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FOURTH EVALUATION ROUND

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FOURTH EVALUATION ROUND

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

SECOND COMPLIANCE REPORT

GEORGIA

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I. INTRODUCTION

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

2. The Fourth Round Evaluation Report on Georgia was adopted at GRECO's 74th Plenary Meeting (2 December 2016) and made public on 17 January 2017, following authorisation by Georgia (GrecoEval4Rep(2016)3).

3. The Compliance Report was adopted by GRECO at its 82nd Plenary Meeting (22 March 2019) and made public on 2 July 2019, following authorisation by Georgia (GrecoRC4(2019)9). As required by GRECO's Rules of Procedure, the authorities of Georgia submitted a Situation Report on further measures taken to implement the pending recommendations. This report was received on 31 December 2020 and served, together with the information submitted subsequently, as a basis for this Second Compliance Report.

4. GRECO selected Estonia and the United States of America to appoint Rapporteurs for the compliance procedure. The Rapporteurs appointed were Ms Mari-Liis SÖÖT, on behalf of Estonia, and Ms Michelle MORALES, on behalf of the United States of America. They were assisted by GRECO's Secretariat in drawing up this Second Compliance Report.

II. ANALYSIS

5. GRECO, in its Evaluation Report, addressed 16 recommendations to Georgia. In the Compliance Report, GRECO concluded that recommendations v, vi, x, xii and xvi had been satisfactorily implemented, recommendations i - iv, vii, viii, xi, and xiii had been partly implemented and recommendations ix, xiv, and xv had not been implemented. Compliance with the 11 pending recommendations is examined below.

Corruption prevention in respect of members of parliament

Recommendation i.

6. *GRECO recommended further enhancing the transparency of the legislative process, including by further ensuring that draft legislation, amendments to such drafts and information on committee work (including on agendas and outcome of meetings) are published in a visible and timely manner, and by establishing a uniform regulatory framework for the public consultation procedure in order to increase its effectiveness*.

7. GRECO recalls that, in the Compliance Report, it concluded that this recommendation had been partly implemented. GRECO noted that the parliamentary website seemed to be regularly updated, with amendments to draft legislation published in a visible manner and updates made to the website of each of the committees of the Parliament, which should make it easier to follow the progress of draft legislation, provided the time-lines of the Rules of Procedure were indeed being respected. GRECO also welcomed amendments to the Rules of Procedure on e-petitions, e-legislative initiatives and the follow-up to be given to comments on draft legislation, but considered this to fall short of rules on a public consultation procedure and therefore concluded that the recommendation had been partly implemented.

8. The authorities now report that the Rules of Procedure (RoP) of the Georgian Parliament ensure the transparency and effectiveness of public consultation procedures. Article 46 RoP, for example, provides that if a parliamentary committee

establishes a working group for the preliminary preparation of a bill or another ongoing issue, the committee has the authority to invite relevant stakeholders as members of the working group to participate in its work. More in particular according to Article 102 RoP, any individual "can express his/her opinion as a comment in order to receive public consultations regarding the draft law", or comment on any particular article through the official website of the Parliament of Georgia.[1] The opinions/remarks made before the discussion of a draft law, as published on the Parliament's website, are then forwarded to the committee chair, who – if needed – introduces them to the members of the committee for the discussion of the draft law (Article 107(3) RoP). If the committee accepts the opinions/remarks, this is to be reflected in the committee's conclusions.

9. Furthermore, Article 105 RoP provides that any citizen of Georgia, state body (other than organisations of the executive branch and legal entities of public law under the executive branch), as well as bodies of local self-government, political and public unions registered in Georgia and other legal entities, can submit a legislative proposal to the Parliament. Following the registration of such a legislative initiative, the Bureau of the Parliament transfers the proposal to a designated parliamentary committee, which can invite the author of the proposal to participate in the proceedings before the committee. The authorities emphasise that once a legislative proposal has been submitted, the relevant committee is obliged to discuss the proposal. In 2019 and 2020, approximately 200 legislative proposals were registered in the Parliament, and stakeholders who asked to participate in the proceedings on such a proposal were provided with the relevant access (with some exceptions due to Covid-19 restrictions). In addition, the RoP provide for e-petitions (a written address of a group of no fewer than 300 persons on issues which concern the state and/or are a general problem) and for the electronic submission of legislative initiatives (Articles 203 and 105 RoP), for which an on-line platform is now operational.[2]

10. More specifically, when it comes to constitutional amendments, Article 77(2) of the Constitution of Georgia envisages a specific consultation procedure, requiring the Parliament to make the draft constitutional law (which can be proposed by more than half the total number of the members of Parliament or 200 000 voters) public for nation-wide public discussions. To this end, pursuant to Article 125 RoP, the Parliament creates a "Steering Commission on Public Consideration", which organises public meetings in different administrative-territorial units of Georgia, with the aim of informing the population and ensuring their involvement. Oral and/or written/electronic opinions on the constitutional draft are included in the final protocol of the Steering Commission and are published on the website of the Parliament at the latest 10 days after each meeting. In 2019, two such constitutional bills were discussed and, in 2020, one such bill (which envisaged constitutional amendments regarding the system of parliamentary elections, in which a vast number of stakeholders were engaged).

11. GRECO takes note of the information provided, which provides some additional clarification of the rules in place, even if neither the RoP, nor the specific consultation procedure for constitutional amendments have been amended since the Compliance Report. It welcomes the detailed regulations on a consultation procedure for constitutional amendments but would have welcomed similarly clear rules for other laws and legislative amendments, with appropriate time frames to have input of relevant stakeholders taken into account. Leaving constitutional amendments aside,

[1] It is understood that the words to "receive public consultations" mean that any relevant stakeholders (natural and legal persons) can express a written remark/opinion on a bill or any other issue discussed by the Parliament or by a parliamentary committee. S/he can also ask to participate in the proceedings before the parliamentary committee and express an opinion/remark at the committee meeting and/or ask for an explanation of the bill in question or on any other issue discussed by the committee.
[2] Website for E-submission of Legislative Initiatives and Petitions.

the possibility to provide comments to draft legislation or to submit a legislative initiative through the website of the Parliament falls short of an obligation upon the Parliament itself to pro-actively consult stakeholders in appropriate cases (e.g. by inviting them to a committee meeting), regardless of any possible initiatives undertaken by these stakeholders themselves.[3] Overall, as outlined in the Compliance Report already, GRECO recognises that – with the amendments to the RoP reported in the Compliance Report, the publication (in what appears to be a visible manner) of draft legislation, updates thereof and information on committee work, the specific consultation procedure for constitutional amendments and the possibilities for e-petitions and electronic submission of legislative proposals (for which a platform is now operational) – important steps have been taken to enhance the transparency of the legislative process. Pending the establishment of a uniform regulatory framework for a public consultation procedure, GRECO can however not say that this recommendation has now been fully complied with.

12. GRECO concludes that recommendation i remains partly implemented.

Recommendation ii.

13. *GRECO recommended that (i) an enforceable code of ethics/conduct be adopted covering various situations of conflicts of interest (e.g. gifts and other advantages, incompatibilities, additional activities and financial interests, third party contacts, including with lobbyists) and that it be made easily accessible to the public; (ii) the code be complemented by practical measures for its implementation, including through awareness-raising and dedicated training, confidential counselling and credible monitoring*.

14. GRECO recalls that, in the Compliance Report, this recommendation was partly implemented. More precisely, GRECO welcomed that a Code of Conduct for MPs had been adopted, that the Council of Ethics, once set up, would be able to enforce (minor) violations of the Code and that explicit provisions on gifts, contacts with lobbyists and certain incompatibilities had been included in the Code. Even though GRECO found that for some violations of the Code (which do not refer to the sanctions regime of the Law on Conflicts of Interest and Corruption in Public Institutions), more dissuasive sanctions than the publication of the violation on the parliament's website could have been included, GRECO considered that an enforceable code covering various situations of conflicts of interest was in place and made accessible to the public. The first part of the recommendation had thus been addressed sufficiently. As regards the second part of the recommendation, GRECO welcomed the explicit reference to the provision of training in the Code, but as no training nor any other practical measures for the implementation of the Code had taken place and the Council of Ethics had not started its monitoring yet, GRECO could only conclude that this part of the recommendation had not been implemented.

15. The authorities now report that Article 5 of the Code of Ethics envisages training for members of Parliament with each new convocation of the Parliament in order to introduce the Code of Ethics. To this end, a training module has been developed, which includes a session on conflicts of interest and parliamentary ethics (in addition to such topics as legislative and budgetary processes, gender equality in policy

[3] Even if for draft legislation of the government, the government would be expected to have its own rules on a consultation procedure, the rules in place should also allow for input at other stages of the legislative process, including when it is discussed before the Parliament, in particular as draft legislation may undergo significant changes at a later point of the legislative process. In this context, GRECO also notes that the relatively short time frames in practice do not always allow for the opinions on relevant stakeholders to be adequately taken into account. A case in point in this respect are the draft amendments relating to the appointment of Supreme Court Judges, as referred to under recommendation iv below, when there were only nine days between the initiation of the draft law and its first reading in Parliament. See in this respect, for example, OSCE/ODIHR, *Opinion of Draft Amendments Relating to the Appointment of Supreme Court Judges of Georgia* (17 April 2019), paras. 96-98.

making, legislative transparency and civic engagement mechanisms). Following the parliamentary elections in October and November 2020, the first training took place on 9-10 February 2021.

16. The authorities also report that on 4 February 2021, a new Council of Ethics was established. The Council has been tasked with overseeing the Code of Ethics and to examine alleged violations of the Code *ex officio* or on the basis of a complaint. Notwithstanding the on-going boycott of the Parliament by some opposition parties, eight Members of Parliament (four of the ruling party, four of an opposition party) were selected to become members of the new Council of Ethics on 2 March 2021. It is expected that the Council will be fully operational soon, once it has elected its chair.

17. GRECO welcomes the training provided to new members of Parliament and the appointment of the Council of Ethics (even if the full parliamentary opposition is not represented on this Council). Pending the Council becoming fully operational and the taking of further practical measures for the implementation of the Code of Conduct (such as confidential counselling), GRECO can only conclude that the second part of the recommendation remains to be fully complied with.

18. GRECO concludes that recommendation ii remains partly implemented.

Recommendation iii.

19. *GRECO recommended that a requirement for ad hoc disclosure be introduced when a conflict between specific private interests of individual members of parliament and a matter under consideration in parliamentary proceedings may emerge, that clear rules for such situations be developed, and that the operation of this mechanism be subject to monitoring*

20. GRECO recalls that, in the Compliance Report, it concluded that this recommendation was partly implemented. GRECO took note of the information that the Code of Ethics required MPs to declare in writing to the Rules and Procedures Committee, before the finalisation of the discussions in Parliament, their (or their family's) interest in entrepreneurial activities, but found this a too limited approach to the issue.

21. The Georgian authorities now report that the Rules of Procedure of Parliament contain a number of provisions allowing for the monitoring of potential conflicts of interest, such as:
    - Articles 40 and 41, which allow parliamentary committees to inquire with state officials about allegations relating to an MP;
    - Article 61, which allows for the creation of a Temporary Investigative Commission by Parliament to explore violations of Georgian legislation by state bodies and public officials;
    - Article 8(3), which authorises the Committee on Procedural Issues to analyse, periodically and in case of need, the property declarations submitted by MPs to the Civil Service Bureau, pursuant to the Law on Conflicts of Interest and Corruption in Public Institutions.

22. Furthermore, the authorities submit that on 11 November 2019, the Bureau of the Parliament issued a decree, establishing a special form requiring MPs who sit on the Council of Ethics to declare that there are "no conflicts of interest that would influence their decision in the consideration of the matter", nor that there are "any grounds for recusal or self-recusal established by the statute of the Council of Ethics" or any circumstance described in the Law on Conflicts of Interest and Corruption in Public Institutions. With the same decree, the Bureau also established a special form, which citizens (and MPs themselves) can use to file a complaint with the Council of Ethics regarding alleged violations of the Code of Ethics.

23. GRECO takes note of the information provided. The measures referred to (such as the possibility to set up a Temporary Investigative Commission, the authorisation for the Committee on Procedural issues to investigate property declarations and the possibility for anyone to file a complaint with the Council of Ethics) can be important tools for the monitoring of conflicts of interest. However, beyond the requirement upon MPs contained in the Code of Ethics to disclose any entrepreneurial activities (which has already been assessed in the Compliance Report as being too narrow) and the declaration relating specifically to proceedings before the Council of Ethics, it cannot be said that a requirement for *ad hoc* disclosure of conflicts between an MP's private interests and a matter under consideration by the Parliament is now in place.

24. GRECO concludes that recommendation iii remains partly implemented.

Corruption prevention in respect of judges

Recommendation iv.

25. *GRECO recommended reforming the recruitment and promotion of judges, including by ensuring that any decisions in those procedures by the High Council of Judges a) are made on the basis of clear and objective, pre-established criteria – notably merit, in a transparent manner and with written indication of reasons, and b) can be appealed to a court.*

26. GRECO recalls that, in the Compliance Report, this recommendation was found to be partly implemented. GRECO welcomed the substantive reform of the judicial recruitment process, which included pre-established criteria for also the selection of judicial candidates for the probationary period, the requirement for the High Council of Justice (HCJ) to justify its decisions and make the reasons for its decisions available to the applicant, and the possibility for candidates to challenge the HCJ decision to the Supreme Court. However, GRECO also noted the concerns expressed by civil society organisations and others regarding the lack of transparency and impartiality of the decisions of the HCJ and asked the authorities to keep the situation under review (and to take additional measures where needed). As the concerns GRECO expressed in its Evaluation Report regarding the promotion of judges had not been addressed, GRECO concluded that the recommendation had been partly implemented.

27. The Georgian authorities now report that new regulations have been adopted both regarding the selection and appointment of Supreme Court judges and the reasoning of decisions of the HCJ on the appointment of judges of first and second instance courts. As regards the selection and appointment of Supreme Court judges, following the 2017 constitutional amendments, further amendments were adopted to the Law on Common Courts (LCC) in May 2019. The amendments prescribe a merit-based selection process for Supreme Court judges, providing that the decisions of the HCJ would be based on the same two main criteria as the initial appointment of judges of first and second instance courts and the performance evaluation of judges assigned to three-year terms: integrity and competence.[4] The amendments oblige the HCJ to conduct an open recruitment for Supreme Court judges, determine applicants' eligibility, establish a candidate shortlist by secret vote, conduct background checks and interview each candidate at a public hearing. Following the interview, candidates are scored by each member of HCJ, with a view to establishing a shortlist equal to

[4] Integrity has in this context been defined as good faith and professional conscience; independence, impartiality and fairness; personal and professional behaviour; personal and professional reputation. Competence in turn comprised knowledge of legal norms; the ability and competence to provide legal arguments; writing and verbal communication skills; professional skills; academic achievements and professional training; professional activity (Articles 35(1) and 36(3) of the LCC).

the number of vacancies. The candidates on the shortlist are voted on individually, with those with at least two-third of the votes of members of the HCJ being nominated to be assessed by the Parliament. Following interviews by the parliamentary committee, those nominees receiving a majority of votes of the Parliament (in full composition) are appointed to the Supreme Court. On 12 December 2019, the Parliament selected 14 candidates (out of the 20 nominations) and appointed them for life to the Supreme Court.

28. Further amendments to the LCC were adopted on 30 September 2020. These amendments:
    - abolish the secret ballot, making the information on which candidate is supported by which HCJ member available to other HCJ members and the staff of the HCJ (but not the general public);
    - oblige members of the HCJ to provide a written justification for voting for a particular candidate, which is then published on the website of the HCJ together with the scores and evaluations for each candidate, without revealing the identity of the member of the HCJ who provided the reasoning;
    - introduce the possibility for candidates to challenge decisions of the HCJ at each stage of the selection process to the Qualifications Chamber of the Supreme Court.

    On 8 October 2020 the HCJ announced the start of the new procedure for the selection of candidates for judges of the Supreme Court, for which interviews started on 10 December 2020.

29. The authorities further report, as regards the reasoning of decisions of the HCJ on the appointment of judges of first and second instance courts, that in December 2019 another set of amendments to the LCC were adopted, completing what is called the "Fourth Wave" of the judicial reform. These amendments to the LCC oblige the HCJ to provide their reasoning in writing and publish decisions on the lifetime appointment of judges of district (city) court and courts of appeals, the appointment of a chairperson of the district (city) court and a chairperson and deputy chairperson of the court of appeal.[5] Since 22 May 2020, all decisions on appointments of judges have been reasoned and this reasoning has become publicly available shortly after the appointment decisions have been made. In parallel, the HCJ is reported to be studying the recommendations provided by experts of partner organisations, to ensure that the practice of reasoning the decisions is fully in line with international standards and good practices.

30. Finally, the authorities report that, although the law provides that interviews with judicial candidates are conducted behind closed doors unless otherwise requested by the candidate him/herself, in 2019 only 12 out of the 78 interviews conducted by the HCJ for the office of a judge at a first instance court and/or court of appeal were conducted in a closed session.

31. GRECO takes note of detailed information provided on the appointments of judges to the Supreme Court. It has however not escaped GRECO's notice that the first 14 appointments of Supreme Court judges in December 2019 were marred by controversy, which in the words of – for example – OSCE/ODIHR failed to ensure "an impartial process based on clearly defined and objective criteria without the influence of partisan politics".[6] GRECO welcomes that further changes were subsequently made

[5] This reasoning should include the description of the procedure and profile of the appointed judge, including the scores obtained by him/her and the conclusions on his/her integrity. Furthermore, publishing a dissenting opinion of a member of the HCJ is mandatory.

[6] ODIHR stated that "despite some positive aspects" (…) "neither the HCJ nor the parliament took sufficient measures to ensure objectivity, fairness or consistency during the selection process". See: ODIHR, *Second report on the nomination and appointment of Supreme Court judges in Georgia (July-December 2019)*, 19 January 2020. Similar statements were made by the rapporteurs of the Parliamentary Assembly of the Council of Europe (PACE) in a statement on 13 December 2019 and the EU (European External Action Service).

to the LCC on the appointment of Supreme Court judges.[7] It urges the authorities to follow the opinion of the Venice Commission in this respect in its entirety and ensure that the current and future selection of judges to the Supreme Court avoid a repetition of the shortcomings of 2019, in order to enhance public trust in these proceedings and in the composition of such an important institution as the Supreme Court.[8]

32. Promotion and appointment to the Supreme Court is however only one (albeit important) aspect of the recruitment and promotion process of judges referred to in the recommendation above. GRECO notes in this respect that no information has been provided on the criteria applied for the promotion of judges (i.e. those who have already been appointed to a judicial position) other than those appointed to the Supreme Court (noting that Article 41 of the LCC only provides that "judges shall be assessed against promotion criteria by the High Council of Justice"), that would allow it to say that the recommendation has been fully addressed.

33. GRECO concludes that recommendation iv remains partly implemented.

Recommendation vii.

34. *GRECO recommended (i) that the "Norms of Judicial Ethics" be updated, communicated to all judges and made easily accessible to the public; (ii) that they be complemented by practical measures for the implementation of the rules, such as further written guidance and explanations, further training and confidential counselling.*

35. GRECO recalls that in the Compliance Report it concluded that this recommendation was partly implemented. GRECO took note of the fact that the 2007 "Norms of Judicial Ethics" still needed to be updated, which had a bearing on the other parts of the recommendation. It therefore considered the first part of the recommendation not to have been implemented. As regards the second part of the recommendation, it recognised that further practical measures for the implementation of the "Norms of Judicial Ethics" could only be taken once these norms had been updated. However, as a number of initial training activities had taken place and training on ethics (in the form of a "basic course on judicial ethics" and an "in-depth course on judicial ethics") would be continued by the High School of Justice on a permanent basis, GRECO regarded the second part of the recommendation to have been partly addressed.

36. The Georgian authorities now report that an updated "Norms of Judicial Ethics" was drafted with the involvement of judges from all three court instances and with assistance of international experts. This draft was first submitted to a working group overseeing the implementation of the Judiciary Strategy for 2017-2021, in which civil society organisations and other stakeholders (such as the Independent Inspector, who is vested with the authority to receive complaints and initiate disciplinary proceedings) participated as well, after which it was forwarded to the HCJ. On 31 January 2020, the HCJ officially approved the draft "Rules of Judicial Ethics" and submitted it to the Conference of Judges for their final adoption.[9] However, the

[7] It welcomes in particular that the secret ballot is removed, that each vote of the HCJ is to be accompanied by written reasoning and made public, that candidates for the Supreme Court who are at the same time HCJ members have to recuse themselves from HCJ procedures on this issue and that decisions of the HCJ can be appealed to the Qualifications Chamber of the Supreme Court (while noting at the same time however that if the HCJ does not follow the decision of the Qualifications Chamber no further appeal is possible).

[8] The Venice Commission recommended to "provide for the disclosure, together with the vote and the reasoning, the identity of the member of the HCJ who cast the vote" and "to allow a second and final appeal to the Qualifications Chamber of the Supreme Court against the second decision of the HCJ". See Opinion of the Venice Commission on the draft Organic Law amending the Organic Law on Common Courts, CDL-AD(2020)021, as well as the Urgent Opinion of the Venice Commission on the Selection and Appointment of Supreme Court Judges, CDL-AD(2019)009.

[9] The draft "Rules on Judicial Ethics" adopted by the HCJ sets out rules on the conduct of judges in seven parts (1. independence, 2. impartiality, 3. integrity (inviolability), 4. propriety, 5. equality, 6. competence, diligence

process of adoption of the "Rules of Judicial Ethics" has been postponed due to the Covid-19 pandemic. Once the Conference of Judges has adopted the draft "Rules of Judicial Ethics", further practical measures for its implementation (e.g. commentaries) will be taken.

37. GRECO takes note of the information provided. It welcomes the draft "Rules of Judicial Ethics" and what appears to have been a comprehensive consultation process on these draft rules. As these rules have not been adopted yet and no further practical measures, other than the initial training activities mentioned in the Compliance Report, could yet be taken, GRECO can only conclude that this recommendation has not been fully complied with.

38. GRECO concludes that recommendation vii remains partly implemented.

Recommendation viii.

39. *GRECO recommended taking appropriate measures to increase the effectiveness, transparency and objectivity of disciplinary proceedings against judges, inter alia, by defining disciplinary offences more precisely; ensuring in-depth examination of complaints submitted to the High Council of Justice and requiring that its decisions to dismiss cases be reasoned, notified to the complainant and subject to review; introducing a simple majority requirement for the Council's decisions; and removing the Council's power to send private recommendation letters to judges as a disciplinary measure.*

40. GRECO recalls that in the Compliance Report it concluded that this recommendation was partly implemented. It welcomed that the Office of the Independent Inspector had been established, that the Secretary of the HCJ could no longer single-handedly end disciplinary proceedings, that the investigative functions were now separated from those establishing misconduct and deciding on sanctions and that the power of the HCJ to send "private recommendation letters" had been removed, as required by the recommendation. GRECO considered these important steps, but noted they needed to be complemented by further measures to comply with the recommendation. Specifically, disciplinary offences needed to be defined more precisely, decisions taken by the HCJ needed to be by simple majority and a review of decisions with which disciplinary proceedings are terminated be made possible, in particular when the HCJ does not follow the recommendation of the Independent Inspector.

41. The Georgian authorities now report that in mid-2019, as part of the fourth wave of the judicial reform, further improvements have been made to strengthen the accountability of judges. More precisely, Article 75^1 of the Law on Common Courts sets out the grounds for disciplinary liability, distinguishing between standards of professional conduct and disciplinary rules. Pursuant to the new regulations, only intentional and negligent behaviour of a judge as listed in the law may constitute disciplinary misconduct.[10] The disciplinary misconduct outlined includes such issues as interference in the activities of another judge for the purpose of influencing the outcome of a case, refusing to recuse oneself when clear legal grounds for recusal exist, interference in case distribution, violations of various provisions of the Law on Conflict of Interest and Corruption in Public Institutions, discriminatory actions (verbal or other) and misuse of confidential information, etc.

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and fairness and 7. non-judicial activity), covering *inter alia* such issues as recusal, personal relations and avoiding the appearance of partiality, confidentiality of information, non-acceptance of gifts in connection with judicial duties, ancillary activities (etc.).

[10] Disciplinary misconduct is considered to be intentional, when a judge realised the possibility of causing harm, while negligent behaviour refers to situations in which a judge did not realise the possibility of causing harm while acting, but could have or should have realised it.

42. Other changes made to the Law on Common Courts include a shortening of the limitation period for disciplinary misconduct (to three years), requiring a two-thirds majority within the HCJ to dismiss the Independent Inspector (but with a possibility to appeal the decision of the HCJ), an increase of the role and capacities of the Independent Inspector[11], a clarification of the standard of proof required in disciplinary proceedings, an obligation upon the Independent Inspector and the HCJ to reason decisions on the termination of disciplinary proceedings and an obligation upon the HCJ to reason its decisions on the disciplinary liability of a judge. The decision on termination of the disciplinary proceedings of either the Independent Inspector or the HCJ is published on the webpage of the HCJ without identifying the judge concerned. Both the judge in question and the complainant are to be notified of the decision within five days of the decision having been taken. A decision of the Independent Inspector not to take a complaint forward in cases provided for by the law (thereby effectively terminating disciplinary proceedings against a judge) is final and not subject to review, as is the reasoned decision of the HCJ to terminate proceedings (following a preliminary examination of misconduct of a judge, on the basis of the conclusion of the Independent Inspector).

43. GRECO takes note of the changes to the Law on Common Courts. While Article 75[1] still contains some notions of disciplinary misconduct that could be more clearly defined (e.g. "political or social influence or influence of personal interests when a judge exercises judiciary powers"), it finds that overall considerable improvements have been made in defining disciplinary offences more precisely. It welcomes in particular that vague notions "as improper fulfilment of the obligations of a judge" and broad concepts as "breach of judicial ethics" have either been amended or removed from the law completely. GRECO also welcomes that the outcomes of disciplinary proceedings are shared with both the judiciary and the public in an anonymised way, that decisions by both the HCJ and the Independent Inspector to discontinue proceedings have to be reasoned and that complainants are to be notified of such decisions. However, it also notes that decisions of the HCJ to take disciplinary proceedings forward still require a two-thirds majority and no review of decisions of the HCJ terminating disciplinary proceedings is provided for, as the recommendation requires. Therefore, in spite of the welcome progress made, GRECO can as of yet not say that this recommendation has been fully complied with.

44. GRECO concludes that recommendation viii has been partly implemented.

Recommendation ix.

45. *GRECO recommended that the immunity of judges be limited to activities relating to their participation in judicial decision-making ("functional immunity").*

46. It is recalled that in the Compliance Report, GRECO concluded that this recommendation was not implemented. It took note of the information that Georgia's judicial strategy for 2017-2021 included the drafting of legislation to limit the immunity of judges to "functional immunity" as one of the activities to be implemented. As the developments were still at a very early stage, GRECO considered the recommendation not to have been implemented.

47. The Georgian authorities now report that this issue remains under consideration.

[11] The independent Inspector is entitled to terminate disciplinary proceedings, to find a complaint filed against a judge deficient, to dismiss a complaint on the grounds provided for by the law, to apply to the HCJ with a motion to refer the case files to the Prosecution Service, if the preliminary disciplinary inspection reveals indications of a criminal offence, and has access a wide of variety of databases for the purpose of conducting an in-depth examination of the complaints.

48. GRECO regrets that no progress has been made and urges the authorities to pursue further efforts in this area.

49. GRECO concludes that recommendation ix remains not implemented.

Corruption prevention in respect of prosecutors

Recommendation xi.

50. *GRECO recommended (i) regulating, in more detail, the recruitment and promotion of prosecutors so as to ensure that decisions are based on precise and objective criteria, notably merit; (ii) providing for transparent procedures – including by making the above-mentioned criteria public – and ensuring that any decisions in those procedures are reasoned.*

51. GRECO recalls that, in the Compliance Report, it concluded that this recommendation was partly implemented. As regards the first part of the recommendation, it found that the new Law on the Prosecution Service made clear improvements to the procedures for the recruitment of prosecutors. However, the concerns expressed in the Evaluation Report had not been addressed sufficiently. For example, the Chief Prosecutor was still to approve criteria for promotions and could recruit prosecutors without a competition or internship. As regards the second part of the recommendation, GRECO noted the information that all decisions were now to be reasoned, but could not establish that this was a legal requirement, nor could it determine from the information provided that transparent procedures were now provided for.

52. The Georgian authorities report that on 26 August 2020 the General Prosecutor[12] issued the following normative acts (which entered into force the next day, following their publication in the legislative gazette):
    - Order No. 39 on the Adoption of the Rule on the Recruitment, Vetting, Competition, Internal Competition, Promotion, Demotion and Rotation of Employees at the Prosecution Service of Georgia (hereafter: "the Rule on the Recruitment and Promotion of Prosecutors");
    - Order No. 40 on the Adoption of the rule on Internship at the Prosecution Service of Georgia (hereafter: "the Rule on Internship at the Prosecution Service").

53. Regarding the first part of the recommendation, the authorities submit that the Rule on the Recruitment and Promotion of Prosecutors and the Rule on Internship at the Prosecution Service, provide detailed regulations on the recruitment and promotion of prosecutors, which – in conjunction with the Law on the Prosecution Service – outline the criteria to be applied when deciding on the recruitment and promotion of prosecutors. As regards the recruitment, the Rule on Internship at the Prosecution Service now contains a pre-established evaluation form requiring an assessment of candidates' education, qualification, work experience, communication skills, motivation and analytical thinking, as well as their communication, organisational and argumentation skills. The discretionary power of the Internship Commission not to use the questionnaire and evaluation form for candidates for an internship in the Prosecution Service, or to use what was called a special questionnaire in the interview of candidates, has now been abolished. Similar obligations are imposed on the Competition Commission of the Prosecution Service. More in particular as regards promotion, it is now prescribed that decisions on promotion – following a recommendation of the Council for Career Management, Ethics and Incentives – are to be based on the length of service and work experience, qualifications, personal

[12] This position was called Chief Prosecutor before 16 December 2018.

and work skills and performance evaluation results of the prosecutors/investigators concerned.

54. Furthermore, while the General Prosecutor is still authorised to appoint a prosecutor without a competition or internship, s/he can only do so if this person meets the general recruitment criteria[13] for prosecutors and additionally meets certain specific requirements (e.g. four years' experience as an investigator, judge or a criminal defence lawyer).[14] Decisions of the General Prosecutor to appoint someone without a competition or internship will have to be reasoned and the person appointed would still need to successfully complete up to two months' professional training. The authorities indicate that in 2019-2020 34 prosecutors were appointed to the Prosecution Service, of which six were appointed without a competition or internship. All six were former employees of the Prosecution Service with considerable experience in prosecutorial and investigatory work.

55. As regards the second part of the recommendation, the authorities report that apart from the fact that the abovementioned criteria have been made public, it is now explicitly provided for that any decision taken under the Rule on Recruitment and Promotion of Prosecutors and the Rule on Internship at the Prosecution Service are to be published on the website of the Prosecution Service and/or other media. Furthermore, both rules explicitly provide that all decisions regarding the appointment and promotion of prosecutors are to be substantiated. Finally, even if this is already provided for in the legislation, both abovementioned rules also provide that any decision taken pursuant to these rules can be appealed in court.

56. GRECO welcomes the adoption of the Rules on Recruitment and Promotion of Prosecutors and on Internship at the Prosecution Service, which – even with some remaining discretionary power preserved for the General Prosecutor to appoint someone in selected cases without a competition or internship or to promote a prosecutor without the recommendation of the Council for Career Management - clearly improve the bases for recruiting and promoting prosecutors, providing for more transparent procedures and requiring decisions in these procedures to be reasoned.

57. GRECO concludes that recommendation xi has been satisfactorily implemented.

Recommendation xiii.

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

59. It is recalled that, in the Compliance Report, GRECO concluded that this recommendation was partly implemented. GRECO welcomed the new Code of Ethics for prosecutors and the way this code had been communicated to prosecutors, as well as the training provided, the establishment of confidential counselling (even if would have preferred this counselling to be provided by a body that does not conduct investigations into disciplinary offences) and the draft commentary to the Code (even

[13] These criteria are outlined in Article 34, paragraph 2 of the Organic Law on the Prosecution Service and concern such issues as Georgian citizenship, a law degree etc.

[14] The specific requirements are set out in Article 34, paragraph 8, of the Organic Law on the Prosecution Service: At least four years' experience as an investigator, judge or a criminal defence lawyer; at least two years' experience of working as a prosecutor/investigator at the Prosecutor's Office and having been discharged in the past ten years on a personal application, deterioration of health, redundancy or moving to another job; enrolled in the reserve staff of the Prosecutor's Office; having completed an internship at the Prosecutor's Office in the previous three years, or; being a recognized criminal law expert.

if it would have preferred to see more detailed guidance on some of the issues covered by the Code). Pending the adoption and dissemination of this draft commentary, GRECO found it could not conclude that this recommendation had been fully addressed.

60. The authorities now report that on 26 August 2020 a new Code of Ethics for Employees of the Prosecution was adopted by order of the General Prosecutor and entered into force the following day. The aim of the new Code, which replaced the Code adopted in 2017, was to align it with the provisions of the Organic Law on the Prosecution Service, by removing the provisions on disciplinary violations which had now been included in the Organic Law on the Prosecution Service. On 22 September 2020, the Office of the Prosecutor General of Georgia issued the Commentary to the Code of Ethics and the Disciplinary Proceedings for Employees of the Prosecution Service, which was circulated to all staff of the prosecution service by e-mail that same day. Training activities on the Code of Ethics and the draft Commentary have continued in the meantime.[15]

61. GRECO takes note of the information provided. It welcomes that the Commentary to the new Code of Ethics (which in a similar manner as the previous Code covers such issues as conflicts of interest, activities incompatible with the work of prosecutors, confidentiality of information, gifts, use of authority, impartiality etc.) has now also been adopted. GRECO appreciates the real-life examples (as encountered by the General Inspectorate) this document contains. GRECO considers that this recommendation has been complied with. It would nevertheless encourage the authorities to keep related issues under review, for example by disassociating confidential counselling from the body conducting investigations into disciplinary offences.

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

Recommendation xiv.

63. *GRECO recommended widening the scope of application of the asset declaration regime under the Law on Conflict of Interest and Corruption to cover all prosecutors.*

64. GRECO recalls that this recommendation was not implemented in the Compliance Report. The authorities had reported that the matter was under consideration.

65. The Georgian authorities now report that the draft amendments to the Law on Conflicts of Interest and Corruption in Public Institutions has been prepared. According to the amendments, the scope of asset declaration regime applicable to prosecutors will be extended.

66. GRECO welcomes this information and encourages the authorities to pursue this work. As the amendments are still at an early stage, GRECO can only conclude that recommendation xiv remains not implemented.

[15] In the period January 2019 - September 2020, 114 prosecutors and investigators have been trained, with the drafters of the Commentary discussing with attendees of the training in further detail the rules of conduct and disciplinary violations contained in the draft document.

Recommendation xv.

67. *GRECO recommended reviewing the disciplinary regime applicable to prosecutors, including by defining disciplinary offences more precisely and ensuring proportionality of sanctions.*

68. GRECO recalls that in the Compliance Report this recommendation was not implemented. More precisely, it noted that the disciplinary regime had been reviewed in the Law on the Prosecution Service but it had not been defined more precisely, nor had the proportionality of sanctions been ensured.

69. The authorities now report that that they have continued to review the disciplinary regime applicable to prosecutors, resulting *inter alia* in the removing the disciplinary offence "breaking an oath" from article 76 of the Law on the Prosecution Service. The authorities furthermore report that the grounds for disciplinary liability have been explicitly outlined in the Commentary to the Ethics Code and Disciplinary Proceedings for Employees of the Prosecution Service, which outlines in its Chapter 6:

- "defective fulfilment of obligations vested by law" means "a defective fulfilment of the Constitution, the Criminal Code, the Criminal Procedure Code, other legal acts of Georgia as well as the Order of the General Prosecutor and/or internal guidelines". This is a minor disciplinary offence, for which a warning or a reprimand can be imposed as a disciplinary sanction;
- "committing misconduct" entails a violation of the requirements envisaged by the Internal Rules of the Prosecution Service and, depending on the circumstances, counts as a minor or medium disciplinary offence, for which a warning, a reprimand or deduction in salary up to 30% from one up to six months can be imposed as a disciplinary sanction:
- "committing an act unbecoming to an employee of the Prosecution Service" entails a violation of the Code of Ethics, and depending on the circumstances, counts a serious disciplinary offence, for which a reprimand, demotion, deduction of up to 30% of the salary from one up to six months or dismissal from the Prosecution Service can be imposed as a disciplinary sanction;
- "failure to perform duties vested by law" means "the failure to fulfil the Constitution, the Criminal Code, the Criminal Procedure Code and other legal acts, as well as the Order of the General Prosecutor of Georgia and/or internal guidelines", and would be a serious disciplinary offence, for which – as with the previous category - a reprimand, demotion, deduction of up to 30% of the salary from one up to six months or dismissal from the Prosecution Service can be imposed as a disciplinary sanction.

70. Detailed examples of the above conduct have been included in the Commentary, indicating the grounds for disciplinary liability and applicable sanctions. Furthermore, information on disciplinary hearings and sanctions imposed for disciplinary offences are regularly posted on the website of the Prosecution Service (without mentioning the employee involved), to ensure more certainty and uniform practice in disciplinary proceedings and imposing sanctions.

71. GRECO takes note of the information provided. It finds that the categorisation of disciplinary offences in both the Law and the Commentary to the Code of Ethics still does not make it very clear what type of sanctionable conduct this involves and which sanction would be imposed for a given violation. However, it accepts that with the provision of examples of disciplinary offences and applicable sanctions in the Commentary to the Code of Ethics, as well as the removal of the disciplinary offence "breaking an oath" from the law (taken together with the changes to the Law reported on in the Compliance Report), some steps towards compliance with the recommendation have been taken, allowing GRECO to conclude that this

recommendation has been partly addressed. Inspiration for further changes may be found in the amendments made to the disciplinary regime applicable to judges (which provide a more precise definition of initially quite similar categories of disciplinary offences).

72. GRECO concludes that recommendation xv has been partly implemented.

III. CONCLUSIONS

73. **In view of the foregoing, GRECO concludes that Georgia has now implemented satisfactorily or dealt with in a satisfactory manner seven of the 16 recommendations contained in the Fourth Round Evaluation Report.** Of the remaining recommendations seven have been partly implemented and two have not been implemented.

74. More specifically, recommendations v, vi, x, xi, xii, xiii and xvi have been implemented satisfactorily or dealt with in a satisfactory manner, recommendations i, ii, iii, iv, vii, viii and xv have been partly implemented and recommendations ix and xiv have not been implemented.

75. With respect to members of Parliament, the regulations on transparency of the legislative process on the side of the parliament have been greatly enhanced, with a more visible publication of draft legislation, amendments thereto and information on the work of committees, but rules should also be adopted to allow for meaningful consultations to take place. Furthermore, training of MPs on the Code of Conduct has taken place, but further practical measures for the implementation of the Code (such as confidential counselling and monitoring) still have to become fully operational. The implementation of these measures have to some extent been hampered by political developments following the 2020 parliamentary elections. Finally, a clear requirement or rules are still required for MPs to declare conflicts of interest when they occur (*ad hoc*).

76. As far as judges are concerned, changes to the legislation on recruitment of judges have improved the criteria on which decisions on recruitment are to be based, as well as the reasoning and the possibility of review of such decisions. It is noted, however, as demonstrated by the appointment process to the Supreme Court, that apparent good intentions on paper are still too easily trumped by other considerations. GRECO therefore urges the authorities to take further measures to enhance public trust in the recruitment processes of judges, be it to the Supreme Court or common courts, in particular in respect of the decision-making of the HCJ. That said, positive steps have been taken as regards disciplinary proceedings (even if some remaining amendments would still need to be made to fully implement the recommendation in question), in particular by more clearly defining disciplinary offences, and in developing an update of the Rules of Judicial Ethics, which is however still to be adopted. Finally, as regards judges, GRECO regrets that the limitation of the broad immunity of judges is still under consideration.

77. Regarding prosecutors, positive measures have been taken for the practical implementation of the Code of Ethics and welcome improvements have been made to the rules on the recruitment and promotion of prosecutors. However, in spite of improvements made to the disciplinary regime applicable to prosecutors, further amendments are clearly necessary, in particular by defining sanctionable conduct more precisely.

78. In view of the fact that nine out of 16 recommendations are yet to be implemented, GRECO, in accordance with Rule 31 revised, paragraph 9 of its Rules of Procedure,

asks the Head of delegation of Georgia to submit additional information on the pending recommendations, namely regarding the implementation of recommendations i, ii, iii, iv, vii, viii, ix, xiv and xv by 31 March 2022 at the latest.

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