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## FOURTH EVALUATION ROUND

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

### SECOND INTERIM COMPLIANCE REPORT TURKEY

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

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## **I. INTRODUCTION**

1. The Fourth Round Evaluation Report on Turkey was adopted at GRECO's 69<sup>th</sup> Plenary Meeting (16 October 2015) and made public on 17 March 2016, following authorisation by Turkey ([Greco Eval IV Rep \(2015\) 3E](#)). GRECO's Fourth Evaluation Round deals with "Corruption prevention in respect of members of parliament, judges and prosecutors".
2. In the [Compliance Report \(GrecoRC4\(2017\)16\)](#), which was adopted by GRECO at its 77<sup>th</sup> meeting (16-18 October 2017), it was concluded that two of the 22 recommendations had been implemented satisfactorily by Turkey. In view of this result, GRECO concluded that the very low level of compliance with the recommendations was "globally unsatisfactory" in the meaning of Rule 31, paragraph 8.3 of its Rules of Procedure.
3. In the [Interim Compliance Report](#), which was adopted by GRECO at its 82<sup>nd</sup> meeting (22 March 2019), GRECO found that concerning members of parliament, judges and prosecutors, no tangible progress had been made to implement its recommendations and that the shortcomings identified in the Evaluation Report remained. GRECO concluded that the current level of compliance with the recommendations remained "globally unsatisfactory" within the meaning of Rule 31, paragraph 8.3 of the Rules of Procedure. In application of paragraph 2.i) of Article 32 of the Rules of Procedure, GRECO asked the head of the Turkish delegation to provide a report on the measures taken to implement the outstanding recommendations (namely recommendations i to xviii and xxi) by 31 March 2020. An extension was granted owing to the exceptional circumstances and this report, which served as basis for the second *Interim Compliance Report*, was received on 11 June 2020.
4. It is recalled that in the Compliance Report, recommendations xix and xx were considered as implemented satisfactorily, recommendations iii, iv, vii, x and xxii as partly implemented and recommendations i, ii, v, vi, viii, ix, xi to xviii, and xxi as not implemented. No changes intervened since then and, in the *Interim Compliance Report*, GRECO came to the same conclusion as to the remaining recommendations. This [second Interim Compliance Report](#) assesses the further implementation of the pending recommendations since the adoption of the first *Interim Compliance Report* and performs an overall appraisal of the level of Turkey's compliance with these recommendations.
5. GRECO selected the Netherlands and Croatia to appoint Rapporteurs for the compliance procedure. The Rapporteurs appointed were Ms Marja VAN DER WERF, on behalf of the Netherlands and Mr Dražen JELENIĆ, on behalf of Croatia. They were assisted by GRECO's Secretariat in drawing up this Report.

## **II. ANALYSIS**

*Corruption prevention in respect of members of parliament*

### **Recommendation i.**

6. *GRECO recommended that the transparency of the legislative process be enhanced by (i) further developing the rules on public consultations in respect of civil society groups and citizens; and (ii) ensuring that draft legislation is presented in a reasonable format (e.g. avoiding that large quantities of unrelated pieces of legislation are treated as one single package) and within adequate timelines to allow for meaningful public consultation and parliamentary debate.*

7. GRECO concluded, in its first *Interim* Compliance Report, that this recommendation was not implemented and referred to its finding in the Compliance Report, as no changes were reported. As regards the first part of the recommendation, it noted the continued absence of rules governing the organisation of public consultations in the legislative process, beyond the possibility of inviting experts or civil society to hearings during the early stages of the preparation of legislation. Therefore, GRECO concluded that this part of the recommendation had not been implemented. As to the second part of the recommendation, GRECO noted that the number of omnibus laws had been on the rise over the last three legislative sessions of the GNAT and found it a worrying trend going against the objective of the recommendation.
8. The Turkish authorities once again reiterate their position without providing further information.
9. In the absence of new information, GRECO concludes that recommendation i remains not implemented.

**Recommendation ii.**

10. *GRECO recommended that a code of ethics/conduct for members of parliament be adopted covering various situations of conflicts of interests (gifts and other advantages, accessory activities, post-employment situations, third party contacts, including with lobbyists, etc.).*
11. GRECO refers to the Compliance Report and the *Interim* Compliance Report where it found that the recommendation was not implemented. GRECO noted that the proposed Law on Ethical Conduct of MPs had not been adopted. Furthermore, the proposed law appeared to be mainly a framework text that was not very detailed in several respects, including gifts. GRECO added that codes of conduct gain in being less static than legislation, containing more detail, providing guidance in a more flexible way and being capable of evolving over time. In the first *Interim* Compliance Report, the authorities indicated the bill on Ethical Conduct of MPs had not be finalised during the 26<sup>th</sup> legislature, i.e. before the general elections of June 2018. The authorities stated that there was no obstacle to the new bill being proposed again during the current 27<sup>th</sup> legislature.
12. The Turkish authorities reiterate their position without providing further information.
13. In the absence of new information, GRECO concludes that recommendation ii remains not implemented.

**Recommendation iii.**

14. *GRECO recommended that a requirement of "ad hoc disclosure" be introduced for members of parliament for situations of personal/financial conflicts of interest which may emerge during the parliamentary proceedings and that rules for such situations be developed.*
15. GRECO refers to its Compliance Report where it concluded that this recommendation was partly implemented at this stage. The authorities mentioned the draft Law on Ethical Conduct of MPs, which was to call on MPs to make the general interest prevail in case of any personal/financial conflict of interest, and to inform the GNAT of potential conflicts of interest interfering with their legislative functions. The authorities added that the bill was publicly available on-line. Nevertheless, GRECO noted that while the proposed law went in the right direction, its formulation was not very precise, for example, as regards the timing of such declarations, an element which is of fundamental importance for ad hoc declarations. In its first *Interim*

Compliance Report, GRECO noted that the draft Law on Ethical Conduct of MPs had not been adopted before the June 2018 general elections and was reportedly to be examined by the new legislature.

16. The Turkish authorities reiterate their position without providing new information.
17. In the absence of any development, GRECO concludes that recommendation iii remains partly implemented.

**Recommendation iv.**

18. *GRECO recommended that the accessory activities which are incompatible with the duties and functions of members of parliament be reviewed and that comprehensive and enforceable legislation be ensured, to remedy any conflicts of interest resulting from such activities.*
19. GRECO refers to its Compliance Report which found the recommendation to be partly implemented. The authorities first indicated that Law No. 6771 on Amending the Constitution of the Republic of Turkey (adopted on 21 January 2017), had removed Article 82 of the Constitution, which stipulates that "a deputy's acceptance of a temporary assignment, not exceeding a period of six months, given by the Council of Ministers on a specific matter, is subject to the decision of the Assembly". Secondly, they referred to the proposal of Law on Ethical Conduct of MPs, which was to cover the issue of accessory activities, as well as post-employment restrictions, and available sanctions where required. GRECO took note of the legal framework set out in the proposed law and how it listed activities incompatible with being an MP, procedures for examining alleged violations and possible sanctions, which would address the current recommendation. GRECO observed that the draft had been agreed at parliamentary committee level and made public. However, in its first *Interim* Compliance Report, GRECO noted that the previous legislature had not adopted the Bill on Ethical Conduct of MPs and that the new legislature had yet to propose its examination.
20. The Turkish authorities reiterate their position without any additional information.
21. In view of the lack of progress, GRECO concludes that recommendation iv remains partly implemented.

**Recommendation v.**

22. *GRECO recommended (i) that the regime of asset declarations of members of parliament be accompanied by a system of verification of their accuracy and veracity as well as effective, proportionate and dissuasive sanctions for violations of the rules; and (ii) that the content of these declarations be made publicly available promptly after their submission to Parliament (it being understood that information concerning spouses and dependent family members would not necessarily need to be made public).*
23. GRECO refers to its conclusion in the Compliance Report, maintained in the first *Interim* Compliance Report, finding the recommendation not to be implemented. The authorities referred to the proposal of Law on Ethical Conduct of MPs which would reduce the reporting period for asset declarations to once every two years and would create an obligation for MPs to declare accessory activities. However, GRECO considered that the proposed law fell short of addressing the full recommendation, in particular the fact that there was no reference to a system of verification of asset declarations or to the publicity of asset declarations. No progress was noted in the first *Interim* Compliance Report.

24. The Turkish authorities reiterate their position without providing additional information.
25. In the absence of any development, GRECO concludes that recommendation v remains not implemented.

**Recommendation vi.**

26. *GRECO recommended that determined measures be taken in order to ensure that the procedures for lifting parliamentary immunity are dealt with as matters of priority and do not hamper criminal investigations in respect of members of parliament suspected of having committed corruption offences.*
27. GRECO refers to its conclusion in the Compliance Report, confirmed in the first *Interim* Compliance Report, that this recommendation was not implemented. The authorities made reference to the fact that Law No. 6718 of 20 May 2016 had introduced a provisional Article 20 to the Constitution, stipulating that the first sentence of the second paragraph of Article 83 (“A deputy who is alleged to have committed an offence before or after election shall not be detained, interrogated, arrested or tried unless the Assembly decides otherwise”) would not apply for the files concerning the lifting of the parliamentary immunity of deputies which had been submitted by the Ministry of Justice, Office of the Prime Minister, the Presidency of the GNAT or Chairmanship of the Joint Committee formed by the members of the Committees on Constitution and on Justice to the authorities empowered to investigate or to allow investigation and the Chief public prosecutor’s offices and courts. The authorities stated that, with this provisional Article, the parliamentary immunity was not applicable to files against MPs. GRECO noted however from the general preamble to Law No. 6718 that the aim of provisional Article 20 was first and foremost to allow prosecution of those MPs whose speech was deemed to support terrorism, even if it was to apply to all files against MPs, to see their immunity lifted.<sup>1</sup> Furthermore, in view of its provisional character, all files not ready at the time of entry into force of provisional Article 20 and during the 15 days of its implementation fell back into the regular system.<sup>2</sup>
28. The Turkish authorities have provided no new information in respect of this recommendation.
29. GRECO concludes that recommendation vi remains not implemented.

**Recommendation vii.**

30. *GRECO recommended (i) that the parliamentary authorities establish dedicated induction and in-service training for members of parliament on corruption prevention, conflicts of interest and ethical conduct and (ii) that a mechanism for confidential counselling be established to provide advice on ethical questions and possible conflicts of interest in relation to their functions and duties.*
31. GRECO refers to the conclusion reached in its Compliance Report whereby this recommendation was partly implemented. In the absence of any development, the first *Interim* Compliance Report confirmed this finding. Concerning the first part of

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

<sup>2</sup> European Commission for Democracy through Law (Venice Commission), Turkey – Opinion on the suspension of the second paragraph of Article 83 of the Constitution (parliamentary inviolability), Adopted by the Venice Commission at its 108<sup>th</sup> Plenary Session (Venice, 14-15 October 2016), [CDL-AD\(2016\)027-e](#)

the recommendation, GRECO noted that MPs have general access to training on matters pertaining to their duties, on a voluntary basis, in addition to access to written material that touches upon certain issues related to their ethical conduct. GRECO found that it fell short of the requirement of the recommendation of a dedicated induction and in-service training for MPs. As to confidential counselling, GRECO noted that the proposed Law on Ethical Conduct of MPs would establish a mechanism (a commission) for confidential counselling, which would represent a positive step. However, this law was not yet adopted. GRECO also noted that counselling was now possible as provided by the Presidency of the GNAT, although to date there have been relatively few counselling requests.

32. The Turkish authorities do not provide any new information on this recommendation.
33. In the absence of new information, GRECO concludes that recommendation vii remains partly implemented.

*Corruption prevention in respect of judges and/or prosecutors*

### **Recommendation viii.**

34. *GRECO recommended that determined measures be taken to strengthen the independence of the High Council of Judges and Prosecutors (HCJP) in respect of potential threats to its independence from the executive authorities and political influence.*
35. GRECO refers to the conclusions reached in both the Compliance Report and the first *Interim* Compliance Report whereby the recommendation was not implemented. The authorities indicated that the recent constitutional reform adopted in 2017 had resulted in the replacement of the High Council of Judges and Prosecutors (HCJP) by the Council of Judges and Prosecutors (CJP). The 13 members of the CJP are composed as such: 4 members among judges selected by the President of the Republic; 4 members among judges of the Council of State and the Court of Cassation and 3 members among academics and lawyers, selected by the GNAT; the Minister of Justice acting as president and the Undersecretary also being a member, both being appointed by the President of the Republic. As all CJP members are chosen by the executive and legislative powers, GRECO was critically concerned that the CJP appeared to be even less independent as a body than was the HCJP. This development resulted in the CJP clearly not being in line with the international standard calling for at least half of the members of self-governing judicial bodies to be elected by their peers, as enshrined in the Council of Europe Committee of Ministers Recommendation CM/Rec(2010)12.<sup>3</sup>
36. The Turkish authorities now reiterate their position and notably that the CJP is to exercise its functions impartially and independently and in accordance with the principles of independence of the courts and security of the tenure of judges. They add that the Minister of Justice, as chairperson of the CJP, only chairs the plenary sessions and cannot participate in the meetings related to disciplinary issues.
37. GRECO takes note of the information provided by the Turkish authorities. It notes, in particular, that the composition of the CJP remains in direct contradiction with the standards of the Council of Europe as referred to in GRECO's previous reports (as mentioned above) as well as GRECO practice, which require that at least half of the members of such self-governing bodies dealing notably with the career of judges should be judges elected by their peers. As it is, the CJP is still chaired by the Minister

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

of Justice and the Deputy Minister is also a member, whilst none of the other members is elected by judges amongst peers.

38. GRECO concludes that recommendation viii remains not implemented.

**Recommendation ix.**

39. *GRECO recommended that the involvement and the responsibility of the judiciary in respect of the process of selecting and recruiting candidates to become judges/prosecutors be considerably strengthened.*
40. GRECO refers to its conclusion in the Compliance Report finding this recommendation not implemented. This assessment was maintained in the first *Interim* Compliance Report, in the absence of any developments. GRECO noted that the situation had not changed more than the HCJP being replaced by the CJP in the final phase of admission of new candidates. The situation that was described in the Evaluation Report, whereby the Ministry of Justice plays a leading and decisive role throughout the recruitment process remained unchanged. In addition, given the misgivings expressed concerning the composition of the CJP, which has no members elected by judges, GRECO was concerned that the process of selecting and recruiting judges was even more under the control of the executive branch. The presence of a CJP member in the interview phase would not suffice to meet the concern of the recommendation.
41. The Turkish authorities indicate that six of seven members of the CJP who are to carry out recruitment interview examination to candidate judges/prosecutors are judges and prosecutors. In line with the Strategic Plan for 2017-2021 of the CJP, one member of the interview commission is to be from the Advisory Board of the Justice Academy of Turkey, who is also a member of the Court of Cassation or the Council of State. The Secretary-General of the CJP also sits on the interview commission. The authorities argue that the Deputy Minister of Justice, who also sits, is by custom a member of the judiciary and that his presence is an established practice. According to the authorities, the composition of the interview commission is not influenced by the executive in carrying out the selection process.
42. The authorities also submit that the Justice Academy of Turkey is given the duty to carry out written and oral examinations at the end of the period of candidacy (amendment of 20.02.2019 to Article 10 of Law on Judges and Prosecutors). The examination in question is carried out by a board consisting of the President and the teaching staff of the academy. The teaching staff of the Academy are judges, prosecutors, and members of the Court of Cassation and the Council of State.
43. GRECO takes note of the information provided by the authorities. GRECO notes that there is no significant change to the system as described in the Evaluation Report. According to Article 9/A of the Law on judges and prosecutors No. 2802 (amended on 21 February 2019), there is still an interview committee responsible for the selection of candidate judges and prosecutors, which is composed of seven members, under the presidency of the Deputy Minister: the president of the investigation board of the Ministry of Justice, the general directors of criminal affairs, legal affairs and personnel of the Ministry of Justice, the secretary general of the CJP and one member selected from the advisory board of the Justice Academy. Apart from the member of the Justice Academy, which can be a judge and is the novelty in the new composition, and the Secretary General of the CJP, all other members are representatives of the Ministry of Justice. This demonstrates the continued influence of the executive on the selection of candidate judges and prosecutors.

44. The CJP (replacing the former HCJP), including the Deputy Minister of Justice, lead the recruitment of candidate judges and prosecutors. In this respect, GRECO has already expressed misgivings in previous reports about the composition of the CJP and the involvement of the Deputy Minister in the recruitment process, and the situation thus remains the same. As to the role played by the Justice Academy in the last stages of recruitment, the situation brings it back to what it was before the previous Academy was disbanded. The establishment of the new Justice Academy is dealt with under recommendation xvii.
45. In view of the above, GRECO cannot consider that the requirements of the recommendation regarding the selection and recruitment of judges and prosecutors have been met.
46. GRECO concludes that recommendation ix remains not implemented.

**Recommendation x.**

47. *GRECO recommended that all candidates to the judiciary be subject to checks concerning their ethical conduct and integrity, based on precise and objective criteria which are open to the public and in accordance with European standards.*
48. GRECO refers to its conclusion in the Compliance and first *Interim* Compliance Reports which found this recommendation to be partly implemented. Initially, there was no assessment/test in respect of academics who could enter the judicial profession directly. In this respect, it turned out that academics did have to take the oral examination, in accordance with Law No. 4954 on the Justice Academy of Turkey. However, in its first *Interim* Compliance Report, GRECO noted that the aforementioned law had been abrogated and that it was unclear what the new setting was. Secondly, there were no established criteria for notions used in the assessment of candidates, such as "honour", "dignity" and "moral conduct". As regards this second aspect, in its first *Interim* Compliance Report, GRECO noted the reported development of a draft code of conduct for judges, which should be subsequently accompanied by explanations concerning, *inter alia*, the notions of "integrity", "honour" and "ethical conduct" but it was too early to come to any firm conclusion.
49. The Turkish authorities now refer to the Declaration of Judicial Ethics in Turkey (hereafter, Judicial Ethics Declaration), published on 6 March 2019 by the CJP. In order to ensure that the ethical principles set out in the declaration are embraced during the early period of candidacy, the ethical principles are made the subject of both training and assessment and evaluation according to the Regulation on the Implementation Principles of Pre-service Training and Written and Oral Examinations of the Justice Academy of Turkey (published on 12 December 2019). Article 11 of the said regulation provides that the purpose of the pre-service training is to "raise judges and prosecutors who embrace and implement the ethical principles of the profession". Similarly, "ensuring that the candidates act in accordance with the written or unwritten rules of the profession by learning the ethics of the profession" is stipulated among the goals of the training in Article 5 of the Regulation. In addition, the provisions of the Regulation on the Pre-Service Trainings of Candidate Judges and Prosecutors of 1 June 2004 and the Regulation on Principles of Ethical Behaviour of the Public Officials and Application Principles and Procedures of 13 April 2005 are also to apply to candidates.
50. Furthermore, reports that include, *inter alia*, the candidate's evaluation in terms of ethical behaviour are drawn up by the judge/prosecutor under whom the training and internship are carried out, in accordance with Article 9 of the aforementioned Regulation. The condition of the candidate is also evaluated in these reports from the aspect of conformity to ethical behaviour principles provided for in the Regulation on



Principles of Ethical Behaviour of the Public Officials and Application Principles and Procedures. These reports are taken into consideration for the continuity of the status of candidacy and acceptance in profession.

51. Persons with a PhD are scored separately during an oral examination by the interview commission members according to various criteria such as their ability in reasoning, levels of culture, their conformity to the rules of the profession based on their behaviour and response in accordance with Article 9/A of the Law No. 2802. Those who succeeded according to these scores do not directly become judges/prosecutors but become candidates and are subject to all professional and ethical inspections as with other candidates and they follow the training offered to all candidates.
52. GRECO takes note of the information provided by the authorities. GRECO notes that candidate judges and prosecutors are evaluated by their superiors during their initial practical training. However, the recommendation calls for precise and objective criteria for all candidates. While GRECO is satisfied there is some form of checks that also apply to candidates from academia, which has been previously the reason for considering this recommendation partly implemented, the question remains as to whether the existing criteria for integrity checks are sufficiently precise as required by the recommendation.
53. Firstly, GRECO considers that the principles contained in the Judicial Ethics Declaration are of such a general nature that they cannot qualify as precise criteria (see paras. 69-70). Secondly, as for those reportedly contained in the Regulation on the Implementation Principles of Pre-service Training and Written and Oral Examinations of the Justice Academy of Turkey, GRECO notes that the provisions referred to by the authorities come under the headings of "objectives of the training" and "aim of the training" and provide guiding principles for training rather than specific criteria for the purpose of integrity checks.<sup>4</sup> Similarly, the provisions referred to by the authorities in the Regulation on pre-service training of candidate judges and prosecutors come under the heading of "general provisions" giving the global aim of the regulation,<sup>5</sup> and the heading of "objectives of training" which gives general objectives.<sup>6</sup> While there are provisions relating to integrity issues in the Regulation on the Principles of Ethical Conduct for Public Officials and on Procedures and Principles for Application (e.g. a provision on conflict of interest), they are addressed to public officials in general whereas GRECO recalls that it had specifically enquired about criteria clarifying the notions which are used in the assessment of candidates to the judiciary, in particular those of "honour", "dignity" and "moral conduct", as underlined in the Evaluation Report (Evaluation Report, para. 134). These regulations do not directly address this issue of integrity tests before joining the judiciary. GRECO trusts that the guidance of the Justice Ethics Declaration will provide such clarifications on the notions of "honour", "dignity" and "moral conduct", but for the reasons stated above cannot consider this recommendation has been fully implemented.
54. GRECO concludes that recommendation x remains partly implemented.

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<sup>4</sup> e.g. "ensuring the acquirement of an understanding of impartiality, independence, equity and justice required by the profession, as well as professional identity", or "Teaching the procedures and principles regarding the writing of decision texts and grounds".

<sup>5</sup> e.g. "the aim of this regulation is to ensure that those appointed (...) become qualified with the necessary knowledge and skills for performance of the job and have a high sense of professional dignity, justice and impartiality and cultural knowledge".

<sup>6</sup> e.g. "to train candidates to become individuals, who have impartiality, dignity and sense of justice required by the profession".

### **Recommendation xi.**

55. *GRECO recommended that evaluations of judges/prosecutors concerning their ethical conduct and integrity be guided by precise and objective criteria, which are open to the public and in conformity with European standards.*
56. GRECO refers to its Compliance and *Interim* Compliance Reports' conclusions according to which this recommendation was not implemented. The authorities indicated that the CJP's Strategic Plan 2017-2021 included an objective on the establishment of an ethical follow-up system, with a code of judicial conduct being elaborated, awareness materials for dissemination in the judiciary, an audit system to ensure that principles of judicial conduct are abided by. In addition, the authorities referred to the aforementioned Project on "Strengthening Judicial Ethics in Turkey", one aim being the development of a code of ethics. In the first *Interim* Compliance Report, GRECO reacted to the authorities' account that a code of judicial ethics for judges and prosecutors was being finalised by underlining that the establishment of precise and objective criteria for the evaluation of judges/prosecutors need not necessarily be done in such a judicial code which dealt first and foremost with standards of conduct. It found that the recommendation remained unimplemented.
57. The Turkish authorities now indicate that the Judicial Ethics Declaration was adopted on 6 March 2019 and published on 14 March 2019, which the authorities consider as providing adequate criteria for the evaluations of judges/prosecutors. An Ethics Committee was constituted within the CJP to make assessments of the procedures and actions that could be encountered during the trial and that might be in dispute in terms of ethical principles. They further refer to the Project on Generalisation of Ethical Principles, Strengthening Transparency in the Court of Cassation and Increasing Trust on the Court of Cassation, which is conducted in co-operation with the Court of Cassation and the UNDP and which targets increasing the conscience and capacity of the Court of Cassation and Turkish Judiciary on increased transparency, public trust and ethical values.
58. GRECO takes note of the adoption of the Judicial Ethics Declaration. However, this document is a list of principles (see paras. 69 and 70) rather than precise and objective criteria that can serve for the regular evaluation of all judges/prosecutors as required by the recommendation. Therefore, it cannot consider the Judicial Ethics Declaration as an adequate response to this particular recommendation.
59. GRECO concludes that recommendation xi remains not implemented.

### **Recommendation xii.**

60. *GRECO recommended (i) that the security of tenure for judicial officeholders be considerably strengthened, by reducing the possibility to transfer judges/prosecutors against their will, that such processes be guided by objective criteria and subject to a review mechanism (appeal); and (ii) that the powers of the Ministry of Justice to intervene in the process concerning temporary assignments be abolished.*
61. GRECO refers to its conclusion in both the Compliance Report and the first *Interim* Compliance Report finding this recommendation not to be implemented. Regarding the first part of the recommendation, GRECO noted in the Compliance Report that the authorities' information indicating that the tenure of judicial officeholders was to be discussed as part of the CJP's Strategic Plan. It further noted that the issue tackled in the second part of the recommendation was also to be part of this discussion. The CJP's Strategic Plan only started in 2017 and was to go on until 2021, and therefore it was not possible for GRECO to pronounce on whether the requirements of the recommendation were met. The same went for the ongoing project organised in co-

operation with TAIEX mentioned by the authorities and which concerned appointment and displacement systems of judges. GRECO also took note, insofar as the second part of the recommendation was concerned, of the power of the Minister of Justice to transfer judges remained unchanged.

62. The Turkish authorities reiterate their position regarding the power of the Minister of Justice to transfer judges against their will and contend that it has never been used in the last 10 years. They now add that work has begun to prepare an amendment to the relevant law to abolish this possibility, which is also mentioned in the Judicial Reform Strategy.
63. The Turkish authorities furthermore indicate that the CJP can move judges and prosecutors from one judicial district to another in order to ensure the employment of judges and public prosecutors in the less developed regions of the country and to ensure the fair working principles among themselves in these places. Judges and prosecutors who are subject to appointment, can make a request for review against the appointment decrees by submitting their grounds to the relevant Chamber in the CJP and in the case of refusal, they are also able to raise their objection before the CJP General Assembly.
64. GRECO notes in respect of the first part of the recommendation the role played by the CJP in deciding to move judges and prosecutors from one judicial district to another, whilst also acting as an appeal body in these matters. GRECO reiterates its misgivings about the new composition of the CJP and the negative impact on the independence and impartiality of what is meant to be the body governing careers in the judiciary. As regards the second part of the recommendation, GRECO takes note of the information whereby work has reportedly started on amending the relevant law with a view to abolishing the possibility for the Minister of Justice of transferring judges against their will. This has the potential of being a positive step, although it is also noted with concern once more that the Minister of Justice is well represented in the CJP, as criticised above. In view of the above, GRECO cannot consider the recommendation even partly implemented.
65. GRECO concludes that recommendation xii remains not implemented.

### **Recommendation xiii.**

66. *GRECO recommended (i) that a code of ethics be established for the particular functions of judges, including practical examples offering adequate guidance on conflicts of interest and other integrity related matters (gifts, recusal, third party contacts and handling of confidential information etc.) and (ii) that it be made accessible to the public and used in the training of all categories of judges.*
67. GRECO refers to its previous conclusion in the first *Interim* Compliance Report finding that this recommendation was not implemented. It noted that some progress appeared to have been made on the preparation of a code of judicial ethics. It considered that the practical guidance that was to be developed afterwards would be crucial to ensure its practical impact. It also renewed its call to ensure that the code takes into account the specificities of each profession, judges and prosecutors.
68. The Turkish authorities now refer to the information provided under recommendation xi on the adoption and publication of the Judicial Ethics Declaration applicable equally to judges and prosecutors. They state that it is built around the following values: respect to human dignity, independence, impartiality, integrity and consistency, representing the trust in the judiciary, safeguarding privacy, acting as required by the profession, being competent and diligent. It is indicated in the declaration that the CJP can be turned to in case of dilemma on judicial ethics. Upon

the first request made in this manner, the General Assembly of the CJP gave its first recommendation in a meeting held on 25 September 2019. Judges and prosecutors whose acts have been determined to be in breach of ethical rules will be subject to the consideration in appointments and promotions because of those acts. Thus, indirect coercive measures have been taken for judges and prosecutors abide by those principles.-It is planned that awareness raising activities such as the practical guide of the Declaration be completed and included into the in-service and prevocational trainings in co-operation with the Justice Academy of Turkey.

69. GRECO takes note of the adoption of the Judicial Ethics Declaration, which it has examined. It notes that it brings together general principles around notions such as respect for human rights, independence, impartiality, propriety, confidentiality, etc. GRECO observes that these principles, including those pertaining to integrity, are relevant but rather general and abstract and that a number of important issues are not tackled in one place but spread out over several principles, in particular the notions of conflict of interest and contact with third parties which are not clearly defined. Furthermore, the Declaration does not deal with recusals in situations of conflict of interest, contrary to what had been announced and is required by the recommendation.
70. In view of the general and abstract nature of the Declaration, GRECO underlines that supplementary practical guidance will be crucial in order to link the principles contained in it to what judges and prosecutors face in the daily exercise of their respective functions. GRECO understands that a practical guide is currently being prepared, which would be a positive development if it clarifies the principles contained in the Declaration. However, GRECO notes that, contrary to what it had called for, the Judicial Ethics Declaration does not take into account the specificities of each profession, i.e. judges and prosecutors, and all principles apply to both without distinction. This is a weakness as the functions of judges and prosecutors are very different by nature and thus demonstrates the general nature of the Declaration. It will therefore be vital that for any guidance on this Declaration to be practical and concrete enough, distinctions being made between judges and prosecutors. GRECO takes note that the Turkish Justice Academy is to organise training based on the future guidance.
71. In view of the above, GRECO cannot consider this recommendation more than partly implemented.
72. GRECO concludes that recommendation xiii has been partly implemented.

**Recommendation xiv.**

73. *GRECO recommended that judges – upon appointment – be obliged to take an oath to adhere to fundamental principles of judicial independence and impartiality when carrying out their judicial functions.*
74. GRECO concluded in both the Compliance Report and the first *Interim* Compliance Report that this recommendation was not implemented. It noted in the *Interim* Compliance Report that the oath appeared to have been submitted to the CJP's Plenary for adoption together with the draft code of judicial ethics but was not adopted yet and no text was available.
75. The Turkish authorities now indicate that all judges (and prosecutors) must sign the Judicial Ethics Declaration whose preamble states that "within the framework of the authorization obtained from the Constitution and laws, by adopting universal principles with their free consciences, judges and public prosecutors fulfil their duties independently and impartially. They sincerely adopt the ethical principles in this

declaration, and they take an oath on their honour and conscience that they shall behave in line with these principles both in their professional and social lives". Moreover, the conclusion provides that "this declaration is a binding document which specifies the ethical principles to be observed by the judges and prosecutors of the Republic of Turkey. In the event that the judges and prosecutors come across a case which is not provided for under this declaration, they shall act in compliance with the spirit of the abovementioned principles which they swore on their honour and conscience to follow. The Judicial Ethics Declaration of Turkey is a promise given by the judges and prosecutors to the Glorious Turkish Nation and to each member of the nation on behalf of whom they decide", according to the text.

76. GRECO takes note of the information provided by the authorities. It considers that the signing of the Judicial Ethics Declaration by all judges is a symbolic gesture of commitment to the standards of the Declaration. However, it has come to GRECO's attention that induction ceremonies for judges are now held in the Presidential Palace, which symbolically does not give a positive signal as to the independence of the judiciary from the executive.<sup>7</sup> Nevertheless, the recommendation, considered in isolation, can be considered met insofar as there is now a written oath to be taken.
77. GRECO concludes that recommendation xiv has been implemented satisfactorily.

**Recommendation xv.**

78. *GRECO recommended (i) that the system of disciplinary proceedings against judges and prosecutors be subject to an in-depth evaluation aiming at establishing a process guided by objective criteria without undue influence from the executive powers and (ii) that this process, measures and sanctions be subject to review by judicial authorities.*
79. GRECO had previously found this recommendation not implemented in both the Compliance Report and the first *Interim* Compliance Report. The authorities reported that the CJP planned to re-examine the disciplinary system as part of its 2017-2021 Strategic Plan. GRECO considered that the fact the CJP's Strategic Plan was to address the question of disciplinary proceedings against judges and prosecutors was a first step. However, no tangible results had been reported. GRECO stressed the misgivings expressed on the composition of the CJP were also relevant in respect of this recommendation. No new information had been provided by the authorities for the first *Interim* Compliance Report.
80. The Turkish authorities now describe the disciplinary proceedings. Under Article 159/9 of the Constitution, disciplinary procedures regarding judges and public prosecutors are initiated upon the proposal of the First Chamber of the CJP and following the approval of President of the CJP. They reiterate that the Minister of Justice, as President of the CJP, cannot initiate an ex officio inquiry or investigation regarding any judge or public prosecutor but, under Article 6/2-ç of the Law No.6087, s/he is to give approval to the procedures followed on the conduct of disciplinary proceedings upon the proposal of the First Chamber. The President of the CJP cannot attend plenary meetings concerning disciplinary procedures or attend to the work of the chambers pursuant to the provision of Article 6/3 of the Law No. 6087. The CJP's General Assembly meetings are presided by the Deputy President of the CJP, in accordance with Article 6/6 of the same Law, and the Deputy President is chosen among the heads of department by the General Assembly pursuant to Article 6/5. The right to make request for the review of decisions and to raise objection and the dismissal are regulated in detail under Articles 62 to 81 of Law No. 2802 and

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<sup>7</sup> See also, Commissioner for Human Rights of the Council of Europe, [Report following her visit to Turkey 1 to 5 July 2019](#), para. 23.

Article 33 of Law No. 6087. The authority deciding on the outcome of disciplinary investigations and prosecutions is the Second Chamber, in accordance with Article 9/2-a-2 of the Law No.6087, decisions of both first and second chambers can be reviewed and decided on by the Chamber which makes the decision while the complaint is decided on by the General Assembly. The authorities add that judicial remedy can be sought against dismissals as a disciplinary punishment, and annulment cases can be initiated against these decisions, which are dealt with in the Council of State as a court of first instance.

81. GRECO takes notes of the information provided by the authorities. The disciplinary system as it stands today with the CJP having replaced the HCJP does not change substantially from the description to be found in the Evaluation Report. The fact that the Minister of Justice is to be involved in the process before a disciplinary process can go ahead (even if s/he is not involved in the work of the two Chambers concerned) remains for instance unchanged. The first part of the recommendation required an in-depth evaluation of the system of disciplinary proceedings against judges and prosecutors with a view to establishing a process guided by objective criteria without undue influence from the executive powers. In view of the above, such an assessment does not appear to have been undertaken. As to the second part of the recommendation, GRECO notes that an appeal against dismissal decisions is possible before the Council of State under normal rules, which is in line with part of the recommendation.
82. However, it has come to GRECO's attention that the power for immediate dismissal of judges and prosecutors enforced during the state of emergency has been extended under Law No. 7145 until July 2021.<sup>8</sup> This gives the power to the CJP General Assembly to dismiss summarily judges and prosecutors, without the normal safeguards, including no possible appeal, if it is suspected that they are members of a criminal organisation, or have acted in junction with such an organisation or have had contacts with it. Around 4 000 judges and prosecutors have been dismissed under these extraordinary rules, representing one third of the judiciary, since the coup attempt in July 2016.<sup>9</sup>
83. In this context, GRECO can but repeat that its misgivings regarding the composition of the CJP are also relevant in respect of this recommendation. That said, it notes that appeals against dismissals are possible before the Council of State, with the exception of summary dismissals by the CJP, which will remain possible until July 2021 as described in the previous paragraph. Therefore, while a positive step, for the time being, this responds partly to the second part of the recommendation.
84. GRECO concludes that recommendation xv has been partly implemented.

#### **Recommendation xvi.**

85. *GRECO recommended that the power of the Minister of Justice to grant permission for the lifting of functional immunity of judges and prosecutors be transferred to the judiciary (e.g. a panel of high-ranking judges or the High Council of Judges and Prosecutors - HCJP) and that the legislation be made clear to that end.*
86. GRECO found in both its Compliance Report and first *Interim* Compliance Report this recommendation not to be implemented. GRECO noted that the CJP's Strategic Plan 2017-2021 was to consider the disciplinary system, but there was no indication that the requirements of the recommendation would be addressed. As regards the existing

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<sup>8</sup> See Commissioner for Human Rights of the Council of Europe, [Report following her visit to Turkey 1 to 5 July 2019](#), para. 21.

<sup>9</sup> *Ibid.* para. 19.

procedure for lifting immunity, it appeared to be the same as that described in the Evaluation Report, which had led GRECO to making this recommendation to remove the power of the Minister of Justice of giving permission or not to investigate with a view to lifting functional immunity. In the first *Interim* Compliance Report, GRECO considered that the information provided concerned changes related to disciplinary proceedings as managed by the CJP rather than the specific question of lifting of the functional immunity of judges. Therefore, GRECO had to assume that the power of the Minister of Justice of giving permission for the lifting of functional immunity of judges and prosecutors was unchanged.

87. The Turkish authorities now provide information on ad interim measures taken to suspend or transfer a judge or prosecutor during disciplinary measures started against them until the conclusion of the investigations (Art. 77, Law No. 2802). The decisions of transfer with temporary authorisations or suspension from office due to disciplinary or criminal investigations fall within the competence of the Second Chamber of CJP (Art. 9/2-a- 3, Law No. 6087). The Minister of Justice, as President of the CJP, cannot participate in the Plenary meetings regarding disciplinary procedures and the works of chambers.
88. GRECO takes note of the information provided by the authorities. However, it does not show any change in the role of the Minister of Justice, as President of the CJP, who must grant permission for the lifting of functional immunity of judges and prosecutors. Furthermore, the reference to disciplinary proceedings is irrelevant as the issue at stake is about lifting the immunity for starting criminal proceedings against a judge. In this respect, the situation has not changed. In addition, the concerns about the composition of the CJP and its impact on its independence are also of importance in the context of this recommendation. GRECO cannot depart from its previous conclusion that the requirements of this recommendation have not been met.
89. GRECO concludes that recommendation xvi remains not implemented.

#### **Recommendation xvii.**

90. *GRECO recommended that the organisational links between the executive authorities and the Justice Academy be reviewed in order to strengthen the involvement of the judiciary as the main interlocutor of the Academy.*
91. GRECO refers to its last conclusions in both the Compliance Report and the first *Interim* Compliance Report finding the recommendation not implemented. In the Compliance Report, the situation had not changed as compared to that in the Evaluation Report. In the first *Interim* Compliance Report, GRECO noted that the Justice Academy had been dissolved and was to be replaced by a Training Centre for Judges and Prosecutors. At the time, however, the functions of the defunct Academy were carried out directly by the Ministry of Justice. GRECO considered that, even if this was only meant as a temporary solution, it went in the opposite direction of what was intended by the recommendation.
92. The Turkish authorities now indicate that the Turkish Justice Academy has been re-established by Presidential Decree No. 34 of 2 May 2019. The authorities argue that the Constitution provides for the establishment of administrative organisations through presidential decrees. The link between the Justice Academy to the Ministry of Justice according to its new structure is that of a "related institution": this status is given to institutions which are to be found in one of the organisations of the legislative, executive and judiciary powers but benefiting from autonomy. The Academy is an institution possessing legal personality, scientific, administrative and financial autonomy and a special budget. The Academy is entrusted with vast

competences in relation to defining the curriculum and the written/oral graduation exams.

93. The Academy is composed of the Presidency and an Advisory Board. The Presidency is composed of the President, selected by the President of the Republic for three years in accordance with Presidential Decree No. 34, and the heads of department of the Academy. The Advisory Board is composed of members appointed for three years: three members to be selected by the Minister of Justice from amongst senior officials of the Ministry of Justice and the Deputy Minister of Justice is to head the board; one member selected by the CJP from amongst judges serving in regional courts of justice and administrative courts; one member selected by CJP from amongst first instance courts and one member from amongst public prosecutors; and one member by the Council of Higher Education from amongst faculty members; the Board of the First Presidency of the Court of Cassation may assign three persons from amongst members of the Court of Cassation; the Board of Presidency of the Council of State may assign two persons from amongst members of the Council of State, and the CJP may assign one person from among its own members (Presidential Decree No. 34, Article 7).
94. GRECO takes note of the updated information provided by the Turkish authorities. While in principle it considers that the re-establishment of the Turkish Justice Academy as a body separate from the Ministry of Justice could be positive, it notes that the legal basis for its establishment is a presidential decree rather than a law therefore undermining its full independence from the executive from the outset.<sup>10</sup> Notwithstanding the authorities' argument that administrative organisations are to be set up by presidential decrees, GRECO underlines that this legal basis binds the Academy's very existence to the executive's goodwill. In addition, it notes that, according to Presidential Decree No. 34 establishing the Justice Academy, the President of the Academy is to be appointed by the President of the Republic, and the Advisory Board is presided by the Deputy Minister of Justice while the Minister of Justice appoints three members of this board from amongst the senior officials of the Ministry of Justice. This shows the continued influence of the executive over the Justice Academy. Consequently, it cannot consider the current situation as an improvement meeting the requirements the recommendation.
95. GRECO concludes that recommendation xvii remains not implemented.

#### **Recommendation xviii.**

96. *GRECO recommended that the special in-service training developed for judges and prosecutors be extended to include regular training on corruption prevention and judicial ethics in line with ethical norms and codes of conduct yet to be established in respect of these two distinct professions.*
97. GRECO found in its conclusions in both the Compliance Report and the first *Interim* Compliance Report that this recommendation was not implemented. GRECO took note of the ongoing development of a code of ethics, which was to serve as reference for future training on judicial ethics but that it had not been completed. In the *Interim* Compliance Report, GRECO further noted that the Turkish Justice Academy previously responsible for training had been dissolved and that its functions had been temporarily entrusted to the Ministry of Justice. GRECO underlined that training ought to be in the hands of the judiciary.

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<sup>10</sup> See also, Commissioner for Human Rights of the Council of Europe, [Report following her visit to Turkey 1 to 5 July 2019](#), para. 24.



98. The Turkish authorities now indicate that training on the recently adopted Judicial Ethics Declaration has started. According to the authorities, from April 2019 to March 2020, 2 653 judges and prosecutors have received training on the Judicial Ethics Declaration and more training sessions are planned in the second half of 2020. The lectures are provided on issues such as ethics, importance of ethical values, ethical values, principles, rules and standards required for the judicial profession, national and international standards of judicial ethics. During these lectures, reference is made to the Judicial Ethics Declaration, the UN Bangalore Principles of Judicial Conduct, and the UN Ethics and Conduct for Public Prosecutors "the Budapest Principles". The seminars are given on the fundamental subjects of the judicial ethics such as respect to human dignity, principle of equality, independence, impartiality, integrity, honesty and coherence, representation of the trust in judiciary, respecting the privacy, being right and proper to the profession, capacity and qualification, professional attention, accountability, legal security, prohibition of acquiring gift and advantage, justice, equity, respectability, and it is ensured that the knowledge, attitudes and behaviors of the members of the judiciary are developed as required by the profession. The Justice Academy continues the works for drafting a new module on code of ethics and prevention of corruption. The authorities state that basic training from judges and prosecutors take place separately, and this includes practical exercises.
99. GRECO takes note of the information provided by the authorities. The regular holding of lectures on the newly adopted Judicial Ethics Declaration is a welcomed development. At the same time, as mentioned before, explanatory guidance will be a crucial tool for the purpose of practical training and for taking account of the specificities of each profession, as per the recommendation; the current lectures on integrity issues are addressed to both judges and prosecutors. GRECO underlines that it will be important to plan practical training, notably based on guidance to be adopted (e.g. using real-life examples corresponding to the different role played by judges and prosecutors as part of the judiciary). In view of the above, GRECO recognises that progress has been made but considers that for the recommendation to be fully implemented, practical training for each profession needs to be more specific and updated on the basis of the future guidance to be adopted regarding the Judicial Ethics Declaration.
100. GRECO concludes that recommendation xviii has been partly implemented.

**Recommendation xxi.**

101. *GRECO recommended (i) that a code of ethics be established for the particular functions of prosecutors, including practical examples offering adequate guidance on, specifically, conflicts of interest and other integrity related matters (gifts, recusal, third party contacts and handling of confidential information etc.) and (ii) that it be made accessible to the public and be used in the training of all categories of prosecutors.*
102. GRECO refers to its conclusions in the Compliance Report and the first *Interim* Compliance Report, according to which this recommendation was not implemented. In the Compliance Report, GRECO referred to its findings under recommendation xiii and xviii where it noted developments regarding the work on a code of judicial ethics and related training but considered it too early to pronounce on whether the requirements of the recommendations would be met. GRECO added that such a code needed to take into account the different functions of prosecutors and judges. In the First *Interim* Compliance Report, some progress appeared to have been made on a code of judicial ethics and that reportedly there were to be specific provisions for prosecutors. It also noted that practical guidance appeared to be planned after the

code's adoption. However, GRECO had seen neither the draft code nor any practical guidance.

103. The Turkish authorities now refer to the information provided under recommendation xiii and further indicate that the Judicial Ethics Declaration covers equally judges and prosecutors. The declaration has been made public after its adoption by the plenary of the CJP. Guidance is being developed.
104. GRECO takes note of the information provided by the authorities. The adoption and publication of the Judicial Ethics Declaration is a positive step. However, it regrets that contrary to what was previously announced there are no specific provisions for prosecutors that would take into account the particularities of their profession. Moreover, the declaration does not in the end deal with recusals in situations of conflict of interest. Moreover, the principles contained in the declaration are rather abstract and the notion of conflict of interest is not clearly defined but touched upon in several provisions. Finally, guidance is still being developed. In this respect, considering the very general nature of the principles contained in the declaration (for instance regarding gifts) and the fact that they do not distinguish between the professions of judge and prosecutor, GRECO considers it crucial that such guidelines, if they are to be truly practical and efficient, should contain concrete examples which are adapted to the daily exercise of prosecutorial functions. In view of the above, the requirements of this recommendation have been partly met.
105. GRECO concludes that recommendation xxi has been partly implemented.

#### **Recommendation xxii.**

106. *GRECO recommended (i) that clear rules/guidelines on recusal be developed in respect of public prosecutors, including an obligation to report such situations within the hierarchical structure of the prosecution service; and (ii) that measures to address a prosecutor's failure to adhere to such standards are ensured.*
107. GRECO refers to its previous conclusions in both the Compliance and the first *Interim* Compliance Reports which found this recommendation to be partly implemented. GRECO recalled that the Evaluation Report reflected a situation where prosecutors were not subject to any explicit rules on recusal. Prosecutors might be given some guidance on the withdrawal/removal procedure and the legal consequences. There was a practice according to which rules on recusal of judges contained in the Criminal Procedure Code were to be applied by analogy to prosecutors. GRECO considered that practice could not be considered sufficient in itself to remedy permanently the absence of explicit rules on the recusal of prosecutors, which should be laid down in an unequivocal manner in law. In the first *Interim* Compliance Report, GRECO noted that the reported inclusion in the future code of judicial ethics of the issue of the recusal of prosecutors had not materialised, as the said draft code was not adopted yet.
108. The Turkish authorities indicate that the Chief Public Prosecutor has a supervision power over public prosecutors (Article 18, Law No. 5235 on Establishment, Duties and Capacities of First Instance Courts and Appellate Courts in Civil Jurisdiction). This power includes the duty to ensure that the Chief Public Prosecutor's Office works in an efficient, coherent and coordinated manner. The Chief Public Prosecutor can remove a prosecutor from a case and assign this case to another prosecutor, where an incident such as a breach of the standards of conduct. In the case of the hostility, kinship relation, or conflict of interest have occurred or emerged between the prosecutor conducting the investigation and the parties, one of the parties or the prosecutor may notify the Chief Public Prosecutor about the situation. The authorities add that if a prosecutor has doubts about the existence of a conflict of interest in a

file under his responsibility, s/he has the possibility of informing the Chief Public Prosecutor. Similarly, parties to a file dealt with by a prosecutor can turn to the Chief Public Prosecutor. The authorities contend that there are no rules because the exclusion/disqualification is implemented by the prosecution office. As to disciplinary measures in cases where a prosecutor continues to work on a file where there is a conflict of interest involving him/her, the authorities add that the Second Chamber of the CJP supervises such situations in accordance with the principles of impartiality and independence stipulated in the UN Bangalore Principles of Judicial Conduct; decision No. 315 of the CJP was adopted in this respect. They contend that there are many decisions of the Second Chamber of the CJP against public prosecutors who do not withdraw from a file in spite of a conflict of interest.

109. GRECO takes notes of the information provided by the authorities. It regrets that contrary to what had been previously announced the Judicial Ethics Declaration does not deal with recusal in situations of conflict of interest. The information now provided does not set out a legal obligation that would require prosecutors to declare whether they have an interest in a case they are investigating and should withdraw from the case, but only that the Chief Public Prosecutor has the power to remove a prosecutor from a case, *inter alia*, if s/he becomes acquainted with circumstances where there is a conflict of interest concerning the prosecutor in charge of a case, which the prosecutor may bring to his/her attention or the parties to the file dealt with by the said prosecutor. GRECO understands that this is a result of the very strong hierarchical structure of the prosecution service in Turkey. GRECO notes that, in terms of disciplinary proceedings in this area, the authorities indicate that the Second Chamber of the CJP deals with many cases of prosecutors failing to withdraw from a case where there is a conflict of interest involving them. GRECO considers that, notwithstanding the existence of a decision adopted by the Second Chamber of the CJP, this demonstrates that there is a need for clear rules on recusal in respect of public prosecutors, notably setting out a requirement to report such situations within the hierarchical structure of the prosecution service and spelling out sanctions in case of breach. As a result, GRECO cannot consider that progress has been made regarding the implementation of this recommendation.
110. GRECO concludes that recommendation xxii remains partly implemented.

### **III. CONCLUSIONS**

111. **In view of the foregoing, GRECO concludes that Turkey has implemented satisfactorily or dealt with in a satisfactory manner three of the twenty-two recommendations contained in the Fourth Round Evaluation Report.** Of the remaining recommendations, nine have been partly implemented and ten have not been implemented.
112. More specifically, recommendations xiv, xix and xx have been implemented satisfactorily, recommendations iii, iv, vii, x, xiii, xv, xviii, xxi and xxii have been partly implemented and recommendations i, ii, v, vi, viii, ix, xi, xii, xvi and xvii have not been implemented.
113. With respect to members of parliament, no tangible progress has been made to implement GRECO's recommendations since the adoption of the first *Interim Compliance Report*. GRECO finds it all the more regrettable that no developments had been reported either between the Compliance Report and the first *Interim Compliance Report*. The draft Law on Ethical Conduct for Members of Parliament was not examined by the previous legislature and has yet to be tabled in the current legislature. Moreover, GRECO noted that this proposed law was a framework text that lacked sufficient detail on a number of relevant issues (e.g. gifts, ad hoc disclosure of conflict of interest, verification and publicity of asset declarations, etc.).

Furthermore, as already underlined in the Compliance Report, a number of shortcomings highlighted in the Evaluation Report remain to be addressed, including the need to enhance the transparency of the legislative process, by laying down rules on public consultations in the legislative process and the lack of measures to ensure MPs' integrity (e.g. a permanent confidential counselling mechanism and operational induction and in-service training on parliamentary ethics).

114. Insofar as judges and prosecutors are concerned, there has been some measure of progress since the adoption of the Compliance Report and the first *Interim* Report. A Judicial Ethics Declaration, that covers both judges and prosecutors without distinction, has been adopted and published. It covers a number of general principles but is rather abstract; it needs to be accompanied by guidance that takes into account the specificities of the distinct functions of judges and prosecutors and provides concrete examples relevant to each profession, preferably in separate documents. There is no clear definition of conflicts of interest, and rules on gifts and contacts with third parties need to be significantly developed. Moreover, the issue of recusals has been left out of the Judicial Ethics Declaration, contrary to what was previously announced.
115. However, as expressed in its previous reports, the underlying reasons for GRECO's recommendations remain the fundamental structural changes which have weakened judicial independence and also led the judiciary to appear even less independent from the executive and political powers now than at the time of the adoption of the Evaluation Report. In this context, GRECO also notes that the European Court of Human Rights issued in 2019 a judgment finding a violation of Art. 18 of the European Convention on Human Rights (ECHR) whereby the judicial process had been misused for ulterior political purposes.<sup>11</sup> Moreover, on 21 February 2020, the Secretary General of the Council of Europe addressed a letter to the Minister of Justice of Turkey<sup>12</sup> to express her concerns about disciplinary proceedings introduced by the Council of Judges and Prosecutors (CJP) against three judges of the Istanbul Assize Court straight after they had ordered the release of an applicant to the European Court of Human Rights in line with the judgment finding his pre-trial detention in breach of Articles 5 and 18 ECHR.
116. As underlined by GRECO in its previous reports, the fact that the newly established Council of Judges and Prosecutors (CJP) – replacing the former High Council of Judges and Prosecutors (HCJP) – is made up of members appointed by the President of the Republic and the GNAT and that none are elected by judges and prosecutors themselves, runs counter to European standards of an independent self-governing body of the judiciary. Furthermore, the executive has kept a strong influence on a number of key matters regarding the running of the judiciary: the process of selecting and recruiting candidate judges and prosecutors; reassignments of judicial officeholders against their will; disciplinary procedures; and training of judges and prosecutors. As regards the training of judges and prosecutors, lectures on the Judicial Ethics Declaration have started but more practical training based on future more detailed guidance is necessary.
117. In the light of the foregoing, GRECO concludes that the current level of compliance with the recommendations remains "globally unsatisfactory" within the meaning of Rule 31, paragraph 8.3 of the Rules of Procedure.

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<sup>11</sup> European Court of Human Rights, judgment of 20 November 2018; [Kavala v. Turkey](#), judgment of 10 December 2019; a Section Judgment of the Court in [Selahattin Demirtaş No. 2 v. Turkey](#) with similar findings under Art. 18 ECHR has been referred to the Grand Chamber where it is pending.

<sup>12</sup> [Letter of the Council of Europe Secretary General to the Minister of Justice of Turkey](#), 21 February 2020.

118. In application of paragraph 2.i) of Rule 32 of the Rules of Procedure, GRECO asks the head of the Turkish delegation to provide a report on measures taken to implement the outstanding recommendations (namely recommendations i to xiii, xv to xviii, xxi and xxii) by 31 October 2021 at the latest.
119. In addition, in accordance with Rule 32, paragraph 2, sub-paragraph (ii.b), GRECO invites the President of the Statutory Committee to send a letter to the Permanent Representative of Turkey to the Council of Europe, drawing his attention to non-compliance with the relevant recommendations.
120. Finally, GRECO invites the authorities of Turkey to authorise, as soon as possible, the publication of the report, to translate it into the national language and to make this translation public.