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FOURTH EVALUATION ROUND

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

SECOND COMPLIANCE REPORT

ARMENIA

Adopted by GRECO at its 84th Plenary Meeting
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FOURTH EVALUATION ROUND

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I. INTRODUCTION

1. The Second Compliance Report assesses the measures taken by the authorities of Armenia to implement the recommendations issued in the Fourth Round Evaluation Report on Armenia (see paragraph 2) "Corruption prevention in respect of members of parliament, judges and prosecutors".

2. The Fourth Round Evaluation Report on Armenia was adopted at GRECO's 69th Plenary Meeting (16 October 2015) and made public on 25 February 2016, following authorisation by Armenia.

3. The Fourth Round Compliance Report was adopted by GRECO at its 78th Plenary Meeting (8 December 2017) and made public on 21 December 2017, following authorisation by Armenia.

4. As required by GRECO's Rules of Procedure, the authorities of Armenia submitted a Situation Report on measures taken to implement the recommendations. This report was received on 28 June 2019 and served, together with the information submitted subsequently, as a basis for the Compliance Report.

5. GRECO selected Georgia and Hungary to appoint Rapporteurs for the compliance procedure. The Rapporteurs appointed were Ms Gulisa KAKHNIASHVILI, on behalf of Georgia and Mr Bálint VARRÓ on behalf of Hungary. They were assisted by GRECO's Secretariat in drawing up the Second Compliance Report.

II. ANALYSIS

6. GRECO, in its Fourth Round Evaluation Report, addressed 18 recommendations to Armenia. In the Compliance Report, GRECO concluded that recommendations v, x, xii, xiii and xvii had been dealt with in a satisfactory manner. Recommendations i-iv, vi-ix, xi, xiv, xv and xviii had been partly implemented and the recommendation xvi had not been implemented. Compliance with the pending recommendations is examined below.

Corruption prevention in respect of members of parliament

Recommendation i.

7. *GRECO recommended that the transparency of the legislative process in the National Assembly be secured and further improved (i) by ensuring that the requirement to carry out public discussions on draft laws is respected in practice and that drafts submitted to the National Assembly as well as amendments are disclosed in a timely manner and (ii) by taking appropriate measures to ensure disclosure of information on the content of and participants in committee sittings, as well as more active use by committees of the possibility to organise parliamentary hearings.*

8. It is recalled that this recommendation was partly implemented in the Compliance Report. GRECO noted a number of improvements in legislation and regulation to provide for more transparency of the legislative process, such as the obligation to make public draft legislation on the newly established website "e-draft.am" and the publication of draft laws registered in Parliament on the parliamentary website, with the possibilities of any interested body to comment on such draft laws. GRECO also noted that the Constitutional Law on Rules of Procedure of the National Assembly (LRoP) improved the regulation on standing committee sittings and increased the possibility to initiate parliamentary hearings. The authorities indicated that the use of closed doors in respect of committee meetings had decreased. However, GRECO

noted that the revised legal framework was new and the actual practices needed to be re-assessed once the system had been operational for some time.

9. In respect of part (i) of the recommendation, the authorities of Armenia now report that the new National Assembly, convened after December 2018 elections started holding its regular sessions from March 2019. The authorities reiterate that draft laws and related amendments now, as a rule, are published on the "www.e-draft.am" and on Parliament's websites, often in parallel. They indicate that the number of users of these websites has considerably increased in 2019 (approx. 30% and 25% respectively). The NGOs actively use these websites[1]. Besides being registered in the register of pending issues, the draft laws can also be monitored in the "Decisions of the Council of the National Assembly" (from the relevant draft decisions of the Council to the introduction on the agenda of a plenary session). The following support documents are made available: justification for the draft, statement on the impact on the budget, expert conclusions and government opinions. The authorities also indicate that a concept paper has been developed in cooperation with international partners to update the website of the National Assembly, to make it more interactive and accessible. They also state that the communication with NGOs has been enhanced. In March 2019 an open platform for cooperation between NGOs and Parliament was launched[2]. It has been used since then for public discussions and working meetings[3]. Finally the authorities indicate that in October 2018 the government adopted a new procedure for public consultations. The authorities specify that in the period March-October 2019 Parliament adopted 35 draft laws using the urgent procedure, or 15% out of all draft laws adopted (206 laws).

10. As regards part (ii) of the recommendation, the authorities report that since May 2019, 99 open sittings of Standing Committees and four open sittings of *Ad-hoc* Committees have been held. In the same period only two closed sittings of an Ad-hoc Committee took place (related to a criminal investigation). 55 committee sessions (all open-door sessions) were subject to live broadcast and audio recordings. All sessions, including time and agenda, have been duly announced on the Parliament's website. The minutes of the committees' sessions have been posted online. The authorities specify that the new National Assembly actively uses hearings, in particular before amendments are made to the draft legislation. The authorities report that two hearings were held in the spring of 2019 (one on the draft Tax Code and the other on the implementation of recommendations of the Universal Periodic Review for Armenia). The authorities also indicate that three other hearings were held in May-June 2019: a hearing on transitional justice initiated by the Speaker; a hearing on economic issues initiated by the opposition; a hearing on amendments to the Electoral Code and Political Party legislation initiated by the Committee on State and Legal Affairs. Finally, since May 2019 eight enlarged parliamentary hearings (with at least 50 participants each) and 12 multistakeholder discussions were held.

11. GRECO takes note of the information provided. Concerning the first part of the recommendation, GRECO notes that the government has adopted new procedures for public consultations, which expand the minimum deadline for online consultations and entrust the Ministry of Justice with monitoring the practices of public consultations. However, GRECO notes that the practice of public discussions on draft laws is allegedly not consistent. For example it appears that the draft Law of the Republic of Armenia on Making Amendments and Additions to the Law on Corruption Prevention Commission adopted in the first reading on 25 June 2019, had not been presented for public discussion, had not been subject to expert examination and had

[1] https://drive.google.com/file/d/1iAIhNjiAZezOJG-2wOU7jTvbThuWS51q/view
[2] https://www.twipu.com/OxYGenarm
[3] More than 5 open public discussions and numerous working meetings have been held on this platform focusing on women political participation, amendments to the Law on Political Parties and to Electoral Code etc.

not been published on the www.e-draft.am website[4]. The authorities believe that this is an exceptional case concerning a parliamentary initiative for which mandatory consultations were not required. Furthermore, they indicate that the draft law in question was subject to consultations via publication on the parliamentary website before the second reading. The authorities add that the government has drafted amendments to this law which have been subject to public discussions and have been published on the "www.e-draft.am" website. The relevant parliamentary discussions were broadcast online. Finally, the authorities have informed that the draft has already been submitted to the Parliament and is publicly available on the parliamentary website. In addition, GRECO notes that while the use of the fast-track has decreased it has still been used for 15% of the draft laws tabled in the new Parliament. GRECO underlines that the fast-track procedures for adopting laws should be clearly exceptional. Although it would appear that the public involvement in the law making process has recently increased, GRECO calls upon the authorities to pursue their efforts to systematically ensure that adequate timeframes are respected in practice, to allow meaningful public consultation and parliamentary debate, and to provide evidence to that end. GRECO also notes that the Parliament's website is expected to be upgraded and made more accessible. This work is in progress.

12. When it comes to the second part of the recommendation, GRECO notes that the National Assembly has apparently ensured an increased level of transparency of committee sittings. The parliamentary hearings have also been organised regularly. This part has been complied with.

13. GRECO concludes that recommendation i remains partly implemented

Recommendation ii.

14. *GRECO recommended (i) that a code of conduct for members of parliament be adopted and made easily accessible to the public, which provides clear guidance on conflicts of interest and related areas – including notably the acceptance of gifts and other advantages, incompatibilities, additional activities and financial interests, misuse of information and of public resources and contacts with third parties such as lobbyists; (ii) that it be complemented by practical measures for its implementation such as dedicated training, counselling and awareness-raising.*

15. It is recalled that this recommendation was partly implemented in the Compliance Report. The authorities referred to several legal acts covering integrity-related matters for MPs. While welcoming the Law on guarantees of activities of a deputy of the National Assembly (LoGAD), which covers general ethical principles, incompatibilities, accessory activities and conflicts of interest, GRECO noted that the law did not contain provisions on gifts and detailed specific restrictions. GRECO stressed that a code of conduct containing a comprehensive overview of existing standards in one document with guidance for their application was still much needed. Although some measures had been taken, covering *inter alia* awareness raising on ethics for MPs, dedicated training and counselling remained to be put in place.

16. In respect of part (i) of the recommendation, the authorities maintain that the LoGAD is in fact a code of conduct for MPs, as it exhaustively regulates integrity related matters. In addition, the Law on Public Service, adopted on 23 March 2018, regulates the issues of acceptance of gifts, incompatibilities and restrictions on side activities by public officials, including MPs (Articles 29-32). In particular, this law provides for a principle prohibition of gifts and for a threshold of acceptable gifts as well as for a mechanism of registration of gifts.

[4] https://armla.am/en/4411.html

17. As regards part (ii) of the recommendation, the authorities report that measures raising awareness on and explaining the ethical standards for MPs have been taken in the framework of the project "Support to the National Assembly of the Republic of Armenia in improving parliamentary oversight and communication with electorate". Similar measures are envisaged by a project aimed at institutional capacity-building of the National Assembly. In February-March 2019 all MPs went through training on ethics and conduct. Moreover, a guidebook on parliamentary ethics and conduct, developed by a parliamentary technical assistance project[5], was distributed to all MPs.

18. GRECO takes note of the information provided. Concerning the first part of the recommendation, GRECO reiterates that a code of conduct for MPs containing appropriate guidance on the whole range of conflicts of interest and integrity related matters is still not in place. Regarding the second part of the recommendation, GRECO notes that some measures (e.g. training) have been taken to raise awareness of MPs on ethics, but dedicated, regular training and counselling remain to be put in place.

19. GRECO concludes that recommendation ii remains partly implemented.

Recommendation iii.

20. *GRECO recommended taking appropriate measures to prevent circumvention of the restrictions on members of parliament holding office in commercial organisations and on their engagement in entrepreneurial activities or other paid occupation in entrepreneurial activities.*

21. It is recalled that this recommendation was partly implemented in the Compliance Report. The recommendation was about the practical implementation of existing legislation concerning the prohibition of side activities, contained in the Constitution, the Law on Public Service, the LoGAD and the Constitutional Law on Rules of Procedure of Parliament.

22. The authorities reiterate that the LoGAD and the Constitutional Law on Rules of Procedure of Parliament regulate the incompatibilities and restrictions for MPs with respect to side activities. Moreover, the authorities affirm that the rules prohibiting the engagement in entrepreneurial activities are effectively enforced in practice. They refer to a case in which the National Assembly received a complaint about an MP allegedly being engaged in entrepreneurial activities. The proceedings in this case have been suspended, because the Special Investigation Service conducted a criminal investigation into a similar case. In this last case the Investigative Committee did not find enough proof of engagement in entrepreneurial activities, but as a result of extensive media coverage public awareness of the matter increased. The authorities are determined to tackle the problem which they do not consider as large-scale anymore in the current Parliament. The new anti-corruption strategy provides for the revision of incompatibility requirements for public officials, in particular providing for a transfer of management or participation in commercial organisations from public officials to a specialised entity of the financial market.

23. GRECO notes that the authorities refer to two individual cases underway, which appear to deal with the problem of MPs circumventing the prohibition of side activities, which was referred to as a "structural" problem in the Evaluation report. While public awareness of the matter may have triggered more determined measures of a general preventive character, including some dedicated training sessions on

[5] UK funded Project "Support to the National Assembly of the Republic of Armenia in improving parliamentary oversight and communication with electorate."

integrity provided to all newly elected MPs, more systemic efforts are required to address the problem and obtain tangible results.

24. GRECO concludes that recommendation iii remains partly implemented.

Recommendation iv.

25. *GRECO recommended that the mechanism for monitoring compliance by members of parliament with standards of ethics and conduct be significantly strengthened so as to ensure (i) independent, continuous and pro-active supervision of the rules of ethics and rules on incompatibilities and secondary activities, conflicts of interest and gifts (ii) enforcement of the rules through adequate sanctions.*

26. It is recalled that this recommendation was partly implemented in the Compliance Report. The *ad hoc* Ethics Committee of the National Assembly was competent for the rules of ethics and *ad hoc* conflicts of interest of MPs. The Commission for the Prevention of Corruption was expected to be established on the basis of the Commission on Ethics for High-Ranking Officials, to deal with incompatibilities, gifts and assets declarations of MPs. The first part of the recommendation was partly complied with. The legislative measures undertaken by Armenia, e.g. criminalisation of illicit enrichment, administrative sanctions for violations of rules on assets declarations and whistleblowers and empowerment of the current Commission on Ethics for High-Ranking Officials to impose administrative sanctions met the requirements of the second part of the recommendation.

27. The authorities recall that the Commission for the Prevention of Corruption, which is being set up on the basis of the existing Commission on Ethics for High-Ranking Officials, will be competent for checking asset declarations of parliamentarians (as well as other officials such as judges or prosecutors), for reviewing the opinions of the relevant ethics commissions (including the one in Parliament) and for supporting their work. The new Parliament has recently adopted a law establishing the Commission for the Prevention of Corruption as a truly independent supervisory mechanism. Based on the new law, the Parliament elected the members of the Commission by a simple majority.

28. The authorities also report that the legal provisions criminalising illicit enrichment and introducing protection of whistleblowers are well in place and being effectively enforced. 5 cases on illicit enrichment were initiated during the reporting period. Furthermore, the Commission on Ethics for High-Ranking Officials has initiated administrative proceedings against MPs for alleged violations of the rules on financial disclosure (such proceedings were initiated against 9 MPs in 2018 and against 26 MPs in 2019).

29. GRECO takes note of the information provided. The *ad hoc* Ethics Committee of the National Assembly continues to be competent for the rules of ethics and *ad hoc* conflicts of interest of MPs. It would appear that the Ethics Committee is not active enough in the face of the problem of conflict of interest and incompatibilities of MPs. The Commission for Prevention of Corruption (CPC), which is expected to supervise financial disclosure, has just been established.

30. As far as the second part of the recommendation is concerned, GRECO notes that the measures taken appear to go in the sense of the requirements of the present recommendation.

31. GRECO concludes that recommendation iv remains partly implemented.

Corruption prevention in respect of judges

Recommendation vi.

32. *GRECO recommended abolishing the possibility for the Council of Court Chairs to temporarily re-assign judges without their consent either for the purpose of ensuring an even workload for judges/courts or for the purpose of remedying a shortfall in the number of judges at a court.*

33. It is recalled that this recommendation was partly implemented in the Compliance Report. GRECO welcomed the constitutional amendment providing for the Supreme Judicial Council's competence to decide on transfers of judges. The draft Judicial Code detailed this new competence in the sense of the present recommendation, but had not been adopted by Parliament, at the time.

34. The authorities now report that on 7 February 2018 Parliament adopted the Constitutional Law on Judicial Code of the Republic of Armenia. The new Judicial Code provides for the Supreme Judicial Council to decide on secondment of judges to the courts. Such secondments are possible only with consent of the judges concerned and only for up to one year. The same judge cannot be transferred again within one year after the last transfer.

35. GRECO welcomes the changed legislation, which meets the concerns of the current recommendation. Now the Supreme Judicial Council decides on transfers and secondments of judges, with their consent.

36. GRECO concludes that recommendation vi has been implemented satisfactorily.

Recommendation vii.

37. *GRECO recommended reforming the procedures for the recruitment, promotion and dismissal of judges, including by i) strengthening the role of the judiciary in those procedures and reducing the role of the President of the Republic and requiring him to give written motivations for his decisions and ii) ensuring that any decisions in those procedures can be appealed to a court.*

38. It is recalled that this recommendation was partly implemented in the Compliance Report. GRECO welcomed that the Supreme Judicial Council was responsible for preparing the lists of candidate judges and for submitting the proposals to the President of the Republic. GRECO also appreciated that the President was required to motivate his/her refusal of appointments and that the Supreme Judicial Council could overturn the President's disapproval. The first part of the recommendation was thus implemented. GRECO noted that the constitutionality of appointment or dismissal decisions may be challenged before the Constitutional Court while there is no appeal remedy on substantial matters. The draft Judicial Code provided for an appeal possibility with the Administrative Court, but was pending for adoption in Parliament.

39. The authorities now report that the new Judicial Code, adopted by Parliament in February 2018, provides for a possibility to challenge the decisions of the Judicial Department of the Supreme Judicial Council when it refuses to accept an application; that can be challenged before the Administrative Court[6]. Such an appeal can be lodged within three working days and is to be examined within ten working days. In such cases, the candidate judge who lodged the appeal can participate in the following stages of the qualification examination. The authorities specify that the right

[6] The relevant legal provisions include also the Constitution (Article 61(1)), which provides for the right of effective judicial protection, and the Administrative Procedure Code (Article 3), which prescribes grounds for applying to the Administrative court.

to appeal the Supreme Judicial Council's decisions on recruitment is effectively exercised in practice. The authorities also add that the Supreme Judicial Council's decisions of not including a judge into a promotion list can also be appealed to the Administrative Court.

40. Furthermore, the authorities report that draft amendments to the Judicial Code provide for the possibility to appeal the results of written qualification examinations to the specially created Appeal Commission, and after that to a judicial body. The draft amendments also provide for a new appeal mechanism in respect of the decisions on dismissal of judges by the Supreme Judicial Council. However, limited to new circumstances only. The authorities admit the limitations of this last mechanism and indicate that overcoming them would require constitutional amendments.

41. As for the pending second part of the recommendation, GRECO notes that, with the adoption of the new Judicial Code, decisions of the Supreme Judicial Council to refuse an application to a qualification examination or to a promotion list, can be appealed to the Administrative Court. However, it appears that there is currently no possibility to appeal the decisions on dismissal of judges. GRECO notes that further amendments of the Judicial Code are foreseen, which *inter alia* would provide for challenging written qualification examinations an appeal commission first (as a filter) and subsequently in court. This goes in the right direction. It would also appear that the decisions of the Supreme Judicial Council on disciplinary matters can be challenged, but this mechanism can hardly be considered as a proper appeal mechanism, but rather a possibility to re-open a case by the SJC. This is not satisfactory. GRECO underlines that the appeal mechanisms should be provided for the decisions on recruitment, promotion and dismissal as required by the recommendation.

42. GRECO concludes that recommendation vii remains partly implemented.

Recommendation viii.

43. *GRECO recommended (i) that the role of the Ministry of Justice in disciplinary proceedings against judges be reviewed; (ii) that adequate safeguards be put in place to ensure that disciplinary proceedings are not used as an instrument of influence or retaliation against judges, including the possibility for judges to challenge disciplinary decisions before a court.*

44. It is recalled that this recommendation was partly implemented in the Compliance Report. As to the first part, it was noted that the Minister of Justice remained entitled to initiate disciplinary proceedings against judges. GRECO underlined that the involvement of the Minister of Justice, who is part of the executive branch, in disciplinary proceedings against judges may be seen as not fully compatible with judicial independence. The draft Judicial Code, pending before Parliament, provided for maintaining this power with the Minister, with some limitations. However, it was only a draft at the time. Concerning the second part of the recommendation, GRECO welcomed the Supreme Judicial Council's new competence to decide on disciplinary liability of judges. GRECO also appreciated additional safeguards against undue pressure such as the functional immunity of judges etc. However, GRECO remained concerned that it was not possible to challenge a disciplinary decision before a court, more than in respect of its constitutionality. This part of the recommendation was therefore partly implemented.

45. In respect of part (i) of the recommendation, the authorities now report that the procedure of disciplinary action against judges has changed but the Minister of Justice still has the power to initiate disciplinary proceedings (Chapter 19 of the Code on

disciplinary action against judges). Moreover, they confirm that the body instituting disciplinary proceedings against a judge, including the Minister of Justice, is entitled to get familiarised at a court with the materials of any criminal, civil or any other case in which the valid judicial decision has not been taken yet, "while not interfering with the process of administration of justice" (Article 147 of the Code, part 3, point 2). However, in those cases they explain that the disciplinary proceedings can be instituted only six months after the completion of the judicial proceedings and the judicial decision. The authorities remain committed to eliminating the power of the Minister of Justice to initiate disciplinary proceedings against judges as soon as the new Ethics and Disciplinary Commission of the Assembly of Judges (EDC), provided for by new amendments to the Judicial Code, proves its efficiency, as suggested by the Venice Commission.

46. Regarding the second part of the recommendation, the authorities report that currently, according to the Constitution, the Supreme Judicial Council is the body that is entitled to decide on disciplinary sanctions against judges. The Council acts as a court, and its decisions could in principle be appealed to the Court of Cassation. However, the latter has a limited scope of jurisdiction. The authorities underline that the Strategy on Judicial and Legal Reforms foresees constitutional amendments providing for the establishment of an effective appeal mechanism to challenge disciplinary decisions against judges. Meanwhile, the amendments to the Judicial Code provide for a temporary appeal mechanism on substantial matters.

47. GRECO takes note of the information provided. It notes that the Minister of Justice, as well as the Ethics and Disciplinary Commission and the Commission for the Prevention of Corruption currently have powers to initiate disciplinary proceedings against judges. GRECO regrets that the Minister of Justice still has this function and the right to gain knowledge of the materials of the on-going legal cases in which no valid judicial decision exists. GRECO maintains its position that the role of the Minister of Justice in disciplinary proceedings should be discontinued. Consequently, the first part of the recommendation remains to be addressed. In respect of the second part of the recommendation, GRECO regrets that a proper appeal mechanism of disciplinary decisions has not been put in place. The mechanism foreseen by the pending amendments to the Judicial Code is not more than a possibility to re-open a case by the SJC on limited grounds. Thus, the second part of the recommendation remains partly implemented.

48. GRECO concludes that recommendation viii remains partly implemented.

Recommendation ix.

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

50. It is recalled that this recommendation was partly implemented in the Compliance Report. GRECO noted that the Constitution stated, as it did before, that "when administering justice, a judge shall be independent, impartial and act only in accordance with the Constitution and laws". In addition, the amended Constitution explicitly prohibited any undue interference with the administration of justice (Article 162, paragraph 2). The draft Judicial Code contained similar provisions and detailed the procedures for reporting and processing cases of undue influence. However, the draft Judicial Code was pending in Parliament.

51. The authorities now report that the new Judicial Code bans any interference with the activities of a court or a judge in connection with the administration of justice and disrespectful attitudes towards courts (Article 7). Based on a complaint from a judge,

the Supreme Judicial Council files a motion with the body competent to bring to account those who are responsible for undue interference. The competent body is required to inform the Council about the measures taken. The Supreme Judicial Council can make an official statement on the measures taken or the failure to take such measures in a reasonable time limit. At the stage of pre-trial criminal investigation and in the framework of other non-criminal proceedings, the actions with regard to a judge are subject to maximum confidentiality and respect to his/her reputation and independence (Articles 51 and 53 of the Code). A judge himself/herself should refrain from interfering into administration of justice by another judge and is required to immediately inform the Supreme Judicial Council about any undue interference in his/her activities in connection with administration of justice (Article 69). The failure to do so is subject to disciplinary liability.

52. Finally, the authorities indicate that the Supreme Judicial Council has adopted a decision[7] detailing the ban of undue interference, in particular indicating that interference through telephone and other channels communication, incl. by a "representative of public authority" or a court chairperson, or making related public statements as well as requests of information in the on-going cases are not allowed. The authorities specify that for the time being no complaints from judges have been registered.

53. GRECO recalls that this recommendation was based on problems that judges of lower courts would sometimes consult with higher court judges before taking decisions, out of concern that a judgment may be reversed in a higher instance, and vice versa, that judges in superior courts influence judges in lower courts in their decision-making. GRECO notes that the new Judicial Code prohibits interference with the activities of judges, and details the procedures for reporting and processing cases of undue interference. It also provides for disciplinary sanctions to punish judges interfering with administration of justice by other judges and those who fail to report cases of undue interference with their activities. Moreover, the Supreme Judicial Council has further detailed the regulation of these matters, in particular that the interference in cases or requests of information in on-going cases are not allowed. All this goes in the right direction. However, GRECO wishes to know more about the practical application of the rules and preventive measures taken, in the form of awareness and training etc.

54. GRECO concludes that recommendation ix remains partly implemented.

Recommendation xi.

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

56. It is recalled that this recommendation was partly implemented in the Compliance Report. GRECO noted the provisions of the then Judicial Code requiring judges to participate in judicial trainings and a few *ad hoc* training events organised on the issue of judges' ethics. The pending draft Judicial Code provided for possibilities of counselling and training on ethics. GRECO called for ensuring confidential counselling

[7] Decision n°SCJ-2-Vo-3 "On preventing possible manifestations threatening the independence of a court or of a judge" of 12 April 2018.

and establishing regular and mandatory training programmes for all sitting judges on ethical conduct, judicial impartiality, independence and the like. Considerably more efforts and measures of a permanent character were expected in respect of all parts of the recommendation.

57. The authorities now report that in 2019 courses on judicial ethics, judges' evaluation, anti-corruption etc. have been included in the initial training curriculum of the Academy of Justice and effectively implemented (for a total of 61 candidate judges). Moreover, the authorities indicate that courses on judicial ethics, judges' evaluation, internal investigations, conflicts of interest and anti-corruption, as well as judicial independence and transparency have been included in the 2019 annual mandatory continuous training curriculum and effectively implemented (for a total of 284 judges and candidate judges).

58. Furthermore, the authorities indicate that the Strategy of Judicial and Legal Reforms for 2019-2023 which was adopted in October 2019, maintains the regular training courses of the Academy of Justice for judges on ethics and judicial independence.

59. The authorities also report that, according to the new Judicial Code, the Ethics and Disciplinary Commission of the General Assembly of Judges is entitled to provide advisory interpretations of the rules of judicial conduct, upon written requests by judges or candidate judges (Article 66). By now, no such requests from judges have been submitted. The authorities admit that the current model of the EDC combining the roles of issuing advisory opinions and bringing disciplinary cases before the Supreme Judicial Council is problematic and was criticised by the Venice Commission in its October 2017 opinion[8].

60. GRECO takes note of the information provided. GRECO appreciates that specialised courses focusing in particular on the issues of judges' rules of conduct and prevention of corruption have been included in the regular training for the judiciary and effectively delivered to a large number of candidate judges and judges in 2019 and that these courses are to continue in the future. The first part of the recommendation has been addressed satisfactorily.

61. When it comes to the second part of the recommendation, GRECO notes that following the adoption of the new Judicial Code, the Ethics and Disciplinary Commission is expected to issue advisory interpretations on the rules of judicial conduct, upon request by judges. This does not appear to be confidential counselling to assist judges on ethical matters. Moreover, GRECO stresses that the system of confidential counselling should preferably be separate from disciplinary bodies (see paragraph 166 of the Evaluation Report).The second part of the recommendation remains to be addressed.

62. GRECO concludes that recommendation xi remains partly implemented.

Corruption prevention in respect of prosecutors

Recommendation xiv.

63. *GRECO recommended reforming the procedures for the recruitment and promotion of prosecutors, including by i) increasing transparency of the decision-making process within the Qualification Committee, circumscribing the discretionary powers of the Prosecutor General and requiring him/her to give written motivations for his/her decisions and ii) allowing unsuccessful candidates to appeal to a court, on the basis of specific and precise legal provisions*

[8] https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2017)019-e

64. It is recalled that this recommendation was partly implemented in the Compliance Report. GRECO noted that a candidate whose application was rejected could appeal the decision before a court. GRECO also welcomed the requirement for the Prosecutor General to reason his/her decisions in respect of candidates who receive a positive opinion from the Qualification Committee but were not finally admitted for nominations and that such decisions could be challenged. GRECO expected further measures to make the procedures of the Qualification Committee more transparent.

65. The authorities of Armenia now report that the General Prosecutor has approved an order providing for increased transparency in the activities of the Qualification Committee, in particular that all sessions of the Committee be recorded and to providing the recordings when appropriate to the candidates. In addition, the Qualification Committee publishes its decisions on the website of the Prosecutor's Office.

66. GRECO welcomes the measures taken to increase the transparency of the Qualification Committee which is in line with the pending requirement of the recommendation.

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

Recommendation xv.

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

69. It is recalled that this recommendation was partly implemented in the Compliance Report. GRECO noted some ad hoc training organised for prosecutors but concluded that a dedicated mandatory and regular training on ethics remained to be introduced for all prosecutors. GRECO noted that a particular counselling mechanism for prosecutors was underway but it did not appear to be distinct from the disciplinary bodies. The new Commission for Prevention of Corruption is expected to provide counselling in respect of incompatibility requirements and other restrictions but not on prosecutorial ethics.

70. As regards part (i) of the recommendation, the authorities now report that courses on rules of prosecutorial conduct, internal investigations, anti-corruption etc. have been included in the 2019 annual mandatory training for prosecutors and effectively delivered (for a total of 49 prosecutors and candidate prosecutors). These courses have been included in the training curriculum of the Justice Academy following a recommendation of the Deputy Prosecutor General[9]. It appears that these courses are to continue in 2020[10].

71. When it comes to part (ii) of the recommendation, the authorities indicate that a commission in charge of counselling on ethics related issues and prevention of corruption has been established in the General Prosecutor's Office[11]. In August 2019

[9] Letter of the Deputy Prosecutor General to the Justice Academy of 28 February 2018.
[10] http://www.justiceacademy.am/#1558
[11] The Order of the Prosecutor General n°15 on "Establishment of the Commission to consult prosecutors on ethics issues and on the rules of procedure for the Commission".

a counselling request was made in a case related to possible disciplinary misconduct. In this case the Commission consulted with the Consultative Council of European Prosecutors and decided that there was no violation of disciplinary rules.

72. GRECO welcomes the delivery of new mandatory training for prosecutors on ethics and prevention of corruption, etc, in 2019 and appreciates that such training courses are also foreseen in 2020. GRECO notes that a counselling mechanism for prosecutors has been set up. However, it is not distinct from the disciplinary bodies. It also appears that the counselling mechanism has just started operating.

73. GRECO concludes that recommendation xv has been partly implemented

Regarding all categories of persons

Recommendation xvi.

74. *GRECO recommended that the rules applicable to the acceptance of gifts by members of parliament, judges and prosecutors be further developed so as to provide clearer definitions to ensure that they cover any benefits – including benefits in kind and benefits provided to associated persons; to introduce a requirement to report gifts received to an appropriate monitoring body; and in the specific case of judges, to lower the existing thresholds for such reporting.*

75. It is recalled that this recommendation was not implemented in the Compliance Report. GRECO noted that the legislation (Law on Public Service and Judicial Code) contained vague provisions on gifts as it did at the time of the adoption of the Evaluation Report. GRECO also noted that a reform was under preparation to amend regulations of gifts in respect of public officials. The Commission for Prevention of Corruption was expected to monitor compliance of public officials with restrictions on gifts and incompatibility requirements.

76. The authorities now report that the new Law on Public Service, adopted on 23 March 2018, provides, as a main rule, for a general prohibition of accepting gifts when related to official duties of public officials (including MPs, judges and prosecutors, Article 29). The law also specifies that certain gifts are allowed (hospitality, ceremonial gifts, scholarship, grants etc.). The law provides for an obligation to report permissible gifts and for registration of gifts the value of which exceeds the threshold of AMD 75 000 (approx. Euro 144)[12]. The procedure of handling and registering gifts is to be defined by a government regulation.

77. The authorities also add that the new Judicial Code (Article 73) prohibits acceptance of gifts (incl. non-pecuniary benefits) related to the performance of official duties by judges (and family members residing with them), with some exceptions (incl. hospitality and ceremonial gifts, gifts from close relatives, scholarship, grant etc.).

78. GRECO takes note of the information provided. It welcomes the enhanced provisions regulating gifts in the new Law on Public Service and the new Judicial Code. The new framework provides for prohibition of gifts as a main rule. The Judicial Code extends this prohibition to a judge's family members and other close relatives residing with him/her. The new rules also specify what constitutes a permissible gift, the reporting and registration procedures. However, GRECO notes that the legislation still contains several vague terms, relating to the definition of a gift, already referred to in the Evaluation report (paragraph 226), which require clarifications. Moreover, the threshold for reporting gifts remains rather high. Finally, the Commission for

[12] The gifts exceeding the threshold of AMD 75 000 (approx. Euro 144) are considered public property.

Prevention of Corruption, which has now been established, will monitor compliance of public officials with restrictions on gifts.

79. GRECO concludes that recommendation xvi has been partly implemented.

Recommendation xviii.

80. *GRECO recommended that appropriate measures be taken to ensure effective supervision and enforcement of the rules on asset declaration applicable to members of parliament, judges and prosecutors, notably by strengthening the operational independence of the Commission on Ethics for High-Ranking Officials, giving it the clear mandate, powers and adequate resources to verify in depth the declarations submitted, to investigate irregularities and to initiate proceedings and impose effective, proportionate and dissuasive sanctions if the rules are violated.*

81. It is recalled that this recommendation was partly implemented in the Compliance Report. GRECO noted measures taken to strengthen the Commission on Ethics of High Ranking Officials, e.g. to provide access to various data bases as well as the necessary financial and staff resources. GRECO noted that the Commission was empowered to impose administrative sanctions. Moreover, GRECO noted the introduction of administrative and criminal sanctions regarding violations of the regulations on asset declarations. However, the system was still in transition from the Commission on Ethics of High-Ranking Officials to the Commission for Prevention of Corruption and its effectiveness will have to be assessed at a later stage.

82. The authorities now report that previously the Commission on Ethics of High-Ranking Officials was tasked with maintaining the declaration register of high-ranking officials, analysing and publishing the income and property declarations, detecting conflicts of interests and violations of the rules of ethics of high-ranking officials, investigating violations and imposing administrative sanctions. The authorities further report that MPs, judges and all prosecutors are required to report assets, income and interests. The Commission had access to electronic databases of state and local self-government bodies and can request additional information from public authorities. The authorities also state that the number of submitted declarations had increased considerably; all of them are accessible on-line. In 2018 the Commission on Ethics of High-Ranking Officials has conducted 419 administrative proceedings in respect of violations of the regulations of asset declarations (non-submission in time, late, false submissions, violations of procedures etc.). 219 public officials have been sanctioned with a warning, 68 with fines, 122 proceedings have been discontinued, 8 proceedings have been suspended (including 20 MPs, 4 judges and 9 prosecutors).

83. Furthermore, the authorities report that the Commission on Ethics of High-Ranking Officials had studied conflicts of interest of high-ranking officials on the basis of 2181 declarations. Conflicts of interest have been identified in 14% of all cases of high-ranking officials being linked to the activities of commercial organisations. In 2018, the Commission considered 7 complaints on alleged conflicts of interest. Finally, the authorities report that 45 judges and 46 prosecutors as well as 9 candidate judges and 13 candidate prosecutors have been trained at the Academy of Justice on prevention of corruption and compliance with declaration requirements.

84. Finally, the authorities indicate that as a result of controversies regarding the process of selecting the members of the Competition Board of the Commission for Prevention of Corruption (which is to conduct a competitive selection of five Commissioners), the Speaker of Parliament proposed amendments to the Law on the Commission for the Prevention of Corruption, removing the Competition Board from the process of appointment of members of the CPC and introducing a system of election by Parliament on the basis of direct nomination of candidates by the Government, the

ruling coalition and opposition factions of Parliament and the Supreme Judicial Council. This was done to exclude any further delay of this process as public officials are legally required to submit their asset declarations to the CPC for 2020. This law was adopted in October 2019. The CPC members have already been nominated. They have elected the Chair of the Commission. Meanwhile a draft law has been elaborated by the Government to re-establish the method of election of Members of the CPC through competition. In accordance with this draft law, the first composition of the CPC will be appointed by the National Assembly through direct nomination of the candidates by the abovementioned respective authorities. The draft law also provides for new rules governing the establishment of the future Competition Boards. Thus, according to the current version of the draft, the Board would include members appointed by the Government, Parliament, Supreme Judicial Council, Human Right's Defender and Chamber of Advocate. The proposed composition aims at balancing the participation of all branches of power in the selection procedure and at preventing manipulations that took place in the establishment of the previous Competition Board.

85. GRECO takes note of the information provided, *inter alia* that the Commission on Ethics of High-Ranking Officials investigated a certain number of administrative cases regarding violations of rules on financial disclosure. GRECO underlines that the powers of a corruption prevention body should allow access to the necessary financial information for an in-depth scrutiny of declarations, with due regard to privacy rights and proportionality. For instance, access to detailed bank transactions could be requested, if provided by law. It would appear that the Commission has studied, on the basis of submitted declarations, the patterns of conflicts of interests of high-level officials. Moreover, it appears that training courses on prevention of corruption have been delivered to a certain number of judges and prosecutors. These reported measures go in the right direction.

86. When it comes to the institutional setting of this system, GRECO notes that transition of the function of monitoring of asset declarations towards the Commission for Prevention of Corruption is underway. Parliament has adopted a new law on the Commission for the Prevention of Corruption. This law removes the competition board from the process of appointment of members of the CPC and introduces a system of direct nominations by Parliament (one candidate is nominated by the Government, one by the ruling party in Parliament, two nominees by the two opposition parties in Parliament, and one nominee by the Supreme Judicial Council). The main concern with such a model is a significant risk of politisation[13]. This is a vital point for the anti-corruption bodies as their insulation from political interference and influence stands as the main principle for ensuring their effectiveness. Civil society organisations are currently not represented in the nomination or selection process. The Government and the ruling parliamentary faction could control the majority in the Commission. It appears that new amendments are being elaborated by the Government on the matter, providing for the direct nominations by Parliament of the first composition of the CPC and then for the re-introduction of a Competition Board. While GRECO understands the determination of the authorities to act promptly, it urges the authorities to ensure independence of the Commission for Prevention of Corruption, in particular through a balanced and sustainable composition and transparent procedures. GRECO wishes to stress that the current recommendation is to a large extent about operational independence of a corruption prevention authority.

87. GRECO concludes that recommendation xviii remains partly implemented.

[13] See Jakarta Statement on Principles for Anti-Corruption Agencies.

III. CONCLUSIONS

88. **In view of the foregoing, GRECO concludes that Armenia has now implemented satisfactorily or dealt with in a satisfactory manner seven of the eighteen recommendations contained in the Fourth Round Evaluation Report.** The remaining eleven recommendations have been partly implemented.

89. More specifically, recommendations v, vi, x, xii, xiii, xiv and xvii have been dealt with in a satisfactory manner and recommendations i-iv, vii-ix, xi, xv, xvi and xviii have been partly implemented.

90. Some limited progress has been achieved with respect to members of parliament. There is increased transparency of committee sittings, but more progress on public consultations on draft legislation and less use of fast-track procedures for adopting new legislation are expected. Parliamentarians still do not have a comprehensive code of conduct with appropriate guidance on integrity related matters connected to a system of supervision and enforcement. More needs to be done in practice to ensure MPs' compliance with the rules prohibiting engagement in entrepreneurial activities.

91. As far as judges are concerned, GRECO welcomes the adoption of the new Judicial Code, which provides for a number of integrity related safeguards for judges; e.g. transfer/secondment of judges is only possible with their consent. Enhanced provisions against undue interference with activities of judges have been included, but more is needed in practice. Progress has been achieved in providing a possibility for judges to challenge certain decisions in the recruitment process before a court but an appropriate appeal mechanism in disciplinary cases remains to be introduced. GRECO appreciates that dedicated training of judges on integrity related matters is put in place. There is a need to separate the mechanism of confidential counselling from disciplinary mechanisms.

92. With regard to prosecutors, GRECO appreciates the increased transparency of the selection process of prosecutors and welcomes the setting up of a dedicated mandatory training on ethics. Confidential counselling to prosecutors needs to be separate from disciplinary mechanisms.

93. Finally, GRECO appreciates the enhanced rules on accepting gifts but considers that they could be further clarified and adequately monitored. GRECO follows the establishment of the Commission for Prevention of Corruption aimed at ensuring effective supervision and enforcement of the rules on asset declaration. In this regard, the independence of this institution from political influence and pressure is pivotal and depending upon a balanced and sustainable composition and transparent procedures.

94. In view of the above, GRECO concludes that the current low level of compliance with the recommendations is "globally unsatisfactory" in the meaning of Rule 31, paragraph 8.3 of the Rules of Procedure. GRECO therefore decides to apply Rule 32, paragraph 2 (i) concerning members found not to be in compliance with the recommendations contained in the mutual evaluation report, and asks the Head of delegation of Armenia to provide a report on the progress in implementing the outstanding recommendations (i.e. recommendations i-iv, vii-ix, xi, xv, xvi and xviii) as soon as possible, however – at the latest – by 31 December 2020.

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