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## FOURTH EVALUATION ROUND

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

## SECOND COMPLIANCE REPORT

SERBIA

Adopted by GRECO at its 86<sup>th</sup> Plenary Meeting  
(Strasbourg, 26 – 29 October 2020)

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## **I. INTRODUCTION**

1. This Second Compliance Report assesses the measures taken by the authorities of Serbia to implement the pending recommendations issued in the Fourth Round Evaluation Report on Serbia (see paragraph 2) covering "Corruption prevention in respect of members of parliament, judges and prosecutors".
2. The [Fourth Evaluation Round Report on Serbia](#) was adopted by GRECO at its 68<sup>th</sup> Plenary Meeting (19 June 2015) and made public on 2 July 2015, following authorisation by Serbia.
3. In the first [Compliance Report](#), adopted at GRECO's 77<sup>th</sup> Plenary Meeting (20 October 2017) and made public on 15 March 2018, following authorisation by Serbia, it was concluded that Serbia had not implemented satisfactorily or dealt with in a satisfactory manner any of the 13 recommendations contained in the Fourth Round Evaluation Report. GRECO concluded that the very low level of compliance with the recommendations was "globally unsatisfactory" within the meaning of Rule 31, paragraph 8.3 of its Rules of Procedure. It therefore decided to apply Rule 32, paragraph 2.i) in respect of members not in compliance with the recommendations contained in the mutual evaluation report.
4. An [Interim Compliance Report](#) was adopted at GRECO's 82<sup>nd</sup> Plenary Meeting (22 March 2019) and made public on 2<sup>nd</sup> April 2019, following authorisation by Serbia. It concluded that, even though none of the recommendations had been implemented satisfactorily, the overall level of compliance with the recommendations was no longer "globally unsatisfactory" within the meaning of Rule 31 revised, paragraph 8.3 of the Rules of Procedure. GRECO encouraged the Serbian authorities to further pursue their efforts to implement GRECO's recommendations and invited the Head of delegation of Serbia to submit additional information regarding the implementation of recommendations i to xiii by 31 December 2019.
5. On 31 December 2019, the Serbian authorities submitted information regarding the actions taken to implement the pending recommendations, which, together with information submitted subsequently, served as a basis for the current Report, drawn up by the rapporteurs, Mr Jens-Oscar NERGARD, on behalf of Norway and Ms Alicja KLAMCZYNSKA, on behalf of Poland, with the assistance of GRECO's Secretariat.
6. This [Second Compliance Report](#) assesses the implementation of the 13 recommendations since the adoption of the Interim Compliance Report and provides an overall assessment of Serbia's level of compliance with these recommendations.

## **II. ANALYSIS**

7. As a preliminary note, [the authorities of Serbia](#) recall that specific parts of GRECO's recommendations call for amendments to the 2006 Constitution. These amendments, on which the Venice Commission issued an opinion in June 2018<sup>1</sup>, have been sent to Parliament (for adoption with a two-thirds majority following a public debate) and will have to be followed by a referendum. Serbia will only be in a position to fulfil some parts of GRECO's recommendations once those constitutional amendments have entered into force.

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<sup>1</sup> See Opinion of the Venice Commission on the draft amendments to the constitutional provisions on the judiciary, CDL-AD(2018)011-e, [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2018\)011-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2018)011-e). This opinion was followed by a memorandum of the Venice Commission Secretariat in October 2018 on the compatibility of the draft amendments to the constitutional amendments on the judiciary of Serbia (CDL-AD(2018)023-e), [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2018\)023-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2018)023-e).

**Recommendation i.**

8. GRECO recommended that the transparency of the legislative process be further improved (i) by ensuring that draft legislation, amendments to such drafts and the agendas and outcome of committee sittings are disclosed in a timely manner, that adequate timeframes are in place for submitting amendments and that the urgent procedure is applied as an exception and not as a rule and (ii) by further developing the rules on public debates and public hearings and ensuring their implementation in practice.
9. It is recalled that in the Interim Compliance Report, this recommendation was partly implemented. More precisely, GRECO considered, as regards the first part of the recommendation, that the urgent procedure for adopting legislation was still applied too often and that the practice of introducing late amendments was still used regularly. Moreover, it pointed out that the website of the National Assembly, where amendments to legislative proposals are put online, was not accessible to the public. As regards the second part of the recommendation, GRECO noted that no further rules had been taken to facilitate public debates and hearings and, in particular, that public debates could only be organised for governmental legislative drafts, not for drafts proposed by parliamentarians or citizen groups. It underlined that the holding of public hearings remained at the discretion of the parliamentary committees.
10. The Serbian authorities now indicate that amendments to the Law on State Administration (in force since 28 June 2018), introduce an obligation for state bodies to provide necessary conditions for public participation in the preparation of draft laws and other regulations and legal acts. Ministries are obliged to inform the public through the internet on the initiation of a law-drafting procedure and its proposed content. They must organise consultations with the relevant stakeholders *“in a way that ensures openness and effective public participation”* in the drafting process and must organise a public debates according to the Rules of Procedure of the Government on *“any draft law that substantially changes legal solutions in a particular field or governs a matter of particular interest to the public”*. A *“Rulebook of good practices for public participation in drafting laws and by-laws”* was adopted on 19 July 2019. It details the practical conditions for the successful participation in the drafting process of all interested parties, including deadlines, concrete modalities of consultation, possibilities for the interested parties to inform on conflicting views highlighted during the consultation process, etc. In addition, the *“Law on planning system”* adopted on 19 April 2018, aims at including the general public in shaping public policy based on principles such as non-discrimination or the principle of publicity and partnership. When sending their bills to Parliament, ministries are recommended to join an explanatory note on the public debate and the consultation methods used. The Serbian authorities indicate that between 1 December 2018 and 26 November 2019, 37 draft laws (including 22 new laws and 15 amendments to existing legislation) out of 96 draft laws (including 68 amendments to existing legislation) submitted to Parliament (excluding draft laws of ratification of international treaties) were subject to a public debate. In addition, 7 public hearings were organised by Parliament in 2018 and 2019 according to articles 83 and 84 of the Rules of procedure of the National Assembly.
11. The Serbian authorities further indicate that once the process of public debate has been fully implemented, the adoption of draft laws through urgent procedures will only be possible, according to articles 167-168 of the Rules of procedure of the National Assembly, under exceptional circumstances: when human life and health, national security or the work of institutions and organisations are at stake, or when there is a clear exigency for fulfilling international or EU obligations. Between

December 2018 and December 2019, less than half of the legislation adopted was done under urgent procedure (79 of 169 adopted in total; 37 of 67 decisions and other acts). The authorities underline that the fact that Serbia is a candidate for EU accession should be borne in mind when looking at this the use that has been made of urgent procedures. They point out also that, since June 2019, the use made of urgent procedures is declining – involving only two bills in the period June and December 2019.

12. GRECO welcomes the amendments to the legislation which improves transparency of the law drafting process prior to the parliamentary procedures by obliging state bodies to disclose draft laws in a timely manner via official and public websites. It notes that amendments to legislative proposals are made public online and are no longer only on closed e-systems reserved to parliamentarians. As regards the use of urgent procedures, GRECO acknowledges that, by amending the law on State Administration, the Serbian authorities have made arrangements for an effective public participation on draft laws before they are to be discussed in Parliament (see para. 13). It also notes that the use of such procedures is decreasing, and that it is reported that a part of the laws adopted through urgent procedure is connected to the EU accession process. However, such a procedure still leaves the way open for introducing late amendments which have not been subject to public information and debated in due time. The first part of the recommendation cannot be considered as implemented more than partly.
13. GRECO notes that the amendments to the Law on State administration oblige the ministries to organise mandatory public consultation and debates on draft laws that substantially change the legal situation in a particular field or govern a matter of particular public interest, according to concrete rules further specified in a new Rulebook of good practices. It points out that a significant number of draft laws (22 of 28 in the period December 2018 to December 2019) have been publicly debated before being forwarded to Parliament, which is a positive step. Moreover, it notes that public hearings are organised by Parliament on important laws, although the organisation of such hearings remain at the discretion of the parliamentary committees. Thus, the second part of the recommendation can be considered as implemented satisfactorily.
14. GRECO concludes that this recommendation remains partly implemented.

#### **Recommendation ii.**

15. *GRECO recommended (i) swiftly proceeding with the adoption of a Code of Conduct for members of parliament and ensuring that clear guidance is provided for the avoidance and resolution of conflicts of interest and (ii) ensuring that the public is given easy access to the future Code and that it is effectively implemented in practice, including by raising awareness among members of parliament on the standards expected of them and by providing them with confidential counselling and dedicated training.*
16. It is recalled that in the Interim Compliance Report, this recommendation was not implemented as no substantive progress could be noted; the Code of conduct for parliamentarians had not been adopted and there was no guidance for parliamentarians on avoiding and resolving conflicts of interest.
17. The Serbian authorities now report that the Committee for Administrative, Budgetary, Mandate and Immunity Issues of the National Assembly is still working on a draft Code of Conduct, which is also linked to recent legislation such as the Law on lobbying which entered into force in August 2019 and the Law on Corruption Prevention which entered into force on 1 September 2020 (see below). The Code should be published

on the official website of the National Assembly and include an obligation on the Ethics Committee to submit annual reports on the implementation of the Code.

18. GRECO looks forward to assessing the Code of Conduct, once adopted. However, for the time being no text has been made available to GRECO. Moreover, once adopted, such a Code would need to be accompanied by with proper guidance, training and counselling.
19. GRECO concludes that recommendation ii remains not implemented.

#### **Recommendation iii.**

20. *GRECO recommended introducing rules for members of parliament on how to interact with lobbyists and other third parties who seek to influence the parliamentary process and making such interactions more transparent.*
21. It is recalled that in the Interim Compliance Report, this recommendation was partly implemented. GRECO welcomed the adoption of the "Law on lobbying", though it had not entered into force at that time. GRECO was looking forward to the development of the Code of conduct for all parties affected by lobbying activities to facilitate the understanding and implementation of the law.
22. The Serbian authorities now indicate that the Law on Lobbying entered into force in August 2019 and that the Anti-corruption Agency has finalised other connected activities. A "Rulebook on internal organisation and job classification in the service of the Agency" was adopted in March 2019 and a unit dealing with the issue of lobbying has been set up within the Agency. IT registers for lobbyists have been established. In addition, the Agency has adopted with the support of OSCE/ODIHR a Code of conduct of participants in lobbying. It is due to be taken into account when finalising the draft Code of conduct for parliamentarians (see above). The staff of the Agency has been trained by the OSCE/ODIHR and the US Department of justice to be able to train lobbyists – it is planned that lobbyists will have to pay for such trainings and their certification. Private companies have been informed on the relevant legislation with the support of the American Chamber of Commerce and the OSCE.
23. GRECO notes that the new legislation to regulate lobbying, lobbyists and third parties and to prevent undue influences has entered into force. Its effective application is supported by a set of secondary legislation and other rules, and by training and awareness raising for those who perform such activities. It notes that primarily this legislation aims at regulating lobbying and that it covers all participants in lobbying, including those that are subject to lobbying (e.g. officials, parliamentarians etc). In addition, a Code of conduct for all participants in lobbying procedures has been adopted (also including parliamentarians). GRECO accepts that this fulfils the requirements of the recommendation. (That said, it would be advisable also to deal with rules on MPs lobbying in the general Code of conduct for parliamentarians which is currently under preparation, see recommendation ii).
24. GRECO concludes that recommendation iii has been implemented satisfactorily.

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

#### **Recommendation iv.**

25. *GRECO recommended (i) changing the composition of the High Judicial Council, in particular by excluding the National Assembly from the election of its members, providing that at least half its members are judges elected by their peers and abolishing the ex officio membership of representatives of the executive and*

*legislative powers; (ii) taking appropriate measures to further develop the role of the High Judicial Council as a genuine self-governing body which acts in a pro-active and transparent manner.*

26. It is recalled that in the Interim Compliance Report, this recommendation was partly implemented. More precisely, as regards the first part of the recommendation, GRECO welcomed the on-going constitutional reform which would represent a considerable improvement on the composition of the High Judicial Council (HJC) as half of the members would then be judges elected by their peers and the *ex officio* membership of representatives of the executive and legislative powers would be abolished. However, it pointed out that the complete exclusion of the National Assembly from the election of these members was not planned and that the constitutional amendments had not been adopted yet. As regards the second part of the recommendation, GRECO recognised that building the capacity of the HJC as a self-governing body would require time and a new practice to be developed, agreed that appropriate measures had been taken and requested the Serbian authorities to keep it informed of further progress, including on the budgetary autonomy of the HJC.
27. The Serbian authorities reiterate that the foreseen change in the composition of the HJC requires constitutional amendments, which are still pending. They confirm that the proposal by the Ministry of Justice remains the same, i.e. exclusion of the National Assembly from the election process, that at least half of the members are to be elected by their peers and of *ex officio* representatives of the executive and legislative powers excluded.
28. As regards the second part of the recommendation, the authorities state that the HJC is being developed as a self-governing body which acts in a pro-active and transparent way. They note that the HJC has adopted a 2018-2020 Communication strategy addressing the transparency of the work of the HJC and the courts. The HJC has published statements to respond to frequent comments on court decisions and proceedings. Moreover, the authorities recall that the draft constitutional reform foresees a budgetary autonomy for the HJC and the courts and remind that, already before the adoption of this reform, the HJC had a role to play in securing and administrating funds for the judiciary together with the Ministry of Justice according to the Law on the organisation of courts. In addition, the authorities point out that the Law on the High Judicial Council provides that the HJC has an active role in elections to judicial functions: it elects permanent judges and proposes candidates to the National Assembly for the first election to judicial functions.
29. GRECO notes that the constitutional reform process is still underway. It stresses the need for the planned provisions to be carried through – e.g. ensuring that at least half of the members of the HJC are judges elected by their peers and that the *ex officio* membership of representatives of the executive and legislative powers is abolished and that the National Assembly is excluded from the election process.
30. GRECO takes note of the information provided in respect of the second part of the recommendation which shows that the HJC continues to play a pro-active role as regards communication, to defend the court system and individual judges against political attacks and in the election of judges. It has also some budgetary and management autonomy. However, further actions are needed so as to enable full budgetary autonomy in accordance with the recommendation.
31. GRECO concludes that recommendation iv remains partly implemented.

#### **Recommendation v.**

32. *GRECO recommended reforming the procedures for the recruitment and promotion of judges and court presidents, in particular by excluding the National Assembly from the process, ensuring that decisions are made on the basis of clear and objective criteria, in a transparent manner and that positions of court presidents are occupied on an acting basis only for short periods of time.*
33. It is recalled that in the Interim Compliance Report, this recommendation was partly implemented. GRECO welcomed the constitutional amendments foreseeing the exclusion of the National Assembly from the process of appointing and promoting judges and court presidents but noted that these amendments had not been adopted yet. It also pointed out that transparency of the process for entering the Judicial Academy would be essential for the recruitment of judges. GRECO noted positively that criteria for recruiting judges were complemented by a Rulebook aimed at strengthening transparency, objectivity and merit in the appointment and promotion procedures. However, it stressed that no specific measures had been taken to ensure that the positions of court presidents are occupied on an acting basis only for short periods of time.
34. The Serbian authorities reiterate the content of the draft constitutional reform aimed at excluding the National Assembly from the election process of judges to first judicial positions and to the function of court president and to giving a preeminent role to the Judicial Academy to protect the appointment process from undue influence. As regards the process for entering the Academy, they recall that it is regulated by the Law on Judicial Academy, completed by the "Rulebook. Moreover, they stress that the Law on Judges provides that, when a court president ceases to hold office, the acting court president, appointed by the President of the Higher Court, cannot serve more than six months in such a position. They indicate that currently, out of 159 court presidencies, 92 are occupied by acting presidents, of which 70 are in the election process before the National Assembly – this process has been slowed down by the COVID-19 pandemic situation and the dissolution of the National Assembly.
35. GRECO notes that no new specific measures have been taken since the adoption of the Interim compliance report. It again encourages the authorities to adopt the constitutional amendments which are still pending. It reiterates its appreciation of the existing normative framework implemented and the methods taken to improve the objectivity and transparency of the procedures for recruiting judges and court presidents.
36. GRECO concludes that recommendation v remains partly implemented.

#### **Recommendation vi.**

37. *GRECO recommended that the system of appraisal of judges' performance be reviewed (i) by introducing more qualitative criteria and (ii) by abolishing the rule that unsatisfactory evaluation results systematically lead to dismissal of the judges concerned.*
38. It is recalled that in the Interim Compliance Report, this recommendation was partly implemented. More precisely, as regards the first part of the recommendation, GRECO recalled that the criteria indicated by the Serbian authorities were only of a quantitative nature. As regards the second part of the recommendation, GRECO welcomed the information showing that the evaluation mark "unsatisfactory performance" does not systematically result in dismissal, while noting that this issue would be further addressed within the framework of the on-going constitutional reform process, leading to corresponding changes to the Law on Judges.

39. The Serbian authorities reiterate that the “Rulebook on criteria, standards, procedures and competent authorities for evaluating the work of judges and court presidents” has not evolved, but that a case weighting methodology system adopted in May 2017 further elaborates qualitative criteria by indicating that the difficulty of particular cases must be taken into account when evaluating judges “*in terms of accuracy and clarity of issued acts and procedural actions, argumentation and legal reasoning skills*”. As regards the second part of the recommendation, the authorities confirm that, while waiting for the constitutional amendments and the subsequent revision of the Law on Judges, an “unsatisfactory evaluation” as such does not lead to dismissal of the judges concerned. This is proved through statistics over a one-year period (November 2018 – November 2019): very few judges got an “unsatisfactory evaluation” (13 out of 1844) and none was dismissed based on this evaluation.
40. GRECO notes that no new information has been provided since the adoption of the Interim Compliance report. It points out that, according to the information provided, it does not seem that the case weighting methodology system introduced three years ago is now fully operational and implemented in all courts. Should it be operational, GRECO is not convinced that such a system of case weighting is sufficient to establish a proper balance between quantitative and qualitative criteria in order to ensure the efficient and objective appraisal of judges’ performance. Therefore, this part of the recommendation has not been implemented. GRECO notes that, according to the authorities, the mark “unsatisfactory performance” does not systematically lead to dismissal; however, this issue will have to be clarified within the constitutional reform process, which is still pending.
41. GRECO concludes that recommendation vi remains partly implemented.

#### **Recommendation vii.**

42. *GRECO recommended (i) that the Code of Ethics for judges be communicated effectively to all judges and complemented by further written guidance on ethical questions – including explanations, interpretative guidance and practical examples – and regularly updated; (ii) that dedicated training of a practice-oriented nature and confidential counselling within the judiciary be provided for all categories of judges.*
43. It is recalled that in the Interim Compliance Report, this recommendation was partly implemented. More precisely, the first part of the recommendation was not implemented, as the mandate given to the Ethics Committee of the HJC to provide further written guidance on ethical questions, make proposals for updates to the Code and raise the awareness of all judges of the Code remained to be done in practice. The second part of the recommendation was partly implemented as the mandate given to the Ethics Committee to carry out confidential counselling to judges had not been put into practice.
44. The Serbian authorities now report that a series of training activities have taken place to strengthen judicial independence and promote ethical conduct among judges. “Guidelines for the prevention of undue influence on judges” were published and disseminated to all judges in February 2019. It is reported that several awareness raising activities have been organised, including within the framework of cooperation with the Council of Europe, concerning a large number of judges. The official website of the HJC<sup>2</sup> includes 36 anonymised final decisions of the Disciplinary Commission with specified interpretations serving as practical examples and providing written guidance on ethical questions. The authorities also refer to the tasks entrusted to the

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<sup>2</sup> [www.vss.sud.rs](http://www.vss.sud.rs)



Ethics Committee to provide guidance on ethical questions, update the Code of ethics and raise the awareness of judges, including confidential counselling to judges.

45. GRECO takes note of the information provided, in particular as regards the publication and dissemination of "Guidelines for the prevention of undue influence on judges", the training and awareness raising activities organised for a large number of judges and the disciplinary decisions published on the HJC's website to guide judges in their professional behaviour and action. However, no new information has been provided to demonstrate that the Ethics Committee of the HJC is indeed implementing the mandate that has been given to it as regards confidential counselling on judicial ethics.
46. GRECO concludes that recommendation vii remains partly implemented.

*Corruption prevention in respect of prosecutors*

**Recommendation viii.**

47. *GRECO recommended (i) changing the composition of the State Prosecutorial Council (SPC), in particular by excluding the National Assembly from the election of its members, providing that a substantial proportion of its members are prosecutors elected by their peers and by abolishing the ex officio membership of representatives of the executive and legislative powers; (ii) taking appropriate measures to strengthen the role of the SPC as a genuine self-governing body which acts in a proactive and transparent manner.*
48. It is recalled that in the Interim Compliance Report, this recommendation was partly implemented. As regards the its first part, GRECO welcomed the draft constitutional amendments providing that the National Assembly would elect four prominent lawyers to the SPC which is composed of ten members (including four deputy public prosecutors), but pointed out that it had also recommended that the Assembly be excluded from this appointment process. It regretted that only four prosecutors out of ten members of the SPC were to be elected by their peers and that the *ex officio* membership of the executive power would remain in place. As regards the second part of the recommendation, GRECO noted that the SPC had to continue to improve the transparency of its work, including as regards the appointment process, the respect of the opinions of the Commissioner for autonomy and the adoption of rules of procedure for his/her work, and by filling vacancies in the prosecution service through open competitions and enhancing its resources. GRECO asked to be informed of the "Functional Review" of the prosecution service in progress.
49. The Serbian authorities reiterate that the planned constitutional reform provides that the National Assembly would be excluded from the election process of deputy public prosecutors to the SPC (it being understood that public prosecutors cannot be elected) and be limited to electing four prominent lawyers to the ten members composing this Council. They stress nonetheless that Parliament remains free to follow GRECO's recommendations. They also recall the envisaged composition of the SPC which includes an equal representation of all levels of the prosecution services.
50. As regards the second part of the recommendation, the authorities recall that the Rules of procedure of the SPC were amended in 2017 to strengthen the autonomy of the SPC through the setting up of *ad hoc* operational bodies, including the Commissioner for autonomy. In 2019, the Commissioner addressed 18 cases (40 in 2017 and 2018): he recommended to the SPC to further protect prosecutors against excessive criticism from the political sphere, carried out direct inspections to verify in eight cases that the prosecutors had not worked under undue political influence, published on its web site specific reports and statements on undue influence

exercised on public prosecutors on specific cases. The authorities also indicate that a series of international projects were carried out in 2019 to strengthen the role and capacities of the SPC, including Joint European Union and the Council of Europe programmes. Moreover, they stress that a SPC Human Resources Plan for 2019 was approved by the Ministry of Finances. In May 2019 the SPC increased again the foreseen human resources of the prosecution service (24 new positions of deputy prosecutors announced in 2019 – 63 new positions created as from September 2016); 60 positions of deputy prosecutors were fulfilled through open competitions in 2019, 86 of 804 positions remain vacant.

51. GRECO notes that the draft constitutional amendments would improve significantly the current situation of the composition of the SCP. It wishes to stress the need to exclude the National Assembly from the whole process for electing SPC members and to exclude *ex officio* members of the executive power from the SPC, which has not been planned so far. The constitutional amendments have not been adopted and this part of the recommendation remains partly implemented.
52. Concerning the second part of the recommendation, GRECO takes note of the public positions taken by the SPC and the active role it has played to defend the autonomy of the prosecution service through the inspections it has carried out since the last Interim Report. It also notes the capacity building activities undertaken with international partners to strengthen the role of the SPC as a self-governing body. It welcomes the increased resources of the SPC. These measures are appropriate responses to the concerns expressed by GRECO in its recommendation. However, GRECO notes that the Rules of Procedure of the Commissioner for autonomy have not been adopted and that he continues to act on an ad hoc basis. Also, this part of the recommendation remains partly implemented.
53. GRECO concludes that recommendation viii remains partly implemented.

#### **Recommendation ix.**

54. *GRECO recommended reforming the procedures for the recruitment and promotion of public prosecutors and deputy public prosecutors, in particular by excluding the National Assembly from the process, limiting the discretion of the government and ensuring that decisions are made on the basis of clear and objective criteria in a transparent manner and that positions of public prosecutors (i.e. heads of office) are occupied on an acting basis only for a short period of time.*
55. It is recalled that in the Interim Compliance Report, this recommendation was partly implemented. More precisely, GRECO acknowledged that the draft constitutional amendments addressing the exclusion of the National Assembly and limiting the discretion of the government as regards the recruitment of deputy public prosecutors went in the right direction, while pointing out that, on this latter issue, much would depend on the influence of the executive power over the process of selection at the Judicial Academy. However, the constitutional amendments were still pending. Moreover, GRECO noted the absence of new information both as regards the criteria and the transparency of the process and as regards the duration of the position of acting heads of office.
56. The Serbian authorities now reiterate that the planned constitutional reform provides that the National Assembly would be excluded from the recruitment process of prosecutors and deputy public prosecutors, although the Assembly would have to elect by a 3/5<sup>th</sup> majority the Supreme Public Prosecutor proposed by the SPC. The reform is also due to give a preeminent role to the Judicial Academy to protect the appointment process from undue influence. As regards the process for entering the Academy, they recall that it is regulated by the Law on Judicial Academy. They also

refer to the "Rulebook on criteria for evaluation of qualifications, competence and worthiness of candidates during the procedure for nominating deputy public prosecutors to first election" and the Law on Public Prosecution which provide for objective criteria for assessing the candidates' competences and a clear process aimed at the SPC. As regards the positions of acting Head of office, the authorities now indicate that 22 of 90 positions are occupied by acting prosecutors. According to the Law on Public Prosecution, such an acting position cannot last more than one year, but the authorities indicate that this period is usually shorter in practice.

57. GRECO notes that no new information has been provided and concludes that recommendation ix remains partly implemented.

**Recommendation x.**

58. *GRECO recommended that the system for appraising the performance of public prosecutors and deputy public prosecutors be reviewed (i) by revising the quantitative indicators and ensuring that evaluation criteria consist principally of qualitative indicators and (ii) by abolishing the rule that unsatisfactory evaluation results systematically lead to dismissal and ensuring that prosecutors have adequate possibilities to contribute to the evaluation process.*

59. It is recalled that in the Interim Compliance Report, this recommendation was partly implemented. More precisely, GRECO welcomed the evaluation criteria being reviewed by a Working Group, but noted that they had not yet been adopted. It welcomed the information that the evaluation mark "unsatisfactory performance" would not systematically lead to dismissal, while noting with satisfaction that this issue would be further addressed within the framework of the on-going constitutional reform process (also not finalised).

60. The Serbian authorities now indicate that the revision of the existing "Rulebook on performance evaluation criteria for public prosecutors and deputy public prosecutors" by a Working group of the SPC still remains to be finalised. This revision will need to be in line with the constitutional reform, which is also still pending. As regards the second part of the recommendation, they reiterate that the Law on Public Prosecution is due to be revised in order to exclude formally that the evaluation mark "unsatisfactory performance" systematically leads to dismissal, while confirming that this possibility is however not applied in practice. Such a mark leads to the proposal of measures to remedy identified deficiencies and a mandatory training organised by the Judicial Academy. They confirm that the relevant legislation will have to be further amended according to the constitutional amendments once adopted. The authorities indicate that since the Interim Compliance Report, no public prosecutors or deputy prosecutors have been given the mark "unsatisfactory performance".

61. GRECO notes that no new information has been provided and concludes that recommendation x remains partly implemented.

**Recommendation xi.**

62. *GRECO recommended (i) that the Code of Ethics for public prosecutors and deputy public prosecutors be communicated effectively to all prosecutors and complemented by further written guidance on ethical questions – including explanations, interpretative guidance and practical examples – and regularly updated; ii) that dedicated training of a practice-oriented nature and confidential counselling within the prosecution service be provided for all categories of prosecutors.*

63. It is recalled that in the Interim Compliance Report, this recommendation was partly implemented. As regards the first part of the recommendation, no measures had

been taken as regards communication, guidance and updating on the Code of Ethics. Regarding the second part of the recommendation, GRECO had accepted that regular training was in place but pointed out that no new developments had been reported as regards confidential counselling and recalled its clear preference for having such counselling dissociated from the disciplinary systems.

64. The Serbian authorities now report that an Ethics Committee was established within the SPC governed by the "Rules of Procedure of the Ethics Committee" and that the Ethics Committee in 2019 set up a Working group for drafting a new Code of Ethics. The new Code is currently under discussion and has not been adopted but the current one is being promoted amongst public prosecutors through the activity of the Judicial Academy which has integrated this issue into its 2019 Training Programme. The authorities add that "Guidelines on recognising and countering risks of undue influence" were published in February 2019 and taken into account by the Judicial Academy as well. In 2019, three training sessions were organised in the field of professional ethics, involving 51 public prosecutors.
65. GRECO takes note of this information and welcomes in particular the setting up of a Working group entrusted with the preparation of a new code of ethics. It also notes that ethical issues are taken into account within the framework of the training activities carried out by the Judicial Academy. It encourages the Serbian authorities to finalise and adopt a new code as soon as possible and to organise proper training, guidance and awareness-raising on the code. Furthermore, it points out that no new information has been provided concerning confidential counselling for all categories of prosecutors: this task has been given to the Ethics Committee but has not been implemented so far. GRECO recalls its clear preference for confidential counselling to be organised outside the structure of the SPC.
66. GRECO concludes that recommendation xi remains partly implemented.

*Regarding all categories of persons*

#### **Recommendation xii.**

67. *GRECO recommended that the rules on conflicts of interest and related matters that apply to members of parliament, judges and prosecutors, inter alia, those that concern the definition and management of conflicts of interest, the holding of several public offices concurrently and secondary activities, asset declarations (scope, disclosure of information and control) and sanctions, be further developed and clarified.*
68. It is recalled that in the Interim Compliance Report, this recommendation was not implemented; a draft Law on Corruption Prevention was underway.
69. The Serbian authorities now indicate that the Law on Corruption Prevention was adopted on 21 May 2019 and entered into force on 1 September 2020. They indicate that this law has been assessed positively by an international expertise<sup>3</sup> in particular as regards the provisions on conflicts of interest, subsidiary activities, reporting obligations on discharging another job/activity, and post-employment. The new law has been accompanied by a "Manual for recognising and managing conflicts of interest and incompatibility of offices" drafted with the support of USAID aimed at getting public officials acquainted with the provisions on conflicts of interest, restrictions related to discharging other offices, risk management as regards conflicts of interest and proper integrity behaviour. This Manual is due to be disseminated

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<sup>3</sup> "Analysis and opinion of the Law on the prevention of corruption of the Republic of Serbia", by Drago Kos – report to the European Commission.

prior to the entry into force of the Law. The new Law has also modified deadlines for declaring extraordinary assets and introduced criteria for drafting an Annual Verification Plan of assets. A procedure for determining reasons for detected potential discrepancy in reported declarations has been defined. The Law has extended the circle of the associated persons of the public officials declaring their private interests and assets. The Law should facilitate a smoother implementation of the new Law on determining the origin of property and the special tax adopted by Parliament in February 2020– a law which also aims at reducing the profitability of corruption-related activities. As regards sanctions, public officials who fail to declare assets or provide false information may be punished by imprisonment from six months to five years, and legal consequences as regards the exercise of the public function (ten-year prohibition of exercising the function or termination of the function). Fines can also be imposed, and plea agreement can take place, for misdemeanours.

70. GRECO welcomes the adoption of the new Law on Corruption Prevention. GRECO also takes note of the above-mentioned international expertise. It takes the view that this law constitutes an improvement of the situation, in particular as regards criteria to give permission for accessory activities; restrictions applicable to public officials being engaged as public entrepreneurs; information on assets from close relatives to public officials; guidance on situations which actually or potentially constitute conflicts of interest in the performance of the principal public function; consistency between specific procedural laws and the Law regarding the handling of conflicts of interest. GRECO also notes that the subsequent “Manual for recognising and managing conflicts of interest and incompatibility of offices” is due to be made public before the entry into force of this Law, and that the new Law on determining the origin of property and the special tax has been adopted. It takes the view that this normative framework, that is applicable to parliamentarians, judges and prosecutors, meets GRECO’s concerns in this respect, as expressed in the recommendation. However, GRECO also notes that the new Law on Corruption Prevention presents shortcomings which could endanger its application. For example, there is no clear criteria for allowing, or providing restrictions to, public officials performing business activities; public officials are still given full discretionary right to report or not on parts of their assets; several categories of public officials’ assets are not made public; the maximum level of fines for breaches of the law (misdemeanours) remain low; the failure by public officials to report on, or the fact of giving false information in relation to, income has not been criminalised. As a result, GRECO cannot conclude that the requirements of the recommendation have been fully met.
71. GRECO concludes that recommendation xii has been partly implemented.

### **Recommendation xiii.**

72. *GRECO recommended that the role of the Anti-Corruption Agency in the prevention of corruption and in the prevention and resolution of conflicts of interest with respect to members of parliament, judges and prosecutors be further strengthened, inter alia, i) by taking appropriate measures to ensure an adequate degree of independence and by providing adequate financial and personnel resources and ii) by extending the Agency’s competences and rights, to include, for example, the right to immediate access to data from other public bodies, the right to act upon anonymous complaints and on its own initiative, and the right to file criminal charges, request misdemeanour proceedings and launch initiatives for disciplinary proceedings.*
73. It is recalled that in the Interim compliance Report, GRECO concluded that this recommendation was not implemented; legislation was underway, but no draft law was provided.

74. The Serbian authorities now report that the Anti-Corruption Agency's independence, resources and powers have been significantly improved by the new Law on Corruption Prevention. They refer to international expertise in this respect (see para. 69 above). They indicate that the composition of the Council of the Agency has been changed: the Director and the Council members are now to be elected by the National Assembly following a detailed procedure including merit-based criteria and to be conducted by the Selection Committee of the Judicial Academy. They further report that the Law provides that the annual funds allocated to the Agency "*must be sufficient to provide its efficient and independent operation*" and that the Agency has been given autonomy in implementing the budget. The authorities point out that in 2020 an increase was approved as regards both budget and staff and that employment procedures were finalised for 19 positions and underway for 10 positions, and that salaries are to increase by 30 %.
75. The authorities furthermore report that direct access to data from other public bodies have been established through expeditious procedures. They specify that the Agency can also have access to data from banks and financial institutions within the framework of the "Law on Prevention of Money Laundering and Terrorist Financing". The authorities also mention that the new Law on Corruption Prevention has introduced for the Agency the right to act upon anonymous complaints. They add that filing criminal charges, requests for the initiation of misdemeanour proceedings and initiatives for launching disciplinary proceedings have been expressly provided for by the new law, thus extending significantly the role and powers of the Agency – it is also noted that the Agency already had legal powers to file criminal charges according to the Code of Criminal Procedure. According to the new law, the Agency can act on its own initiative as regards any violation of this law, which strengthens its role in the prevention of corruption and in the prevention and resolution of conflicts of interest.
76. Furthermore, the Law on Corruption Prevention entrusts the Anti-Corruption Agency with the legislative initiative and the publication of opinions on corruption risk assessments of relevant draft laws. The Agency must also initiate the adoption of regulations aimed at eliminating corruption risks and ensuring compliance of the normative framework with international obligations in the field of the fight against corruption. It must be consulted on corruption risk assessment by state authorities during the preparatory phase of the legislative process when appropriate. The Agency has also been given the power of monitoring the implementation of strategic documents and integrity plans.
77. The Anti-Corruption Agency has also now the responsibility for adopting and publishing training programmes on the prevention of corruption and the strengthening of integrity and for providing training instructions.
78. GRECO notes that the new Law on Corruption Prevention provides appropriate guarantees for ensuring the independence of the Anti-Corruption Agency and for extending its competences and rights as expected in its recommendation. It welcomes the increase in the Agency's resources, competences and a proper degree of independence to effectively perform its tasks. The Agency is given a more central role in preventing and resolving conflicts of interest. GRECO notes in particular:
- that the Law grants the Agency immediate and unimpeded access to official records and documents held by public authorities and that financial institutions must submit data on all the accounts of public officials;
  - the Agency's obligation to act upon complaints is extended to anonymous complaints and to take action *ex officio* to disclose corruptive behaviour, file criminal charges, request misdemeanour proceedings and launch disciplinary proceedings.

Moreover, the law strengthens the Agency's competences as regards preventive activities, e.g. practical guidance to parliamentarians, judges and prosecutors in issues related to conflicts of interest, and training activities.

79. GRECO concludes that recommendation xiii has been implemented satisfactorily.

### **III. CONCLUSIONS**

80. **In view of the foregoing, GRECO concludes that Serbia has implemented satisfactorily or dealt with in a satisfactory manner two of the thirteen recommendations contained in the Fourth Round Evaluation Report.** Ten recommendations have been partly implemented and one has not been implemented.
81. More specifically, recommendations iii and xiii has been implemented satisfactorily, recommendations i, iv, v, vi, vii, viii, ix, x, xi and xii have been partly implemented and recommendation ii has not been implemented.
82. With respect to *members of parliament*, a step forward has been taken with the adoption of the new Law on Lobbying whose effective application is supported by a set of secondary legislation, and by training and awareness raising activities. If implemented as foreseen, this law would present a stride forward in increasing the transparency of lobbying. Transparency on the law drafting process has been further improved: state bodies are to disclose draft laws in a timely manner via public websites, amendments to legislative proposals are now made public online, an effective process of public participation in the legislative process at a preliminary stage has been established by law and public hearings are organised at Parliament on important laws, though the organisation of such hearings remain at the discretion of the parliamentary committees. The use of urgent procedure appears to have decreased but the use of urgent procedure still leaves the way open for introducing late amendments which have not been subject to public information and debate in due time. The adoption of a Code of conduct for parliamentarians remains a priority.
83. As regards *judges and prosecutors*, the fact that constitutional reforms are still underway remains an obstacle in respect of implementing a number of GRECO's recommendations. GRECO is critically concerned about the rather acrimonious environment in which the consultation process has taken place, with various non-governmental organisations, including the Judges' Association and Prosecutors' Association, withdrawing from the process, and the criticism of not only these organisations but also the Consultative Council of European Judges on some aspects of the draft constitutional amendments.<sup>4</sup> Given the importance of the judicial reforms, GRECO continues to encourage the Serbian authorities to spare no efforts to make sure that these constitutional amendments have the broadest base of support possible, ensuring that the final constitutional amendments are in line with GRECO's recommendations, in particular as regards the composition of the High Judicial Council (HJC).
84. The normative framework and the methods to improve the objectivity and transparency of the recruitment procedures of judges and prosecutors are to be welcomed. Training and awareness raising activities are organised for a large number of judges and prosecutors, in particular through the Judicial Academy. More work remains to be done on the system of appraisal of the performance of judges and prosecutors. The adoption of "Guidelines for the prevention of undue influence on judges" appear to go in the right direction, but the Ethics Committee of the HJC has

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<sup>4</sup> See *inter alia* the opinion of the CCJE Bureau on the compatibility with European standards of the newly proposed amendments to the Constitution of the Republic of Serbia which will affect the organisation of judicial power: <https://rm.coe.int/opinion-on-the-newly-proposed-amendments-to-the-constitution-of-the-re/168090751b>

not started implementing its mandate as regards judicial ethics. The Code of ethics for prosecutors has not been adopted yet. Further measures are also to be taken for judges and prosecutors to effectively communicate on ethical issues, provide guidance and confidential counselling.

85. The new Law on Corruption Prevention is to be welcomed as it improves the rules on conflicts of interest that apply to parliamentarians, judges and prosecutors and provides appropriate guarantees for ensuring the independence of the Anti-Corruption Agency and for extending its competences, and thus gives it a more central role in preventing and resolving conflicts of interest. However, shortcomings remain in this law which need to be remedied.
86. In the Interim report GRECO concluded that the overall level of compliance with the recommendations was no longer "globally unsatisfactory" within the meaning of Rule 31, paragraph 8.3 of the Rules of Procedure. It encouraged the Serbian authorities to pursue their efforts to implement GRECO's recommendations. GRECO acknowledges the efforts undertaken by the Serbian authorities since the Interim report, and notes that several recommendations cannot be fully implemented because of the current parliamentary situation which prevents from adopting the new Constitution. However, at the stage of this Second Compliance report, eleven of thirteen recommendations are yet to be implemented satisfactorily. As the vast majority of the recommendations remain partly implemented, GRECO has no choice but to consider the situation as "globally unsatisfactory" in the meaning of Rule 31, paragraph 8.3 of its Rules of Procedure. GRECO therefore decides to apply Rule 32 concerning members found not to be in compliance with the recommendations contained in the Evaluation Report and asks the Head of delegation of Serbia to provide a report on the progress made in implementing recommendations i and ii and iv to xii by 31 October 2021.
87. Finally, GRECO invites the authorities of Serbia to authorise, as soon as possible, the publication of the report, to translate it into the national language and to make this translation public.