at a court.*
36. The authorities report that according to the Constitution, the Supreme Judicial Council decides on transfers of judges to another court (Article 175 1.(5)). They also submit that the draft Judicial Code prescribes the details in this respect. It foresees that a transfer can last for a term of up to one year, with the consent of judge concerned. The same judge cannot be transferred again within one year after the last transfer. The draft Judicial Code was expected to be submitted to the National Assembly in December 2017.
37. GRECO welcomes this amendment to the Constitution, which now provides that the Supreme Judicial Council is competent to decide on transfers of judges. Furthermore, it notes that the draft Judicial Code provides for the details of this competence. GRECO appreciates that such transfers are to be carried out only with the consent of the judges concerned. While the concerns of this recommendation have been adequately addressed, it would appear that the amendments to the Judicial Code have not yet been considered by Parliament.
38. GRECO concludes therefore that recommendation vi has been partly implemented.

Recommendation vii.

39. *GRECO recommended reforming the procedures for the recruitment, promotion and dismissal of judges, including by i) strengthening the role of the judiciary in those procedures and reducing the role of the President of the Republic and requiring him to give written motivations for his decisions and ii) ensuring that any decisions in those procedures can be appealed to a court.*
40. The authorities report that the amended Constitution provides for new procedures of nomination and appointment of judges. Regarding the first part of the recommendation, they indicate that the Supreme Judicial Council draws up, approves and proposes the list of candidate judges to first instance and appeal courts (as well as the chairpersons) to the President of the Republic, who either appoints them or sends the proposal back to the Supreme Judicial Council with his/her objections. If the Council does not accept the President's objection(s), the President either appoints the judge or applies to the Constitutional Court to challenge the Supreme Judicial Council's decision (Article 139 of the Constitution). It also follows from the details submitted by the authorities that the Supreme Judicial Council is competent for dealing with dismissals of judges (Article 175(8) of the Constitution). As to the second part of the recommendation, the authorities indicate that judges can make a submission to the Constitutional Court to challenge the constitutionality of legal norms applied in decisions on appointment or dismissal (in virtue of Article 169 §8). According to the draft Judicial Code, the judges will be able to appeal those decisions in the Administrative Court.
41. Concerning the first part of the recommendation, GRECO welcomes the Supreme Judicial Council being responsible for preparing the lists of candidate judges and submits the proposal to the President of the Republic. It would appear that the President is required to motivate his/her refusals of appointments. Moreover, GRECO acknowledges the right of the Supreme Judicial Council to overturn the President's disapproval. GRECO notes that the revised Constitution provides that decisions of dismissal also come under the authority of the Supreme Judicial

Council. The first part of the recommendation has been implemented. As far as the second part is concerned, GRECO notes that the constitutionality of appointment or dismissal decisions may be challenged before the Constitutional Court while there is no appeal remedy on substantial matters. That said, GRECO notes that the draft Judicial Code appears to provide an appeal possibility with the Administrative Court. Since this draft has not yet been examined by Parliament, GRECO considers that this part of the recommendation remains not implemented.

42. GRECO concludes that recommendation vii has been partly implemented.

Recommendation viii.

43. *GRECO recommended (i) that the role of the Ministry of Justice in disciplinary proceedings against judges be reviewed; (ii) that adequate safeguards be put in place to ensure that disciplinary proceedings are not used as an instrument of influence or retaliation against judges, including the possibility for judges to challenge disciplinary decisions before a court.*
44. With respect to the first part of the recommendation, the authorities report that in the draft Judicial Code the right of the Minister of Justice to initiate disciplinary proceedings against a judge has been retained⁵, but in those cases the Minister has to substantiate such a decision (Article 155§6 of the existing Judicial Code). Following the draft Judicial Code the instituting body, is entitled to require or receive materials for launching disciplinary proceedings (in cases with judicial acts in force), but cannot interfere in on-going judicial cases. The procedural rights of the defence (judge) are ensured by giving it the possibility to provide arguments both at the stage of instituting disciplinary proceedings (additional guarantee) and before the SJC. Regarding the second part of the recommendation, the authorities indicate that the amended Constitution provides that a judge cannot be held liable for opinions expressed or judicial acts rendered in the administration of justice, except where there are elements of a crime or disciplinary violations (Article 164 §2). The authorities underline that while deciding on disciplinary liability in respect of judges the Supreme Judicial Council acts as a court (Article 175 para.2 of the Constitution). The termination of powers of a judge as a penalty now concerns only gross/substantial/essential disciplinary violations and that such a decision is taken by the Supreme Judicial Council (Article 164 §9 of the Constitution). They add that withholding (part of a) salary as a disciplinary sanction has been repealed. The authorities state that a judge can challenge the constitutionality of disciplinary decisions before the Constitutional Court.
45. GRECO notes that the Minister of Justice remains entitled to initiate disciplinary proceedings against judges. GRECO underlines that the involvement of the Minister of Justice, who is part of the executive branch, in disciplinary proceedings against judges may be seen as not fully compatible with judicial independence. In the draft Judicial Code it is foreseen that the Minister retains this power, with some limitations. The authorities submit that according to the draft Judicial Code the Minister does not have the possibility to interfere into the ongoing cases. GRECO notes that no regulatory changes occurred so far as the draft Judicial Code has not even been considered in Parliament. The first part of the recommendation has not been complied with.
46. As to part (ii) of the recommendation, GRECO notes that the revised Constitution provides that the Supreme Judicial Council is now competent for deciding on disciplinary liability in respect of judges (Article 175 1(7)). This is to be welcomed

⁵ Such a power of the Ministry of Justice has been accepted by the Venice Commission in an opinion on the draft Judicial code of Armenia (CDL-AD (2017)19).

as a form of procedural safeguard, considering the composition of this body (see recommendation v.). Moreover, the principle that a judge cannot be held liable for the opinions expressed or judicial acts rendered in the administration of justice (Article 164 of the Constitution) is another safeguard. GRECO appreciates also that the new Constitution indicates that the termination of powers of a judge is a penalty only for serious disciplinary violations (Article 164 para 9). However, GRECO is concerned that it does not appear to be possible to challenge a disciplinary decision before a court, more than in respect of its constitutionality before the Constitutional Court. It follows that this part of the recommendation has been partly implemented.

47. GRECO concludes that recommendation viii has been partly implemented.

Recommendation ix.

48. *GRECO recommended that effective rules and mechanisms be introduced for identifying undue interference with the activities of judges in the administration of justice and for sanctioning judges who practice or seek such interference.*

49. The authorities refer to the draft Judicial Code which prohibits any interference with the activities of a court and any undue influence on the courts as well as disrespectful attitudes towards courts. The draft Judicial Code provides the Supreme Judicial Council with disciplinary powers against judges having interfered with activities of another judge. Disciplinary proceedings may also be instituted against a judge failing to inform about interference with his/her activities. In case of *prima facie* interference with the activities of a judge by other persons, the Supreme Judicial Council based on a statement of the judge concerned, may file a motion to the relevant bodies for sanctioning the persons responsible for undue interference.

50. GRECO notes that the Constitution states, as it did before, that “when administering justice, a judge shall be independent, impartial and act only in accordance with the Constitution and laws”. In addition, the amended Constitution now explicitly prohibits any undue interference with the administration of justice (Article 162, paragraph 2). The draft Judicial Code contains similar provisions and details the procedures for reporting and processing cases of undue influence. However, the draft Judicial Code has not yet been presented to GRECO, nor considered by Parliament.

51. GRECO concludes that recommendation ix has been partly implemented.

Recommendation x.

52. *GRECO recommended that the immunity of judges be limited to activities relating to their participation in the administration of justice (“functional immunity”).*

53. The authorities report that the amended 2015 Constitution introduced the principle of functional immunity. Article 164, paragraph 2 of the Constitution states that a “judge cannot be held liable for the opinion expressed or judicial act rendered during administration of justice, except where there are elements of crime or disciplinary violation” and that criminal prosecution of a judge can be initiated only with the consent of the Supreme Judicial Council (Constitutional Court for Constitutional Court judges). Moreover, a judge cannot be deprived of liberty, with respect to the exercise of his or her powers, without the consent of the Supreme Judicial Council (Constitutional court for Constitutional court judges), except where he or she has been caught at the time of or immediately after committing a criminal offence.

54. GRECO takes note of the information provided. The amended Constitution (Article 164) has now limited the immunity protection of judges to opinions expressed and acts rendered while carrying out judicial functions, so called “functional immunity”, as requested in this recommendation. This limited form of immunity should suffice to protect judges from inappropriate disturbance in carrying out their duties, as stated in the Evaluation Report.

55. GRECO concludes that recommendation x has been implemented satisfactorily.

Recommendation xi.

56. *GRECO recommended that a deliberate policy for preventing improper influences on judges, conflicts of interest and corruption within the judiciary be pursued which includes (i) the provision of on-going mandatory training to all judges on ethics and conduct, on judicial impartiality and independence and on the prevention of conflicts of interest and corruption, which is to be organised with strong involvement of the judiciary, and (ii) the provision of confidential counselling within the judiciary in order to raise judges’ awareness and advise them with regard to the areas mentioned under (i).*

57. The authorities report that the draft Judicial Code foresees counselling by the Commission on Ethics and Disciplinary Matters upon a written request of a judge. It also provides for the inclusion of a code of conduct in the training programme for judges and for a disciplinary sanction on judges who fail to undergo the compulsory training (even termination of powers for failure to undergo training for two consecutive years). A mandatory training on the code of conduct for judges is envisaged in the Action Plan 2018-2023 of the Strategy of Legal and Judicial Reforms. The authorities refer also to the following training activities organised by the Academy of Justice⁶:

- Seminar on professional ethics of judges, attended by 7 judges (30 April 2016);
- Training courses on professional ethics of judges, attended by 84 acting judges (11 November – 16 December 2016);
- Training course on the fight against corruption in the public service, attended by 23 judges (28 November – 8 December 2016);
- Training courses on professional ethics of judges, attended by 19 candidate judges (14 April – 19 May 2017).

58. GRECO notes that the current Judicial Code provides for measures to force judges to participate in judicial trainings. GRECO also takes note of a few *ad hoc* training events on judges’ ethics that have been conducted, which meet some requirements of the recommendation. GRECO notes that the draft Judicial Code aims at establishing possibilities for counselling and training on ethics and wishes to stress the importance of making such counselling confidential, as a safeguard for individual judges. GRECO underlines the importance of regular and mandatory training programmes for all sitting judges on ethical conduct, judicial impartiality, independence and the like, especially following the judicial reforms underway. Considerably more efforts and measures of a permanent character are expected in respect of all parts of the recommendation.

59. GRECO concludes that recommendation xi has been partly implemented.

⁶ The Academy of Justice is responsible for training of judges and prosecutors, candidate judges and prosecutors as well as of the persons having completed studies at the Academy of Justice.

Corruption prevention in respect of prosecutors

Recommendation xii.

60. *GRECO recommended that adequate measures be taken to involve professional, non-political expertise in the processes for the selection, appointment and dismissal of the Prosecutor General, to increase their transparency and to minimise risks of improper political influence*

61. The authorities report that the Constitution (as amended in 2015) states that the competent standing committee of the National Assembly, and not the President of the Republic, as was the case before, recommends a candidate to the position of the Prosecutor General. The National Assembly elects and dismisses the Prosecutor General, by at least 3/5 of votes of the total number of deputies. The Prosecutor General is elected for a term of 6 years. The same person cannot be elected more than twice. Furthermore, the Constitution contains specific professional requirements of the candidates, including a higher law degree and 10 years of professional experience. Similar provisions are contained in the Law on Prosecutor's Office (LPO) adopted by Parliament on 17 November 2017 and signed by President on 1 December 2017⁷. This law lists grounds for dismissal of the Prosecutor General (Article 63). The early termination of powers is possible in particular if the Prosecutor General "committed a violation of the law" or of "the code of conduct for prosecutors, which impairs the reputation of the Prosecutor's Office", as well as the violations of restrictions and of the incompatibility requirement. The new LoRP regulates the procedure for removal (Article 153), providing that any faction can initiate such a procedure. The authorities consider that the fact that the ruling party has the majority in the relevant committee provides an additional safeguard against "instrumentalised" removal. In addition, the new LoRP provides that each of the standing committees should have one coordinating expert and at least two experts (specialists) (Article 162, §3). Moreover, the Council may increase the number of experts in a standing committee on the recommendation of its Chair. The LoRP provides also for a possibility to invite independent experts to committee sittings (Article 13).

62. GRECO takes note of the information provided. The procedure for proposing a candidate for the position of Prosecutor General has been changed in the amended Constitution. While Parliament still elects the Prosecutor General in the end, it is no longer the President of the Republic that proposes the candidate(s) for this position. Instead, this task is given to a standing parliamentary committee. This is an improvement as it also allows the committee to assess the qualifications of candidates, using outside expertise, if necessary. Moreover, it is to be welcomed that clear criteria, including legal education and professional experience, are required under the Constitution for the position of the Prosecutor General. GRECO notes that it is also the National Assembly that can dismiss the Prosecutor General by 3/5 of votes (and not as in the past by a simple majority). GRECO acknowledges that the amendments to the Constitution and the adoption of the LPO represent a number of adequate measures in line with what is required in the recommendation.

63. GRECO concludes that recommendation xii has been dealt with in a satisfactory manner.

⁷ The English language translation has been made available by the authorities.

Recommendation xiii.

64. *GRECO recommended amending the composition of the Ethics Committee with a view to strengthening the prosecution's independence from improper political influence, notably by ensuring (i) that it is made up of a majority of prosecutors and (ii) that at least some of these prosecutors are elected by their peers*
65. The authorities refer, in respect of part (i) of the recommendation, to the Law on Prosecutor's Office (LPO), adopted on 17 November 2017, which foresees that the Ethics Committee shall consist of seven members, including a deputy prosecutor general, three prosecutors and three academic lawyers. The Committee is to be chaired by the Deputy Prosecutor General. In respect of part (ii) of the recommendation the authorities report that the three prosecutors shall be elected by majority of votes by the Prosecutor General, deputy prosecutors general, who are not members of the Ethics Commission, the heads of structural subdivisions of the Prosecutor General's Office, prosecutors of the city of Yerevan, prosecutors of *marzes*, prosecutors of administrative districts of the city of Yerevan and military prosecutors of garrisons.
66. GRECO takes note of the information provided, which indicates that the newly adopted LPO addresses both parts of the recommendation, i.e. to increase the number of prosecutors in the Ethics Committee and that these are to be elected by their peers.
67. GRECO concludes that recommendation xiii has been implemented satisfactorily.

Recommendation xiv.

68. *GRECO recommended reforming the procedures for the recruitment and promotion of prosecutors, including by i) increasing transparency of the decision-making process within the Qualification Committee, circumscribing the discretionary powers of the Prosecutor General and requiring him/her to give written motivations for his/her decisions and ii) allowing unsuccessful candidates to appeal to a court, on the basis of specific and precise legal provisions*
69. The authorities of Armenia refer to the Law on Prosecutor's Office, adopted on 17 November 2017, according to which the Qualification Committee is to be an independent committee in charge of open vacancy competitions and subsequent selection of prosecutors. The announcements for open competitions are published on the website of the Prosecutor's Office. As a result of the selection by the Qualification Committee, the committee provides the list of candidate prosecutors to the Prosecutor General, who appoints the candidates (part (i)). Turning to part (ii) of the recommendation, the authorities refer again to the Law on Prosecutor's Office, which states that a candidate whose application was rejected may appeal the rejection decision in court within three days. Moreover, the candidates who received a positive opinion from the Qualification Committee but have not been included by the Prosecutor General on the list of candidates for appointment may appeal this decision of the Prosecutor General "through judicial procedure".
70. GRECO takes note of the information provided. The procedure for publicly announcing open competitions was already in place at the time of the evaluation visit. Instead, the recommendation points at a lack of transparency concerning the recruitment procedure in respect of the Qualification Committee as well as in the final decision by the Prosecutor General. It is to be welcomed that the decisions of the Qualification Committee to reject an application can now be appealed under the LPO. Moreover, the Prosecutor General now is to make a reasoned decision in respect of candidates not admitted for nomination and, in addition, such decisions

are subject to appeal. GRECO welcomes these measures which to a large extent comply with the recommendation. However, further measures are required to make the process more transparent in respect of the procedures of the Qualification Committee.

71. GRECO concludes that recommendation xiv has been partly implemented.

Recommendation xv.

72. *GRECO recommended that a deliberate policy for preventing improper influences on prosecutors, conflicts of interest and corruption within the prosecution service be pursued which includes (i) the provision of on-going mandatory training to all prosecutors on ethics and conduct, on impartiality and independence and on the prevention of conflicts of interest and corruption, and (ii) the provision of confidential counselling within the prosecution service in order to advise prosecutors and raise their awareness with regard to the areas mentioned under (i)*

73. As regards part (i) of the recommendation, the authorities refer to the LPO (Article 51) which stipulates that prosecutors must undergo training at regular interval. They also refer to the law on the Justice Academy, which provides rules on the curriculum for prosecutors' training etc. In respect of concrete measures taken they highlight the following training activities organised by the Academy of Justice:

- Training course on anti-corruption and professional ethics of prosecutors, attended by 12 candidate prosecutors and 31 acting prosecutors (8 August – 9 September 2016 and 18-28 April 2017);
- Training course on professional ethics of prosecutors, as part of the seminar on professional ethics of judges (30 April 2016).
- The authorities indicate that two more training course on anti-corruption and professional ethics of prosecutors are planned for candidate prosecutors in 2017.

74. The authorities also report that the concern raised under part (ii) of the recommendation, has been taken into consideration by a working group, in charge of the anti-corruption legal package of reforms. The future Commission for Prevention of Corruption will provide support and consultations to the institutional ethics commissions regarding incompatibility requirements and other restrictions. Furthermore, the draft LPO provides that a prosecutor may request advice on the rules of conduct with the Prosecutorial Ethics Committee.

75. GRECO notes that some training events have been organised for prosecutors. However, GRECO cannot conclude that a dedicated mandatory and regular training on ethics etc. has been put in place for all prosecutors, as required by the recommendation. GRECO concludes that this part of the recommendation has been partly addressed. Regarding part (ii) of the recommendation, GRECO notes that a particular counselling mechanism for prosecutors seems to be underway but it does not appear to be distinct from the disciplinary bodies (see §223 of the Evaluation Report). It would appear the future Commission for Prevention of Corruption will provide counselling in respect of incompatibility requirements and other restrictions but not on prosecutorial ethics. This part of the recommendation has been partly implemented.

76. GRECO concludes that recommendation xv has been partly implemented.

Regarding all categories of persons

Recommendation xvi.

77. *GRECO recommended that the rules applicable to the acceptance of gifts by members of parliament, judges and prosecutors be further developed so as to provide clearer definitions to ensure that they cover any benefits – including benefits in kind and benefits provided to associated persons; to introduce a requirement to report gifts received to an appropriate monitoring body; and in the specific case of judges, to lower the existing thresholds for such reporting.*
78. The authorities refer to the regulations on the acceptance of gifts contained in the Law on Public Service (LPS) (Article 29). Moreover amendments to the LPS are under preparation to improve this legal framework. In particular, a general prohibition as a main rule is envisaged, whether pecuniary or non-pecuniary, when related to official duties of a public official. The draft law is also to establish under which circumstances gifts may be received as not being conditioned by official duties, thresholds in respect of the values of such gifts as well as the burden of proof in such situations. The restrictions on acceptance of gifts and the relevant sanctions apply also to family members of public officials. The draft legislation also envisages reporting and registration of gifts. Finally the authorities add that the Judicial Code (Article 95) prohibits acceptance of gifts by judges (and family members residing with them), with some exceptions. The Judicial Code establishes thresholds with respect to values and contains a requirement to report gifts to the Ethics and Disciplinary Commission and to include them in the asset declarations.
79. GRECO notes that, similarly to the LPS, the Judicial Code continues to contain several vague terms already mentioned in the Evaluation Report⁸. That said, it takes note of the on-going reform of the rules regulating the prohibition/acceptance of gifts in respect of public officials. The draft laws mentioned have not been submitted to Parliament. However, it would appear that the objective of the reform aims at strengthening the legal framework regulating gifts, which is to be welcomed. The future Commission for Prevention of Corruption is to monitor compliance of public officials with restrictions on gifts and incompatibility requirements. GRECO encourages the authorities to pursue their efforts in the light of the current recommendation; but it is too early to assess the outcome of the reforms referred to.
80. GRECO concludes that recommendation xvi has not been implemented.

Recommendation xvii.

81. *GRECO recommended that the existing regime of asset declarations applicable to members of parliament, judges and prosecutors be further developed by defining in law the data subject to publication and excluding only data whose confidentiality is clearly required for privacy reasons; and widening the scope of application of the declaration regime to cover all prosecutors.*
82. The authorities refer to the provisions of the Law on Public Service (LPS) concerning financial disclosure of public officials, which in particular specify the types of assets which the high-ranking officials are required to report. The authorities also refer to the 2011 Government decree that used to limit the publication of asset declarations relating to assets of high-ranking officials and their affiliated persons (spouse, co-residing parent, co-residing adult and unmarried children). The authorities

⁸ Definition of a gift as “any property advantage that would reasonably not be given to a non-judge” or exceptions not considered as gifts - “gifts and awards usually given in public events” or gifts from relatives or friends if their nature and amount “reasonably correspond to the nature of the relationship between them”.

underline that this decree was amended in 2015 removing limitations as to what should be published in order to provide for more transparency. Only personal data are not public. The authorities also submit that the scope of declarants has been widened, now including all prosecutors⁹. Finally the authorities sustain that the regulation of the list of data to be published by a government decree is provided for by the LPS and is sufficiently clear and precise and does not hamper implementation.

83. GRECO takes note of the information provided. Data from asset declarations are now subject to more transparency, which meets one concern of the recommendation. It would also appear that a broader scope of data will have to be declared and that all categories of prosecutors are to be under the obligation to declare assets.
84. GRECO concludes that recommendation xvii has been dealt with in a satisfactory manner.

Recommendation xviii.

85. *GRECO recommended that appropriate measures be taken to ensure effective supervision and enforcement of the rules on asset declaration applicable to members of parliament, judges and prosecutors, notably by strengthening the operational independence of the Commission on Ethics for High-Ranking Officials, giving it the clear mandate, powers and adequate resources to verify in depth the declarations submitted, to investigate irregularities and to initiate proceedings and impose effective, proportionate and dissuasive sanctions if the rules are violated.*
86. The authorities report that the Commission on Ethics of High-Ranking Officials has been provided with access to electronic databases of several state bodies (registries of legal entities, real estates, vehicles etc.). The electronic declaration system is now connected to these databases and the information in the declaration is cross checked automatically.
87. Moreover, the authorities indicate that the resources and staff of the Commission on Ethics of High-Ranking Officials have been strengthened following the entry into force of the law on amendments to the Law on Public Service (LPS) on 1 July 2017¹⁰. With the approval of a government decision¹¹ this body was fully staffed and functional by early October 2017. The Commission has a separate budget line now and is vested with clear mandate to check asset declarations in accordance with a legally defined methodology. In addition, administrative sanctions have been introduced¹² in respect of violations of the regulations of asset declarations (late, false submissions etc.). Furthermore, criminal sanctions have been introduced¹³ for non-submission of declarations or submission of false data. Finally, with the entry into force of the amendments to the LPS, the Commission has been empowered to institute administrative proceedings.
88. The authorities repeat that a new anti-corruption preventive body the Commission for Prevention of Corruption - is to be created to replace the Commission on Ethics of High-Ranking Officials. The relevant law has been adopted but is not yet enacted, as the Commissioners still have to be appointed. The new Commission is expected to be an independent institution, with adequate staff and its own budget.

⁹ With amendments to the LPS adopted on 9 June 2017 the number of declarants increased from 763 to 3184.

¹⁰ Law HO-98-N On amendments to the Law on Public Service

¹¹ Government Decision n°900-A on allocation of budget resources to the Commission on Ethics of High-Ranking Officials of 22 September 2017

¹² Law HO-106-N of 9 June 2017 on amendments to the Code of Administrative Offences (Article 169.28)

¹³ Law HO-102-N of 9 June 2017, Articles 314.2 and 314.3

The future preventive anti-corruption body is also foreseen to be responsible for the supervision of financial disclosure of all public officials and empowered to institute administrative proceedings against officials violating the reporting obligations.

89. GRECO notes that measures have been taken to strengthen the Commission on Ethics of High Ranking Officials, e.g. to provide access to various data bases as well as the necessary financial and staff resources. GRECO welcomes the Commission having been empowered to impose administrative sanctions. Moreover, GRECO welcomes the introduction of administrative and criminal sanctions regarding violations of the regulations on asset declarations. Globally, the measures taken appear to respond to concerns in the recommendation. That said, the transfer of functions of the existing Commission on Ethics of High-Ranking Officials to the future Commission for Prevention of Corruption indicates that the system is still undergoing transition and its effectiveness will have to be assessed at a later stage.
90. GRECO concludes that recommendation xviii has been partly implemented.

III. CONCLUSIONS

91. In view of the foregoing, GRECO concludes that Armenia has implemented satisfactorily or dealt with in a satisfactory manner five of the eighteen recommendations contained in the Fourth Round Evaluation Report. Of the remaining recommendations, twelve have been partly implemented and one has not been implemented.
92. More specifically, recommendations v, x, xii, xiii and xvii have been dealt with in a satisfactory manner, recommendations i-iv, vi-ix, xi, xiv, xv and xviii have been partly implemented and the recommendation xvi has not been implemented.
93. With respect to members of parliament, GRECO notes that progress has been achieved regarding the transparency of the legislative process in Parliament and measures to implement standards on incompatibilities. Further efforts are required to establish a code of conduct for the members of parliament and to strengthen the mechanism for monitoring members' compliance with ethical norms and standards.
94. As far as judges are concerned, GRECO welcomes the constitutional amendments that reformed the judicial self-governance with the establishment of the Supreme Judicial Council. Furthermore, the immunities of judges have been limited to so-called "functional immunities". Some progress has been achieved as regards the procedures for recruitment, promotion, dismissal and transfer of judges in that the Supreme Judicial Council has been given the key role. That said, more is expected to be done in relation to dedicated training and counselling of judges and with respect to safeguards against the use of disciplinary proceedings to influence or retaliate against judges. Effective rules against undue interference still have to be put in place. Regarding prosecutors, GRECO welcomes the adoption of the Law on Prosecutor's Office; important steps to enhance the recruitment procedures of prosecutors and to strengthen the ethics committee of prosecutors have been made. More measures are necessary to introduce dedicated mandatory training and confidential counselling.
95. In view of the above, GRECO notes that further significant progress is necessary in order to achieve an acceptable level of compliance with the recommendations within the next 18 months can be achieved. GRECO invites the Head of delegation of Armenia to submit additional information regarding the implementation of recommendations i-iv, vi-ix and xi-xviii by 30 June 2019 at the latest.

96. Finally, GRECO invites the authorities of Armenia to authorise, as soon as possible, the publication of the report, to translate it into the national language and to make this translation public.