



Adoption: 22 March 2019  
Publication: 2 July 2019

**Public**  
GrecoRC4(2019)9

## FOURTH EVALUATION ROUND

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

### COMPLIANCE REPORT

### GEORGIA

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

## **I. INTRODUCTION**

1. The Compliance Report assesses the measures taken by the authorities of Georgia to implement the recommendations issued in the Fourth Round Evaluation Report on Georgia which was adopted at GRECO's 74<sup>th</sup> Plenary Meeting (28 November - 2 December 2016) and made public on 17 January 2017, following authorisation by Georgia ([GrecoEval4Rep\(2016\)3](#)). 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 Georgia submitted a Situation Report on measures taken to implement the recommendations. This report was received on 18 December 2018 and served as a basis for the Compliance Report.
3. GRECO selected Estonia and the United States of America to appoint Rapporteurs for the compliance procedure. The Rapporteurs appointed were Ms Mari-Liis SÖÖT, on behalf of Estonia, and Mr Kenneth E. KELLNER, on behalf of the United States of America. They were assisted by GRECO's Secretariat in drawing up the Compliance Report.
4. The Compliance Report assesses the implementation of each individual recommendation contained in the Evaluation Report and establishes an overall appraisal of the level of the member's compliance with these recommendations. The implementation of any outstanding recommendation (partially or not implemented) will be assessed on the basis of a further Situation Report to be submitted by the authorities 18 months after the adoption of the present Compliance Report.

## **II. ANALYSIS**

5. GRECO addressed 16 recommendations to Georgia 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 further enhancing the transparency of the legislative process, including by further ensuring that draft legislation, amendments to such drafts and information on committee work (including on agendas and outcome of meetings) are published in a visible and timely manner, and by establishing a uniform regulatory framework for the public consultation procedure in order to increase its effectiveness.*
7. The authorities report that all draft laws are published on the official website of the Parliament, together with explanatory notes, the conclusions of the relevant parliamentary committee, audio recordings of parliamentary discussions and other related documents.<sup>1</sup> The documents are now published in an editable format (Word and PDF) and updated using track changes after each parliamentary hearing. In addition, the Parliament's website publishes the monthly parliamentary calendar, monthly agendas of committees and minutes of committee meetings (under the subsection of the website on the committee in question, which also provides further information on the committee itself, its statute, activities, workplan and reports).<sup>2</sup>

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<sup>1</sup> Please see: <https://info.parliament.ge/#law-drafting>

<sup>2</sup> On the "[committees](#)" part of the website of the Parliament, the following sections are shown for each of them: [members](#) of committee (e.g. in this case the Legal Affairs Committee), [statute](#) of the committee, [office/staff](#),

Further amendments to the Rules of Procedure (RoP) have been made, which provide that all relevant materials to be discussed at a meeting of a committee are to be published at least three days before the meeting, and draft legislation is to be published on the Parliament's website immediately after the Bureau has decided that the draft law is ready to be presented to the Committee (Article 34(8) of the amendments to the RoP). The period between this decision of the Bureau and the review of the draft law by the relevant committee has furthermore been prolonged from two to three weeks, which should provide for sufficient time for the public to take note of this draft legislation. According to Article 117 of the amended RoP, changes to the committee hearing agendas and decisions approving an accelerated review of a draft law are to be adopted at the first hearing of the committee.

8. Moreover, the website includes a special module allowing citizens to comment on the draft legislation and, following amendments to the RoP of April 2018, the office of the parliamentary committee in question is to collect those comments and submit them to the head of the committee who is to discuss them with the committee members. If the committee agrees with the comments, they are included in the committee's conclusion on the draft law (Article 102 (8-9) RoP). The amended RoP also provide for e-petitions and for the electronic submission of legislative initiatives (Article 203 and 105 RoP), for which an on-line platform is now under construction.<sup>3</sup>
9. GRECO takes note of the information provided, which presents an improvement to the situation described in the Evaluation Report. The parliamentary website seems to be regularly updated, amendments to draft legislation appear to be published in a visible manner and the updates to the webpages of each of the parliamentary committees should make it easier to follow the progress of draft legislation, provided the time-lines of the amended RoP are being respected. However, while GRECO welcomes the amendments made to RoP on e-petitions, e-legislative initiatives and the follow-up to be given to comments on draft legislation, it considers this to fall short of rules on a public consultation procedure (i.e. rules on a procedure in which the public is obliged to be consulted on certain pieces of legislation initiated by the government or parliament).
10. GRECO concludes that recommendation i has been partly implemented.

#### **Recommendation ii.**

11. *GRECO recommended (i) that an enforceable code of ethics/conduct be adopted covering various situations of conflicts of interest (e.g. gifts and other advantages, incompatibilities, additional activities and financial interests, third party contacts, including with lobbyists) and that it be made easily accessible to the public; (ii) that the code be complemented by practical measures for its implementation, including through awareness-raising and dedicated training, confidential counselling and credible monitoring.*
12. The authorities report as regards the first part of the recommendation that in February 2019 a new Code of Ethics for members of parliament (MPs), was adopted by the Parliament. It was drafted by a working group comprising MPs, parliamentary staff and civil society representatives. The Code provides that MPs

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[agenda](#), [news](#), [activities](#), official [letters](#) received by the committee (when relevant) and [contact](#) information. Under the activities part of the committee page, there is further information, e.g. the working [plan](#) of the committee, [reports](#) of the committee, official [meeting](#) reports and [minutes](#) of the committee's sessions.

<sup>3</sup> An e-petition on a public issue can be submitted by at least 300 citizens and, if it meets the criteria set out in the RoP, will be discussed by the relevant parliamentary committee within one month of its submission, after which it may be forwarded to the Plenary of the Parliament should the committee so decide. A legislative initiative follows a similar procedure but needs 30.000 citizens to be put forward.

are *inter alia* not allowed to use their status as an MP in favour of their own, family members' or close relatives' interests; prohibited from accepting gifts from lobbyists or accepting gifts which may influence the performance of their duties; required to declare any gifts with a value of more than 300 GEL (approximately 100 EUR), which is to include the identity of the donor and the gift's market value); required to inform the Procedural Issues and Rules Committee in writing - prior to the finalisation of the discussion of a particular issue - of their or their family members' interest in entrepreneurial activities; prohibited from carrying out any entrepreneurial activity, lobbying activities or having a position in the civil service; required to disclose meetings they have with registered lobbyists and publish information on those meetings on the Parliament's website. The Code is available on the Parliament's website, has been published in the Legislative Gazette and will in due course (once the Council of Ethics mentioned below has been established) be published on the Council of Ethics' webpage.<sup>4</sup>

13. Furthermore, in accordance with Article 227 of the RoP of the Parliament and Article 4 of the Code of Ethics, two months after the formation of each new Parliament, a Council of Ethics will be established (comprising MPs of all political groups) to monitor, study and act on alleged breaches of the rules of conduct.<sup>5</sup> The Council of Ethics can on its own initiative or following the receipt of a complaint (to be received within a month from either the alleged breach or from its discovery) look into possible breaches of the Code. If the Council finds that the MP has breached the rules of conduct, it will publish this violation together with the full name of the MP on its website. For serious violations of the Code, the provisions on sanctions in the Law on Conflict of Interest and Corruption in Public Institutions (hereafter: LCI) and other legislation will be applied.<sup>6</sup>
14. As regards the second part of the recommendation, the Code (article 5) provides that training sessions will be organised for members of every newly formed Parliament. Training session for this Parliament will take place following the creation of the Council of Ethics (which is expected to be established at the end of March 2019).
15. GRECO welcomes the adoption of a Code of Conduct for MPs, and in particular the fact that this was developed with involvement of MPs themselves (which should lead the Parliament to take greater ownership of the document). As regards the first part of the recommendation, it recalls the criticism it expressed in respect of a previous code, which it found to require an enforcement mechanism and more detailed and binding guidance for MPs on conflicts of interest and related questions. GRECO welcomes in this respect that the Council of Ethics, once it has been set up, can enforce (minor) violations of the Code and that explicit provisions on gifts, contacts with lobbyists and certain incompatibilities are now included in the Code (even if those on conflicts of interest could have provided more detailed guidance<sup>7</sup>, see also on this issue recommendation iii below). Even though GRECO considers that certain provisions of the Code which do not refer to the sanctions regime of the LCI could have included a more dissuasive sanction than the publication of the violation on the parliament's website, it considers that an enforceable code covering

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<sup>4</sup> The Code of Ethics was published in the Legislative Gazette under registration number 010190030.09.001.016506).

<sup>5</sup> It is furthermore provided that representatives of the major party should not exceed half of the Council's members.

<sup>6</sup> According to Article 4, paragraph 1 of the Code, this refers to the provisions of the Code on gifts, incompatibilities (i.e. incompatible entrepreneurial activities and a position in public service), lobbying activities, asset declarations, participation in parliamentary activities, misuse of administrative resources and confidential information.

<sup>7</sup> Apart from more specific provisions on gifts and incompatibilities, the general provision on conflicts of interest in the Code reads "*The Member of Parliament shall not use the status of the Member of Parliament in favour of personal, family members' or close relatives' interest (...)*".

various situations of conflicts of interest is now in place and made accessible to the public, as required by the first part of the recommendation. This part of the recommendation has thus been addressed.

16. As regards the second part of the recommendation, GRECO welcomes the explicit reference to the provision of training in the Code. However, as this training has not taken place, no other practical measures in the form of awareness-raising and confidential counselling have been taken and a Council of Ethics has not started monitoring the implementation of the Code yet, it considers that this part of the recommendation has not been implemented.
17. GRECO concludes that recommendation ii has been partly implemented.

#### **Recommendation iii.**

18. *GRECO recommended that a requirement for ad hoc disclosure be introduced when a conflict between specific private interests of individual members of parliament and a matter under consideration in parliamentary proceedings may emerge, that clear rules for such situations be developed, and that the operation of this mechanism be subject to monitoring.*
19. The authorities report that the Code of Ethics, as referred to under recommendation iii above, requires MPs to declare in writing, to the Rules and Procedures Committee, before the finalisation of the discussions in Parliament, his/her or his/her family's interest in entrepreneurial activity, which will be published on the website of the Parliament by the Committee.
20. GRECO takes note of the information provided. It however considers the limitation of a disclosure procedure to interests in entrepreneurial activities a too limited approach to this issue. As such it cannot say that clear rules for such situations have been developed (noting in this regard also the absence of any rules on recusal of MPs and more detailed guidance on this matter, as referred to under recommendation ii above), nor that the operation of ad-hoc disclosures of conflicts of interest is now subject to monitoring (given that the Council of Ethics has not started its work yet).
21. GRECO concludes that recommendation iii has been partly implemented.

#### *Corruption prevention in respect of judges*

#### **Recommendation iv.**

22. *GRECO recommended reforming the recruitment and promotion of judges, including by ensuring that any decisions in those procedures by the High Council of Judges a) are made on the basis of clear and objective, pre-established criteria – notably merit, in a transparent manner and with written indication of reasons, and b) can be appealed to a court.*
23. The authorities report that in the so-called "third wave of judicial reform", on 8 February 2017, the Parliament adopted a number of amendments to the Law on Common Courts (LCC) as regards the recruitment of judges. The LCC differentiates between candidates with prior judicial experience (judges who have been assigned to their position for a three-year probation term, who are candidates for a life-time appointment) and candidates without such experience (who are candidates for a three-year probation period). Both categories are to be assessed based on detailed

criteria regarding their integrity and competence.<sup>8</sup> For judges who are candidates for a life-time appointment, assessments will be carried out at various points during their three-year probation period, with for the final assessment additionally five cases<sup>9</sup> (selected randomly) of the judge concerned being examined; for candidates without judicial experience, there is one overall assessment, for which the High Council of Judges (HCJ) will also collect additional information on the candidate's background.

24. Candidates with prior judicial experience (judge candidates for life-time appointments) will have the opportunity to read the reports of each assessment at a location designated by the HCJ for this purpose. Following an analysis of the assessment results and an interview with the judge, the HJC is to take a decision on the life-time appointment of a judge (with two-third majority). Within five days of the HJC's decision, a copy of this decision along with the argumentation or dissenting opinions of members of the HJC is to be submitted to the judge candidate concerned. The evaluation sheets of candidates without prior judicial experience who have been appointed for a three-year probationary period and the summary information contained therein can be obtained by anyone upon request. Candidates who have not been appointed can access their file (including evaluation sheets) upon request, but this information will not be released to others without the consent of the candidate in question. Both categories of candidates may lodge an appeal with the HJC (which is to forward this appeal to the Chamber of Qualification of the Supreme Court for a decision) within two weeks of the HJC's decision.<sup>10</sup>
25. As for the promotion of judges, following the above-mentioned amendments to the LCC, a judge of a district (city) court may be appointed to the Court of Appeals, if s/he has been a district (city) court judge for at least five years. The amended LCC furthermore provides that the HCJ is to establish criteria for the promotion of a judge. The development of a clear and transparent mechanism for the promotion of judges has been outlined in the Georgia's judicial strategy for 2017-2021 as one of the priorities and a working group of the HCJ is currently elaborating a model for the promotion of judges.
26. GRECO welcomes the substantive reform of the judicial recruitment process, providing pre-established criteria for also the selection of judicial candidates for the probationary period (similar to those to be applied when deciding on lifetime appointments, as already described in the Evaluation Report), requiring the HCJ to justify its decisions and make the reasons for its decisions available to the applicant, and providing for a possibility for candidates to challenge the HCJ's decision to the Supreme Court. It however also notes the concerns which continue to be expressed by civil society organisations as regards the transparency and impartiality of the decisions of the HCJ.<sup>11</sup> In this respect, GRECO can only

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<sup>8</sup> Integrity criteria include personal honesty and professional integrity, independence, impartiality and fairness, personal and professional conduct and personal and professional reputation (with for judges with prior judicial experience the criterion "financial obligations" added to assess the potential for a conflict of interests). Competence criteria include knowledge of legal norms, legal reasoning, oral and written communication skills, professional qualities (with for judges with prior judicial experience the conduct of the judge in the courtroom also being looked at), academic achievements and professional training and professional activities. Each of these criteria is subsequently further explained in Articles 35<sup>1</sup> and 36<sup>4</sup> for candidates without and with judicial experience respectively.

<sup>9</sup> These cases are examined to assess the judge's knowledge of substantive and procedural law, human rights law, the ability to analyse logically etc.

<sup>10</sup> Articles 35<sup>4</sup> and 36<sup>5</sup> of the LCC provide the grounds of appeal such as bias (of the evaluator or member of the HJC, as appropriate), discriminatory attitude, exceeding powers granted under the legislation of Georgia, substantively incorrect information on which the assessment was based or lack of compliance of the procedure with the legislation.

<sup>11</sup> Despite the criteria now included in the LCC, the HCJ is alleged to have broad discretion regarding judicial appointments, in particular as not necessarily candidates with the best assessment results are appointed (candidates are instead being voted on), interviews are mostly discussed in closed sessions, it is not clear what weight the interview has in the overall assessment, it is not defined in detail on what information the HCJ members

encourage the authorities to keep the situation under review, and – if needed - take additional measures. As the concerns GRECO expressed in its Evaluation Report regarding the opaque procedures and the lack of clear and objective criteria as regards specifically the *promotion* of judges have not been addressed yet, GRECO can only consider this recommendation to have been partly implemented.

27. GRECO concludes that recommendation iv has been partly implemented.

**Recommendation v.**

28. *GRECO recommended that the planned legislation on the transfer of judges, if adopted, provides for adequate safeguards against misuse of the possibility of transfer of judges to another court without their consent, including by ensuring that such a transfer is only possible in exceptional cases, under strict criteria clearly identified in the law, and by providing for the possibility to appeal against transfer decisions.*

29. The authorities report that on 8 February 2018 further legal amendments were adopted within the framework of the “third wave of the judicial reform”. A new Article 37<sup>1</sup> has been added to the LCC which provides that the transfer of a judge may only take place in two distinct situations, namely if another district (city) court or court of appeals lacks a judge or if there is a dramatic increase in the number of cases at a given court. The transfer of a judge is subject to his/her consent, but if no judge accepts the offer to be transferred to the court in question, the HCJ is authorised to randomly (by drawing lots) select a judge from the nearest court of the same instance. The judge thus selected will be given an opportunity to provide arguments for why s/he should not be transferred, which will be reviewed by the HCJ. A judge may only be sent to another court without his/her consent once in a ten year period and only for a period of up to one year (in which time the HCJ is to announce a competition for the position in question). S/he in any case cannot be transferred to a lower court without his/her consent. Decisions of the HCJ on a judge’s transfer can be appealed to the common courts in accordance with the procedure foreseen for appealing administrative acts under the Code of Administrative Procedure.

30. GRECO welcomes the information provided. The new procedure for the transfer of judges is a considerable improvement on the situation outlined in the Evaluation Report and, if implemented as foreseen, should provide for adequate safeguards against misuse of the possibility to transfer judges without their consent.

31. GRECO concludes that recommendation v has been implemented satisfactorily.

**Recommendation vi.**

32. *GRECO recommended introducing an objective and transparent system for the allocation of cases to individual judges, such as an automatic (electronic) system providing for random case assignment.*

33. The authorities report that an electronic system for the random allocation of cases was introduced in Georgia (in accordance with amended Article 58<sup>1</sup> of the LCC) on 1 January 2018 (following an initial trial period in Rustavi city Court). The cases are

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should base their decisions when deciding on the competency and integrity of candidates (with – despite the introduction of a point system – there not being any obligation to substantiate the assessment of a candidate). See *inter alia* the Coalition for Independent and Transparent Judiciary, [Coalition addresses Parliament with legislative proposal concerning selection/appointment of judges](#) (13 July 2018); Transparency International, [Corruption Risks in the Georgian Judiciary](#) (5 July 2018) and Coalition for Independent and Transparent Judiciary, [The Judicial System: Past Reforms and Future Perspectives](#) (2017), p. 37, and further.

distributed between judges of district (city) courts, courts of appeal and the Supreme Court automatically taking into consideration the specialisation of judges.

34. Furthermore, in January 2018, the HCJ adopted a decision abolishing the previous practice whereby, in case of a temporary failing of the electronic case assignment system it would be the chair of the court who assigned cases. Instead, it will be a specially authorised staff member of the registry of the court in question, who is to allocate cases according to the rules for case distribution (i.e. in the order in which the cases have been registered and alphabetical order of the surnames of judges). From January 2018 to March 2019, the electronic case assignment system has failed six times, due to problems with the internet service, which has meant that in total 46 cases have been assigned by a specially authorised staff member in accordance with the aforementioned rules for case distribution.
35. GRECO welcomes the establishment of an automatic (electronic) system for the random assignment of cases. GRECO understands that some initial problems to do with the weighing of cases are still being worked out, but is satisfied that an objective and transparent system for the allocation of cases to individual judges is in place once the problems with the electronic case assignment system are resolved.
36. GRECO concludes that recommendation vi has been implemented satisfactorily.

**Recommendation vii.**

37. *GRECO recommended (i) that the "Norms of Judicial Ethics" be updated, communicated to all judges and made easily accessible to the public; (ii) that they be complemented by practical measures for the implementation of the rules, such as further written guidance and explanations, further training and confidential counselling.*
38. The authorities report that updating of the 2007 "Norms of Judicial Ethics" and establishing a mechanism to provide confidential counselling on ethical issues are mentioned as priorities in Georgia's judicial strategy 2017-2021 and its Action Plan 2017-2018. The working group responsible for the implementation of the Action Plan has prepared an analysis of good practices as regards the setting up of a mechanism for confidential counselling within the judiciary. Furthermore, the HSoJ – in collaboration with two different USAID projects – has developed a "basic course on judicial ethics" and an "in-depth course on judicial ethics" (in which - after the training of trainers – respectively 38 and 30 judges participated). The HSoJ will continue with these training activities on a permanent basis.
39. GRECO takes note of the fact that the "Norms of Judicial Ethics" still need to be updated, which also has a bearing on implementation of other parts of the recommendation. The first part of the recommendation has therefore not been implemented. As regards the second part of the recommendation, it is clear that further practical measures for the implementation of these norms will need to be taken once they have been updated. However, as a number of initial training activities have taken place and as training on ethics now appears to form part of the regular training programme for judges, GRECO will regard this part of the recommendation as having been partly addressed.
40. GRECO concludes that recommendation vii has been partly implemented.



### **Recommendation viii.**

41. *GRECO recommended taking appropriate measures to increase the effectiveness, transparency and objectivity of disciplinary proceedings against judges, inter alia, by defining disciplinary offences more precisely; ensuring in-depth examination of complaints submitted to the High Council of Justice and requiring that its decisions to dismiss cases be reasoned, notified to the complainant and subject to review; introducing a simple majority requirement for the Council's decisions; and removing the Council's power to send private recommendation letters to judges as a disciplinary measure.*
42. The authorities report that in the framework of the so-called "fourth wave of judicial reform", a working group has finalised its work on a draft law on the grounds for disciplinary liability, which will be submitted to the government in the near future.
43. In the meantime, in April 2018, a new chapter on disciplinary proceedings was added to the LCC, which provides for the establishment of the Office of the Independent Inspector<sup>12</sup>, who is vested with the authority to receive complaints (and act on information received in other forms as well), initiate disciplinary proceedings and carry out the preliminary investigation into disciplinary misconduct.<sup>13</sup> After carrying out an preliminary investigation, the Independent Inspector submits his/her conclusions to the HCJ, which decides by a two-thirds majority (article 75<sup>8</sup> LCC) to initiate disciplinary proceedings against a judge, after which the Independent Inspector may carry out a further in-depth investigation, if needed. The HCJ can terminate the disciplinary proceedings at this point if it considers that the disciplinary misconduct has not been proven, the limitation period has expired, a decision on the same issue as regards the same judge has been taken already by a disciplinary institution or the judge's authority has been terminated (article 75<sup>12</sup> LCC). Decisions of the HCJ on terminating disciplinary proceedings (together with their reasoning) will be communicated to the judge in question, forwarded to the complainant and published on the website of the HCJ (without identifying the judge or other parties in the case, unless the judge in question has requested for the proceedings to be made public) (Article 75<sup>12</sup> LCC). A complainant cannot appeal the decision to terminate the disciplinary proceedings.
44. If disciplinary proceedings are not terminated at this stage, the proceedings will be brought before the Disciplinary Board of Judges of the General Courts, in accordance with the procedure described in the Evaluation Report, and can be appealed to the Disciplinary Chamber of the Supreme Court. Decisions of the Disciplinary Board and Chamber are forwarded to the judge concerned, the HCJ, the Conference of Judges and the complainant, as appropriate (Article 75<sup>52</sup> LCC).
45. Since the establishment of the Office of the Independent Inspector 410 disciplinary cases (around 85% of incoming complaints) have been examined by the Inspector and around 173 conclusions (covering 188 disciplinary complaints) have been submitted to the HCJ, with a recommendation to either initiate the proceedings or terminate them. This recommendation has been followed by the HCJ in 92% of the cases. Disciplinary proceedings have been initiated in 33 cases: in 21 cases the

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<sup>12</sup> The Office of the Independent Inspector is situated at the HCJ and led by the Independent Inspector (a Georgian citizen with higher legal education, at least five years' experience of working in the specialty with a high reputation), who is elected by a simple majority of the HCJ for a five-year term (Article 51<sup>1</sup> LCC).

<sup>13</sup> Misconduct is defined in Article 75<sup>1</sup> LCC as a corruption offence – including violations of the Law on Conflicts of Interest and Corruption in Public service, if not entailing criminal or administrative liability already –, misuse of one's official status to the detriment of the interests of justice and the office held, incompatible activities or conflict of interest with the duties of a judge, any action inappropriate for a judge that disgraces the reputation of or damages the confidence in a court, unjustified delays in procedure, failure to fulfil or improper fulfilment of the obligations of a judge, disclosure of secrecy of deliberations of judges or professional secrecy, impediment to or disrespect for the activities of bodies having disciplinary powers or a breach of judicial ethics.

process is still on-going, eight cases have been terminated and four referred to the Disciplinary Board (which in turn acquitted one judge and issued a so-called private recommendation letter in three cases).

46. In addition to the establishment of the Office of the Independent Inspector of the HCJ and the publication of the decisions on disciplinary proceedings, the authorities report on other amendments made to the LCC to improve the effectiveness, transparency and objectivity of disciplinary proceedings. Pursuant to these amendments the chair of a court and the Secretary of the HCJ no longer have the authority to institute disciplinary proceedings, a judge is to be immediately notified of a complaint made against him/her, a judge has the right to be represented by a lawyer and to request a public hearing in his/her disciplinary case and the HCJ is no longer authorised to issue so-called private recommendation letters (which remains the authority of the Disciplinary Board).
47. GRECO takes note of the measures taken to improve the effectiveness, transparency and objectivity of disciplinary proceedings. It welcomes that an Office of the Independent Inspector has been established within the HCJ (which – provided the Inspector is given sufficient resources and granted access to relevant information for investigating disciplinary violations – should allow for a more in-depth examination of complaints), that it is no longer the Secretary of the HCJ who has the power to single-handedly end disciplinary proceedings, that the investigative functions are now separated from those for establishing the misconduct and deciding on sanctions (in accordance with relevant Council of Europe standards), and that the power of the HCJ to send “private recommendation letters” has now been removed. GRECO considers these to be important steps in addressing the concerns expressed in the Evaluation Report, which will need to be complemented by further measures, in particular by defining disciplinary offences more precisely, introducing a simple majority for decisions taken by the HCJ and the possibility of a review of decisions with which disciplinary proceedings are terminated (in particular when the HCJ does not follow the recommendation of the Independent Inspector).
48. GRECO concludes that recommendation viii has been partly implemented.

#### **Recommendation ix.**

49. *GRECO recommended that the immunity of judges be limited to activities relating to their participation in judicial decision-making (“functional immunity”).*
50. The authorities report that Georgia’s judicial strategy for 2017-2021 includes the drafting of legislation to limit the immunity of judges to “functional immunity” as one of the activities to be implemented. The strategy also specifies that a clear and transparent procedure for lifting the immunity of judges is to be determined.
51. GRECO takes note of the information provided, which indicates that developments are still at a very early stage.
52. GRECO concludes that recommendation ix has not been implemented.

#### *Corruption prevention in respect of prosecutors*

#### **Recommendation x.**

53. *GRECO recommended keeping the implementation of the recent reform of the prosecution service under review and, if necessary, taking appropriate measures to further reduce the influence of the government/parliamentary majority on the*

*appointment procedure of the Chief Prosecutor and on the activity of the Prosecutorial Council.*

54. The authorities report that the implementation of the reforms of the prosecution service were kept under review since the adoption of the Evaluation Report and that since then further amendments to the Constitution have been made, aimed *inter alia* at strengthening the independence of the prosecution service. Due to these constitutional amendments, which entered into force on the day of inauguration of the new President on 16 December 2018, it is now explicitly provided in the Constitution that the prosecution service is independent in its activities, led by the Chief Prosecutor, who is elected by a majority of the full composition of the Parliament following the nomination of a candidate by the Prosecutorial Council (Article 65 of the Constitution). Pursuant to these constitutional amendments, the Minister of Justice is neither the *ex officio* chair of the Prosecutorial Council (instead the chairperson is now elected by the Council itself) nor an *ex officio* member of the Prosecutorial Council.
55. GRECO notes that the reform of the prosecution service of Georgia did not stop with the developments described in the Evaluation Report and that further measures have been taken to reduce the influence of the government on the appointment procedure of the Chief Prosecutor (by providing that it is no longer the Minister of Justice<sup>14</sup> but the Prosecutorial Council which nominates a candidate to present to the Parliament) and on the activity of the Prosecutorial Council (by *inter alia* abolishing the *ex officio* chairmanship of the Minister of Justice). Even if GRECO would also have liked to have seen that a qualified majority in Parliament be required for the election of the Chief Prosecutor to further reduce politicisation of this procedure (as has also been recommended by the Venice Commission at various points in time<sup>15</sup>), it welcomes that the implementation of the recent reform of the prosecution service has been kept under review, and the further measures taken so far, which are in line with the aim of the recommendation.
56. GRECO concludes that recommendation x has been implemented satisfactorily.

#### **Recommendation xi.**

57. *GRECO recommended (i) regulating, in more detail, the recruitment and promotion of prosecutors so as to ensure that decisions are based on precise and objective criteria, notably merit; (ii) providing for transparent procedures – including by making the above-mentioned criteria public – and ensuring that any decisions in those procedures are reasoned.*
58. The authorities report that a new Law on the Prosecution Service (LPS), aligning the legal provisions with the abovementioned constitutional amendments, was adopted by the Parliament on 30 November 2018 and entered into force on 16 December 2018. The LPS provides that prosecutors are recruited through an internship or a competition (and exceptionally without an internship or a competition, based on a motivated decision by the Chief Prosecutor, if the person meets certain specific criteria, e.g. four years' experience as a judge or criminal

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<sup>14</sup> As described in para. 159 of the Evaluation Report, previously the Minister of Justice would (based on consultations with academics, civil society representatives and legal specialists) present three candidates for Prosecutor General to the Prosecutorial Council. The candidate who receives support of at least two thirds of the full composition of the Prosecutorial Council is then presented by the Minister of Justice to the government. If the government consents to the candidature of the person in question, s/he is presented to the Parliament for election by secret ballot by a majority of its full composition.

<sup>15</sup> See the Opinion of the Venice Commission on the draft revised constitution (CDL-AD(2017)013-e), [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2017\)013-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2017)013-e), para. 83, and the Opinion of the Venice Commission on the Constitutional amendments as adopted at the second and third hearings in December 2017 (CDL-AD(2018)005-e), [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2018\)005-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2018)005-e).

lawyer). Any Georgian citizen who has higher legal education, has a good command of the necessary languages, has passed a qualification exam in law, has completed an internship in the Prosecution Service and can – considering his/her “work and moral qualities” and health – perform the duties of a prosecutor / investigator in the Prosecution Service, may be appointed to the position of a prosecutor / investigator. Persons with two years’ experience working as a judge, prosecutor, investigator or criminal lawyer or five years’ experience working in a legal speciality can be appointed on the basis competition (without the need for an internship). People with a criminal record, alcohol or drug addiction or mental or severe chronic disease, who have been declared mentally not fully competent or if the result of their background check does not meet the requirements, cannot be employed in the Prosecution Service.

59. As regards the promotion of prosecutors, the LPS includes new provisions on the performance assessment of prosecutors, providing for an assessment every two years (in which, pursuant to Article 58 LPS, the quality of prosecutorial activities/investigations is assessed, as well as his/her workload, any rewards s/he may have received, disciplinary proceedings made against him/her and the evaluation made by his/her superior). The results of this assessment will be taken into account in decisions on the promotion of a prosecutor / investigator, which can take place once a prosecutor / investigator has had the required work experience (two or three years depending on the promotion sought). Furthermore, Article 36, paragraph 4 LPS provides that the Chief Prosecutor will approve rules and criteria for the promotion of prosecutors.
60. Furthermore, the role and mandate of the Prosecutorial Council in *inter alia* career management of prosecutors has been strengthened. The Law now explicitly provides for a sub-council dealing with career management and disciplining prosecutors, the Career Management, Ethics and Incentives Council (the meetings of which can be attended by prosecutors/investigators, providing for increased transparency of proceedings).
61. Finally, the authorities indicate that the criteria outlined above are included in the LPS (and thereby public) and that, based on the relevant provisions of the law, decisions on recruitment and promotion of prosecutors are reasoned.
62. GRECO takes note of the information provided. As regards the first part of the recommendation, while clearly improvements to the procedures have been made, based on the information provided, it is not possible to say whether the concerns GRECO expressed in the Evaluation Report (*inter alia* that the decision-makers, be it the Chief Prosecutor or the internship commission, had or appeared to have too much discretion) have been sufficiently addressed and that decisions on recruitment and promotion are now based on merit. In this context, it also notes that it is still possible for the Chief Prosecutor to recruit prosecutors without a competition or internship (if certain criteria are met), and that the Chief Prosecutor is still to approve the criteria for promotions. Without further information, GRECO can thus at this point not say that the recommendation has been fully implemented. As regards the second part of the recommendation, GRECO takes note of the information provided by the Georgian authorities that all decisions on recruiting and promoting prosecutors are reasoned. However, it could not deduce this to be a requirement from the legislative provisions it was provided with (leaving aside the requirement for the Chief Prosecutor to reason his/her decision if s/he decides to recruit a prosecutor without competition or internship) nor could it gather from the information provided that transparent procedures are now provided for. Therefore, it cannot yet say that this part of the recommendation has been fully implemented.

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

**Recommendation xii.**

64. *GRECO recommended (i) introducing clear and objective criteria for the assignment and withdrawal of cases to/from prosecutors; (ii) ensuring that decisions and instructions by superior prosecutors, including decisions to remove cases from subordinate prosecutors, are justified in writing.*

65. The authorities report that, in 2017, a working group was created within the Prosecution Service to review the existing criteria and practices for assigning and withdrawing cases to/from prosecutors and to analyse the regulations and existing practices regarding instructions given by prosecutors. Based on the recommendations of this working group, the Chief Prosecutor issued on 28 February 2019 an Order on defining fundamental principles for the case distribution to prosecutors, which provides that a superior prosecutor is to ensure a fair and transparent distribution of cases in the unit under his/her supervision, taking into consideration the number of cases, their difficulty and volume, as well as the specialisation, competences, experience and skills required to prosecute and/or investigate the case. The aforementioned Order furthermore gives a list of circumstances in which a superior prosecutor can remove a case from a subordinate prosecutor and provides that such decisions are to be reasoned.<sup>16</sup>

66. GRECO takes note of the information provided, which is a welcome improvement upon the situation described in the Evaluation Report.

67. GRECO concludes that recommendation xii has been implemented satisfactorily.

**Recommendation xiii.**

68. *GRECO recommended (i) that the "Code of Ethics for Employees of the Prosecution Service of Georgia" continues to be updated, is communicated to all prosecutors and made easily accessible to the public; (ii) that it be complemented by practical measures for the implementation of the rules, such as further written guidance and explanations, further training and confidential counselling*

69. The authorities report, as regards the first part of the recommendation, that – following a review by staff of the prosecution service, EU and US experts, the Criminal Justice Reform Council and interested civil society representatives – a newly drafted Code of Ethics for the prosecution service was adopted by the Minister of Justice in May 2017, entering into force a few days thereafter. The Code of Ethics covers such issues as conflicts of interest, activities incompatible with the work of prosecutors, gifts, use of authority and impartiality. The Code was sent to all prosecutors and investigators of the prosecution service by e-mail, with the request to return a signed form to the prosecution service human resources' department as confirmation of familiarisation with the Code, and was published on the website of the Legislative Gazette and the website of the prosecution service.<sup>17</sup>

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<sup>16</sup> The circumstances outlined in the Order include situations described in Articles 59 and 62 of the Criminal Procedure Code for which a judge or prosecutor has to recuse him/herself from a given case (*inter alia* being a close relative of the accused, defence lawyer or victim; having an investigation initiated against him/her for an offence and/or other circumstances that question his/her objectivity or impartiality); the case requiring the competences of a specialised prosecutor; an inability to complete the prosecution/investigation for health reasons or leave of absence; the commission of a legal mistake, which may have an impact on the outcomes of the case; the work load of the prosecutor, or; a reasoned request made by the subordinate prosecutor him/herself.

<sup>17</sup> See the Legislative Gazette: <https://matsne.gov.ge/ka/document/view/3679145?publication=0> and the website of the prosecution service: [http://poq.gov.ge/qeo/news?info\\_id=1242](http://poq.gov.ge/qeo/news?info_id=1242).

70. Following the adoption of the new Code of Ethics, the prosecution service developed a special training module on rules of conduct for prosecutors and investigators. In the period from July 2017 to mid-October 2018, 25 training sessions on rules of conduct have been held in which 560 prosecutors, investigators, advisers and specialists have been trained. Furthermore, confidential counselling is an established practice in the prosecution service, with prosecutors contacting the General Inspectorate by phone or in person with questions on certain ethical dilemmas.
71. Finally, work has been on-going to develop a commentary to the Code of Ethics for prosecutors. Following a review by experts from the EU and US Department of Justice, this commentary was further amended and will be adopted (and circulated to all staff of the Prosecution Service) shortly. The 44-page draft commentary gives further guidance as regards various topics outlined in the Code of Ethics, providing examples of how to act (based on real-life situations encountered by the General Inspectorate).
72. GRECO takes note of the new Code of Ethics for prosecutors and commends the authorities for the way this code has been communicated to prosecutors. It also welcomes the training and confidential counselling that has been and is being provided (even if it would have preferred that this confidential counselling would be provided by a body that does not conduct the investigations into disciplinary offences) and the draft commentary to the code providing further written guidance and explanations. Even if the commentary (and Code itself) would benefit from more detailed guidance in some respects (e.g. as regards situations in which a conflict of interest could arise, reactions to offers of an undue advantage, ways to report misconduct, procedures to follow in case a prosecutor has been given an illegal instruction by his/her superior and the possibility to receive confidential counselling from the General Inspectorate), GRECO accepts these to be living documents, which will be regularly updated. However, pending the adoption and dissemination of the commentary, GRECO cannot yet conclude that this recommendation has been fully addressed.
73. GRECO concludes that recommendation xiii has been partly implemented.

**Recommendation xiv.**

74. *GRECO recommended widening the scope of application of the asset declaration regime under the Law on Conflict of Interest and Corruption to cover all prosecutors.*
75. The authorities report that this matter remains under consideration.
76. GRECO concludes that recommendation xiv has not been implemented.

**Recommendation xv.**

77. *GRECO recommended reviewing the disciplinary regime applicable to prosecutors, including by defining disciplinary offences more precisely and ensuring proportionality of sanctions.*
78. The authorities report that the disciplinary regime of prosecutors has been further amended with the adoption of the abovementioned new Law on the Prosecution Service, which entered into force in December 2018. The new law *inter alia* categorises disciplinary misconduct in three categories, minor, medium and serious misconduct, which corresponding sanctions ranging from reprimand to dismissal. To

this end, Article 76, paragraphs 8 and 10 of the new law provides that if a prosecutor:

- performs his/her duties in a negligent manner, it is to be considered minor misconduct, which - depending on the circumstances - can lead to a reprimand or a reproach of the prosecutor in question;
- "commits misconduct", it is to be considered minor or medium misconduct, depending on the circumstances, which can lead to a reprimand, reproach or deduction in salary by 30% for a period of one to six months;
- "acts unbecomingly" or "fails to perform duties vested in him/her by law", it is to be considered a serious misconduct, which – depending on the circumstances – can lead to a reproach, demotion to a lower rank, deduction in salary by 30% for a period of one to six months or dismissal from the Prosecution Service.

Similar categories of disciplinary violations are outlined in the new Code of Ethics, mentioned under recommendation xiii above, corresponding to Article 76 of the Law.

79. GRECO recalls that it saw a clear need to establish "a catalogue of more precisely defined grounds/disciplinary offences, including, *inter alia*, violation of specified requirements of the code of ethics" and criticised the law as not setting "any criteria for determining the appropriate measure in a given case". While GRECO appreciates that disciplinary regime has been reviewed in the law itself (and not just in the Code of Ethics), it cannot say that disciplinary offences have now been defined more precisely. Grounds for disciplinary liability remain vague, referring to concepts such as "committing misconduct" and "acting unbecomingly" (similar to what has been described in the Evaluation Report). The Code of Ethics does not address this issue either. In view of GRECO, the offences are still not clearly defined and the proportionality of sanctions is not ensured.
80. GRECO concludes that recommendation xv has not been implemented.

*Regarding all categories*

**Recommendation xvi.**

81. *GRECO recommended taking appropriate measures to ensure effective monitoring of asset declarations to be submitted by members of parliament, judges and prosecutors, including through providing the Civil Service Bureau and/or any other competent body with the competences and resources necessary to check the declarations submitted in depth and in a proactive manner.*
82. The authorities report that amendments to the Law on Conflicts of Interest and Corruption in Public Institutions (LCI) entered into force on 1 January 2017, granting the Civil Service Bureau (CSB) the authority to monitor declarations and to verify the accuracy of the data contained therein. To this end a new department was set up in the Civil Service Bureau (CSB), the Asset Declarations Monitoring Department, which currently employs eight persons. This department has access to a number of state databases, allowing *inter alia* for access to information on property rights, involvement in legal entities, vehicles registered and taxes paid by the official and his/her family members. The Asset Declarations Monitoring Department does not have access to information from financial institutions other than the financial information provided by the official him/herself.
83. In accordance with Article 18<sup>1</sup> of the LCI and the government decree "Adoption of the Instruction for Monitoring Asset Declarations of Public Servants", asset declarations to be monitored are a) a random selection made by the electronic

system, b) a selection made by an independent commission, established by the Head of the CSB<sup>18</sup>, and c) a reasoned written statement requesting a check of an asset declaration (which can be made by any citizen). The total number of monitored asset declarations by random selection and selection by the commission shall not exceed 10% of the total number of asset declarations made with additionally the asset declarations on which a reasoned written statement has been received being monitored.<sup>19</sup>

84. In 2017, the CSB monitored 287 declarations in total, of which 284 were randomly selected and three were based on written statements. Out of these, 56 were assessed positively and 224 negatively, with a further seven declarations being suspected of having been intentionally misleading: these were therefore forwarded to the Prosecution Service for further investigation. The results of the monitoring were published on the website of the CSB in December 2017. For 2018, 448 declarations were monitored, of which 320 declarations were randomly selected and 128 were monitored on the basis of written declarations received.
85. On the basis of the monitoring results in 2017, further amendments to the LCI were drafted, which entered into force in May 2018, in order to allow for more proportional sanctions to be imposed. In case of minor violations in the asset declarations (called "non-essential" in the LCI), the CSB will publish this information and issue a warning to the official in question. In case of substantive violations, instead of imposing a fine of 1000 Georgian Lari (approximately 330 EUR), the CBS can fine an official in an amount of 20% of their monthly salary (but no lower than 500 Georgian Lari (approximately 165 EUR), in addition to the sanctions that can be imposed following criminal proceedings.
86. Finally, following the establishment of the abovementioned independent commission in December 2018, a further 297 declarations were selected (from state-political officials and on the basis of specific criteria) to be checked by the CSB in 2019.
87. GRECO welcomes the measures taken by the Georgian authorities to increase the effectiveness of monitoring of asset declarations, which are in line with the aims of the recommendation. It encourages the authorities to keep the need for additional measures in the future under review (such as further increasing the resources of the CSB, enlarging the CSB's investigative competences etc., if needed).
88. GRECO concludes that recommendation xvi has been implemented satisfactorily.

### **III. CONCLUSIONS**

89. **In view of the foregoing, GRECO concludes that Georgia has implemented satisfactorily five of the sixteen recommendations contained in the Fourth Round Evaluation Report.** Of the remaining recommendations, eight have been partly implemented and three have not been implemented.
90. More specifically, recommendations v, vi, x, xii and xvi have been satisfactorily implemented, recommendations i-iv, vii, viii, xi and xiii have been partly implemented and recommendations ix, xiv and xv have not been implemented.

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<sup>18</sup> This commission was established in December 2018 and comprise four representatives of civil society and three of academia. It selects asset declarations of state-political officials (i.e. high-level officials) and on the basis of specific criteria (i.e. the positions of the officials concerned, particular risks of corruption, public interest and previous violations revealed as a result of monitoring).

<sup>19</sup> In 2018, the number of officials having to submit an asset declaration was 6410.



91. Some positive developments have taken place regarding the prevention of corruption in respect of members of parliament, with various measures taken to further enhance the transparency of the legislative process and the adoption of a code of ethics for members of parliament. However, further clear rules on a public consultation procedure for draft legislation, an enforcement mechanism of the code of ethics for members of parliament, practical measures for implementation of the aforementioned code as well as more comprehensive rules on *ad hoc* disclosure of conflicts of interest of Members of Parliament, are still to be developed.
92. In respect of judges, “the third wave of judicial reform” has brought certain amendments to the Law on Courts, providing for clearer criteria for the selection of judicial candidates for the three-year probation period (notwithstanding the criticism expressed of the decision-making process within the HCJ in this respect). Further safeguards have been introduced against possible misuse of the transfer of judges to another court without their consent; a mechanism introduced for the random assignment of cases; the establishment of an Independent Inspector – which should make a more in-depth examination of complaints against judges possible – and the abolishment of the authority of the secretary of the HCJ to single-handedly end disciplinary proceedings. That said, more is required, in particular, in establishing clear and objective criteria for the promotion of judges, updating the Norms of Judicial Ethics (accompanied by practical measures for its implementation), taking measures to increase the effectiveness of disciplinary proceedings (*inter alia* by defining disciplinary offences more clearly) and limiting the immunity of judges to “functional immunity”.
93. Regarding prosecutors, GRECO is pleased that further measures have been taken to reduce the influence of the government and/or parliamentary majority on the appointment of the Chief Prosecutor and the Prosecutorial Council and that criteria have been introduced for the assignment and withdrawal of cases to/from prosecutors. It also welcomes that the Code of Ethics for the prosecution service has been updated and complemented by further training and confidential counselling on the required conduct, as well as written guidance and explanations with yet-to-be adopted commentary to the Code. However, even if a new Law on the Prosecution Service has entered into force in December 2018, GRECO cannot yet say that the concerns it expressed in the Evaluation Report as regards the process of recruitment and promotion of prosecutors have been sufficiently addressed. Similarly, GRECO still expects the disciplinary regime applicable to prosecutors to be further reviewed and the asset declaration regime to cover all prosecutors.
94. As a final point, GRECO welcomes the work that has been carried out to improve the Law on Conflicts of Interest and Corruption in Public Institutions. The various measures contained therein should allow for a more effective monitoring of asset declarations of members of parliament, judges and prosecutors.
95. In view of the above, GRECO notes that tangible progress has been made in respect of all themes. However, further efforts are necessary to implement the remaining recommendations within the next 18 months and GRECO therefore invites the Head of delegation of Georgia to submit additional information regarding the implementation of recommendations i-iv, vii-ix, xi and xiii-xv by 30 September 2020.
96. Finally, GRECO invites the authorities of Georgia to authorise, as soon as possible, the publication of the report, to translate it into the national language and to make this translation public.