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Groupe d'États contre la corruption

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## FOURTH EVALUATION ROUND

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

### ADDENDUM TO THE SECOND COMPLIANCE REPORT GEORGIA

Adopted by GRECO at its 91<sup>st</sup> Plenary Meeting  
(Strasbourg, 13 – 17 June 2022)

## **I. INTRODUCTION**

1. The Addendum to 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 (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 74<sup>th</sup> 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 82<sup>nd</sup> Plenary Meeting (22 March 2019) and made public on 2 July 2019, following authorisation by Georgia ([GrecoRC4\(2019\)9](#)). GRECO considered that tangible progress had been made in respect of all themes.
4. In the Second Compliance report, adopted by GRECO at its 87<sup>th</sup> Plenary meeting (25 March 2021) ([GrecoRC4\(2021\)9](#)) and made public on 12 April 2021, GRECO concluded that Georgia had complied with 7 out of 16 recommendations, 7 recommendations had been partly implemented and 2 not implemented. GRECO invited the Head of Delegation of Georgia to submit additional information regarding the implementation of the outstanding recommendations. The information was received on 31 March 2021 and, together with information supplied subsequently, forms the basis of the current Addendum.
5. This Addendum to the Second Compliance Report evaluates the progress made in implementing the outstanding recommendations since the Second Compliance Report (i.e. recommendations i, ii, iii, iv, vii, viii, ix, xiv and xv) and provides an overall appraisal of the level of compliance with these recommendations.
6. GRECO selected Estonia and the United States of America to appoint Rapporteurs for the compliance procedure. The Rapporteurs appointed were Ms Kätlin-Chris Kruusmaa, 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 Addendum to the Second Compliance Report.

## **II. ANALYSIS**

7. GRECO addressed 16 recommendations to Georgia in its Evaluation Report. At the preceding stages of the compliance procedure, recommendations v, vi, x, xi, xii, xiii and xvi had been implemented satisfactorily or dealt with in a satisfactory manner, recommendations i, ii, iii, iv, vii, viii and xv had been partly implemented and recommendations ix and xiv had not been implemented. Compliance with the nine pending recommendations is examined below.

### *Corruption prevention in respect of members of parliament*

#### **Recommendation i.**

8. *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.*
9. GRECO recalls its findings in the Second Compliance Report that, pending the establishment of a uniform regulatory framework for a public consultation procedure

for laws and legislative amendments, this recommendation had been partly complied with. While there existed a detailed consultation procedure for constitutional amendments, the possibility to provide comments to draft legislation or to submit a legislative initiative through the website of the Georgian Parliament fell short of an obligation upon 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. In the Compliance Report, GRECO noted that Parliament's website was regularly updated, with draft laws and amendments to draft legislation published in a visible manner and updates made to the website of parliamentary committees after each parliamentary hearing. The Parliament's Rules of Procedure (ROPs) on e-petitions, e-legislative initiatives and the follow-up to be given to comments on draft legislation were also amended.

10. The authorities now indicate that the public consultation procedure for constitutional amendments, namely the organisation of public meetings in different administrative territorial units of Georgia, cannot apply to the ordinary legislative process. That notwithstanding, the ROPs provide a variety of tools on which parliamentary committees can rely in order to ensure the participation of stakeholders and interested parties in the law-making process, such as (i) committee sittings (which are open to public, are broadcasted live, can be attended by individuals who can contribute to the discussions, upon invitation and request), (ii) working groups (which are composed of parliamentarians and experts of the field, for the preliminary preparation of legislative issues), (iii) scientific-consultative councils (which are composed of competent expert-consultants in the appropriate fields, to provide consultation on issues related to the working field of the committee) and (iv) the possibility for any individual to "express his/her opinion as a comment in order to receive public consultations<sup>1</sup> regarding a draft law" or comment on any particular provision through the official website of the Georgian Parliament.
11. GRECO notes that the information provided by the authorities regarding the existence of certain means for public consultation was already described in the Evaluation Report (see paragraphs 21 and 26-29), the Compliance Report (see paragraph 7) and the Second Compliance Report (see paragraph 8). The authorities have provided no new relevant information warranting a departure from GRECO's prior conclusions that the authorities have not established a uniform regulatory framework for public consultations during the legislative drafting process (i.e. there is no obligation for Parliament to consult the public on certain pieces of legislation initiated by the Government or Parliament).
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.*

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<sup>1</sup> As noted in the Second Compliance Report, 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 draft law or any other issue discussed by 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 draft law in question or on any other issue discussed by the committee.

14. GRECO recalls that this recommendation was partly implemented in the previous report. Further to the adoption of a Code of Conduct for parliamentarians in 2019, the establishment of an enforcement mechanism through the setting up of a Council of Ethics and the inclusion of explicit provisions on gifts, contacts with lobbyists and certain incompatibilities (the first part of the recommendation) had been addressed. However, GRECO considered that the second part of the recommendation had not been fully complied with as, in spite of training provided to new Members of Parliament (MPs), the Council of Ethics had not become fully operational and further practical measures for the implementation of the Code of Conduct, such as confidential counselling, had to be taken.
15. The authorities now report that, further to amendments introduced on 25 June 2021, the Council of Ethics will be composed of 14 members (instead of 8). Factions have put forward respective candidates and an update about its composition and operation will be provided in the next situation report.
16. GRECO takes note of the changes in the composition of the Council of Ethics, which, once filled and the Council has become operational, will be in a position to decide on alleged breaches of the rules of conduct. In these circumstances and noting the lack of any tangible progress regarding the provision of confidential counselling to MPs, GRECO considers that the second part of the recommendation remains partly complied with.
17. GRECO concludes that recommendation ii remains partly implemented.

**Recommendation iii.**

18. *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.*
19. GRECO recalls that this recommendation was partly implemented, since MPs were required, under the Code of Ethics, to disclose any entrepreneurial activities and there was no requirement in place for *ad hoc* disclosure of conflicts between an MP's private interests and a matter under consideration by Parliament.
20. The authorities now report that the Georgian legislation provides detailed regulation about MPs' incompatibilities with their entrepreneurial or other activities. Thus, according to Article 6 (4)-(7) of the ROPs, a newly elected MP should quit incompatible work or activity within seven days from the date of his/her confirmation. The Procedural Issues and Rules Committee monitors the fulfilment of this requirement, reviews cases of alleged incompatibility and prepares the relevant conclusions. In addition, Articles 3(b) and 4(2) of the Code of Ethics cover incompatibilities concerning an MP's special interest in entrepreneurial activities.
21. GRECO refers to the Compliance Report (paragraph 20), in which it found the statutory requirements on the MPs to disclose any entrepreneurial activities, contained in the ROPs and the Code of Ethics, as being too narrow. It notes that the authorities have not provided any new information in this respect. In addition, no progress has been made to introduce the requirement for *ad hoc* disclosure of MPs' conflicts of interests.
22. GRECO concludes that recommendation iii remains partly implemented.

**Recommendation iv.**

23. 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.
24. GRECO recalls that this recommendation was partly implemented. It took note of the substantive reform of the judicial recruitment process introducing (i) pre-established criteria for the selection of judicial candidates for the probationary period, (ii) the requirement for the High Council of Justice (HCJ) to justify its decisions and make reasons for its decisions available to candidates, and (iii) the possibility for candidates to challenge the HCJ decision to the Supreme Court. Further legislative amendments to the Law on Common Court (LCC), providing for the abolishment of secret voting in the HCJ, the publication of HCJ decisions, the recusal of HCJ members who were candidates for vacancies within the Supreme Court from the procedure on the selection and nomination of Supreme Court judges and the possibility to appeal against HCJ decisions to the Qualification Chamber of the Supreme Court, were also welcomed. However, the concerns GRECO expressed in (paragraph 94 of) the Evaluation Report regarding the opaque procedures and the lack of clear and objective criteria as regards the promotion of judges (i.e., those who have already been appointed to a judicial position) had not been addressed, other than those appointed to the Supreme Court in respect of which GRECO urged the authorities to follow the Venice Commission’s opinions<sup>2</sup>.
25. The authorities now submit that the promotion of first-instance court judges to courts of appeal takes place either through a competitive procedure or without competition. As regards promotion through competition, which is governed by Articles 35 and 36 of the LCC, the HCJ publishes the competition procedure in the Official Gazette and determines the period during which applications can be submitted. Upon the expiry of the deadline, the HCJ ensures that the submitted applications comply with the statutory requirements, such as the requirement to have served as a district (city) court judge for five years. The HCJ collects reliable background information about candidates prior to its conducting interviews and examines their professional reputation and activities. Brief background information on the candidates who comply with the statutory requirements is published on the HCJ’s website. Candidates are evaluated on the basis of two criteria: integrity and competence<sup>3</sup>. Five randomly selected cases are also examined by the HCJ. Following the conduct of interviews with the candidates, the HCJ members complete an evaluation sheet for each candidate, the results of which are summarised by the HCJ secretariat. The evaluation sheets and the results are accessible to the public on request. After the submission of the evaluation results, the HCJ votes to appoint judges to a court of appeal by a two-third majority, provided that candidates were found to comply or fully comply with the

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<sup>2</sup> 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](#). The opinions had recommended to provide for the disclosure, together with the vote and the reasoning, of the identity of the member of the HCJ who cast the vote and to allow a second and final appeal to the Qualification Chamber of the Supreme Court against the second decision of the HCJ refusing to present a candidate to Parliament for election in the Supreme Court subsequent to the quashing of the first HCJ decision by the Supreme Court’s Qualification Chamber.

<sup>3</sup> According to the LCC, 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 and financial obligations. Competence in turn comprises knowledge of legal norms; the ability and competence to provide legal arguments; writing and verbal communication skills; professional skills including conduct in a courtroom; academic achievements and professional training.

integrity criterion by more than half of the HCJ members and they obtained at least 70% of the maximum number of points in respect of the competence criterion. HCJ decisions are reasoned and published. A candidate can appeal against the HCJ decision to the Qualification Chamber of the Supreme Court of Georgia.

26. A district (city) court judge may be appointed to a court of appeal without competition if s/he has at least five years of experience as a district (city) court judge. Articles 37 and 41 of the LCC and Article 13 of the HCJ's Rules of Procedure regulate the procedure for promotion without competition. Following the publication of a vacancy notice by the HCJ, the receipt of applications within the fixed deadline and their review by the HCJ, a judge may be promoted to a court of appeal if his/her competence, experience, professional and moral reputation is compliant with the high rank of the judge of court of appeal and there are no disciplinary sanctions in force. When taking the decision, the HCJ considers the criteria enshrined in Article 13 of its Rules of Procedure, such as the quantitative and qualitative indicators of the judge's performance, the number of ratio of cases considered, the complexity of the cases completed, respect for procedural time-frames when deciding on cases and preparing a decision, the coherence of decisions, the judge's working discipline, the judge's reputation amongst colleagues, the judge's participation in mentoring and teaching young judges and lawyers, his/her role in discussing judicial and legal issues, his or her organisational skills, scientific and pedagogical activity, adherence to ethical and professional standards, trend of the judge's professional growth. The decision is taken in secret voting, by a two-thirds majority of the HCJ, there being no requirement to complete any evaluation sheets. It is reasoned and published. Any dissenting opinion are to be appended to the HCJ decision which is subject to judicial review in accordance with the provisions of the Code of Administrative Procedure.
27. As regards the appointment and promotion to the Supreme Court, the authorities report that, in response to the Venice Commission's opinions given in 2020 and 2019 (see paragraph 24 above), on 30 September 2020 and 1 April 2021 the Georgian Parliament amended (Article 34 of) the LCC, which now provides that: (i) the HCJ conducts a public hearing of each candidate in accordance with the principle of equal treatment; (ii) information about the identity of HCJ members who evaluated candidates according to the competence and integrity criteria is made public and published on the HCJ's website, together with a score and written justification. If a member of the HCJ does not evaluate all candidates and does not submit the evaluation (together with the written justification), it is considered that the member has not participated in the evaluation procedure; (iii) the HCJ draws up a shortlist of candidates according to the aggregate score of points that they obtained during the evaluation. Only the candidates who obtained the best results during the evaluation of the competence and integrity criteria will move to the next stage, provided that a candidate has scored not less than 70 per cent of the maximum number of points in respect of the competence criterion and at least ten members of the HCJ consider that the candidate meets the integrity criterion. The list and order of candidates is published on the HCJ's website; (iv) the full list of candidates is to gain the support of at least two-thirds of the HCJ members, at an open voting session, in order to be submitted jointly to the Parliament. If any of the candidates fails to obtain a two-thirds majority by the HCJ, the remaining candidates are not to be voted. A member of the HCJ will submit a written justification of his/her decision made during the voting process; (v) candidates can appeal against the HCJ decision to the Qualification Chamber of the Supreme Court on specific grounds of appeal provided for by law. If the Qualification Chamber annuls the HCJ decision, it will remit the case to the HCJ for reconsideration. A second HCJ decision is open to appeal before the Qualification Chamber of the Supreme Court. If the Qualification Chamber annuls the second HCJ decision, it will remit the case to the HCJ for reconsideration. A third HCJ decision is not subject to appeal; (vi) if the decision/nomination of the HCJ is appealed against, the procedure for the selection and nomination of candidates for the vacancy of

Supreme Court judges is stayed until the Qualification Chamber of the Supreme Court decides on the matter.

28. In response to a recent Venice Commission's opinion which examined the amendments to the LCC and subsequently made respective recommendations<sup>4</sup>, the authorities submit that the Venice Commission's recommendation regarding the modification of the HCJ composition in the event it takes subsequent decisions following a remittal of the case for reconsideration by the Supreme Court's Qualification Chamber would not be compatible with the Constitution of Georgia, its standards and rules. In particular, if six or more HCJ members were found to be biased and excluded from the voting process, the required HCJ's two-third majority<sup>5</sup> to nominate candidates to Parliament would not be achieved. Concerning the other recommendation, the authorities provide that, as a result of the stay of the appointment procedure on account of the amendments to the LCC regarding the selection of Supreme Court judges, from 6 to 12 April 2021 three new additional applications had been received, while the evaluation of all candidates had not yet commenced. Thus, the statutory amendments of 1 April 2021 applied equally to all candidates, including those who had submitted an application for appointment to the Supreme Court before 1 April 2021.
29. GRECO notes that the competitive procedure for the promotion of district (city) court judges to courts of appeal is based on clear and objective criteria, namely the integrity and competence as well as the requirement to have at least five years' experience as a district (city) court judge, which have been enshrined in the law. It is satisfied that the competitive procedure contains elements of transparency and publicity, that the HCJ's decisions are reasoned and published and that unsuccessful candidates have the right to challenge the HCJ's decisions to the Supreme Court. However, GRECO has misgivings about the promotion of judges without competition. While the domestic legal framework has laid down objective criteria, their evaluation by the HCJ members is not governed by clear rules of procedure which would ensure the impartiality and transparency of the HCJ members. In addition, the HCJ's voting process lacks any transparency whatsoever. In view of the above reasons, GRECO is of the opinion that promotion without competition would fall foul of the principle of equal treatment of all first-instance court judges and, consequently, invites the authorities to consider revising or scrapping this promotion track.
30. As regards the appointment to the Supreme Court, GRECO considers that the statutory amendments to the LCC are good steps in the right direction. They relate to the disclosure of identity of the HCJ members who evaluated the candidates, including the respective score and written justification, and the preparation of a shortlist of only those candidates who obtained the best aggregate results. In addition, the statutory amendments envisage the stay of the selection and nomination procedure until the Supreme Court's Qualification Chamber decides on an appeal lodged against the HCJ decision/nomination and the equal treatment of all candidates. That said, GRECO expresses the same concerns as raised by the Venice Commission in its most recent opinion in 2021 about the re-examination of the case by the same composition of the HCJ after the Supreme Court's Qualification Chamber remits the case for reconsideration to the HCJ, and encourages the authorities to envisage introducing an anti-deadlock mechanism if the requirement for the HCJ's

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<sup>4</sup> See [Venice Commission's Urgent Opinion on the Amendments to the Organic Law on Common Courts](#), CDL-AD(2021)020, in which the Venice Commission made the following key recommendations: (i) to consider modifying the composition of the HCJ for the subsequent decisions by excluding those HCJ members who have been found to be biased or for other reasons provided for by law, (ii) to stay the appointment procedure until a decision is rendered by the Qualification Chamber of the Supreme Court and (iii) in order to ensure that there is an equality of treatment of candidates, the selection procedure may need to be restarted.

<sup>5</sup> According to paragraph 83 of the Evaluation Report, the HCJ consists of 15 members.

two-thirds majority for taking a decision cannot be met so that the nomination process could work effectively.

31. GRECO concludes that recommendation iv remains partly implemented.

**Recommendation vii.**

32. *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.*
33. GRECO recalls that this recommendation was partly implemented. As regards the first part of the recommendation, the HCJ had approved the draft Rules of Judicial Ethics and submitted them to the Conference of Judges for final adoption. Concerning the second part of the recommendation, other than organising a number of initial training activities on ethics in the form of a "basic course on judicial ethics" and "an in-depth course on judicial ethics", no further practical measures had been taken.
34. The authorities now report that on 31 October 2021 the Conference of Judges approved the updated Rules on Judicial Ethics, which have since been published on the website of the Supreme Court<sup>6</sup> and HCJ<sup>7</sup>. The High School of Justice has already updated the training module on judicial ethics in accordance with the approved Rules on Judicial Ethics. Consequently, the first training on the updated Rules on Judicial Ethics in the form of an in-depth course on judicial ethics was organised for judges on 16 and 17 April 2022. Additional training activities have been scheduled for 2022 and further practical measures will be taken for elaborating a commentary on the updated Rules of Judicial Ethics.
35. GRECO welcomes the adoption and publication of the updated Rules of Judicial Ethics. It thus considers that the first part of the recommendation has been implemented satisfactorily. As regards the second part of the recommendation, GRECO is pleased to note that the training module on judicial ethics has been updated and that the first training on the updated Rules on Judicial Ethics has taken place. These are steps in the right direction. Still, GRECO considers that, since practical measures are underway, such as the organisation of further trainings for 2022, confidential counselling and the production of a commentary on the updated Rules of Judicial Ethics, the second part of the recommendation remains partly complied with.
36. GRECO concludes that recommendation vii has been partly implemented.

**Recommendation viii.**

37. *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.*

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<sup>66</sup> Click [here](#).

<sup>7</sup> Click [here](#).

38. GRECO recalls that this recommendation was partly implemented. It noted that: the Office of the Independent Inspector, which is vested with the authority to receive complaints, initiate disciplinary proceedings and carry out the preliminary investigation into disciplinary misconduct, had been established; the investigative functions had been separated from those establishing misconduct and deciding on sanctions; the Secretary of the HCJ could no longer single-handedly end disciplinary proceedings; the power of the HCJ to send "private recommendation letters" had been abolished; improvements had been made in defining disciplinary offences more precisely and vague notions and broad concepts of certain disciplinary offences had either been amended or abolished; the outcomes of disciplinary proceedings had been shared with both the judiciary and the public in an anonymised way; decisions by the Independent Inspector and the HCJ to discontinue proceedings were to be reasoned and complainants notified of such decisions. However, GRECO noted that decisions of the HCJ to take disciplinary proceedings forward still required a two-thirds majority and no review of decisions of the HCJ terminating disciplinary proceedings had been provided for, as required by the recommendation.
39. The authorities now report that, further to amendments to the LCC on 30 December 2021, the requirement for a two-thirds majority for decisions by the HCJ on disciplinary matters has been abolished and the HCJ takes decisions by secret voting and a simple majority of its members. The HCJ decisions are reasoned and indicate the number of members who voted for or against. The decisions on termination of disciplinary proceedings, which are final, are published on its website. In addition, an Explanatory Guide on grounds of disciplinary liability was prepared in 2021, providing in-depth interpretation of the grounds of disciplinary liability to be applied in the course of disciplinary proceedings by the disciplinary bodies, and containing examples of cases decided upon by disciplinary bodies in France and Italy. The Explanatory Guide has been published on the website of the Office of the Independent Inspector<sup>8</sup>.
40. GRECO welcomes the amendments to the LCC abolishing the requirement for a two-thirds majority for HCJ decisions on disciplinary matters, which is an important step in addressing one of the last elements expressed in the recommendation. It also takes note of the preparation of an Explanatory Guide on the interpretation of grounds of disciplinary liability. That said, and by reference to the findings made in the Compliance Report (see paragraph 47) and the Second Compliance Report (see paragraph 43), GRECO notes that the statutory framework still provides for no possibility of review of decisions of the HCJ terminating disciplinary proceedings, which is a requirement to conclude that this recommendation has been fully complied with.
41. Pending the introduction of a possibility of such review, GRECO concludes that recommendation viii remains partly implemented.

**Recommendation ix.**

42. *GRECO recommended that the immunity of judges be limited to activities relating to their participation in judicial decision-making ("functional immunity").*
43. 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. However, in the Second Compliance Report the authorities had made no progress in implementing this recommendation.

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<sup>8</sup> [Practical-Guide-to-the-Grounds-of-the-Disciplinary-Liability-of-Judges GEO.pdf \(court.ge\)](#)

44. The authorities have provided no further information as to the progress of implementation of this recommendation.
45. In the absence of any concrete developments, GRECO concludes that recommendation ix remains not implemented.

*Corruption prevention in respect of prosecutors*

**Recommendation xiv.**

46. *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.*
47. GRECO recalls that this recommendation was not implemented. In the Second Compliance Report, GRECO took note of the draft amendments to the Law on Conflicts of Interest and Corruption in Public Institutions (LCI) which aimed at extending the scope of asset declaration regime applicable to prosecutors.
48. The authorities have provided no further information as to the progress of implementation of this recommendation.
49. In the absence of any concrete developments, GRECO concludes that recommendation xiv remains not implemented.

**Recommendation xv.**

50. *GRECO recommended reviewing the disciplinary regime applicable to prosecutors, including by defining disciplinary offences more precisely and ensuring proportionality of sanctions.*
51. GRECO recalls that, in the Second Compliance Report, this recommendation was found to have been partly implemented on account of some steps taken by the authorities, in particular as regards the removal of the disciplinary offence of "breaking an oath" from the law and the provision of examples of disciplinary offences and applicable sanctions in the Commentary to the Code of Ethics. Inspiration for further changes was to be found in the amendments made to the disciplinary regime applicable to judges (which provided a more precise definition of initially quite similar categories of disciplinary offences).
52. The authorities now report that in 2021 a working group was set up within the prosecution service to review the practice regarding the detection and sanctioning of disciplinary breaches in order to define the types of disciplinary misconduct more precisely and ensure the proportionality of sanctions. As a result, on 16 May 2022 the Prosecutor General adopted Rule no. 14 on the grounds for disciplinary liability and categories of disciplinary misconduct of the employees of the prosecution service. The Rule entered into force on 17 May 2022 following its publication on the website of the Official Gazette of Georgia<sup>9</sup>.
53. The Rule lays down the grounds for disciplinary liability, namely (i) the breach of work discipline consisting of a violation of the requirements of the internal rules, (ii) the commission of an act unbecoming of an employee of the prosecution service entailing a violation of the instructions and principles of the Code of Ethics of the employees of the Prosecution Service, (iii) the failure to perform duties vested in law, such as failure to comply with the Constitution, the Criminal Code, the Code of Criminal Procedure and other legal acts, as well as the Prosecutor General's Orders and/or internal

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<sup>9</sup> <https://matsne.gov.ge/ka/document/view/5463825?publication=0>

guidelines, and (iv) the defective fulfilment of obligations vested by law, such as defective compliance with the Constitution, the Criminal Code, the Code of Criminal Procedure and other legal acts, as well as the Prosecutor General's Orders and/or internal guidelines.

54. According to the Rule, disciplinary misconduct is characterised as minor, medium and serious. The breach of work discipline is considered minor or medium misconduct, depending on the circumstances of a case. The commission of an act unbecoming of an employee of the prosecution service and the failure to perform a duty vested by law are regarded as serious misconduct. Defective fulfilment of obligations vested by law is characterised as minor misconduct. The Rule lists numerous examples of disciplinary offence under each ground of disciplinary liability.
55. The authorities further indicate that the Rule complements the Organic Law of Georgia on the Prosecutor's Office 2018, Article 76 § 10 of which provides for the imposition of the following applicable sanctions: the breach of work discipline is punishable by a reprimand, a reproach or a deduction of 30% of salary for a period of one to six months, depending on the circumstances of a case; the commission of an act unbecoming of an employee of the prosecution service and failure to perform duties vested by law is punishable by a reproach, a transfer to a lower rank, a deduction of 30 % of salary for a period of one to six months, or dismissal, depending on the circumstances of a case; defective fulfilment of obligations vested by law, regard being had to the circumstances of a given case, is punishable by a reprimand or a reproach<sup>10</sup>.
56. GRECO welcomes the approval by the Prosecutor General of the Rule on the grounds for disciplinary liability and categories of disciplinary misconduct for the employees of the prosecution service, its subsequent entry into force and publication. It is satisfied that the Rule has defined more precisely a broad range of disciplinary offences under each ground for disciplinary liability. In addition, GRECO notes that the Organic Law on the Prosecutor's Office 2018 has laid down a range of disciplinary measures (which appear proportionate) in respect of each category of disciplinary misconduct, regard being had to the circumstances in a given case. In these circumstances, GRECO considers that the concerns behind this recommendation have been fully addressed.
57. GRECO concludes that recommendation xv has been implemented satisfactorily.

### **III. CONCLUSIONS**

58. **In view of the foregoing, GRECO concludes that Georgia has implemented satisfactorily or dealt with in a satisfactory manner 8 of the 16 recommendations contained in the Fourth Round Evaluation Report.** Of the remaining recommendations six remain partly implemented and two have not been implemented.
59. More specifically, recommendations v, vi, x, xi, xii, xiii, xv and xvi have been implemented satisfactorily or dealt with in a satisfactory manner, recommendations i, ii, iii, iv, vii and viii have been partly implemented and recommendations ix and xiv have not been implemented.
60. With respect to members of Parliament, GRECO regrets the lack of any tangible progress towards the implementation of the remaining recommendations since the Second Compliance Report. The authorities did not provide any relevant information

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<sup>10</sup> A reprimand is a formal disapproval administered to a prosecutor as a disciplinary sanction. A reproach is a severe form of strong disapproval and a harsher disciplinary penalty.

regarding the establishment of a uniform regulatory framework for the public consultation procedure for draft legislation. The Council of Ethics still remains not fully operational and confidential counselling to MPs has not yet been provided. Regrettably, no progress has been made to introduce the requirement for *ad hoc* disclosure of MPs' conflicts of interest.

61. As far as judges are concerned, GRECO is pleased that the competitive procedure for the promotion of judges to courts of appeal is in line with the requirements of its recommendation. However, GRECO has serious misgivings about the promotion of judges without competition, in respect of which it invites the authorities to consider revising or abolishing this promotion track. In addition, GRECO welcomes the improvements made to the LCC in respect of the procedure for the appointment of judges to the Supreme Court. Still, it expresses concerns about the alleged lack of impartiality during the re-examination of a case by the same composition of the HCJ and the lack of an anti-deadlock mechanism as regards the requirement to have a two-thirds majority for HCJ decisions. Moreover, GRECO is satisfied that the updated Rules of Judicial Ethics were adopted and published. The authorities also organised a training on the updated Rules of Judicial Ethics. That said, GRECO encourages the authorities to conduct confidential counselling, increase training activities and provide guidance and explanations on the updated Rules. Lastly, as regards the disciplinary proceedings against judges, GRECO took note of the abolishment of the requirement for a two-thirds majority for HCJ decisions on disciplinary matters and calls on the authorities to provide for a right to appeal against HCJ decisions terminating disciplinary proceedings.
62. Regarding prosecutors, GRECO welcomes the approval, entry into force and publication of the Rule on the grounds for disciplinary liability and categories of disciplinary misconduct for the employees of the prosecution service, which has defined more precisely disciplinary offences. It is furthermore noted that the domestic law provides for adequate sanctions in respect of different categories of disciplinary misconduct. GRECO regrets that the authorities' work to pursue the draft amendments to the LCI has not advanced and that there has not been any tangible progress on their work to widen the scope of application of the asset declaration regime under the LCI. It calls on the authorities to step up their efforts to introduce legislative amendments so that all prosecutors are required to submit asset declarations.
63. In view of the fact that 8 out of 16 recommendations are yet to be implemented, GRECO, in accordance Rule 31 revised, paragraph 9 of its Rules of Procedure asks the Head of Delegation of Georgia to submit a report on the pending recommendations, namely regarding the implementation of recommendations i, ii, iii, iv, vii, viii, ix and xiv by 30 June 2023, at the latest.
64. 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.