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FOURTH EVALUATION ROUND

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

COMPLIANCE REPORT

TURKEY

Adopted by GRECO at its 77th Plenary Meeting
(Strasbourg, 16-18 October 2017)

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I. INTRODUCTION

1. The Compliance Report assesses the measures taken by the authorities of Turkey to implement the recommendations issued in the Fourth Round Evaluation Report on Turkey which was adopted at GRECO's 69th Plenary Meeting (16 October 2015) and made public on 17 March 2016, following authorisation by Turkey ([Greco Eval IV Rep \(2015\) 3E](#)). 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 Turkey submitted a Situation Report on measures taken to implement the recommendations. This report was received on 31 May 2017 and served, together with the information submitted subsequently, as a basis for the Compliance Report.
3. GRECO selected Croatia and the Netherlands to appoint Rapporteurs for the compliance procedure. The Rapporteurs appointed were Mr Dražen JELENIC, on behalf of Croatia and Ms Marja VAN DER WERF, on behalf of the Netherlands. 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 after the adoption of the present Compliance Report.

II. ANALYSIS

5. GRECO addressed 22 recommendations to Turkey in its Evaluation Report. Compliance with these 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 enhanced by (i) further developing the rules on public consultations in respect of civil society groups and citizens; and (ii) ensuring that draft legislation is presented in a reasonable format (e.g. avoiding that large quantities of unrelated pieces of legislation are treated as one single package) and within adequate timelines to allow for meaningful public consultation and parliamentary debate.*
7. The Turkish authorities reiterate information reflected in the Evaluation Report, *inter alia*, on the publication of minutes of parliamentary debates on its website and the live broadcasting of public debates on TV and online on its website. They add that, in accordance with the Law on the Right to Information, citizens can submit requests for information on bills and proposals which are answered within 15 days.¹
8. As regards the first part of the recommendation, the authorities also reiterate that, according to the GNAT Rules of Procedure, committees can hold hearings with experts, including NGOs and academics. By way of example, the Parliamentary Investigation Committee has held hearings with 24 experts with a view to identifying measures to prevent abuse against children, and 100 experts regarding measures to address challenges to families (such as divorce). These hearings are

¹ In 2016, 271 requests were received, including 156 on the ongoing legislative process.

organised in the early stages of the parliamentary process to inform the preparation of bills and proposals. The authorities also state that, provided conditions laid down by the Rules of Procedure are met, the participation of civil society interlocutors in activities of the GNAT is possible, at the discretion of committee presidents (Art. 30, GNAT Rules of Procedure). The Turkish authorities consider that altogether these different mechanisms (information tools and possibility of engaging with civil society) are aimed at securing public participation.

9. As to the second part of the recommendation, the authorities state that drafting omnibus laws is only used in exceptional circumstances, such as when the Constitutional Court finds a law unconstitutional and gives a limited period of time to rectify the law in question. From July 2007 to June 2011, 11 omnibus laws were adopted out of a total of 557 laws; from June 2011 to June 2015, there were 21 omnibus laws out of 331 laws; and from November 2015 to the present, 22 omnibus laws were passed out of a total of 244 laws.
10. GRECO takes note of the information provided by the authorities. As to the first part of the recommendation on public consultations, the Evaluation Report noted that there was no mechanism to ensure public consultations on a more structural basis. From the information provided by the authorities, GRECO notes that the situation remains as described in the Evaluation Report as there are no rules governing the organisation of public consultations in the legislative process, beyond the possibility of inviting experts or civil society to hearings during the early stages of the preparation of legislation. Therefore, this part of the recommendation has not been implemented.
11. Regarding the second part of the recommendation, GRECO recalls that the Evaluation Report took note of allegations as to a practice of presenting a great number of amendments relating to different laws in one omnibus bill with limited time for adoption which was not conducive to examination by MPs or public consultation. While it notes that the authorities contend that such omnibus bills are a rare occurrence, GRECO can but notice that their number has been on the increase over the last three legislative sessions of the GNAT, going from 2% from 2007 to 2011, to 6.3% from 2011 to 2015 and 9% from 2015 to the present, according to the information submitted by the authorities in the Situation Report. In the light of the findings of the Evaluation Report, this represents a worrying upward trend and therefore GRECO cannot consider this part of the recommendation implemented either.
12. GRECO concludes that recommendation i has not been implemented.

Recommendation ii.

13. *GRECO recommended that a code of ethics/conduct for members of parliament be adopted covering various situations of conflicts of interests (gifts and other advantages, accessory activities, post-employment situations, third party contacts, including with lobbyists, etc.).*
14. The Turkish authorities indicate that a proposal for a Law on Ethical Conduct for Members of the GNAT (Law on Ethical Conduct of MPs) was submitted to the Presidency of the GNAT on 1 April 2016 and then sent to the plenary where it is tabled as the 307th item on its agenda. According to the authorities, the draft law includes detailed arrangements on ethical principles to be followed by MPs, asset declarations, conflict of interest, gifts, activities incompatible with the role of MP, supervision procedures and bodies. The authorities underline the importance of this bill which, by nature is meant to lay down general rules, will be the first attempt at regulating the ethical behaviour and conduct of MPs. The authorities state that, in

the meantime, the Presidency of the GNAT has decided that MPs must seek authorisation to receive any gift, which should all be declared. Moreover, since 15 July 2016, it is the practice for official gifts received by MPs to be exhibited and made accessible to the public.

15. GRECO takes note of the information provided by the authorities. While noting the reported recent practice of declaring gifts to the Presidency of the GNAT, GRECO notes that the proposed Law on Ethical Conduct of Members of the GNAT is a positive step in order to regulate the ethical behaviour and conduct of MPs. However, it has not been examined or adopted yet. Furthermore, the proposed law, whose text was provided by the authorities, appears to be mainly a framework text; it is not very detailed in a number of respects. The part of the draft law that constitutes the "Ethical Code of Conduct" is covered in Article 3, which is made up of six basic principles (e.g. "*Shall not act in a way providing unjust advantage to themselves...*"). Moreover, the provision concerning gifts (Article 5) provides a general prohibition on gifts which require further guidance in a subsequent by-law, according to the draft law. Further, the proposed law does not explicitly deal, for instance, with third party contacts, including with lobbyists, etc.
16. GRECO wishes to add that the current recommendation does not suggest a code of ethics to be adopted in the form of legislation. On the contrary (as reflected in the Evaluation Report), while codes of conduct are to be built on constitutional principles, legislation and regulations, they are often less static than legislation and ought to go further to clarify and provide guidance in a more flexible way and may need to evolve over time. If the draft legislation becomes legislation in its current form, it needs to be followed up with further guidance. It would appear that this is foreseen in Article 8(5) c) of the draft law.
17. GRECO concludes that recommendation ii has not been implemented.

Recommendation iii.
18. *GRECO recommended that a requirement of "ad hoc disclosure" be introduced for members of parliament for situations of personal/financial conflicts of interest which may emerge during the parliamentary proceedings and that rules for such situations be developed.*
19. The authorities refer to the draft Law on Ethical Conduct of MPs. Article 3 of the proposed law calls on MPs to make the general interest prevail in case of any personal/financial conflict of interest, and Article 4 (2)b) provides that MPs must inform the GNAT of potential conflicts of interest interfering with their legislative functions. The authorities add that the draft law is currently pending before the GNAT, however, it was agreed at parliamentary committee level in April 2016 and is since then publicly available on-line.
20. GRECO notes that the proposed Law on Ethical Conduct of MPs appears to go in the right direction, although the formulation is not very precise, for example, as regards the timing of such declarations, an element which is of fundamental importance for ad hoc declarations. While the draft law is still pending before the GNAT, GRECO observes that the draft has been agreed at parliamentary committee level and made public.
21. GRECO concludes that recommendation iii has been partly implemented.

Recommendation iv.

22. *GRECO recommended that the accessory activities which are incompatible with the duties and functions of members of parliament be reviewed and that comprehensive and enforceable legislation be ensured, to remedy any conflicts of interest resulting from such activities.*
23. The authorities first indicate that Law No. 6771 on Amending the Constitution of the Republic of Turkey, which was adopted by the GNAT on 21 January 2017, removed Article 82 of the Constitution, which stipulates that “a deputy’s acceptance of a temporary assignment, not exceeding a period of six months, given by the Council of Ministers on a specific matter, is subject to the decision of the Assembly”. Secondly, they refer to the proposal of Law on Ethical Conduct of MPs, which covers the issue of accessory activities, as well as post-employment restrictions, and available sanctions where required (including MPs being removed from office, and prison sentences from six months to two years for illegal post-employment activities). The authorities add that the draft law is currently pending before the GNAT; however, it was agreed at parliamentary committee level in April 2016 and is since then publicly available on-line.
24. GRECO takes note of the legal framework set out in the proposed Law on Ethical Conduct of MPs and how it lists activities incompatible with being an MP (Article 11), procedures for examining alleged violations (Article 10) and possible sanctions (Article 12), which address the current recommendation. While the draft law is still pending before the GNAT, GRECO observes that the draft has been agreed at parliamentary committee level and made public.
25. GRECO concludes that recommendation iv has been partly implemented.

Recommendation v.

26. *GRECO recommended (i) that the regime of asset declarations of members of parliament be accompanied by a system of verification of their accuracy and veracity as well as effective, proportionate and dissuasive sanctions for violations of the rules; and (ii) that the content of these declarations be made publicly available promptly after their submission to Parliament (it being understood that information concerning spouses and dependent family members would not necessarily need to be made public).*
27. The authorities refer to the proposal of Law on Ethical Conduct of MPs whose Article 4(1) would reduce the reporting period for asset declarations to once every two years, and Article 4(2) would create an obligation for MPs to declare accessory activities.
28. GRECO takes note of the information provided by the authorities, but considers that, in addition to the fact the proposed law is currently pending before Parliament, it falls short of addressing the full recommendation, in particular the fact that there is no reference to a system of verification of asset declarations. No reference is made either to the publicity of asset declarations and, from Article 9 of the Law on Declaration of Property and Combat against Bribery and Corruption, it would appear that the principle of confidentiality of declarations would remain in place for MPs. In view of this, GRECO cannot view the requirements of this recommendation as implemented.
29. GRECO concludes that recommendation v has not been implemented.

Recommendation vi.

30. GRECO recommended that determined measures be taken in order to ensure that the procedures for lifting parliamentary immunity are dealt with as matters of priority and do not hamper criminal investigations in respect of members of parliament suspected of having committed corruption offences.
31. The authorities make reference to the fact that Law No. 6718 of 20 May 2016 has introduced a provisional Article 20 to the Constitution, which stipulates that the first sentence of the second paragraph of Article 83 (“A deputy who is alleged to have committed an offence before or after election shall not be detained, interrogated, arrested or tried unless the Assembly decides otherwise”) will not apply for the files concerning the lifting of the parliamentary immunity of deputies which have been submitted by the Ministry of Justice, Office of the Prime Minister, the Presidency of the GNAT or Chairmanship of the Joint Committee formed by the members of the Committees on Constitution and on Justice to the authorities empowered to investigate or to allow investigation and the Chief public prosecutor’s offices and courts. The authorities state that, with this provisional Article, the parliamentary immunity is not applicable to files against MPs.
32. The authorities refer to the following table as of 29 May 2017:

PARTY NAME	NUMBER OF DEPUTIES HAVING FILES	NUMBER OF FILES INVOLVING DEPUTIES
HDP	55 ²	518
CHP	59 ³	215 ⁴
AK PARTY	29	50 ⁵
MHP	10 ⁶	23 ⁷
Independent	1	5
Total	154 ⁸	811 ⁹

33. GRECO takes note of the information provided by the authorities. It also notes from the general preamble to Law No. 6718 of 20 May 2016 that the prime aim of provisional Article 20 is first and foremost to allow prosecution of those MPs whose speech is deemed to support terrorism, even if it is to apply to all files against MPs, to see their immunity lifted.¹⁰ Furthermore, as noted by the Venice Commission,¹¹ in view of its provisional character, all files not ready at the time of entry into force of provisional Article 20 and during the 15 days of its implementation fall back into

² The figure was 53 on 23 April 2017.

³ The figure was 54 on 23 April 2017.

⁴ The figure was 210 on 23 April 2017.

⁵ The figure was 49 on 23 April 2017.

⁶ The figure was 9 on 23 April 2017.

⁷ The figure was 21 on 23 April 2017.

⁸ The figure was 146 on 23 April 2017.

⁹ The figure was 803 on 23 April 2017.

¹⁰ European Commission for Democracy through Law (Venice Commission), Turkey – Law No. 6718 Constitutional amendment as to lifting parliamentary immunity, [CDL-REF\(2016\)056](#)

¹¹ European Commission for Democracy through Law (Venice Commission), Turkey – Opinion on the suspension of the second paragraph of Article 83 of the Constitution (parliamentary inviolability), Adopted by the Venice Commission at its 108th Plenary Session (Venice, 14-15 October 2016), [CDL-AD\(2016\)027-e](#)

the regular system, demonstrating that it was not meant to be a permanent change to the existing parliamentary immunity, as laid down in Article 83 of the Constitution.

34. Therefore, GRECO notes that the main purpose of provisional Article 20 appears to have been to tackle a very specific situation, unrelated to tackling corruption, and was to be limited in time. In view of the foregoing, GRECO cannot consider that the requirements of its recommendation have been met.
35. GRECO concludes that recommendation vi has not been implemented.

Recommendation vii.

36. *GRECO recommended (i) that the parliamentary authorities establish dedicated induction and in-service training for members of parliament on corruption prevention, conflicts of interest and ethical conduct and (ii) that a mechanism for confidential counselling be established to provide advice on ethical questions and possible conflicts of interest in relation to their functions and duties.*
37. The authorities recall that, on taking office, MPs are given a guidebook, with general information on the GNAT, its various bodies, the rights and obligations of MPs, including asset declarations, as well as another handbook on laws concerning the GNAT. Both are available on the GNAT's intranet, as are now a handbook on "financial, social and other rights, services and facilities provided to deputies" and, since 2016, and a handbook on "professional activities of MPs in their field of expertise". Other handbooks establishing comparisons with other parliaments are also available to MPs (e.g. activities incompatible with being an MP; codes of conduct/ethics, etc.). When it comes to training per se, the authorities indicate that MPs may attend training programmes, organised by public or private institutions, linked to their duties, which can include ethical issues.
38. Regarding counselling, the authorities report that the Department of Laws and Decisions and the Department of Judicial Services of the Presidency of the GNAT provide counselling services to MPs on parliamentary ethics and possible conflicts of interest. They indicate that each department answered eight requests, in addition to which the Presidency of the GNAT answered three questions concerning conflicts of interest and activities incompatible with MP membership during the 26th legislative session (starting from 2 November 2015). Finally, they refer to the proposal of Law on Ethical Conduct of MPs whose Article 8 provides that the GNAT's Ethics Committee should provide confidential counselling to MPs, upon their requests, on ethical conduct.
39. GRECO takes note of the information provided by the authorities. Concerning the first part of the recommendation on training, it would appear that MPs have general access to training on matters pertaining to their duties, on a voluntary basis, in addition to access to written material that touches upon certain issues related to their ethical conduct. This nonetheless falls short of the requirement of the recommendation which is to set up dedicated induction and in-service training for MPs specifically on corruption prevention, conflicts of interest and ethical conduct as the existing training offer is not specifically organised around ethical matters. It follows that the requirements of this part of the recommendation have only been partly met.
40. As to the second part of the recommendation (confidential counselling), GRECO notes that the proposed Law on Ethical Conduct of MPs would establish a mechanism (a commission) for confidential counselling (Article 8(5)c), which would represent a positive step. However, this law is not yet adopted. GRECO also notes

that counselling is now possible as provided by the Presidency of the GNAT, although to date there have been relatively few counselling requests. This represents a step forward, while awaiting the adoption of new legislation.

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

Corruption prevention in respect of judges and/or prosecutors

Recommendation viii.

42. *GRECO recommended that determined measures be taken to strengthen the independence of the High Council of Judges and Prosecutors (HCJP) in respect of potential threats to its independence from the executive authorities and political influence.*
43. The authorities indicate that the recent constitutional reform adopted in 2017 has resulted in the replacement of the High Council of Judges and Prosecutors (HCJP) by the Council of Judges and Prosecutors (CJP). The number of members has been brought down from 22 members and 12 substitutes to 13 members: 3 members among first-rank judges and prosecutors of civil jurisdiction and 1 member among first-category judges in administrative jurisdiction, who are selected by the President of the Republic; 4 members among judges of the Council of State and the Court of Cassation and 3 members among academics and lawyers, selected by the GNAT. The Turkish authorities explain that this reform has changed the election procedure and the type of background expected of members, but not the constitutional regulations laying down the CJP's independence, impartiality and adherence of the principle of the judges' tenure, or the rules governing the work of the CJP.
44. The authorities refer to the Strategic Plan of the CJP for 2017-2021, which calls for an analysis of factors posing a threat to the independence and impartiality of the judiciary and, through comparative law, to identify good practice in terms of independence and impartiality of the judiciary, with a view to adopting an action plan on the issues that fall under the duty and competence of the CJP. Finally, the authorities underline that the 2017 constitutional reform has included a reference to the impartiality of the judiciary alongside their independence in Article 9 of the Constitution.
45. GRECO takes notes of the information provided by the authorities, which presents the replacement of the HCJP by the CJP, following the 2017 constitutional amendments. In relation to the composition of CJP, GRECO is concerned that, contrary to the defunct HCJP, none of the CJP members are elected by their peers, which represents a step backwards and is contrary to a statement in the Evaluation Report calling for a higher ratio of members of the HCJP being elected by peers. Out of the 13 members of the CJP, four are appointed by the President of the Republic, two of the members are the Minister and the undersecretary of Justice, which was criticised in respect of the HCJP in the Evaluation Report, and the seven remaining members are elected by the GNAT. In this respect, GRECO wishes to draw the attention also to the Venice Commission's opinion on the 2017 constitutional amendments, which underlines that "*the President will no more be a pouvoir neutre, but will be engaged in party politics: his choice of the members of the CJP will not have to be politically neutral. The remaining seven members would be appointed by the Grand National Assembly. If the party of the President has a*

three-fifths majority in the Assembly, it will be able to fill all positions in the Council."¹²

46. To conclude, as all its members are chosen by the executive and legislative powers, GRECO is critically concerned that the CJP appears even less independent body than was the HCJP, and this runs counter to the objective sought by the above recommendation, which is to ensure that the independence of the self-governing judicial body be protected from possible interference from the executive and political branches. Moreover, this development results in the CJP clearly not being in line with the international standard calling for at least half of the members of self-governing judicial bodies to be elected by their peers, as enshrined in the Council of Europe Committee of Ministers Recommendation CM/Rec(2010)12.¹³
47. GRECO concludes that recommendation viii has not been implemented.
Recommendation ix.
48. *GRECO recommended that the involvement and the responsibility of the judiciary in respect of the process of selecting and recruiting candidates to become judges/prosecutors be considerably strengthened.*
49. The authorities indicate that the admission of candidate judges and prosecutors to the profession is made by the CJP. They refer to one of the goals set by the CJP's Strategic Plan for 2017-2021, "Strengthening judicial independence and impartiality", which is to include a study on the possible amendment of the legislation towards the presence of a representative of the CJP also in the interview commission (under the Ministry of Justice) for candidate judges and prosecutors.
50. GRECO takes note of the information provided and the fact that CJP's first Strategic Plan is aimed at strengthening judicial independence and impartiality. However, GRECO finds it premature to pronounce on this policy document and its future impact as it has only started operating and is to last four years. It appears that the situation has not changed more than the HCJP being replaced by the CJP in the final phase of admission of new candidates. The situation that was described in the Evaluation Report, whereby the Ministry of Justice plays a leading and decisive role throughout the recruitment process, demonstrating its significant influence over the judiciary remains the same. In addition, given the misgivings expressed earlier about the composition of the CJP, which has no members elected by either judges or prosecutors, GRECO is concerned that the situation has not improved; rather it would appear that the process of selecting and recruiting judges is even more under the control of the executive branch. The presence of a CJP member in the interview phase would not suffice to meet the concern of the recommendation, as things stand at the moment.
51. GRECO concludes that recommendation ix has not been implemented.

¹² European Commission for Democracy through Law (Venice Commission), Opinion on the amendments to the Constitution adopted by the Grand National Assembly on 21 January 2017 and to be submitted to a national referendum on 16 April 2017, Adopted by the Venice Commission at its 110th Plenary Session (Venice, 10-11 March 2017), Opinion No. 875/2017, [CDL-AD\(2017\)005-e](#)

¹³ Cf. [Recommendation CM/Rec\(2010\)12 of the Committee of Ministers of the Council of Europe on judges: independence, efficiency and responsibilities](#).

Recommendation x.

52. *GRECO recommended that all candidates to the judiciary be subject to checks concerning their ethical conduct and integrity, based on precise and objective criteria which are open to the public and in accordance with European standards.*
53. The authorities recall that the ethical conduct and integrity of candidate judges and prosecutors are examined against the criteria found in Articles 7 to 9, 11 and 13 of Law No. 2802 on Judges and Prosecutors as well as files prepared by the head of departments under whom they undergo training.
54. They add that Article 28(7) of Law No. 4954 on the Justice Academy of Turkey, as amended by the Law on making amendments on the Law on the Council of State and Other Laws of 1 July 2016, provides that "candidates shall also be subjected to oral examination to evaluate the compliance of their professional conduct during their internship in the judiciary". This oral examination covers, *inter alia*, the appropriateness of their conduct with the profession and their ethical conduct. Academics who enter the profession also have to undertake this oral examination. Further, a compulsory course on "Judicial Ethics and Professional Identity" is organised by the Turkish Justice Academy as a pre-vocational training for judges and prosecutors. The authorities stress that such classes are given by senior judges and prosecutors having shown outstanding integrity. The authorities indicate that, for the purpose of this course, the practices of other European countries have been reviewed.
55. Finally, the authorities refer to the Project on "Strengthening of Judicial Conduct in Turkey", which is jointly funded by Turkey, the EU and the Council of Europe and was launched on 4 May 2016, as part of which precise and objective criteria concerning the code of conduct and the rules of integrity are to be studied and determined.
56. GRECO notes that, according to the Law on Judges and Prosecutors, as amended in July 2016, candidates have to go through an oral examination during their internship in the judiciary, which is used, *inter alia*, to assess their professional and ethical conduct. This was already the case when the Evaluation Report was adopted. However, there were two reasons for the current recommendation. First, there was no assessment/test in respect of academics who could enter the judicial profession directly. In this respect of this matter, GRECO notes that, whilst academics do not have to take the written examination, they are to take the subsequent oral examination. Second, there were no criteria established for notions used in the assessment of candidates, such as "honour", "dignity" and "moral conduct". No new information has been reported on this latter aspect. GRECO welcomes though the "Project on Strengthening Judicial Conduct in Turkey", which may assist in addressing these questions.
57. GRECO concludes that recommendation x has been partly implemented.

Recommendation xi.

58. *GRECO recommended that evaluations of judges/prosecutors concerning their ethical conduct and integrity be guided by precise and objective criteria, which are open to the public and in conformity with European standards.*
59. The authorities indicate that the CJP's Strategic Plan 2017-2021 include an objective on the establishment of an ethical follow-up system, with codes of judicial conduct being elaborated, awareness materials for dissemination in the judiciary, an audit system to ensure that principles of judicial conduct are abided by.

60. In addition, the authorities refer to the aforementioned Project on “Strengthening Judicial Ethics in Turkey”, one of its aim being the development of a code of ethics. The CJP plans the Code of Judicial Ethics to be finalised in 2017.
61. Finally, the authorities make reference to the Project on “Strengthening Transparency and Code of Ethics for Enhanced Public Confidence in the Court of Cassation in Turkey” carried out by Court of Cassation together with UNDP. Within this framework, the Istanbul Declaration was adopted on 3 June 2016: Principle 14 of this declaration is that the judiciary should respond to complaints regarding unethical conduct of judges in a transparent manner. The justification of this principle includes the fact it should be made known to the public at large.
62. GRECO is mindful of the process that has started in order to raise awareness of ethical standards expected of members of the judiciary, including the preparation of a code of judicial ethics and the adoption of the Istanbul Declaration containing principles that underline the need for transparency in how unethical conduct is dealt with. It considers the ongoing process is a step in the right direction. However, the recommendation is focusing specifically on setting out precise and objective criteria for the evaluation of judges/prosecutors, which should be made known to the public. According to GRECO, this needs to be fully taken into account in the ongoing process to provide concrete guidance on the evaluation of judges/prosecutors. For the time being, the specific requirements of the recommendation cannot be considered to have been met.
63. GRECO concludes that recommendation xi has not been implemented.
- Recommendation xii.
64. *GRECO recommended (i) that the security of tenure for judicial officeholders be considerably strengthened, by reducing the possibility to transfer judges/prosecutors against their will, that such processes be guided by objective criteria and subject to a review mechanism (appeal); and (ii) that the powers of the Ministry of Justice to intervene in the process concerning temporary assignments be abolished.*
65. The authorities refer to the CJP’s Strategic Plan 2017-2021 and the section on “Improving the Tenure of Judges and Prosecutors” and its Objective 3.1 according to which the “Appointment, transfer and permanent jurisdiction system shall be bound by more objective criteria in a manner making the specialisation possible”. This is to imply that the current situation be analysed; good practices be identified; appointment, transfer and permanent jurisdiction be organised in a determined schedule; provisional authorisation for the Minister of Justice to temporarily assign judges to another jurisdiction against their wish (Art. 47, Law on Judges and Prosecutors) follow more objective criteria; and, as a result of that, necessary legislative arrangements are made. The authorities further refer to the ongoing “Project on Development of Appointment and Displacement Systems of Judges and Prosecutors in EU Standards” organised in co-operation with TAIEX, one of whose aims is to bring the appointment and displacement of judges and prosecutors in compliance with EU standards.
66. As to the second part of the recommendation, the authorities state that the CJP has confirmed that the power of the Minister of Justice to decide on temporary assignments is exceptional and only used in cases where the CJP is unable to hold a meeting, in order to ensure continuity and effectiveness of the Council, and that this power has not been used in the last five years. Further, the President of the

CJP (i.e. the Minister of Justice) has passed on this power to the Deputy President who is a judge.

67. GRECO notes, regarding the first part of the recommendation, that the tenure of judicial officeholders is to be discussed as part of the CJP's Strategic Plan 2017-2021, with the aim of setting out objective criteria for appointment, transfer and tenure of judges and prosecutors. It notes that the issue tackled in the second part of the recommendation (i.e. the power of the Minister of Justice to temporarily assign judges to another jurisdiction against their will) is also to be part of this discussion. While this is a step in the right direction, the CJP's Strategic Plan only started in 2017 and is to be concluded in 2021, and therefore it is too soon for GRECO to pronounce on whether its outcome will meet the requirements of the recommendation. The same goes for the ongoing project organised in co-operation with TAIEX which concerns appointment and displacement systems of judges.
68. GRECO also takes note, insofar as the second part of the recommendation is concerned, that Article 47 of the Law on Judges and Prosecutors which provides the power of the Minister to transfer judges, remains unchanged. It notes that the authorities underline the exceptional character of the power of the Minister of Justice to transfer temporarily judges against their will and the fact that this power has been in practice transferred to the Deputy President of the CJP. As mentioned above, it also notes the ongoing project in co-operation with TAIEX in this respect and its potential for change, which is a welcome first step, although it is too soon to assess what its impact will be. That being said, considering that the situation has in essence not changed since the Evaluation Report, GRECO cannot consider for the time being that the current situation responds to the requirements of the second part of the recommendation.
69. GRECO concludes that recommendation xii has not been implemented.
Recommendation xiii.
70. *GRECO recommended (i) that a code of ethics be established for the particular functions of judges, including practical examples offering adequate guidance on conflicts of interest and other integrity related matters (gifts, recusal, third party contacts and handling of confidential information etc.) and (ii) that it be made accessible to the public and used in the training of all categories of judges.*
71. The authorities refer again to the fact the CJP's Strategic Plan 2017-2021 includes the preparation of a code of judicial ethics. They report that in 2018 a comparative study of the legislation of four European countries is to be conducted. A total of 23 meetings with all stakeholders, including judges and prosecutors, are planned, seven of which have already taken place. Judicial ethics training is planned for 2017 and 2018 and 1 000 judges and prosecutors are expected to follow it. A guidebook on judicial ethics is also to be prepared and distributed to all judges and prosecutors in 2018-2019. As a result of consultation meetings already held, it was stated that gifts, recusals, third party contacts and confidential information would be covered by the future code of ethics and the guidebook would include concrete examples.
72. As part of the Project on "Strengthening Judicial Ethics in Turkey", mentioned under recommendation xi, 3 000 judges and prosecutors are to be trained on ethics. Finally, Principle 14 of the aforementioned Istanbul Declaration on a transparent complaint system to deal with unethical conduct of judges is justified by the fact it is necessary for the judiciary to adopt a code of ethics which should be widely

disseminated. The authorities indicate that information on progress of ongoing projects is published on the CJP's website.¹⁴

73. GRECO takes note of the fact that work has started on the preparation of a code of judicial ethics and a guidebook for judges and prosecutors. While this is a positive development, GRECO is not in a position for the time being to assess whether the requirements of its recommendation will be met by the texts yet to be finalised and adopted. GRECO wishes to stress that such a code needs to take into account the different functions of judges and prosecutors.
74. GRECO concludes that recommendation xiii has not been implemented.
Recommendation xiv.
75. *GRECO recommended that judges – upon appointment – be obliged to take an oath to adhere to fundamental principles of judicial independence and impartiality when carrying out their judicial functions.*
76. The authorities report that, as part of the Project on “Strengthening Judicial Ethics in Turkey”, the text of an oath to be taken by judges and prosecutors upon appointment is currently being drafted, which once final is to be made available to the judiciary.
77. GRECO takes note of the information provided by the authorities, which is a positive development. However, the drafting of the oath appears to be ongoing and no text, even as a draft, is available.
78. GRECO concludes that recommendation xiv has not been implemented.
Recommendation xv.
79. *GRECO recommended (i) that the system of disciplinary proceedings against judges and prosecutors be subject to an in-depth evaluation aiming at establishing a process guided by objective criteria without undue influence from the executive powers and (ii) that this process, measures and sanctions be subject to review by judicial authorities.*
80. The authorities report that the CJP has planned to re-examine the disciplinary system as part of its 2017-2021 Strategic Plan. For this purpose, a working group is to be set up and legislation is to be revised to improve disciplinary provisions and establish objective and concrete criteria. The authorities refer to Principles 14 and 15 of the Istanbul Declaration on Judicial Ethics which calls for the judiciary to deal with complaints of unethical conduct in a transparent manner and for the transparency of disciplinary procedures against judges.
81. GRECO takes note of the fact the CJP's Strategic Plan is to address the question of disciplinary proceedings against judges and prosecutors, which is a first step. However, no tangible results have been reported so far. GRECO wishes to stress that the misgivings expressed on the composition of the CJP are relevant also in respect of this recommendation.
82. GRECO concludes that recommendation xv has not been implemented.

¹⁴ www.hsk.gov.tr/DisIliskiler/Yurutulen-Projeler.aspx for Turkish and www.cjp.gov.tr/DisIliskiler/Yurutulen-Projeler.aspx for English

Recommendation xvi.

83. *GRECO recommended that the power of the Minister of Justice to grant permission for the lifting of functional immunity of judges and prosecutors be transferred to the judiciary (e.g. a panel of high-ranking judges or the High Council of Judges and Prosecutors - HCJP) and that the legislation be made clear to that end.*
84. The authorities refer to CJP's Strategic Plan 2017-2021 which, as explained previously, is to look into the disciplinary system and how to improve it. They also mention Principles 14 and 15 of the Istanbul Declaration on Judiciary Ethics which underline that unethical conduct should be dealt with in a transparent manner and disciplinary procedures should thus be transparent. The authorities also recall that the authority to lift the immunity of judges and prosecutors is not only vested to the Minister of Justice but also the First Chamber of the CJP.
85. GRECO notes that the CJP's Strategic Plan 2017-2021 is to consider the disciplinary system, which is a first step, but there is no indication at this early stage that the requirements of the recommendation will be addressed. As regards the existing procedure for lifting immunity, it appears the same as that in the Evaluation Report, which had led GRECO to making this recommendation to remove the power of the Minister of Justice of giving permission or not to investigate with a view to lifting functional immunity.
86. GRECO concludes that recommendation xvi has not been implemented.

Recommendation xvii.

87. *GRECO recommended that the organisational links between the executive authorities and the Justice Academy be reviewed in order to strengthen the involvement of the judiciary as the main interlocutor of the Academy.*
88. The authorities report that the structure of the Turkish Justice Academy has been reviewed, with the participation of the Academy itself, the CJP and other stakeholders. According to Article 6 and 26 of Law No. 4954 on the Turkish Justice Academy, the Academy co-operates with high judicial bodies and other bodies of the judiciary. The authorities underline that the Academy carries out training programmes, scientific meetings, and projects in co-operation with high courts and other bodies of the judiciary. They also refer to Article 12 of the same law concerning the composition of the General Assembly of the Academy. They argue that a majority of professionals coming from the judiciary are involved in the governing bodies of the Academy. The authorities therefore consider that the Academy cannot be considered as affiliated to the Ministry of Justice.
89. GRECO takes note of the information provided by the authorities, according to which a review of the structures of the Justice Academy has taken place. At the same time, GRECO notes that the authorities mainly refer to Law No. 4954 on the Justice Academy, which regulates in detail the composition, organisation and structure of the Academy as a body affiliated to the Ministry of Justice. The legal situation remains the same now as it was at the time of the adoption of the Evaluation Report. GRECO does not contest that the Academy organises a number of activities with high courts and various judicial bodies being involved, which was already known and welcomed in the Evaluation Report. While a review of some structures of the Academy may well have taken place, GRECO does not see any concrete results going beyond what was already known when this Recommendation was adopted.
90. GRECO concludes that recommendation xvii has not been implemented.

Recommendation xviii.

91. *GRECO recommended that the special in-service training developed for judges and prosecutors be extended to include regular training on corruption prevention and judicial ethics in line with ethical norms and codes of conduct yet to be established in respect of these two distinct professions.*
92. The authorities refer to the Project on “Strengthening Judicial Ethics in Turkey”, conducted jointly with the European Union and the Council of Europe, which includes a training objective for judges and prosecutors. The CJP has already organised six working group meetings and two regional consultation meetings during which a preliminary code of ethics and training of judges and prosecutors were examined; participants included notably judges, prosecutors, academics, NGOs and media representatives. The Turkish Justice Academy has included in its programme of activities in-service training on ethics for 1 500 judges and prosecutors, and by the end of the above-mentioned project the aim is that 3 000 judges and prosecutors are to have followed this training.
93. In addition, the authorities make reference to several conferences and activities around judicial ethics (e.g. CJP conference on the awareness of judicial ethics in October 2015; the Project on “Strengthening Transparency and Code of Ethics for Enhanced Public Confidence in the Court of Cassation”, conducted jointly with UNDP, with two workshops in 2017 attended each time by 120 judges and 30 prosecutors; a CJP-led “Ethics for Justice Symposium” in May 2017 as part of the “Ethics Week”, attended by several judges and prosecutors). Furthermore, the authorities mention a number of training activities organised by the Turkish Justice Academy in 2015-2016 on different topics (e.g. offences against the security and function of Public Administration; terrorism and organised crime) during which corruption prevention and judicial ethics were broached. The CJP is planning to provide training on judicial ethics to 2 000 judges and prosecutors as part of its Strategic Plan 2017-2021.
94. The authorities indicate that a lecture on “Judicial ethics and Professional identity” is given during pre-service training for candidate judges and prosecutors. As soon as precise and objective criteria are defined as part of the above-mentioned Project on “Strengthening Judicial Ethics in Turkey”, they are to be included in the training modules of the Academy. Finally, they indicate that an online training module is under preparation, which was to be provided in 2018.
95. GRECO takes note of the information provided by the authorities. The ongoing development of a code of ethics, which is to serve as the reference for future training on judicial ethics, is a positive development but yet to provide concrete results. In the meantime, GRECO notes that the Turkish Justice Academy is planning to train judges and prosecutors as a result of the project on “Strengthening Judicial Ethics in Turkey” and that on-line training is underway. Whilst these steps are to be welcomed, it would however appear that they are still not in operation.
96. GRECO concludes that recommendation xviii has not been implemented.

Recommendation xix.

97. *GRECO recommended that a mechanism be established to provide confidential counselling on ethics and integrity issues to judges in the course of their duties.*
98. The authorities report that the CJP has set up the Judicial Ethics Bureau (JEB) on 4 February 2016. The JEB is tasked, *inter alia*, with providing counselling to

members of the judiciary on ethical questions in accordance with the principle of confidentiality. One of the Deputy Generals of the CJP Secretariat General is responsible for the JEB, which is composed of some of the CJP members.

99. GRECO takes note of the information provided by the authorities and considers that with the setting up the JEB to provide confidential counselling to members of the judiciary, the recommendation's requirement has been met.

100. GRECO concludes that recommendation xix has been implemented satisfactorily.

Recommendation xx.

101. *GRECO recommended that the removal of cases from subordinate prosecutors be guided by predefined criteria and that the reasons for such decisions be justified in writing.*

102. The authorities report that further to GRECO's recommendation the Inspection Board of the CJP, which disseminates recommendations on issues considered as problematic, confirmed that those Chief Public Prosecutors that cause delay in investigations by changing at short notice the division of duties and case distribution or by not distributing work equitably between prosecutors are criticised by the Board. The authorities state that the Inspection Board confirmed that grounds for the removal of cases from subordinate prosecutors should be indicated in internal directives and division of duties. Decisions on removal of subordinate prosecutors by chief public prosecutors must be written and include adequate reasoning.

103. GRECO takes note of the information provided by the authorities according to which the Division of Duties should mention grounds where a case can be removed from subordinate prosecutors. GRECO notes that there is a requirement that decisions taken by a Chief Public Prosecutor to remove a case from a prosecutor be justified in writing. Therefore, GRECO considers that the recommendation has been fully implemented.

104. GRECO concludes that recommendation xx has been implemented satisfactorily.

Recommendation xxi.

105. *GRECO recommended (i) that a code of ethics be established for the particular functions of prosecutors, including practical examples offering adequate guidance on, specifically, conflicts of interest and other integrity related matters (gifts, recusal, third party contacts and handling of confidential information etc.) and (ii) that it be made accessible to the public and be used in the training of all categories of prosecutors.*

106. The authorities make reference to the information provided under recommendations xiii and xviii in connection with judges which also apply to public prosecutors.

107. GRECO refers to its own findings under recommendation xiii and xviii where it notes positive developments regarding the ongoing work on a code of judicial ethics and related training, but considers it nonetheless too early to pronounce at this stage on whether the requirements of the recommendations will be met. GRECO wishes to add that such a code needs to take into account the different functions of prosecutors and judges.

108. GRECO concludes that recommendation xxi has not been implemented.

Recommendation xxii.

109. *GRECO recommended (i) that clear rules/guidelines on recusal be developed in respect of public prosecutors, including an obligation to report such situations within the hierarchical structure of the prosecution service; and (ii) that measures to address a prosecutor's failure to adhere to such standards are ensured.*
110. The authorities state that in case of doubt as to a public prosecutor's impartiality, the withdrawal/removal process from a case and the legal consequences of continuing investigations despite such doubt are explained by the supervisory authority of the Chief Public Prosecutors, together with the provisions on disciplinary measures contained in Law No. 2802 on Judges and Public Prosecutors. In addition, files on prosecutors regarding the exercise of their duties with impartiality are being scrutinised. The authorities state that the rules on the recusal of judges contained in the Criminal Procedure Code are applied by analogy to public prosecutors. They draw attention to a case where the Constitutional Court has ruled that rules on recusal judges should be applied by analogy to prosecutors.¹⁵ In addition, the authorities underline that the CJP's 2017-2021 Strategic Plan plans that efforts be made to raise awareness on the independence and impartiality of the judiciary. As before, they recall that the CJP is currently drafting a code of ethics for the judiciary that is to cover this issue.
111. GRECO takes note of the information provided by the authorities. It is recalled that the Evaluation Report reflects a situation where prosecutors are not subject to any explicit rules on recusal, neither in law or soft law. GRECO notes that prosecutors may be given some guidance on the withdrawal/removal procedure and the legal consequences. GRECO takes note of the current practice whereby rules on recusal of judges contained in the Criminal Procedure Code are applied by analogy to prosecutors, which has been established in a judgment of the Constitutional Court. While GRECO acknowledges that practice has been developed to apply *mutatis mutandis* the recusal rules designed for judges, it nonetheless considers that this cannot be considered sufficient to remedy permanently the absence of explicit rules on the recusal of prosecutors, which should be laid down in a clear way in law. On the hand, GRECO welcomes that rules/guidelines in this respect may be under consideration under the 2017-2021 Strategic Plan.
112. GRECO concludes that recommendation xxii has been partly implemented.

III. CONCLUSIONS

113. In view of the foregoing, GRECO concludes that Turkey has implemented satisfactorily or dealt with in a satisfactory manner two of the twenty-two recommendations contained in the Fourth Round Evaluation Report. Of the remaining recommendations, five have been partly implemented and fifteen have not been implemented.
114. More specifically, recommendations xix and xx have been implemented satisfactorily, recommendations iii, iv, vii, x and xxii have been partly implemented and recommendations i to vi, viii, ix, xi to xviii, and xxi have not been implemented.
115. With respect to members of parliament, little progress has been made to implement GRECO's recommendations. The main development is a draft Law on Ethical Conduct for Members of the GNAT, which has been tabled in Parliament but

¹⁵ Decision of the Constitutional Court, doc. No. 1988/1, dec. No. 1988/26 dated 26/11/1988.

remains to be examined. However, the draft law is not intended as a detailed code of ethics on a number of aspects (such as gifts or ad hoc disclosure) and fails to cover details of others (contacts with third parties and lobbies, verification of asset declarations); it can thus only be seen as a framework legislation for a future code of ethics, which will need to provide appropriate guidance to MPs on their conduct and various obligations. Moreover, a number of shortcomings highlighted in the Evaluation Report remain to be addressed fully, including the need to enhance the transparency of the legislative process, by laying down rules on holding public consultations, and the lack of a permanent confidential counselling mechanism and operational induction and in-service training for MPs on parliamentary ethics, etc.

116. Insofar as judges and prosecutors are concerned, progress has been even more limited. An underlying serious concern relates to the fundamental structural changes that have taken place in Turkey since the adoption of the Evaluation Report. As a result of these changes, the judiciary appears less independent from the executive and political powers than before. The fact that the newly established Council of Judges and Prosecutors (CJP) – replacing the former High Council of Judges and Prosecutors (HCJP) – is made up of members appointed by the President of the Republic and the GNAT and that none are elected by judges and prosecutors themselves, runs counter to the fundamental principle of an independent self-governing judicial body. Furthermore, the executive has kept a strong influence on a number of key matters regarding the running of the judiciary: the process of selecting and recruiting candidate judges and prosecutors; reassignments of judicial officeholders against their will; disciplinary procedures; strong organisational links with the Turkish Judicial Academy. That said, there are ongoing projects, such as the Project on “Strengthening Judicial Ethics in Turkey”, which could bring about positive developments in respect of a number of recommendations.
117. In view of the above, GRECO therefore concludes that the current very low level of compliance with the recommendations is “globally unsatisfactory” in the meaning of Rule 31, paragraph 8.3 of the Rules of Procedure. GRECO therefore decides to apply Rule 32, paragraph 2 (i) concerning members found not to be in compliance with the recommendations contained in the mutual evaluation report, and asks the Head of delegation of Turkey to provide a report on the progress in implementing the outstanding recommendations (i.e. recommendations i to xviii, xxi and xxii) as soon as possible, however – at the latest – by 31 October 2018.
118. Finally, GRECO invites the authorities of Turkey to authorise, as soon as possible, the publication of the report, to translate it into the national language and to make this translation public.