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FOURTH EVALUATION ROUND

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

SECOND COMPLIANCE REPORT

MONTENEGRO

Adopted by GRECO at its 84th Plenary Meeting
(Strasbourg, 2-6 December 2019)

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I. INTRODUCTION

1. The Second Compliance Report assesses the measures taken by the authorities of Montenegro to implement the recommendations issued in the Fourth Round Evaluation Report on Montenegro (see paragraph 2). GRECO's Fourth Evaluation Round deals with "Corruption prevention in respect of members of parliament, judges and prosecutors".
2. The Fourth Round Evaluation Report on Montenegro was adopted at GRECO's 68th Plenary Meeting (19 June 2015) and made public on 26 August 2015, following authorisation by Montenegro ([Greco Eval IV Rep \(2014\) 6E](#)).
3. The [Fourth Round Compliance Report](#) was adopted by GRECO at its 77th Plenary meeting (18 October 2017) and made public on 3 April 2018, following authorisation by the authorities of Montenegro. As required by GRECO's Rules of Procedure, the authorities of Montenegro submitted a Situation Report on further measures taken to implement the pending recommendations. This report was received on 18 July 2019 and served, together with the information submitted subsequently, as a basis for this Second Compliance Report.
4. GRECO selected Albania (with respect to parliamentary assemblies) and Lithuania (with respect to judicial institutions) to appoint Rapporteurs for the compliance procedure. The Rapporteurs appointed for the current report were Ms Suzana Frashëri, on behalf of Albania and Ms Živilė Šadianec, on behalf of Lithuania. They were assisted by GRECO's Secretariat in drawing up the Second Compliance Report.

II. ANALYSIS

5. It is recalled that GRECO addressed eleven recommendations to Montenegro in its Evaluation Report. In the Compliance Report, GRECO concluded that six out of the eleven recommendations contained in the Fourth Round Evaluation Report had been implemented satisfactorily or dealt with in a satisfactory manner by Montenegro. Two recommendations (i and x) had been partly implemented and three recommendations (ii, v and vii) had not been implemented. Compliance with the pending recommendations is dealt with below.

Corruption prevention in respect of members of parliament

Recommendation i.

6. *GRECO recommended ensuring there is a mechanism both to promote the Code of Ethics for parliamentarians and raise their awareness as regards the standards expected from them and enforcing such standards where necessary.*
7. It is recalled that in the Compliance Report, GRECO concluded that this recommendation was partly implemented. More precisely, it welcomed the guidelines that had been developed which explained the ethics rules applying to parliamentarians together with practical examples. However, it stressed that Parliament itself ought to establish dedicated training on the Code of Ethics covering all its members on a regular basis. It noted that, since the adoption of the Code of Ethics in December 2014, the Parliamentary Committee on Human Rights and Freedoms had dealt with five complaints on improper behaviour by parliamentarians.
8. The authorities of Montenegro now report that a new Code of Ethics was adopted in July 2019 and published in the Official Gazette on 7 August 2019.

9. As regards the awareness and training of parliamentarians on the ethical rules, they point out that the Code introduces compulsory annual training plans for the parliamentarians (Article 15). The plans are prepared by the Committee on Human Rights and Freedoms. Trainings are conducted namely by the Agency for Prevention of Corruption, which prepares the training materials. Furthermore, they indicate that on 18 October 2018 parliamentarians participated in a training course on "Ethical standards, good conduct and prevention of conflicts of interest", which followed previous courses on similar issues.
10. The authorities recall that in December 2017, Guidelines on Good Conduct, drafted in cooperation with a Council of Europe expert, were adopted by the Parliamentary Committee on Human Rights and Freedoms and published on the Website of the Parliament, together with an Information Brief on the above-mentioned training course. These are the same Guidelines than the ones adopted by the Anti-Corruption Committee in March 2017. They specify that the Code of Ethics has a primacy over the Guidelines.
11. As regards the effective enforcement of the ethical standards, the authorities refer to Article 16 of the new Code of Ethics which organises the procedure for submitting a complaint and initiating proceedings against the violation of the Code. According to this new procedure, anonymous complaints cannot be taken into consideration. They indicate that no new cases have been filed with the Parliamentary Committee on Human Rights and Freedoms since 2017, stressing that the previous Code of Ethics was ineffective.
12. The authorities of Montenegro add that the Committee on Human Rights and Freedoms has adopted on 29 October 2019 a solemn statement on the acceptance by the parliamentarians of the obligations of the Code of Ethics. This statement was due to be signed by all parliamentarians by 20 November 2019.
13. GRECO welcomes the adoption of the new Code of ethics, including a procedure for submitting a complaint and initiating proceedings against the violation of this Code, as well as an annual and mandatory training of parliamentarians. It takes note of other information provided, i.e. that Parliament has further developed training on parliamentarians' integrity and ethics, provided to GRECO. GRECO has already acknowledged that cooperation between the Agency for Prevention of Corruption and parliamentary committees is ongoing. It notes that the Parliamentary Committee on Human Rights and Freedoms has only dealt with a few cases under the former Code of Ethics. From the information provided by the authorities of Montenegro, GRECO has not been able to assess the effectiveness of the mechanism for enforcing the ethical standards applicable to the parliamentarians, in particular as regards the concrete implementation of the procedure for complaining and initiating proceedings against the violation of the Code of Ethics.
14. GRECO concludes that recommendation i remains partly implemented.

Recommendation ii.

15. *GRECO recommends that a requirement of ad-hoc disclosure be introduced when a conflict emerges between the private interests of individual members of parliament and a matter under consideration in parliamentary proceedings.*
16. It is recalled that in the Compliance Report, GRECO concluded that this recommendation had not been implemented. More precisely, it stressed that in a sudden situation of a conflict of interest, parliamentarians were still under no legal obligation to declare these circumstances. The Guidelines for Good Practice stressing

the parliamentarians' obligation to report conflicts of interest before participating in debates were not assessed as sufficient in this context.

17. The authorities of Montenegro now indicate that the new Code of Ethics was adopted in July 2019. Conflicts of interest are defined in Article 7 of the Law N° 53/14 and 42/17 on Prevention on Corruption; they are assessed and addressed by the Agency for Prevention of Corruption. According to Article 10 of the new Code, a parliamentarian who takes part in a discussion where he/she, or a person related to him/her, has a private interest shall give a statement to the Committee on Human Rights and Freedoms before taking part in the discussion and before taking part in the vote.
18. GRECO welcomes the new version of the Code which includes a requirement for parliamentarians to disclose conflicts of interest before taking part in a decision-making process. This is in line with the recommendation.
19. GRECO concludes that recommendation ii has been implemented satisfactorily.

Corruption prevention in respect of judges

Recommendation v.

20. *GRECO recommended (i) taking additional measures to strengthen the Judicial Council's independence – both real and perceived – against undue political influence, including by abolishing the ex-officio participation of the Minister of Justice in the Council, by providing for no less than half of the Council's membership to be composed of judges who are elected by their peers and by ensuring that the presiding function is given to one of those judicial members; (ii) establishing objective and measurable selection criteria for non-judicial members which would endorse their professional qualities and impartiality; and (iii) setting in place operational arrangements to avoid an over-concentration of powers in the same hands concerning the different functions to be performed by members of the Judicial Council.*
21. It is recalled that in the Compliance Report, GRECO concluded that this recommendation had not been implemented. More precisely, GRECO noted that no regulatory changes had occurred in the Constitution or legislation, nor in practice, to strengthen the independence of the Judicial Council.
22. The authorities of Montenegro reiterate that, as there has been no changes to the constitutional framework, the composition of the Judicial Council has not been modified. At the end of the term of office of the ten-member Judicial Council, on 2 July 2018, the four judge members were replaced by four other judges. The Minister of Justice remains an *ex officio* member, the judges elected by their peers remain a minority within the Council, and the President of the Council is elected among the members who are not holders of judicial office (not the Minister) by a two-thirds majority of the members of the Judicial Council. The authorities stress that half of the members of the Judicial Council are judges, including the President of the Supreme Court (*ex officio* member).
23. As regards the second part of the recommendation, the authorities explain that no selection criteria have been established for non-judicial members of the Council. They also report that the non-judicial members of the Judicial Council have not been replaced, following the end of their term of office on 2 July 2018, as the required two-thirds parliamentary majority has not been reached for this replacement. Therefore, the Law on Judicial Council and Judges has been amended so that the President of the Council and the members can continue their functions until official

appointment of the new members (the Venice Commission has confirmed that this procedure was in conformity with the Constitution¹). This explains why the interim President of the Council was elected on 4 July 2018 among the four non-judicial "eminent lawyers".

24. Regarding the third part of the recommendation, the authorities indicate that all eight commissions of the Council are composed, according to the law, of at least one of the ten Council members, which implies that each member has a seat in various commissions. They stress that the conclusions of the commissions are always forwarded to the Judicial Council for a final decision.
25. GRECO takes note that no new measures aimed at strengthening the Judicial Council's independence have been taken since the adoption of the first Compliance Report. The composition of the Council has not been modified. Criteria for selecting non-judicial members have not evolved. The Council is still presided by a non-judicial member. No new operational arrangements have been reported to avoid an over-concentration of powers in the same hands concerning the functions to be performed by the Council's members.
26. Moreover, GRECO expresses its deep concerns about the decision by the Judicial Council to appoint five court presidents for at least a third term. Indeed, the purpose of GRECO's recommendation was *inter alia* to limit over-concentration of powers within the judiciary. In this spirit, Montenegro had changed its normative framework to limit the duration of judges' terms of office in the same high positions. However, the Judicial Council has re-appointed five court presidents, including the President of the Supreme Court, who had been at the same place for more than ten years. Some NGOs have raised their concerns. GRECO points out that these appointments are not in line with the purpose of its recommendation.
27. GRECO concludes that recommendation v remains not implemented.

Recommendation vii.

28. *GRECO recommended (i) further developing the disciplinary framework for judges with a view to strengthening its objectivity, proportionality and effectiveness; and (ii) publishing information on complaints received, disciplinary action taken and sanctions applied against judges, including possible dissemination of the relevant case-law, while respecting the anonymity of the persons concerned.*
29. It is recalled that in the Compliance Report, GRECO concluded that this recommendation had not been implemented. More precisely, GRECO noted that no final consideration had been given by the authorities to further develop the disciplinary framework for judges; that a systemic public track record on complaints and sanctions against judges was missing; and that no information had been provided as regards the dissemination of the case law on disciplinary matters.
30. The authorities of Montenegro now report that the working group, composed of Supreme Court judges, established to monitor the application of the legal provisions on disciplinary responsibility of judges, has prepared amendments to the Law on Judicial Council and Judges. This concerns, *inter alia*, disciplinary liability of judges. The proposals have been forwarded to the Ministry of Justice for further action.
31. As to the second part of the recommendation, the authorities recall once again that all the decisions of the Commission concerning the application of the Code of Ethics

¹ Opinion CDL-AD(2018)15 "on the draft Law on amendments to the law on the Judicial Council and judges" adopted by the Venice Commission at its 115th Plenary Session (Venice, 22-23 June 2018).

and of the Disciplinary Committee of the Judicial Council are published on the website of the Judicial Council (sudovi.me). The information on complaints discussed at the meetings of the Council are contained in the minutes of the Council, which are also made public. The authorities also indicate that, following GRECO's recommendation, the "2018 Annual Report of the work of the Judicial Council and total balance in the Judiciary", dated 1 April 2019, includes tables with an overview of the activities carried out by the Commission for the Code of ethics of judges.

32. GRECO takes note of the information provided. As regards the issue raised in the first part of the recommendation, it encourages the Ministry of Justice and Parliament to give proper follow-up to the proposals by the Supreme Court's working group in order to amend the relevant legislation thereby strengthening the objectivity, proportionality and effectiveness of the disciplinary framework for judges. Concerning the second part of the recommendation, GRECO notes again that information regarding the decisions of the Commission concerning the Code of Ethics of judges are published. It urges the authorities to complement this information with systemic information on complaints received, types of misconduct, disciplinary action taken, and sanctions applied against judges, both as regards disciplinary and ethical matters.
33. GRECO concludes that recommendation vii remains not implemented.

Corruption prevention in respect of prosecutors

Recommendation x.

34. *GRECO recommended (i) further developing the disciplinary framework for prosecutors with a view to strengthening its objectivity, proportionality and effectiveness; and (ii) publishing information on complaints received, disciplinary action taken and sanctions applied against prosecutors, including possible dissemination of the relevant case-law, while respecting the anonymity of the persons concerned.*
35. It is recalled that in the Compliance Report, GRECO concluded that this recommendation had been partly implemented. More precisely, GRECO assessed positively that the disciplinary framework for prosecutors had been further strengthened, and that the rules for disciplinary proceedings had been modified and sufficiently explained. Concerning the second part of the recommendation, GRECO noted that the publication of information concerning disciplinary proceedings against prosecutors in the Annual Report of the Public Prosecutor's Office responded to a need for more transparency but stressed that a systematic form of disclosure of details in a public record was required.
36. The authorities of Montenegro now state that, in 2018, four disciplinary liability cases were initiated by the Disciplinary Panel against prosecutors, and three prosecutors were sanctioned for having failed to declare asset and income data. In October 2018, the Prosecutorial Council temporarily removed one prosecutor from office until the end of pending criminal proceedings. A table presenting information on disciplinary proceedings against prosecutors was published on the website of the Prosecutorial Council.
37. Moreover, the authorities indicate that the Prosecutorial Council has firmly committed itself to increase the level of transparency of the State Prosecutor's Office by publishing information on disciplinary proceedings as a part of its annual report and through spreadsheet reports, which are both available on its website. They stress that these spreadsheet reports give a transparent, clear and understandable information on disciplinary procedures against prosecutors in 2018 and 2019,

including on the decisions taken, while respecting the anonymity of the persons concerned. In addition to this overview on disciplinary proceedings, data is also made available as regards temporary relieving of duty of state prosecutors, until specific criminal proceedings are concluded.

38. Concerning the second part of the recommendation, GRECO takes note that the website of the Prosecutorial Council now presents detailed information on disciplinary proceedings, while respecting the anonymity of the persons concerned in a systematic form on complaints received, types of misconduct, disciplinary actions taken, and sanctions applied against prosecutors.
39. GRECO concludes that recommendation x has been implemented satisfactorily.

III. CONCLUSIONS

40. **In view of the foregoing information, GRECO concludes that Montenegro has implemented satisfactorily eight out of the eleven recommendations contained in the Fourth Round Evaluation Report.** Of the remaining recommendations, one has been partly implemented and two have not been implemented.
41. More specifically, recommendations ii, iii, iv, vi, viii, ix, x and xi have been implemented satisfactorily or dealt with in a satisfactory manner, recommendation i has been partly implemented and recommendations v and vii have not been implemented.
42. *With respect to members of parliament*, GRECO welcomes that adoption of the new Code of Ethics which includes training on parliamentarians' integrity and ethics, on an annual and mandatory basis, and introduces a requirement for parliamentarians to sign a declaration on the non-existence of private interests before taking part in a decision-making process. This complements the efforts already undertaken to prevent and fight corruption among parliamentarians. GRECO encourages the authorities to implement effectively the procedure for complaining and initiating proceedings against the violation of this Code by parliamentarians.
43. *As far as judges and prosecutors are concerned*, some progress continues to be observed when it comes to providing guidance and counselling on the application of the Judicial Code of Ethics and conflicts of interest. However, it is alarming that no progress has been demonstrated as regards the composition and independence of the Judicial Council, nor in reviewing the disciplinary framework for judges. In this context, GRECO is particularly concerned by the decision taken by the Judicial Council to re-appoint five court presidents for at least a third term, which is not in line with its recommendations. GRECO will need to closely follow further actions in this respect. Concerning prosecutors, progress is to be noted as regards public information concerning disciplinary proceedings.
44. In view of the overall compliance with the recommendations the adoption of the Second Compliance Report terminates the Fourth Round Compliance procedure in respect of Montenegro. The authorities of Montenegro may, however, wish to inform GRECO of further developments with regard to the implementation of the pending recommendations i, v and vii.
45. Finally, GRECO invites the authorities of Montenegro to authorise, as soon as possible, the publication of the present report, to translate it into the national language and to make this translation public.