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FOURTH EVALUATION ROUND

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

INTERIM COMPLIANCE REPORT

TURKEY

Adopted by GRECO at its 82nd Plenary Meeting
(Strasbourg, 18-22 March 2019)

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I. INTRODUCTION

1. The Fourth Round Evaluation Report on Turkey 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. 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 this Report.
3. In the [Compliance Report \(GrecoRC4\(2017\)16\)](#), which was adopted by GRECO at its 77th meeting (16-18 October 2017), it was concluded that two of the 22 recommendations had been implemented satisfactorily by Turkey. In view of this result, GRECO concluded that the very low level of compliance with the recommendations was "globally unsatisfactory" in the meaning of Rule 31, paragraph 8.3 of the Rules of Procedure. GRECO therefore decided 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 asked the Head of the Delegation of Turkey to provide a report on the progress in implementing the pending recommendations by 31 October 2018. This report was received on 15 November 2018 and served as a basis for the Interim Compliance Report.
4. It is recalled that in the Compliance Report, recommendations xix and xx were considered as implemented satisfactorily, recommendations iii, iv, vii, x and xxii as partly implemented and recommendations i, ii, v, vi, viii, ix, xi to xviii, and xxi as not implemented. This [Interim Compliance Report](#) assesses the further implementation of the pending recommendations since the adoption of the Compliance Report and performs an overall appraisal of the level of Turkey's compliance with these recommendations.

II. ANALYSIS

Corruption prevention in respect of members of parliament

Recommendation i.

5. *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.*
6. GRECO refers to its last conclusion finding the recommendation not implemented. As regards the first part of the recommendation, it, noted that the situation remained as described in the Evaluation Report owing to the absence of 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 had not been implemented. As to the second part of the recommendation, GRECO noted that the number of omnibus laws had been on the rise over the last three

legislative sessions of the GNAT and found it a worrying trend going against the objective of the recommendation.

7. The Turkish authorities do not provide any new information concerning the implementation of either parts of this recommendation.
8. In the absence of any new developments, GRECO can only reiterate its conclusions regarding this recommendation and concludes that recommendation i remains not implemented.

Recommendation ii.

9. *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.).*
10. GRECO refers to the Compliance Report which found that the recommendation was not implemented. The Turkish authorities indicated that a proposal for a Law on Ethical Conduct for Members of the GNAT (hereafter, Law on Ethical Conduct of MPs) had been submitted to the Presidency of the GNAT on 1 April 2016 and then sent to the plenary. In the meantime, the Presidency of the GNAT had decided that MPs had to seek authorisation to receive any gift, which should all be declared. GRECO noted that the proposed Law on Ethical Conduct of MPs had not been adopted. Furthermore, the proposed law appeared to be mainly a framework text and was not very detailed in a number of respects (e.g. gifts). GRECO added that codes of conduct gain in being less static than legislation, containing more detail, providing guidance in a more flexible way and being capable of evolving over time.
11. The Turkish authorities now indicate that the bill on Ethical Conduct of MPs could not be finalised during the 26th legislature, i.e. before the general elections held in June 2018. The authorities state that there is no obstacle to the new bill being proposed again during the current 27th legislature.
12. GRECO notes that the bill on Ethical Conduct of MPs has not been adopted yet. GRECO reiterates that the proposed text appeared to be no more than a framework text lacking the practical detail expected of a code of conduct.
13. GRECO concludes that recommendation ii remains not implemented.

Recommendation iii.

14. *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.*
15. GRECO refers to its previous conclusion that the recommendation was partly implemented. The authorities mentioned the draft Law on Ethical Conduct of MPs, which was to call on MPs to make the general interest prevail in case of any personal/financial conflict of interest, and to inform the GNAT of potential conflicts of interest interfering with their legislative functions. The authorities added that the bill was publicly available on-line. GRECO noted that the formulation of the proposed law was not very precise, for example, as regards the timing of such declarations, an element which is of fundamental importance for ad hoc declarations.

16. The Turkish authorities, as described above, now indicate that the Bill on Ethical Conduct of MPs was not examined by the last legislature of the National Assembly and will have to be proposed again during the current legislature.
17. GRECO notes that there is no new development, reiterates that the proposed Bill on Ethical Conduct of MPs lacked sufficient detail, and concludes that recommendation iii remains partly implemented.

Recommendation iv.

18. *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.*
19. GRECO refers to its previous conclusion whereby the recommendation was partly implemented. The authorities first indicated that Law No. 6771 on Amending the Constitution of the Republic of Turkey (adopted on 21 January 2017), had 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 referred to the proposal of Law on Ethical Conduct of MPs, which was to cover the issue of accessory activities, as well as post-employment restrictions, and available sanctions where required. GRECO took note of the legal framework set out in the proposed law and how it lists activities incompatible with being an MP, procedures for examining alleged violations and possible sanctions, which address the current recommendation. GRECO observed that the draft had been agreed at parliamentary committee level and made public.
20. The Turkish authorities, as mentioned under previous recommendations, now indicate that the previous legislature did not adopt the Bill on Ethical Conduct of MPs and that the new legislature has yet to propose its examination.
21. In view of the lack of progress, GRECO concludes that recommendation iv remains partly implemented.

Recommendation v.

22. *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).*
23. GRECO refers to its previous conclusion finding the recommendation not implemented. The authorities referred to the proposal of Law on Ethical Conduct of MPs which would reduce the reporting period for asset declarations to once every two years, and would create an obligation for MPs to declare accessory activities. GRECO considered that the proposed law fell short of addressing the full recommendation, in particular the fact that there was no reference to a system of verification of asset declarations or to the publicity of asset declarations.
24. As indicated above, the Turkish authorities now indicate that the new legislature of the National Assembly has yet to decide on the examination of the Bill on Ethical Conduct of MPs.

25. GRECO reiterates the misgivings expressed in the Compliance Report regarding the proposed law on Ethical Conduct of MPs and calls on the authorities to ensure that this recommendation is fully taken into account when the time comes to re-examine the Bill on Ethical Conduct of MPs.
26. GRECO concludes that recommendation v remains not implemented.

Recommendation vi.

27. *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.*
28. GRECO refers to its previous conclusion which found that this recommendation was not implemented. The authorities made reference to the fact that Law No. 6718 of 20 May 2016 had introduced a provisional Article 20 to the Constitution, stipulating 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”) would not apply for the files concerning the lifting of the parliamentary immunity of deputies which had 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 stated that, with this provisional Article, the parliamentary immunity was not applicable to files against MPs.
29. GRECO noted however from the general preamble to Law No. 6718 that the prime aim of provisional Article 20 was first and foremost to allow prosecution of those MPs whose speech was deemed to support terrorism, even if it was to apply to all files against MPs, to see their immunity lifted.¹ Furthermore, 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 fell back into the regular system.²
30. The Turkish authorities have provided no new information in respect of this recommendation.
31. GRECO concludes that recommendation vi remains not implemented.

Recommendation vii.

32. *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.*

¹ European Commission for Democracy through Law (Venice Commission), Turkey – Law No. 6718 Constitutional amendment as to lifting parliamentary immunity, [CDL-REF\(2016\)056](#)

² 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](#)

33. GRECO refers to its previous conclusion which found this recommendation to be partly implemented. Concerning the first part of the recommendation, GRECO noted 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. GRECO found that it fell short of the requirement of the recommendation of a dedicated induction and in-service training for MPs as required by the recommendation. As to confidential counselling, GRECO noted that the proposed Law on Ethical Conduct of MPs would establish a mechanism (a commission) for confidential counselling, which would represent a positive step. However, this law was not yet adopted. GRECO also noted that counselling is now possible as provided by the Presidency of the GNAT, although to date there have been relatively few counselling requests.
34. The Turkish authorities do not provide any new information on this recommendation, other than the fact that the Bill on Ethical Conduct of MPs is yet to be examined by the new legislature of the National Assembly.
35. In the absence of new elements, GRECO reiterates its previous findings and concludes that recommendation vii remains partly implemented.

Corruption prevention in respect of judges and/or prosecutors

36. GRECO was informed that the Turkish authorities were currently working on a Judicial Reform Strategy that would tackle a number of issues of relevance to the implementation of GRECO's recommendations, including criteria for recruitment and evaluation and disciplinary proceedings. This is however still in progress and GRECO can only invite the authorities to fully take on board its recommendations as part of this reform process.

Recommendation viii.

37. *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.*
38. GRECO refers to its last conclusions whereby the recommendation was not implemented. The authorities indicated that the recent constitutional reform adopted in 2017 had resulted in the replacement of the High Council of Judges and Prosecutors (HCJP) by the Council of Judges and Prosecutors (CJP). The 13 members of the CJP are composed as such: 4 members among judges 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 Minister of Justice acting as president and the Undersecretary also being a member, both being appointed by the President of the Republic. As all CJP members are chosen by the executive and legislative powers, GRECO was critically concerned that the CJP appears an even less independent body than was the HCJP. This development resulted 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)12.³

³ Cf. [Recommendation CM/Rec\(2010\)12 of the Committee of Ministers of the Council of Europe on judges: independence, efficiency and responsibilities.](#)

39. The Turkish authorities now reiterate their arguments on the composition of the CJP. They add that, in the National Assembly, in the event of a qualified majority not being reached in the first two rounds, members are to be elected by drawing lots between two candidates who received the highest number of votes in the second round. They contend that this has created an obstacle for the political group having the majority to get their desired candidates elected.
40. GRECO repeats its previous findings underlining that the composition of the CJP is at odds with the international standard that calls for at least half of the members of self-governing judicial bodies being elected by their peers in order to ensure its true independence from both the executive and legislative powers, as required by the recommendation.
41. GRECO concludes that recommendation viii remains not implemented.

Recommendation ix.

42. *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.*
43. GRECO refers to its previous conclusion finding this recommendation not implemented. The authorities referred to one of the goals set by the CJP's Strategic Plan for 2017-2021, "Strengthening judicial independence and impartiality", which was to include a study on the possible amendment of 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. GRECO noted that the situation had 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 remained unchanged. In addition, given the misgivings expressed about the composition of the CJP, which has no members elected by judges (or prosecutors), GRECO was concerned that the process of selecting and recruiting judges was 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.
44. The Turkish authorities now reiterate the same line of reasoning as before without providing any new elements.
45. GRECO refers to its findings as reflected above and concludes that recommendation ix remains not implemented.

Recommendation x.

46. *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.*
47. GRECO refers to its previous conclusion which found this recommendation partly implemented. GRECO underlined the two reasons for this recommendation. First, there was no assessment/test in respect of academics who could enter the judicial profession directly. In this respect, it turned out that academics did have to take the oral examination, as per Law No. 4954 on the Justice Academy of Turkey. Secondly, there were no established criteria for notions used in the assessment of candidates, such as "honour", "dignity" and "moral conduct". No new information had been reported on this latter aspect.

48. The Turkish authorities now reiterate their previous explanations. They also indicate that a code of judicial ethics is currently under examination before the CJP, after being prepared as part of the "Project on Strengthening Judicial Ethics in Turkey", based on the contribution by various stakeholders. They add that the code is to be accompanied by explanations, which are to indicate, for instance, what is meant by "integrity", "honour" and "ethical conduct".
49. GRECO takes note of the reported development of a draft code of conduct for judges, which should be subsequently accompanied by explanations concerning, *inter alia*, the notions of "integrity", "honour" and "ethical conduct"; this would admittedly be used to check candidates' suitability. This could potentially be a positive step, but GRECO cannot however come to any firm conclusion at this stage without having examined it. Moreover, it notes that recruitment conditions used to be dealt with in Law No. 4954 on the Justice Academy, which has been abrogated since the last compliance report; it is now unclear what rules are followed for examinations, including in respect of academics joining the profession, which was previously a cause of concern that the abrogated law had previously clarified.
50. GRECO concludes that recommendation x remains partly implemented.

Recommendation xi.

51. *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.*
52. GRECO refers to its previous conclusion according to which this recommendation was not implemented. The authorities indicated that the CJP's Strategic Plan 2017-2021 included an objective on the establishment of an ethical follow-up system, with a code 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. In addition, the authorities referred to the aforementioned Project on "Strengthening Judicial Ethics in Turkey", one aim being the development of a code of ethics. GRECO underlined that the recommendation was focusing specifically on setting out precise and objective criteria for the evaluation of judges/prosecutors, which should be made known to the public and the specific requirements of the recommendation could therefore not be considered to have been met.
53. The Turkish authorities now reiterate their previous points. They also add that a code of judicial ethics for judges and prosecutors is currently before the plenary of the CJP for adoption, following which explanations, with concrete examples, are to be prepared.
54. GRECO notes the ongoing development of a code of judicial ethics. However, it must reiterate that the purpose of the recommendation is the establishment of precise and objective criteria for the evaluation of judges/prosecutors, which should be known to the public, which is not necessarily synonymous with a code of judicial ethics. Even if there were included in the future code of judicial ethics, its content is not known yet. Therefore, GRECO still cannot find that the recommendation's requirements have been met.
55. GRECO concludes that recommendation xi remains not implemented.

Recommendation xii.

56. *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.*
57. GRECO refers to its last conclusion finding the recommendation not implemented. Regarding the first part of the recommendation, GRECO noted the authorities' information indicating that the tenure of judicial officeholders was to be discussed as part of the CJP's Strategic Plan. It further noted that the issue tackled in the second part of the recommendation was also to be part of this discussion. The CJP's Strategic Plan only started in 2017 and was go on until 2021, and therefore it was too soon for GRECO to pronounce on whether the requirements of the recommendation were met. The same went for the ongoing project organised in co-operation with TAIEX mentioned by the authorities and which concerned appointment and displacement systems of judges. GRECO also took note, insofar as the second part of the recommendation was concerned, of the power of the Minister of Justice to transfer judges remained unchanged.
58. The Turkish authorities now refer to their previous explanations. They add that a first meeting under the "Project on Development of Appointment and Displacement Systems of Judges and Prosecutors in EU Standards" was conducted by the CJP with examples from different countries. The resolutions regarding this matter are updated by the 1st Chamber of the CJP, which is competent for the appointment and transfer of judges. The authorities reiterate their position regarding the power of the Minister of Justice to transfer judges against their will and the fact that it has in practice been transferred to the Deputy President of the CJP.
59. GRECO notes that the aforementioned project on the appointment and transfer of judges is on-going. It notes with concern that the power of the Minister of Justice to transfer judges against their will remains in place, the situation has therefore in essence not changed. In addition, GRECO refers in this context to its previous misgivings about the new composition of the CJP and its negative impact on the independence and impartiality of what is meant to be the self-governing body of the judiciary.
60. GRECO concludes that recommendation xii remains not implemented.

Recommendation xiii.

61. *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.*
62. GRECO refers to its previous conclusion finding that this recommendation was not implemented. The authorities mentioned the fact the CJP's Strategic Plan 2017-2021 included the preparation of a code of judicial ethics. As a result of consultation meetings, it was stated that gifts, recusals, third party contacts and confidential information would be covered by it and the practical guidebook would include concrete examples. As part of the Project on "Strengthening Judicial Ethics in Turkey", mentioned under recommendation xi, 3 000 judges and prosecutors were to be trained on ethics. While GRECO noted that work had started on the

preparation of a code of judicial ethics, it was too soon to assess whether the requirements of its recommendation were going to be met. GRECO stressed that such a code needed to take into account the different functions of judges and prosecutors.

63. The Turkish authorities now refer to their previous position and provide an update. As mentioned before, the CJP is examining in plenary a draft code of judicial ethics. The authorities say it contains provisions on conflict of interest and integrity and that explanations are to be prepared subsequently with concrete examples, which should cover other issues such as gifts, recusation, contacts with third parties and confidential information. Moreover, pursuant to Statutory Decree No. 703 of 9 July 2018, Article 7, para. 2, subpara. (d) of the Law on Judges and Public Prosecutors provides for a duty for the plenary of the CJP to establish the code of judicial ethics for judges and public prosecutors. The authorities state that this code is to be published as soon as adopted in plenary.
64. GRECO notes that some progress appears to be made on the preparation of a code of judicial ethics. It considers that the practical guidance that is to be developed afterwards will however be crucial to ensure its practical impact. It also renews its call to ensure that the code takes into account the specificities of each profession, judges and prosecutors. The draft code was not communicated to GRECO at this stage.
65. GRECO concludes that recommendation xiii remains not implemented.

Recommendation xiv.

66. *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.*
67. GRECO last concluded that this recommendation was not implemented. The authorities reported 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 was being drafted, which once final was to be made available to the judiciary.
68. The Turkish authorities now indicate that the issue of an oath for judges has been linked to the code of judicial ethics, currently before the CJP’s Plenary for adoption.
69. GRECO notes that the oath appears to have been submitted to the CJP’s Plenary for adoption together with the draft code of judicial ethics, but not adopted yet and no text is available yet.
70. GRECO concludes that recommendation xiv remains not implemented.

Recommendation xv.

71. *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.*
72. GRECO had previously found this recommendation not implemented. The authorities reported that the CJP planned to re-examine the disciplinary system as part of its 2017-2021 Strategic Plan. GRECO considered that the fact the CJP’s

Strategic Plan was to address the question of disciplinary proceedings against judges and prosecutors was a first step. However, no tangible results had been reported. GRECO stressed the misgivings expressed on the composition of the CJP were also relevant in respect of this recommendation.

73. The Turkish authorities have not provided new information in this respect.
74. GRECO can but reiterate its findings as reported above and concludes that recommendation xv remains not implemented.

Recommendation xvi.

75. *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.*
76. GRECO had found that this recommendation was not implemented. GRECO noted that the CJP's Strategic Plan 2017-2021 was to consider the disciplinary system, but there was no indication at this early stage that the requirements of the recommendation would be addressed. As regards the existing procedure for lifting immunity, it appeared to be the same as that described 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.
77. The Turkish authorities now reiterate their position. They also refer to Article 159 of the Constitution as revised following the replacement of the HCJP by the CJP. Investigations are carried out by the CJP Inspection Board (and may be conducted by a judge or prosecutor senior to the judge or prosecutor being investigated) upon the proposal of the competent Chamber of the CJP and with the consent of the President of the CJP. According to Article 6, para. 2, subpara. ç of the Law on the CJP, the President of the CJP has the power to authorise procedures of inspection, examination, investigation and non-prosecution of judges and prosecutors. Under Article 9, para. 1, subpara. b, the First Chamber of the CJP is assigned with having the Inspection Board to carry out inspection procedures to establish whether judges and prosecutors fulfil their duties in accordance with the law and other legislation. Pursuant to Article 16, para. 1, subpara. ç, the President of the CJP is assigned with the duty and power to prepare the draft annual inspection programme, to submit it to the First Chamber and to ensure its implementation upon the consent of the President.
78. GRECO takes note of the information provided by the authorities, although it appears to concern changes related more to disciplinary proceedings as managed by the CJP – where GRECO notes that the Minister of Justice, as its president, plays an important role – rather than the specific question of lifting of the functional immunity of judges, which is at the heart of this recommendation. Therefore, GRECO assumes that the power of the Minister of Justice of giving permission for the lifting of functional immunity of judges and prosecutors is unchanged.
79. GRECO concludes that recommendation xvi remains not implemented.

Recommendation xvii.

80. *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.*
81. GRECO refers to its last conclusion finding the recommendation not implemented. The authorities reported that the structure of the Turkish Justice Academy had been reviewed, with the participation of the Academy itself, the CJP and other stakeholders. GRECO noted that the authorities mainly referred to Law No. 4954 on the Justice Academy, which regulated in detail the composition, organisation and structure of the Academy as a body affiliated to the Ministry of Justice. The legal situation remained the same as in the Evaluation Report.
82. The Turkish authorities now indicate that, following the entry into force of the presidential system, Law No. 4954 has been abrogated and the Justice Academy has therefore been dissolved. Until the establishment of the organs of a Judges and Prosecutors Training Centre, the duties and services of the Justice Academy (except for conducting written and oral examinations) are to be carried out the Ministry of Justice Department of Training.
83. GRECO notes that the Justice Academy has been dissolved and is to be replaced by a Training Centre for Judges and Prosecutors. For the time being, the functions of the defunct Academy are carried out directly by the Ministry of Justice. Even if this is only a temporary solution, it goes in the opposite direction of what was intended by the recommendation.
84. GRECO concludes that recommendation xvii remains not implemented.

Recommendation xviii.

85. *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.*
86. GRECO found in its last conclusion that this recommendation was not implemented. The authorities referred to the Project on "Strengthening Judicial Ethics in Turkey", conducted jointly with the EU and the Council of Europe, which includes a training objective for judges and prosecutors and work on a code of ethics. The CJP was planning to provide training on judicial ethics to 2 000 judges and prosecutors as part of its Strategic Plan 2017-2021. The authorities indicated that a lecture on "Judicial ethics and Professional identity" is given during pre-service training for candidate judges and prosecutors. Finally, they indicated that an online training module was under preparation, which was to be provided in 2018. GRECO took note of the ongoing development of a code of ethics, which was to serve as reference for future training on judicial ethics, as a positive development but yet to yield concrete results. GRECO noted that, whilst initiated, changes had not yet materialised.
87. The Turkish authorities now indicate that training on ethics will be initiated once the code of judicial ethics has been adopted, in co-operation with the Ministry of Justice Department of Training. They mention the creation under the CJP of an Office of Judicial Ethics as a reference point for ethical issues. The content of the training sessions on "judicial ethics and professional identity", which are given to judges and prosecutors separately, are to be updated in the light of the future code of judicial ethics. In response to GRECO's recommendation, more prominence was to be given

to corruption prevention and judicial ethics in the training programmes of the end of 2018 and in 2019. The authorities indicate that there are 20 000 judges and prosecutors and an equivalent of 1/10th of candidates, therefore training programmes are costly and require long preparations.

88. GRECO notes that progress towards in-service training based on the future code of judicial ethics is still ongoing, but at the same time that there is still a long way to go. First, GRECO notes that the Turkish Justice Academy previously responsible for training has now been dissolved and that its functions have been temporarily entrusted to the Ministry of Justice. GRECO is of the firm opinion that training ought to be in the hands of the judiciary. Secondly, the recommendation asks for in-service training to be based on a code of judicial ethics, which has not been adopted and the content of which is not known.

89. GRECO concludes that recommendation xviii remains not implemented.

Recommendation xxi.

90. *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.*

91. GRECO refers to its last conclusion according to which this recommendation was not implemented. The authorities made reference to the information provided under recommendations xiii and xviii in connection with judges which also apply to public prosecutors. GRECO referred to its own findings under recommendation xiii and xviii where it noted positive developments regarding the ongoing work on a code of judicial ethics and related training, but considered it nonetheless too early to pronounce on whether the requirements of the recommendations would be met. GRECO added that such a code needed to take into account the different functions of prosecutors and judges.

92. The Turkish authorities now refer to the information provided under recommendation xiii and further indicate that the code of judicial ethics is to cover both judges and prosecutors, with common provisions as well as provisions specific to each profession. A working group composed exclusively of prosecutors is to identify the specificities that should be covered by the future code. Special provisions are to cover for instance, conflicts of interest and integrity. The code is to be made public after its adoption by the plenary of the CJP. As said before, practical explanations, illustrated by examples, are to be devised after adoption of the code (including on gifts, recusal, contacts with third parties, etc.).

93. GRECO notes that some progress appears to be made towards the adoption of a code of judicial ethics and that reportedly there are to be specific provisions for prosecutors where considered necessary. It also notes that practical guidance is planned after the code's adoption. These developments need to materialise and GRECO has not seen the draft code, nor any practical guidance.

94. GRECO concludes that recommendation xxi remains not implemented.

Recommendation xxii.

95. *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.

96. GRECO refers to its previous conclusion on this recommendation which found it partly implemented. The authorities stated that the rules on the recusal of judges contained in the Criminal Procedure Code were applied by analogy to public prosecutors. They drew attention to a case where the Constitutional Court has ruled that rules on recusal judges should be applied by analogy to prosecutors.⁴ As before, they recalled that the CJP is currently drafting a code of ethics for the judiciary that is to cover this issue. GRECO recalled that the Evaluation Report reflected a situation where prosecutors were not subject to any explicit rules on recusal. Prosecutors may be given some guidance on the withdrawal/removal procedure and the legal consequences, that the current practice according to which rules on recusal of judges contained in the Criminal Procedure Code are applied by analogy to prosecutors. GRECO considered that practice could not be considered sufficient in itself to remedy permanently the absence of explicit rules on the recusal of prosecutors, which should be laid down in a clear way in law.
97. The Turkish authorities now indicate that the code of judicial ethics to be adopted by the plenary of the CJP is to clarify the issue of recusal and withdrawal of prosecutors.
98. GRECO notes that the reported inclusion in the future code of judicial ethics of the issue of the recusal of prosecutors has not materialised, the said draft code is not adopted. Moreover, GRECO has not seen the draft.
99. GRECO concludes that recommendation xxii remains partly implemented.

III. CONCLUSIONS

100. **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.
101. More specifically, recommendations xix and xx have been implemented satisfactorily, recommendations iii, iv, vii, x and xxii have been partly implemented and recommendations i, ii, v, vi, viii, ix, xi to xviii, and xxi have not been implemented.
102. With respect to members of parliament, no tangible progress has been made to implement GRECO's recommendations since the adoption of the Compliance Report. The draft Law on Ethical Conduct for Members of the GNAT was not examined by the previous legislature and has yet to be tabled in the current legislature. Moreover, GRECO noted that this proposed law was a framework text that lacked sufficient detail on a number of relevant issues (e.g. gifts, ad hoc disclosure of conflict of interest, verification and publicity of asset declarations, etc.). Furthermore, as already underlined in the Compliance Report, a number of shortcomings highlighted in the Evaluation Report remain to be addressed, including the need to enhance the transparency of the legislative process, by laying down rules on public consultations in the legislative process and the lack of measures to ensure MPs' integrity (e.g. a permanent confidential counselling

⁴ Decision of the Constitutional Court, doc. No. 1988/1, dec. No. 1988/26 dated 26/11/1988.

mechanism and operational induction and in-service training on parliamentary ethics).

103. Insofar as judges and prosecutors are concerned, there has been no tangible progress since the adoption of the Compliance Report. While a draft code of judicial ethics for judges and prosecutors is reportedly underway, the underlying reasons for GRECO's recommendations remain the fundamental structural changes which have weakened judicial independence and also led the judiciary to appear even less independent from the executive and political powers now than at the time of the adoption of the Evaluation Report. 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 European standards of an independent self-governing judicial body. Furthermore, the executive has kept and even increased 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; and training of judges.
104. In the light of the foregoing, GRECO concludes that the current level of compliance with the recommendations remains “globally unsatisfactory” within the meaning of Rule 31, paragraph 8.3 of the Rules of Procedure.
105. In application of paragraph 2.i) of Article 32 of the Rules of Procedure, GRECO asks the head of the Turkish delegation to provide a report on the measures taken to implement the outstanding recommendations (namely recommendations i to xviii and xxi) by 31 March 2020 at the latest.
106. In addition, in accordance with Rule 32, paragraph 2, sub-paragraph (ii.a), GRECO invites its President to send a letter – with a copy to the President of the Statutory Committee – to the Head of the Turkish delegation, drawing his attention to the non-compliance with the relevant recommendations and the need to take determined action with a view to achieving tangible progress as soon as possible.
107. 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.