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FOURTH EVALUATION ROUND

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

INTERIM COMPLIANCE REPORT

POLAND

Adopted by GRECO at its 88th Plenary Meeting
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I. INTRODUCTION

1. This Interim Compliance Report assesses the measures taken by the authorities of Poland to implement the pending recommendations issued in the Fourth Round Evaluation Report on Poland (see paragraph 2) covering "Corruption prevention in respect of members of parliament, judges and prosecutors", as well as the additional recommendations issued in 2018 in the Addendum to the Fourth Round Evaluation Report on Poland (Rule 34).

2. The Fourth Round Evaluation Report on Poland was adopted at GRECO's 57th Plenary Meeting (19 October 2012) and made public on 25 January 2013, following authorisation by Poland (Greco Eval IV Rep (2012) 4E). The Fourth Round Compliance Report was adopted by GRECO at its 66th Plenary Meeting (12 December 2014) and made public on 24 February 2015, following authorisation by Poland (Greco RC-IV (2014) 1E). The Second Compliance Report (GrecoRC4(2017)2) was adopted at GRECO's 75th Plenary (20-24 March 2017) and made public on 28 March 2017, following authorisation by Poland. The Addendum to the Second Compliance Report (GrecoRC4(2018)11) was adopted at GRECO's 80th Plenary (18-22 June 2018) and made public on 28 June 2018, following authorisation by Poland.

3. In addition, in light of the judicial reform of 2016-2018 in Poland, which critically affected the judiciary, GRECO decided at its 78th Plenary meeting (4-8 December 2017) to apply its ad-hoc procedure (Rule 34 procedure) to Poland.[1] As a result, GRECO adopted at its 80th Plenary (18-22 June 2018) an Addendum to the Fourth Round Evaluation Report (Greco-AdHocRep(2018)3) (hereafter: the Rule 34 Report), which re-assessed outdated parts of the Fourth Round Evaluation Report.

4. The compliance procedure of the Fourth Evaluation Round (i.e. in respect of the recommendations of the Evaluation Report and, later on, those of the Rule 34 Report in the Addendum to the Evaluation Report) continued in the Second Addendum to the Second Compliance Report (GrecoRC4(2019)23) which was adopted at GRECO's 84th Plenary meeting (2-6 December 2019). This report was made public on 16 December 2019, following authorisation by Poland. GRECO concluded that the overall low level of compliance with the recommendations was "globally unsatisfactory" within the meaning of Rule 31, paragraph 8.3 of the Revised Rules of Procedure. GRECO therefore decided to apply Rule 32 concerning members found not to be in compliance with the recommendations contained in the mutual evaluation report, and asked the Head of the Polish delegation to provide a report on the progress in implementing the pending recommendations (i.e. recommendations i-iii, v-vi, ix, xii, xiv and xvi, and Rule 34 recommendations i-ii and iv-vi), at the latest by 31 December 2020, pursuant to paragraph 2(i) of that rule. This deadline was postponed to 31 March 2021.

5. As required, the authorities of Poland submitted a Situation Report on measures taken to implement the pending recommendations. This report was received on 31 March 2021 and served as a basis for the current Interim Compliance Report.

6. GRECO selected Portugal and the Czech Republic to appoint Rapporteurs for the compliance procedure. The Rapporteurs appointed were Mr António DELICADO on behalf of Portugal and Ms Helena KLIMA LIŠUCHOVÁ on behalf of the Czech Republic. They were assisted by GRECO's Secretariat in drawing up the Interim Compliance Report.

[1] Rule 34 of GRECO's Rules of Procedure provides for an *ad hoc* procedure that can be triggered in exceptional circumstances, such as when GRECO receives reliable information concerning institutional reforms, legislative initiatives or procedural changes that may result in serious violations of anti-corruption standards of the Council of Europe.

II. ANALYSIS

7. It is recalled that GRECO, in its Evaluation Report, had addressed 16 recommendations to Poland, to which an additional six recommendations were added by the Rule 34 Report. At the time of the adoption of the previous compliance report recommendations iv, vii, viii, x, xi, xiii and xv as well as Rule 34 recommendation iii had been implemented satisfactorily or dealt with in a satisfactory manner. Recommendations ix, xii, xiv and xvi as well as Rule 34 recommendation ii had been partly implemented, and recommendations i, ii, iii, v and vi as well as Rule 34 recommendations i, iv, v and vi had not been implemented. Compliance with the pending recommendations is dealt with below.

Corruption prevention in respect of members of parliament

Recommendations i-iii, v and vi.

8. *GRECO recommended:*

- *that interactions by parliamentarians with lobbyists and other third parties who seek to influence the legislative process, be made more transparent, including with regard to parliamentary sub-committee meetings* (recommendation i)*;*

- *i) that the "Principles of Deputies' Ethics" be complemented in such a way so as to provide clear guidance to Sejm deputies with regard to conflicts of interest (e.g. definitions and/or types) and related areas (including notably the acceptance of gifts and other advantages, incompatibilities, additional activities and financial interests, misuse of information and of public resources, the obligation to submit asset declarations and on the attitude towards third parties such as lobbyists – and including elaborated examples); and ii) that such standards of ethics and conduct also be introduced for senators and disseminated among them* (recommendation ii)*;*

- *both in respect of Sejm deputies and senators, the development of a clearly defined mechanism to declare potential conflicts of interest of parliamentarians – also taking into account interests of close family members – with regard to concrete legislative (draft) provisions* (recommendation iii)*;*

- *that the monitoring mechanism in respect of compliance by parliamentarians with standards of ethics and conduct - including rules on conflicts of interest and related areas - be reviewed in order to increase its effectiveness, in particular by simplifying the system of various bodies involved and by providing it with the necessary financial and personnel resources* (recommendation v)*; and*

- *both in respect of Sejm deputies and senators, (i) the establishment of a dedicated confidential counsellor with the mandate to provide parliamentarians with advice on ethical questions and possible conflicts of interests in relation to specific situations; and (ii) the provision of specific and periodic training for all parliamentarians on ethical questions and conflicts of interests* (recommendation vi)*.*

9. GRECO recalls that in the Second Addendum to the Second Compliance Report it had concluded that none of these five recommendations had been implemented. Initially, at the stage of the Compliance Report, various measures[2] had been reported.

[2] These measures included a draft law on lobbying (regarding recommendation i), draft amendments to the Rules of Procedure for the *Senate* (recommendation i, iii and vi), a draft resolution on ethical rules for senators (recommendation ii) and a draft law on asset declarations of officials performing public functions (recommendation v).

However, due to the early stages of these developments and the absence of any concrete information on the draft amendments to the Rules of Procedures concerning senators, as regards recommendations i, iii and vi (noting also that these did not concern *Sejm* deputies), GRECO concluded that these recommendations had not been implemented. In the Second Compliance Report, these measures seemed to have been largely discontinued and the aforementioned recommendations therefore remained non-implemented. In the Addendum to the Second Compliance Report, GRECO took note of the elaboration of a draft law on transparency of public administration, which would be applicable to members of parliament (as well as judges and prosecutors), dealing *inter alia* with conflicts of interest, incompatibilities and cooling-off periods and considered that this law could eventually have a bearing on some parts of the abovementioned recommendations. In the Second Addendum to the Compliance Report, it was reported that the aforementioned draft law had not been agreed by the Council of Ministers due to the parliamentary elections held on 13 October 2019. GRECO reiterated its profound disappointment at the lack of any concrete progress in implementing any of these five recommendations.

10. The Polish authorities now report that, in September 2019, Parliament adopted a law amending the law on the exercise of the mandate of deputies and senators and some other laws. This law amends the provisions related to the submission of asset declarations by deputies and senators, by explicitly providing that these declarations are to include marital property, the property of the spouse and children of the persons obliged to make the declaration (as well as the children of this person's spouse).[3] However, the compatibility of this law with the Constitution was questioned. Therefore, in October 2019, the President of the Republic referred the law to the Constitutional Tribunal, where the request is currently pending.

11. Furthermore, the authorities stress that the implementation of the abovementioned recommendations has been affected by the parliamentary elections in October 2019 (and the discontinuation of activities of the *Sejm* of the previous term) and the outbreak of the Covid-19 pandemic in the course of the new term of the *Sejm*, which has led to a decrease in parliamentary activities and a primary focus on crisis-related activities.

12. GRECO takes note of the information provided. It welcomes that a law amending the legal provisions on asset declarations by parliamentarians has been adopted, widening the scope of these declarations to include information on assets of spouses and children (notwithstanding the currently pending constitutional appeal). However, it notes that this law had already been adopted at the time of the Second Addendum to the Second Compliance Report. Moreover, the law relates to a recommendation that was already concluded to have been dealt with in a satisfactorily manner in the first Compliance Report (adopted by GRECO's 66th Plenary on 12 December 2014), as consideration had been given to widening the scope of asset declarations, in a manner required by that recommendation.[4]

13. Furthermore, while GRECO understands that there have been Covid-related delays in the work of Parliament, it can only conclude at this stage that no steps towards implementation of any of the outstanding recommendations has been taken. GRECO

[3] The law is additionally applicable to the asset declarations to be submitted by members of the European Parliament, persons covered by the Act on Restriction of the Business Activities by Persons Performing Public Functions (*e.g.* members of the Council of Ministers, secretaries and undersecretaries of state, the Ombudsman, the Ombudsman for Children, the President of the Supreme Administrative Court and the First President of the Supreme Court) and the President of the Constitutional Tribunal.

[4] In recommendation iv, GRECO recommended that "consideration be given to widening the scope of asset declarations by parliamentarians to include information on assets of spouses, dependent family members and, as appropriate, other close relatives (it being understood that such information would not necessarily need to be made public).

repeats its profound disappointment about this complete lack of progress in respect of all these five pending recommendations.

14. GRECO concludes that recommendations i-iii, v and vi remain not implemented.

Corruption prevention in respect of judges

Recommendation ix.

15. *GRECO recommended that appropriate legal, institutional and/or operational measures be put in place or strengthened to ensure a more in-depth scrutiny of judges' asset declarations and to enhance the preventive dimension of asset declarations. This should include greater co-ordination of all relevant control bodies.*

16. GRECO recalls that this recommendation was considered partly implemented in the Second Addendum to the Second Compliance Report. In the Compliance Report, it was reported that several measures had been taken to reform the monitoring system with respect to asset declarations to be submitted by judges. They were aimed at strengthening co-operation among the bodies involved rather than entrusting this task to one leading body. It appeared that the rules on review of asset declarations by fiscal authorities, developed by the Ministry of Finance, provided several tools for significantly strengthening in-depth control of the declarations – *inter alia*, by defining a wide range of sources of information to be taken into account – and for co-operation with other bodies concerned. Moreover, draft legislation on asset declarations had been prepared by the Ministry of Justice. However, by the stage of the Second Compliance Report, the work on the aforementioned draft law had stopped. In light of the fact that the rules on the review of asset declarations developed by the Ministry of Finance nevertheless remained in force, GRECO concluded at that stage that the recommendation remained partly implemented. In the Addendum to the Second Compliance Report, GRECO took note of the preparation of a draft law on transparency of public administration (as also referred to above), which would also be applicable to judges. As the draft law was still at an early stage of the legislative process, GRECO concluded that recommendation ix remained partly implemented. In the Second Addendum to the Second Compliance Report no further information was reported and the recommendation remained partly implemented.

17. The authorities now report that the information previously provided by Poland remains valid and no further information can be reported.

18. GRECO regrets that no further progress towards the implementation of this recommendation has been reported.

19. GRECO concludes that recommendation ix remains partly implemented.

Corruption prevention in respect of prosecutors

Recommendation xii.

20. *GRECO recommended that the "Collection of Ethical Principles governing the Prosecutors' Profession" (i) be disseminated among all prosecutors and made easily accessible to the general public; and (ii) that they be complemented in such a way so as to offer proper guidance specifically with regard to conflicts of interest (e.g. definitions and/or types) and related areas (including in particular the acceptance of gifts and other advantages, incompatibilities and additional activities).*

21. GRECO recalls that in the Second Addendum to the Second Compliance Report it concluded that this recommendation remained partly implemented. As regards the

first part of the recommendation, GRECO had already concluded at the stage of the Compliance Report that this part had been implemented satisfactorily, with the distribution of the "Collection of Ethical Principles governing the Prosecutors' Profession" among prosecutors and the information that was provided on this to the general public. As regards the second part of the recommendation, in the Addendum to the Second Compliance Report, GRECO welcomed the adoption of a new "Collection of Ethical Principles governing the Prosecutors' Profession" in December 2017. It however found that the relevant provisions remained rather general and thus did not offer much guidance as regards conflicts of interest and related areas, as required by the recommendation. The recommendation therefore remained partly implemented. In the Second Addendum to the Second Compliance Report, the authorities reported that as the composition of the National Prosecution Council (NPC) was changed in 2018, it had not yet been in a position to give general guidance on conflicts of interest and related areas and the opportunity to interpret the relevant ethical principles had not come up in any concrete case. The recommendation therefore remained partly implemented.

22. The Polish authorities now report that an analysis of the existing legal provisions was conducted by the Presidium of the National Public Prosecutor's Office. While this analysis revealed no need for legislative changes, the NPC was asked to consider taking practical steps to fulfil its competence to supervise compliance with the rules of ethics by public prosecutors. It was *inter alia* proposed to hold periodic meetings of the NPC devoted to issues related to prosecutors' professional ethics or to review the judgments on disciplinary offences for breach of the rules on professional ethics, to post on the website of the NPC typical examples of conflicts of interest (taking into account the disciplinary case law), to develop an interpretation of the rules of ethics and practical guidelines and to supplement the Collection of Ethical Principles governing the Prosecutors' Profession with a definition of a conflict of interests or a prohibition of any action that would constitute a conflict of interest.

23. Subsequently at its meeting on 16 March 2021, the NPC adopted a resolution to supplement the "Collection of Ethical Principles governing the Prosecutor's Profession" with standards in the area of conflicts of interest, providing that "prosecutors shall be under a special obligation not to allow the performance of their duties and official interests [to be affected] in a situation where a conflict of interest arises". A conflict of interest is in turn defined as a situation in which "a prosecutor has such a private interest that may affect the impartial and objective performance of his/her duties or the exercise of his/her powers". If a prosecutor perceives that a conflict of interest would be a possibility, s/he is required to immediately notify his/her superior, even if the conflict of interest would not be serious enough for him/her to be excluded from the proceedings. This addition to the "Collection of Ethical Principles governing the Prosecutor's Profession" entered into force the same day (16 March 2021). It was subsequently disseminated among prosecutors and made available on the website of the National Public Prosecutor's Office.

24. GRECO takes note of the information provided. It welcomes the addition of provisions on conflicts of interest to the "Collection of Ethical Principles governing the Prosecutor's Profession". However, for this part of the recommendation to be fully implemented, it would also have to offer further guidance both on conflicts of interest and other related issues (such as the acceptance of gifts and other advantages, incompatibilities and additional activities), as has also been proposed by the Presidium of the National Prosecutor's Office to the NPC. As this has apparently not been done, this part of the recommendation has been partly implemented.

25. GRECO concludes that recommendation xii remains partly implemented.

Recommendation xiv.

26. *GRECO recommended (i) that the competences of the National Prosecution Council for supervising compliance with ethical principles for prosecutors be clearly defined by law and that the Council be provided with adequate tools and powers for effectively performing this function; and (ii) that appropriate legal, institutional and/or operational measures be put in place or strengthened to ensure a more in-depth scrutiny of prosecutors' asset declarations and to enhance the preventive dimension of asset declarations. This should include greater co-ordination of all relevant control bodies.*

27. GRECO recalls that this recommendation remained partly implemented in the Second Addendum to the Second Compliance Report. With regard to the first part of the recommendation, in the Addendum to the Second Compliance Report, GRECO welcomed the steps taken to provide NPC with the power to enact the "Collection of Principles of Professional Ethics for Prosecutors" (through a legislative amendment) and to interpret these principles when so requested. However, based on the information provided, it could not say that the NPC had been provided with adequate tools and powers to supervise compliance with these principles, given that it did not seem to have the power to take any sort of action in response to violations of these principles. In the Second Addendum to the Second Compliance Report, no further information was reported on this part of the recommendation.

28. As regards the second part of the recommendation, at the stage of the Compliance Report, various measures had been initiated in order to reform the system for monitoring asset declarations to be submitted by prosecutors (and other categories of persons concerned), including the adoption of rules by the Ministry of Finance (providing for more in-depth scrutiny of asset declarations), guidelines by the General Prosecutor and the preparation of a draft law on asset declarations. At the stage of the Second Compliance Report, the draft legislation had however been abandoned. At the stage of the Addendum to the Second Compliance Report, the authorities reported on the draft law on the transparency of publication administration (which was also reported on as regards MPs and judges). GRECO considered this a notable development, which was however still an early stage. As mentioned before, at the stage of the Second Addendum to the Second Compliance Report, the draft law on transparency of public administration had however not progressed further. GRECO therefore concluded that the recommendation as a whole remained partly implemented.

29. The Polish authorities now report, as also mentioned under recommendation xii above, that an analysis of the existing legal regulations (in particular the solutions adopted in the Law on the Public Prosecutor's Office) was conducted by the Presidium of the National Public Prosecutor's Office. On the basis of this analysis, it was concluded that there is no need to introduce legislative changes to introduce new competences and tools for the NPC to supervise the rules of ethics by public prosecutors. Similar to the National Council of Judiciary for judges, the NPC has a statutory duty to ensure compliance with the principles of the professional ethics of prosecutors. At its abovementioned meeting of 16 March 2021, the NPC endorsed the view of the Presidium of the National Public Prosecutor's Office, finding that there was no justification for giving the NPC new powers and tools to oversee the observance of the principles of professional ethics by prosecutors.

30. GRECO takes note of the information provided. As regards the first part of the recommendation, it recalls that at the stage of the Addendum to the Compliance Report, the amendment to Article 43 of the Law on the Public Prosecutor's Office clarified that the NPC was to "enact the Collection of Principles of Professional Ethics for Prosecutors and supervise that it is obeyed". It however remained unclear what

tools and powers the NPC had to perform this function. No information has been submitted to allow GRECO to now conclude that the NPC has indeed been provided with adequate tools and powers to effectively supervise compliance with ethical principles for prosecutors, and no new information has been provided as regards the second part of the recommendation either.

31. GRECO concludes that recommendation xiv remains partly implemented.

Recommendation xvi.

32. *GRECO recommended (i) the provision of on-going training to all prosecutors on conflicts of interest, rules concerning gifts, prohibition or restriction of certain activities and declaration of assets and private interests, by way of dedicated courses referring to practical examples; and (ii) the provision of proper dedicated counselling in prosecutors' offices, in order to raise prosecutors' awareness and to provide them with confidential advice on questions of ethics and conduct – particularly with regard to the areas mentioned under (i) – in relation to specific facts, taking into account the need for common, nationwide solutions.*

33. GRECO recalls that in the Second Addendum to the Second Compliance Report it concluded that this recommendation remained partly implemented. As regards the first part of the recommendation, it had already been satisfied in the initial Compliance Report with the information provided regarding training activities on ethical matters provided to prosecutors, which were to continue in future. As regards the second part of the recommendation, in the previous compliance report, in which the authorities reported that the National Public Prosecutor's Office was considering ways to implement this part of the recommendation, GRECO expressed regret that no further steps had been taken. No further information was subsequently provided in the Second Addendum to the Second Compliance Report.

34. The authorities of Poland now report that, following the abovementioned analysis of the legal provisions by the Presidium of the National Public Prosecutor's Office, it was considered not necessary to appoint ethics advisors for prosecutors within the current structure of the prosecution service. It was concluded that the appointment of ethics advisors would contravene the way the system of the prosecutor's office is operating and is organised, in particular with regard to the disciplinary and professional liability of prosecutors. At its meeting of 16 March 2021, the NPC shared this view of the Presidium and additionally concluded that the appointment of ethics advisors would not fall within the competences of the NPC.

35. GRECO cannot but reiterate its regret that confidential counselling on integrity issues has not been set up for prosecutors. Given the experiences of other GRECO member states, it is clear that whichever way a prosecution service is organised, it should be possible to find a way to offer such counselling.

36. GRECO concludes that recommendation xvi remains partly implemented.

Recommendations issued in the Rule 34 Report of June 2018 (Addendum to the Fourth Round Evaluation Report)

37. As a general remark in respect of all recommendations issued in the Rule 34 Report of June 2018, the Polish authorities state that assessing the changes in the organisation of the judiciary, carried out within the current constitutional order, does not fall within GRECO's mandate, as GRECO is only authorised to assess legislative changes in individual countries from the point of view of corruption prevention. Furthermore, the Polish authorities do not share the negative assessment outlined below. It is emphasised that in the Polish legal order judges are irremovable, with

their independence and impartiality guaranteed by the legislation in force. The reform of the judiciary did not negatively influence this independence and impartiality. The authorities state that the provisions regulating the election of members of the National Council of the Judiciary (NCJ), the establishment of and appointment of judges to the Disciplinary Chamber and Extraordinary Appeals Chamber of the Supreme Court (SC), the appointment and dismissal of presidents and vice-presidents of courts and the new regulations on disciplinary proceedings all meet the standards set in a democratic state.

Rule 34 recommendation i.

38. *GRECO recommended that the provisions on the election of judges to the National Council of the Judiciary be amended, to ensure that at least half of the members of the National Council of the Judiciary are judges elected by their peers.*

39. GRECO recalls that, in its previous compliance report, it concluded that this recommendation was not implemented, given that the authorities did not provide any further information. GRECO expressed regret that, given the central role of the NCJ in the process of appointing judges in Poland, no steps had been taken to amend the Law on the NCJ to ensure a composition of the NCJ in line with the recommendation. It maintained its position that the composition of the NCJ was not in compliance with Council of Europe standards.

40. The Polish authorities now report that the information previously provided by Poland remains valid. Furthermore, The Constitutional Tribunal, in its judgment of 25 March 2019 (K 12/18), stated the compatibility of the election to the NCJ with Article 187, paragraph 1(2), of the Constitution[5]. The method of elections of members of the NCJ (as well as its organisational structure, the scope of its activities and its work) is to be regulated by statute (Article 187, paragraph 4 of the Constitution). It is furthermore emphasised that, as a constitutional state body whose functions are linked to the judicial power, the NCJ is not an organ of the judiciary, as judicial power in Poland is exercised exclusively by courts and tribunals, pursuant to Article 10, paragraph 2, of the Constitution. In turn, the independence of these courts and tribunals is to be safeguarded by the NCJ (according to Article 186 of the Constitution). In addition to judges, the composition of the NCJ includes representatives of the legislative and executive branches, thus going beyond the scope of the principle of separation of powers referred to in Article 10 of the Constitution. The Constitutional Tribunal has taken the position that the NCJ is a body structurally located between the authorities, which conditions the rules of the NCJ as a body constituting an instrument for the implementation of the constitutional principle of balance between the three authorities, as well as a forum for cooperation (judgment of the Constitutional Court of 20 June 2017, K5/17).

41. Furthermore, the Polish authorities refer to the general remark made above (see paragraph 37) and state that the manner in which judges are elected to the NCJ does not in any way affect the prevention of corruption in respect of judges. It is underlined that GRECO has not provided any data to support the thesis that the amendments to the rules on the election of judges to the NCJ may have increased corruption in Poland. Finally, the authorities consider that there are no binding standards to be followed by the state with regard to the establishment and functioning of judicial

[5] Article 187, paragraph 1, of the Constitution reads: "The National Council of the Judiciary shall be composed as follows: 1) the First President of the Supreme Court, the Minister of Justice, the President of the Supreme Administrative Court and an individual appointed by the President of the Republic; 2) 15 judges chosen from amongst the judges of the Supreme Court, common courts, administrative courts and military court; 3) 4 members chosen by the *Sejm* from amongst its Deputies and 2 members chosen by the Senate from amongst its Senators.

council and the participation of other authorities in the procedures for appointing judges. This issue falls with the competence of a given state.

42. GRECO takes note of the information provided. As regards the statements of the Polish authorities concerning the competence of GRECO to issue recommendations on this matter, GRECO refers to the reasoning outlined in the Rule 34 Report, as well as similar recommendations issued to various other member states in the Fourth Evaluation Round. As regards the judgments of the Constitutional Tribunal, GRECO notes that these pre-date its last report of December 2019 and therefore do not provide any new information. GRECO can only reiterate its previous position that, following the 2017 amendments to the Law on the NCJ (which has meant that effectively 21 of 25 members of the NCJ are now elected by Parliament), the election of representatives of the judiciary is no longer in compliance with Council of Europe standards, nor GRECO's well-established practice, which require that at least half of the members of a judicial council should consist of judges elected by their peers.[6] In this respect, GRECO has also taken note of the judgment of the European Court of Human Rights (ECtHR) in the case of *Reczkowicz v. Poland* of 22 July 2021, which refers to the NCJ as a body lacking "sufficient guarantees of independence from the legislature and the executive".[7] In light of this, GRECO regrets that no further steps have been taken to amend the legal provisions on the election of judges to the NCJ, to return to the situation whereby at least half of the members of the NCJ are judges elected by their peers. The current method of election politicises this process and thus threatens judicial independence.

43. GRECO concludes that Rule 34 recommendation i remains not implemented.

Rule 34 recommendation ii.

44. *GRECO recommended i) to reconsider the establishment of an extraordinary appeals chamber and disciplinary chamber at the Supreme Court and ii) reduce the involvement of the executive in the internal organisation of the Supreme Court.*

45. GRECO recalls in that in its previous compliance report, it concluded that this recommendation was partly implemented. As regards the first part of the recommendation, GRECO welcomed the analysis carried out by the Ministry of Justice of the jurisprudence of the SC, aimed at scrutinising the practice of the two new chambers in order to assess their effectiveness, but regretted that this analysis did not fully take all of GRECO's concerns into account, as outlined in its Rule 34 Report (*inter alia* as regards the creation of a hierarchy within the court and the involvement

[6] In this context, GRECO has noted the pending cases before the European Court of Human Rights relating to the NCJ and its procedures, *inter alia* focusing on whether a court, composed of judges appointed with the involvement of the new NCJ, qualifies as an "independent and impartial tribunal established by law" and on the premature termination of office of members of the NCJ (*Grzęda v. Poland*, application no. 43572/18). It has also taken note of the preliminary ruling C-824/18 of the Court of Justice of the EU of 2 March 2021, which states that successive amendments to the law on the NCJ which have the effect of removing effective judicial review of the NCJ's decision proposing to the President of the Republic candidates for the office of judge at the SC are liable to infringe EU law, as well as the judgment of the Court of Justice in case C-791/19 of 15 July 2021 (which, even if it is essentially a judgement on the disciplinary regime applicable to judges in Poland, also states that the independence of the NCJ from political authorities is questionable).

[7] *Reczkowicz v. Poland* (application no. 43447/19, judgment of 22 July 2021) concerned complaints brought by a barrister as regards the Disciplinary Chamber of the SC. The ECtHR ruled that there had been a violation of Article 6, paragraph 1 of the European Convention on Human Rights (ECHR) in that the procedure for appointing judges had been unduly influenced by the legislative and executive powers, which amounted to a fundamental irregularity (compromising the legitimacy of the Disciplinary Chamber).

of lay judges, elected by the legislature).[8] GRECO stated that it would continue to follow this issue (also noting the preliminary ruling[9] of the Court of Justice of the EU (CJEU) of 19 November 2019) and concluded that the first part of the recommendation was partly implemented. As no information had been reported on the second part of the recommendation that part remained not implemented, while the recommendation as a whole was partly implemented.

46. The Polish authorities now report that the previous information provided by Poland remains valid. In addition, as regards the second part of the recommendation, even if the President determines the rules of procedure of the SC, s/he only does so after consulting the College of the SC. Reference is further made to the commentary to the Law on the SC, which notes that "the scope of the statutory matter, limited by the guidelines contained in the provision commented on and, above all, by the provisions of the Act, does not give grounds for the claim that the content of the regulations may affect the impartiality and independence of the SC. Furthermore, it should be noted that in accordance with Article 178(1) of the Polish Constitution, judges in the exercise of their office are independent and subject only to the Constitution and statutes. It is accepted in doctrine that judges, in exercising the administration of justice in a particular case, may refuse to apply a sub-statutory act that they consider to be inconsistent with the Constitution or a statute".[10]

47. GRECO takes note of the information provided. As regard the first part of the recommendation, rather than reconsidering the establishment of the Extraordinary Appeals Chamber and the Disciplinary Chamber of the SC as required by the recommendation, GRECO notes that amendments to the Law on the SC of December 2019 (which entered into force in February 2020, as will be discussed in paragraph 57 and further below) have expanded the competences of both chambers, with the Extraordinary Appeals Chamber now being the only body with the competence to decide on motions challenging the independence and impartiality of judges, with a special competence to overturn decisions of other courts, including other SC chambers, which contest the legitimacy of other judges (Article 26, new paragraphs 2-6, Law on the SC). The Disciplinary Chamber in turn has been given the competence to decide on the lifting of immunity of judges (Article 27, new paragraph 1.1(a), Law on the SC).[11] GRECO regrets this development, which goes in the opposite direction of the intentions behind the first part of the recommendation. It furthermore observes that on 5 August 2021, in response to the interim measure ordered by the CJEU on 14 July 2021 in case C-204/21[12] and the abovementioned judgement of the CJEU of 15 July 2021 in case C-791/19, the President of the SC ordered a partial suspension of the activities of the Disciplinary Chamber until mid-November, which may be followed by further legislative changes by the government.

[8] The conclusions reached in this analysis were *inter alia* that it would not be appropriate to dissolve the extraordinary appeals chamber, as its competence were quite broad (going beyond extraordinary appeals), that its influence was marginal given the small number of extraordinary appeals, and that the extraordinary appeals chamber's examination of electoral protests submitted following the October 2019 parliamentary elections and its turning down of several extraordinary appeals submitted by the Prosecutor General showed that it operated impartially.

[9] The CJEU *inter alia* ruled that the referring court must ascertain whether the new Disciplinary Chamber of the SC is independent in order to determine whether that chamber has jurisdiction to rule on cases where judges of the SC have been retired, or in order to determine whether such cases must be examined by another court which meets the requirement that courts must be independent.

[10] K. Szczucki, *Supreme Court Act: Commentary* (Warsaw, 2021).

[11] In this context, GRECO also refers to the abovementioned judgment of the ECtHR (see footnote 7 above) in the case of *Reczkowicz v. Poland*, in which the ECtHR concluded that the Disciplinary Chamber was not a "tribunal established by law" within the meaning of the ECHR, and also notes that the abovementioned judgment of the CJEU in case C-791/19 of 15 July 2021 (see footnote 6 above) *inter alia* concludes that the Disciplinary Chamber of the SC "does not meet that requirement of independence and impartiality" and is not adequately protected from "direct and indirect influence from the Polish legislature and executive".

[12] In case C-204/21, the CJEU ordered on 14 July 2021 as an interim measure the suspension of provisions relating to the powers of the Disciplinary Chamber to *inter alia* decide on the lifting of immunity and the status and duties of judges.

While GRECO welcomes this, it notes that this is only a partial suspension. Pending further legislative changes, it can therefore not say that as of yet the establishment of the Disciplinary Chamber (and the Extraordinary Appeals Chamber) has been reconsidered in the manner required by the recommendation. Given the step backward represented by the legislative amendments of February 2020, GRECO can no longer maintain that this part of the recommendation has been partly implemented.

48. As regards the second part of the recommendation, GRECO recalls its misgivings – as outlined in the Rule 34 Report – about the far-reaching involvement of the executive in the internal proceedings of the SC.[13] GRECO's misgivings in this respect have not been allayed neither by the assurance that the President consults the College of the SC on the rules of procedure nor by the commentary to the Law on the SC. If anything, developments since GRECO's last report, such as the selection of the First President of the SC (notwithstanding the arguments of the Polish authorities that this procedure was fully in line with Article 183 of the Constitution of Poland[14]) and further amendments to the Law on the SC in the first half of 2021 on the proposal of the President of the Republic, further deepen its misgivings. GRECO cannot but renew its appeal to the Polish authorities to take steps to reduce the involvement of the executive in the internal organisation of the SC and concludes that this part of the recommendation has not been implemented.

49. GRECO concludes that Rule 34 recommendation ii has not been implemented.

Rule 34 recommendation iv.

50. *GRECO recommended that the disciplinary procedures applicable to Supreme Court judges are amended, in order to exclude any potential undue influence from the legislative and executive powers in this respect, in particular by excluding the possibility for the executive to intervene in these proceedings.*

51. GRECO recalls that in the previous compliance report, it concluded that this recommendation was not implemented, as no information had been provided by the authorities.

52. The Polish authorities now state that there is no justification for the claim that the disciplinary procedures applicable to SC judges pose a potential risk of undue influence of the legislature and executive therein. Furthermore, the authorities refer to the preliminary ruling of the CJEU of 19 November 2019 (as also referred to in paragraph 45 above), which states that the SC may examine whether the SC's Disciplinary Chamber is independent to hear cases of retiring judges of the SC. If the Court finds that the Disciplinary Chamber does not meet the independence requirement, it should not apply Polish law in this case. It follows from the ruling that a comprehensive assessment of whether a given court meets the impartiality requirement should be made *ad casum*, as part of a judicial review. The authorities submit that the CJEU judgment does not provide ground for the general (abstract) questioning of the appointment and status of a judges. The questioning is only possible when the manner in which a judge is appointed is likely to affect a specific case and therefore the decision given.

[13] This included the fact that the President sets rules for the internal organisation of the SC, decided on the number of judges, including those of individual chambers, established the rules of procedure of the SC and selected the First President of the SC from a list of candidates as well as presidents of the chambers of the SC.
[14] Paragraph 3 of Article 183 of the Constitution provides that the First President of the SC is "appointed by the President of the Republic for a 6-year term of office from amongst candidates proposed by the General Assembly of the Judges of the Supreme Court". The President would not be bound by the number of votes received by individual candidates.

53. The authorities furthermore point out that, given that the CJEU left it to the SC to examine the independence of the SC's Disciplinary Chamber to determine whether it could hear cases regarding the retirement of SC judges, the cases returned to the SC and steps were taken following the CJEU's judgment to make sure that the independence of the Disciplinary Chamber would not raise any doubts.

54. With respect to the reference in the conclusion in GRECO's last report, that GRECO was most concerned about developments in disciplinary proceedings, including for the submission of requests to the CJEU, the authorities emphasise that the sheer number of requests in recent times indicate a high sense of freedom on the part of the parties, and does not indicate a sense of threat of sanctions for formulating them. Currently, there are several dozen questions for preliminary rulings concerning disciplinary proceedings against Polish judges, not only in the abstract but in the context of specific disciplinary proceedings and disciplinary actions taken against judges. From this it can be assumed, in line with GRECO's Rule 34 recommendations, that the Polish authorities in no way limits access from interested parties to the CJEU.

55. Finally, the authorities submit that Poland has taken the necessary steps to implement the order of the CJEU of 8 April 2020 in case C-791/19 (with which the Court granted the European Commission's request for interim measures), by ensuring that the provisions concerning the Disciplinary Chamber will not be applied in disciplinary cases of judges until the final judgment of the CJEU. With this, the Rule 34 recommendation of GRECO has also been implemented, according to the authorities. However, they stress that the Polish authorities in their reply pointed out that the CJEU's is not "self-executing" meaning that it does not have automatic effect and that in its implementation the principle of constitutional identity and procedural autonomy of the member state must be respected.

56. GRECO takes note of the information provided. In the view of GRECO, it cannot be said that with the taking of temporary measures — such as the abovementioned suspension of legal provisions in disciplinary cases of judges and the order of the President of the SC of 5 August 2021 to partially suspend the activities of the Disciplinary Chamber (following the CJEU judgment of 15 July 2021 in case C-791/19 and the interim measure ordered by the CJEU on 14 July 2021 in case C-204/21) — the disciplinary procedures applicable to SC judges have been amended in the manner required by the recommendation.[15]

57. As already referred to above, since GRECO's last report, new disciplinary offences were introduced by the December 2019 amendments to the Law on the SC (which entered into force in February 2020).[16] Pursuant to these amendments (which are similar to the new disciplinary offences introduced in respect of judges of ordinary courts, as will be discussed in paragraph 71 and further below), challenging the legitimacy of judicial appointments or the independence of judicial bodies[17], as well as public activities "incompatible to the principles of judicial independence and impartiality of judges" and "acts or omissions which may prevent or significantly impede the functioning of an organ of the judiciary" can now give rise to disciplinary liability of SC judges.

[15] In this context, GRECO observes that the Disciplinary Chamber continued to rule on cases regarding the lifting of immunity of judges (as also referred to in paragraph 47 above) and that the order of the President of the SC partially suspending activities of the Disciplinary Chamber only seems to relate to new cases.
[16] See on this issue also the Joint Opinion of the Venice Commission and the Directorate General of Human Rights and Rule of Law of the Council of Europe on amendments to the Law on Common Courts, the Law on the Supreme Court and some other laws (CDL-AD(2020)017) of 22 June 2020.
[17] Article 72, paragraph 3 of the Law on the SC defines as a disciplinary offence in this respect "acts that question the existence of the official tenure of a judge or the effectiveness of his/her appointment, or the constitutional mandate of an organ of the Republic of Poland".

58. As such, as also outlined in a letter by the President of GRECO to the Minister of Justice of Poland in February 2020, it puts SC judges (and judges of ordinary courts) in an impossible situation of facing disciplinary proceedings for rendering decisions required by the ECHR and EU-law. GRECO has taken note of the arguments the undersecretary of state at the Ministry of Justice, Mr ROMANOWSKI, put forward in his reply of September 2020 to the aforementioned letter by GRECO's President, that challenging the status of a judge by another judge would destabilise the functioning of the judiciary. GRECO however finds that given the clear doubts its expressed about the NCJ and the status of the Extraordinary Appeals Chamber itself, it is inappropriate to give the Extraordinary Appeals Chamber additional (exclusive) competences in this matter.[18] GRECO considers that if the method of appointment of judicial members of the NCJ is brought back in line with European standards, as referred to under Rule 34 recommendation i above, the status of newly appointed judges (and the authority of the NCJ itself) would less likely be challenged by other judges.

59. The formulation of the new disciplinary offences also gives rise to concern. Prohibiting public activities "incompatible to the principles of judicial independence and impartiality of judges" may violate judges' rights to freedom of assembly and expression. Furthermore, using vague notions such as – for example - "acts which significantly impede the functioning of an organ of the judiciary" only increases the potential for disciplinary proceedings being misused and being motivated by other reasons than judicial misconduct. As such, given all of the above, these amendments rather represent a step backwards to the previous situation, which GRECO already then found serious enough to issue a recommendation. GRECO can only urge the authorities to address these concerns and amend the disciplinary procedures applicable to SC judges once again, in the manner required by the recommendation.

60. GRECO concludes that Rule 34 recommendation iv remains not implemented.

Rule 34 recommendation v.

61. *GRECO recommended that the procedures for appointing and dismissing presidents and vice-presidents of ordinary courts be amended, to exclude any potential undue influence from the executive power therein.*

62. GRECO recalls that in the previous compliance report, it concluded that this recommendation was not implemented, as no information had been provided by the authorities.

63. The Polish authorities refer to its general remarks (see paragraph 37) and state that GRECO's comments on the manner of appointment and dismissal of presidents and vice-presidents should be considered as exceeding its competence. Furthermore, the authorities report that the Minister of Justice exercises external administrative supervision and is responsible for the proper administrative functioning of courts. S/he must therefore have tools to respond adequately to irregularities in this regard. One of these tools is to make personnel decisions on the appointment of court presidents and vice-presidents. It is emphasised that the position of court president or vice-president is not a senior judicial position and appointment to such a position is not related to career advancement as a judge. Rejection of annual information on the activity of courts, in the case of significant problems in the administration of courts at the level of the president of a court, can and should therefore be the basis for initiating proceedings for a change in the position of a court president.

[18] In the abovementioned case C-204/21, the CJEU ordered Poland, as an interim measure, to also suspend the application of these legal provisions establishing the exclusive competence of the Extraordinary Appeals Chamber to examine complaints based on a lack of independence of a judge or court.

64. More specifically as regards courts of appeal, a president of such a court, whose annual information has been rejected, has the right to submit reservations. These reservations can be taken into account by the Minister of Justice and lead to a change of the evaluation, or – if not taken into account – lead to a decision of the NCJ. If the NCJ accepts the reservations of the president of the court of appeal, the Minister of Justice has to accept the annual information. In cases in which the Minister of Justice rejects the annual information on the activity of courts, thereby fulfilling the prerequisite for dismissal of the president of the appellate court, the approval of the college of the appellate court in question is necessary. In the absence of such approval of the college of the appellate court, the Minister of Justice may submit the intention to dismiss the president of the appellate court to the NCJ. If adopted by a two-thirds majority, the NCJ's negative opinion of the Minister of Justice's intention to reject the annual information will be binding on the Minister.

65. GRECO takes note of the information provided. It would appear that the procedure of dismissal of presidents of courts of appeals has been amended in December 2019, aligning the procedure with earlier amendments on the dismissal of presidents of ordinary courts. In respect of those earlier amendments GRECO already noted in its reports that the procedure was only changed after the dismissal of around 160 court presidents and vice-presidents late 2017 to early 2018, thereby effectively cementing the then newly appointed presidents and vice-presidents in their positions. Now, also in respect of presidents of courts of appeal, GRECO reiterates its view (as expressed in the Rule 34 Report) that such strong involvement of the Minister of Justice (who is also the Prosecutor General) in the process of dismissing court presidents should be avoided, notwithstanding the arguments of the Polish authorities as regards the managerial nature of such positions. Its concerns are not offset by the possible participation of the college of the court (which comprises court presidents subordinated to the Minister of Justice) or the NCJ in this process, given the misgivings it has already expressed in respect of this body. GRECO recalls its previous position, with which it aligned itself with the opinion of the Consultative Council of European Judges (CCJE) of the Council of Europe, that procedures for the appointment of court presidents should ideally follow the same path as that for the selection and appointment of ordinary judges and should as a minimum be merit-based.[19] Procedures for the dismissing of court presidents should be transparent, subject to established procedures and safeguards, with clear and objective criteria, excluding political influence and with a possibility for appeal for the presidents concerned. In this context, GRECO has also taken note of the judgment of the ECtHR on 29 June 2021 in *Broda and Bojara v. Poland.*[20] GRECO urges the Polish authorities to take further steps to implement the above recommendation.

66. GRECO concludes that Rule 34 recommendation v remains not implemented.

Rule 34 recommendation vi.

67. *GRECO recommended that the disciplinary procedures applicable to judges of ordinary courts be amended to exclude any potential undue influence from the executive powers therein, in particular by excluding the possibility for the executive to intervene in these proceedings.*

[19] See CCJE, Opinion. No. 19(2016) on "The Role of Court Presidents", paragraphs 38 and 39 (on selection) and paragraphs 45-47 (on removal).
[20] In *Broda and Bojara v. Poland* (applications no. 26691/18 and 27367/18, judgment of 29 June 2021), the ECtHR *inter alia* found that the premature termination of the applicants' term of office as vice-presidents of a court without the possibility of having this examined by either an ordinary court or another body exercising judicial duties, Poland had infringed the applicants' right of access to a court, entailing a violation of Article 6, paragraph 1, of the ECHR. The ECtHR also observed that the national legal framework applicable to the applicants' removal did not clarify the conditions in which the heads of a court could be removed from office, by way of exception to the principle that a judge should be guaranteed security of tenure during his or her term of office.

68. GRECO recalls that in its previous compliance report, it concluded that this recommendation was not implemented. It appreciated the information that the amendments to the Law on the Organisation of Ordinary Courts of July 2018 sought to reduce the influence of the executive in the allocation of disciplinary cases to disciplinary commissioners. However, it could not conclude that an increase in the number of deputy disciplinary commissioners as foreseen by these amendments would reduce possibilities for the executive to intervene in disciplinary proceedings against judges of ordinary courts. GRECO concluded that the amendments did not directly address the concerns underlying this recommendation. Against the background of the far-reaching powers of the Minister of Justice in disciplinary proceedings against judges[21], reservations about the disciplinary proceedings themselves (*inter alia* the limited procedural rights for judges) and the earlier noted misgivings regarding the Disciplinary Chamber at the Supreme Court[22] (see Rule 34 recommendation ii above), GRECO additionally noted with concern the allegations about disciplinary proceedings being misused to exert pressure on judges, be it for the content of certain rulings, for submitting requests for preliminary rulings to the CJEU, for criticising the government's judicial reforms, or for being present at events where such criticism is being expressed. It was not in a position to assess the merits of each allegation but could not rule out that the disciplinary proceedings could be misused and be motivated by other reasons than judicial misconduct, giving rise to serious concerns in respect of the independence of judges and having a chilling effect on the judiciary as a whole.

69. The authorities refer to the earlier remarks made in respect of GRECO's competence on the matters covered by this recommendation and state that the information previously submitted by Poland remains valid. With respect to GRECO's statements concerning submitting requests for preliminary rulings to the CJEU, the sheer number of such proceedings does not indicate a threat of sanctions for making them. Making use of possibilities to request preliminary ruling to the CJEU is not an endangered institution in Poland, but something that is rather willingly used by courts as a democratic tool in a state governed by the rule of law. There is no provision in Polish law allowing a judge to be held responsible for the content of a ruling or for requesting a preliminary ruling under Article 267 of the Treaty on the Functioning of the EU. Since this Treaty gives national courts an express right to refer questions for a preliminary ruling, it cannot reasonably be argued that referring to the CJEU could constitute a disciplinary offence. In line with GRECO's recommendations, Poland does not limit in any way the access of interested parties to the CJEU.

70. The authorities furthermore emphasise that the current arrangements in the Polish judiciary following the judicial reform sufficiently guarantee that judicial independence and the rule of law are not threatened. It is unequivocally stressed that the adopted reforms concerning the Polish judiciary are balanced, and at the same time as resolute and comprehensive as possible, while respecting the Constitution of Poland and the values expressed in the EU Treaties. Poland is and will always be open to well-founded recommendations, which – in the spirit of respect for the constitutional principles of Member States – will guarantee greater efficiency, reliability, credibility and trust in the national justice system.

71. GRECO takes note of the information provided. More in particular concerning the information that there is no provision in Polish law allowing a judge to be held responsible for the content of a ruling or for requesting a preliminary ruling of the

[21] GRECO noted that with the legislation in place the Minister of Justice had the power to select judges at disciplinary courts, appoint the (Chief) Disciplinary Commissioner for ordinary courts (and his/her two deputies), to initiate disciplinary proceedings, to challenge the closing of disciplinary proceedings and to appeal a decision of the first instance disciplinary court.

[22] It is recalled that the Disciplinary Chamber at the SC acts as a second instance disciplinary court for ordinary judges.

CJEU, GRECO has already said before that, even if it was not in a position to assess the merits of each allegation, it was clear that the legal provisions indeed did make it possible for disciplinary proceedings to be misused and to be motivated by other reasons than judicial misconduct. It stands by this earlier assessment.[23] Similar to what has been described under Rule 34 recommendation iv above (see paragraphs 57-59) in respect of judges of the SC, GRECO additionally finds that this potential for misuse has become even greater with the inclusion of such disciplinary offences as "acts or omissions which may prevent or significantly impede the functioning of an organ of the judiciary" and "actions questioning the existence of the official relationship of a judge, the effectiveness of the appointment of a judge, or the constitutional mandate of an organ of the Republic of Poland" (Article 107, Law on Ordinary Courts).[24] Similar to the amendments to the Law on the SC, these offences were added to the Law on Ordinary Courts in December 2019, together with the disciplinary offence of "public activities that are incompatible with the principles of judicial independence and the impartiality of judges".

72. The abovementioned amendments also seem to further strengthen the influence of the executive on disciplinary prosecutors. Pursuant to the amended Article 112 of the Law on Ordinary Courts, disciplinary prosecutors (who have themselves been appointed by the Minister of Justice) will now select deputy disciplinary officers attached to appellate or regional courts (instead of selecting these deputy disciplinary officers from among judges proposed by the assembly of judges of the respective appellate or regional court, as it was before).

73. In short, rather than excluding potential undue influence from the executive powers in the disciplinary procedures applicable to judges from ordinary courts as required by the recommendation, these amendments to the Law on Ordinary Courts of December 2019 increase the potential influence of the executive in such proceedings, leaving judges increasingly vulnerable to political control, having a cumulative chilling effect on the judiciary as whole. As such, these amendments represent a step backwards and exacerbate an already grave situation. GRECO can only compel the authorities in the strongest possible terms to address the abovementioned concerns.

74. GRECO concludes that Rule 34 Recommendation vi remains not implemented.

III. CONCLUSIONS

75. **In view of the foregoing, GRECO concludes that Poland has implemented seven of the sixteen recommendations of the Fourth Round Evaluation Report, and one of the six recommendations of the Addendum to the Fourth Round Evaluation Report (Rule 34 Report).**

76. More specifically, recommendations iv, vii, viii, x, xi, xiii and xv, as well as Rule 34 recommendation iii, have been implemented satisfactorily or dealt with in a satisfactory manner. Recommendations ix, xii, xiv and xvi remain partly implemented, recommendations i, ii, iii, v and vi remain not implemented, and Rule 34 recommendations i, iv, v and vi have not been implemented. Rule 34

[23] In this context, GRECO again notes the judgment of CJEU in case C-791/19 of 15 July 2021, which - in deciding that the disciplinary regime applicable to judges is not compatible with EU-law – makes explicit reference to the content of judicial decisions being qualified as a disciplinary offence, which risks the disciplinary regime being used for the purposes of political control, and the exposure of judges to disciplinary proceedings for referring to the CJEU for a preliminary ruling.

[24] In addition to adding these offences to Article 107 of the Law on Ordinary Courts, the new article 42a of the Law on Ordinary Courts also provides: "Within the framework of the activity of courts or organs of courts, it is unacceptable to question the powers of courts and tribunals, constitutional state bodies and law enforcement and control bodies. It is unacceptable for a common court or any other authority to determine or assess the compliance with the right to appoint a judge or the resulting entitlement to perform tasks in the field of justice".

recommendation ii had previously been partly implemented, but in light of further amendments to the Law on the SC this recommendation is now not implemented.

77. As regards Members of Parliament, the level of implementation remains unchanged since the Compliance Report of December 2014, with only one out of six recommendations having been implemented. While GRECO takes note of the new legislative term of the Parliament and Covid-related delays in its work, it finds it deeply regrettable that nothing towards implementation of any of the outstanding recommendations has been reported, almost nine years after the adoption of the Evaluation Report.

78. With respect to prosecutors, the three pending recommendations remain partly implemented. A positive step forward has been made by supplementing the "Collection of Ethical Principles governing the Prosecutor's Profession" with standards in the area of conflicts of interest. However, this would need to be complemented by further guidance, not only on conflicts of interest but also other related matters (such as the acceptance of gifts, incompatibilities, secondary activities etc.). Furthermore, no information has been provided to GRECO to allow it to conclude that adequate tools and powers to effectively supervise compliance with ethical principles for prosecutors are now in place and no confidential counselling for prosecutors has been set up. For both judges and prosecutors furthermore no further information has been provided to assess whether measures have been taken to ensure a more in-depth scrutiny of asset declarations of judges and prosecutors.

79. Furthermore, as regards judges, a large part of the current Interim Compliance Report is devoted to the compliance with GRECO's recommendations adopted as part of its Rule 34 procedure in June 2018, following the extensive judicial reform 2016-2018 in Poland, which has critically affected the independence of the judiciary in Poland. In this respect it can be concluded that five recommendations remain outstanding, covering the election to and composition of the National Council of the Judiciary, the establishment of the Disciplinary Chamber and Extraordinary Appeals Chamber at the Supreme Court and the involvement of the executive in the internal organisation of the Supreme Court, appointments and dismissals of court presidents and vice-presidents and disciplinary proceedings against judges.

80. The amendments to the Law on Ordinary Courts, the Law on the Supreme Court and some other laws of December 2019 unfortunately represent a step backwards in relation to GRECO's assessments and recommendations. This is specifically the case in respect of disciplinary proceedings against judges, noting also that recently (on 15 July 2021) the Court of Justice of the EU has ruled the disciplinary regime in respect of judges in Poland to be incompatible with EU law (case C-791/19). The amendments adopted in December 2019 *inter alia* added further disciplinary offences to the Law on Ordinary Courts and Law on the Supreme Court, which leaves judges increasingly vulnerable to political control, thereby further weakening judicial independence. As GRECO has outlined before, it is of the strong opinion even the impression that disciplinary proceedings against judges are being misused and motivated by other reasons than judicial misconduct must be avoided at all costs, given their cumulative chilling effect on the judiciary as a whole. As such, the abovementioned amendments represent a serious step backwards and exacerbate an already grave situation.

81. Also on the issue of the establishment of the Extraordinary Appeals Chamber and Disciplinary Chamber at the Supreme Court and the appointments and dismissals of presidents and vice-presidents of courts do the legal amendments of December 2019 not bring any improvements. The Extraordinary Appeals Chamber has been given additional competences and, while for some time in the period covered by the report the Disciplinary Chamber no longer heard cases involving disciplinary proceedings

against judges, it continued to rule on the lifting of immunity of judges.[25] Furthermore, as regards the appointments and dismissals of court presidents and vice-presidents, in the Rule 34 Report, GRECO critically assessed the large-scale dismissal of around 160 court presidents and vice-presidents in 2017/18 (and, in respect of two of those vice-presidents, the European Court of Human Rights pronounced on 29 June 2021 a violation of Article 6 of the Convention in respect of the premature termination of their term of office[26]). Subsequently, the Law on Ordinary Courts was amended, which had the effect of cementing the appointments of the new presidents and vice-presidents. With the abovementioned amendments of December 2019, a similar dismissal procedure has now been provided for presidents of courts of appeal. GRECO emphasises once again that such a strong involvement of the Minister of Justice (who is also the Prosecutor General) in appointing/dismissing court presidents and vice-presidents is not acceptable.

82. To conclude, in its Rule 34 Report, GRECO expressed strong concerns that the 2016-2018 amendments to different laws on the judiciary enabled "the legislative and executive powers to influence the functioning of the judiciary in a critical manner", thereby significantly weakening the independence of the judiciary. Unfortunately, this situation is further exacerbated by the December 2019 amendments to the Law on Ordinary Courts, the Law on the Supreme Court and certain other laws. GRECO cannot but urgently implore the Polish authorities to address this situation, and the concerns underlying GRECO's five outstanding recommendations in this respect. In this connection, GRECO welcomes the recent news that the Disciplinary Chamber of the Supreme Court will likely be abolished. It will continue to follow this issue closely, to see if its concerns - in particular as regards the disciplinary regime applying to judges - are addressed in this context.

83. In view of the above (with only eight out of a total of 22 recommendations having been implemented), GRECO concludes that the overall very low level of compliance with the recommendations remains "globally unsatisfactory" within the meaning of Rule 31 revised, paragraph 8.3 of its Rules of Procedure. GRECO therefore decides to continue to apply Rule 32 concerning members found not to be in compliance with the recommendations contained in the Evaluation Report and its Addendum, and asks the Head of the Polish delegation to provide a report on the progress in implementing the outstanding recommendations (i.e. recommendations i-iii, v-vi, ix, xii, xiv and xvi, and Rule 34 recommendations i-ii and iv-vi), at the latest by 30 September 2022, pursuant to paragraph 2(i) of that rule.

84. In addition, in accordance with Rule 32, paragraph 2, sub-paragraph ii.a, GRECO invites its President to send a letter – with a copy to the President of the Statutory Committee – to the head of delegation of Poland, drawing her attention to the non-compliance with the relevant recommendations and the need to take determined action with a view to achieving tangible progress as soon as possible.

85. Finally, GRECO invites the authorities of Poland to authorise, as soon as possible, the publication of the report, to translate the report into the national language and to make the translation public.

[25] Since then (on 14 July 2021), the Court of Justice of the EU has ordered as an interim measure in proceedings brought by the European Commission in relation to the December 2019 legal amendments (case C-204/21) the suspension of some of these provisions, including as regards the power of the Disciplinary Chamber to decide on the lifting of immunity of judges. On 5 August 2021, the President of the Supreme Court decided on a partial suspension of the activities of the Disciplinary Chamber, pending possible further legal amendments. In proceedings before the European Court of Human Rights, the Court ruled on 22 July 2021 in the case of a *Reczkowicz v. Poland* (application no. 43447/19), in a matter not directly involving disciplinary proceedings in respect of judges, that the Disciplinary Chamber of the Supreme Court was not a "tribunal established by law".
[26] *Broda and Bojara v. Poland* (applications no. 26691/18 and 27367/18), Chamber judgment of 29 June 2021.