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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

THIRD *INTERIM* COMPLIANCE REPORT

HUNGARY

Adopted by GRECO at its 89th Plenary meeting
(Strasbourg, 29 November – 3 December 2021)

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I. INTRODUCTION

1. The [Fourth Evaluation Round Report on Hungary](#) was adopted by GRECO at its 67th Plenary Meeting (27 March 2015) and made public on 22 July 2015, following authorisation by Hungary. GRECO's Fourth Evaluation Round deals with "Corruption Prevention in respect of Members of Parliament, Judges and Prosecutors".
2. As required by GRECO's Rules of Procedure, the Hungarian authorities submitted a Situation Report containing information on measures taken to implement the recommendations. In the [Compliance Report](#), adopted by GRECO at its 76th plenary meeting (23 June 2017) and made public on 1 August 2019, it was concluded that Hungary had implemented satisfactorily or dealt in a satisfactory manner only five of the 18 recommendations contained in the Fourth Round Evaluation Report (recommendations vii, ix, xi, xiii and xviii). In light of these results, 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 its Rules of Procedure. It therefore decided to apply Rule 32, paragraph 2.i) in respect of members not in compliance with the recommendations contained in the mutual evaluation report and called on the Head of the Hungarian delegation to submit a report on progress in implementing the pending recommendations.
3. In the [Interim Compliance Report](#), adopted by GRECO at its 81st Plenary Meeting (7 December 2018) and made public on 1 August 2019, it was concluded that Hungary had still only implemented satisfactorily or dealt with in a satisfactory manner five of the 18 recommendations contained in the Fourth Round Evaluation Report. In light of these results, GRECO also concluded that the overall low level of compliance with the recommendations remained "globally unsatisfactory" within the meaning of Rule 31, paragraph 8.3 of its Rules of Procedure. In accordance with Rule 32, paragraph 2 subparagraph (ii), GRECO instructed its President to send a letter – with a Copy to the President of the Statutory Committee – to the Head of Delegation of Hungary, drawing his attention to the need to take determined action with a view to achieving tangible progress as soon as possible.
4. In addition, given the lack of information provided and the lack of progress in implementing the recommendations, in accordance with Rule 32, paragraph 2(iii), GRECO also requested the authorities of Hungary to receive a high-level mission in order to discuss on the spot with all stakeholders concerned ways to expedite the legislative and policy changes highlighted in the Interim Compliance Report. This high-level mission took place on 1 March 2019, at which the GRECO delegation¹ met with the State Secretary for Cooperation in European and International Justice Affairs at the Ministry of Justice, the Prosecutor General and the President of the National Judicial Council, as well as representatives of the National Office for the Judiciary and members of the Hungarian Delegation to the Parliamentary Assembly to the Council of Europe.
5. The [Second Interim Compliance Report](#) was adopted at GRECO's 85th Plenary Meeting (25 September 2020) and made public on 17 November 2020, following authorisation by the authorities. It concluded that Hungary had still only implemented satisfactorily or dealt in a satisfactory manner five of the eighteen recommendations contained in the Fourth Round Evaluation Report. Four recommendations had been partly implemented and nine not implemented. The level of compliance was again assessed as "globally unsatisfactory". GRECO invited the President of the Statutory

¹ The GRECO delegation comprised the President of GRECO, the Council of Europe Director of Information Society and Action Against Crime, the Head of the Austrian Delegation to GRECO, GRECO's Executive Secretary and a member of the GRECO Secretariat.

Committee to send a letter to the Permanent Representative of Hungary to the Council of Europe, drawing the attention to non-compliance with the relevant recommendations. GRECO also requested the Head of the Hungarian delegation to GRECO to provide a report on the action taken to implement the outstanding recommendations.

6. The situation report was received on 27 September 2021 and forms the basis of this Third Interim Compliance Report, which assesses the implementation of the 13 outstanding recommendations and provides an overall assessment of Hungary's level of compliance with these recommendations.
7. GRECO selected Austria and Romania to appoint Rapporteurs for the compliance procedure. The Rapporteurs appointed were Mr Christian MANQUET on behalf of Austria and Mr Sorin TANASE on behalf of Romania. They were assisted by GRECO's Secretariat in drawing up this Third Interim Compliance Report.

II. ANALYSIS

Corruption prevention in respect of members of parliament

Recommendations i-v.

8. GRECO recommended:
 - *(i) to ensure that all legislative proposals are processed with an adequate level of transparency and consultation and, (ii) that rules be introduced for members of parliament on how to interact with lobbyists and other third parties seeking to influence the parliamentary process; (recommendation i)*
 - *that a code of ethics/conduct for members of parliament be adopted, including in respect of their staff as appropriate – covering various situations of conflicts of interest (gifts and other advantages, third party contacts, lobbyists, accessory activities, post-employment situations, etc.) and that it be complemented by practical measures for its implementation, such as dedicated training and counselling; (recommendation ii)*
 - *that a requirement of ad hoc disclosure be introduced for members of parliament for situations of personal conflicts of interest which may emerge during the parliamentary proceedings and that rules for such situations be developed; (recommendation iii)*
 - *to ensure (i) that the obligation upon members of parliament to disclose outside occupations and activities of a non-financial character are applied in practice; and (ii) that all declarations as submitted follow a format, which allows for adequate public scrutiny over time, preferably by using electronic means; (recommendation iv)*
 - *that appropriate measures be taken in order to ensure that the procedures of lifting the immunity of parliamentarians do not hamper criminal investigations in respect of members of parliament suspected of having committed corruption related offences; (recommendation v)*
9. GRECO recalls that these five recommendations were not implemented in the Second Interim Compliance Report. Initially, in the Compliance Report, GRECO welcomed

that a step towards implementation of some parts of recommendations i, ii, iii and iv was initiated with the preparation of guidelines on rules of conduct. These guidelines had the potential of addressing various elements of the pending recommendations. However, no tangible results had been achieved in this respect.

10. The authorities now report that no progress has been made regarding recommendations i-v and reiterate their position that Parliament alone is responsible for the implementation of these recommendations.
11. GRECO concludes that recommendations i-v remain not implemented.

Recommendation vi

12. *GRECO recommended that appropriate measures be taken to ensure effective supervision and enforcement of the existing and yet to be established rules on the conduct, conflicts of interest and interest declarations of members of parliament and that adequate and proportionate sanctions be introduced to that end.*
13. GRECO recalls that this recommendation was partly implemented in the Second Interim Compliance Report. On 10 December 2019, Parliament had adopted amendments to Act XXXVI of 2012 on the National Assembly. These amendments (which entered into force on 1 February 2020) list the rights an MP may not exercise in the event of a potential conflict of interest listed in sections 80, 84-86 or 88 of the Act on the National Assembly. GRECO welcomed that the provisions dealing with incompatibilities and certain potential conflicts of interests had provided for clearer consequences in case these matters are not resolved by the MP in question. However, the wider issue of deficiencies in the supervision carried out by the Committee on Immunity, Incompatibility and Mandate Control and the lack of proportionality of sanctions remained to be addressed.
14. The authorities now report that no further progress has been made regarding recommendation vi.
15. GRECO concludes that recommendation vi remains partly implemented.

Corruption prevention in respect of judges

Recommendation viii

16. *GRECO recommended that the powers of the President of the National Judicial Office to intervene in the process of appointing and promoting candidates for judicial positions be reviewed in favour of a procedure where the National Judicial Council is given a stronger role.*
17. GRECO recalls that this recommendation was not implemented in previous compliance reports. The reasons for this recommendation are developed in detail in the Evaluation Report (paragraph 111) as well as in previous compliance reports. Throughout the compliance procedure, GRECO has taken note of the Hungarian position, which is also reflected in the Evaluation Report as well as in the subsequent compliance reports. The essence of GRECO's concerns have been that it would be advisable that the National Judicial Council (NJC), as the highest collective body of the judiciary, be given the final say on recommendations for judicial appointments. At the same time, GRECO acknowledged that the involvement of the President of the National Judicial Office (PNJO) in such procedures was to some extent balanced by the supervisory function of the NJC, as already noted in the Evaluation Report (which also takes into account and refers to the Opinions of the Venice Commission (CDL-AD (2012)001). However, no measure to review the role of the PNJO and provide for

a stronger role of the NJC in the process of appointing and promoting candidates for judicial positions, as recommended by GRECO, have been taken.

18. The authorities now reiterate their position stating that the current rules on judicial appointments guarantee that whenever a candidate is appointed or promoted, elected bodies of judges have a role in this process. They also highlight that a recent decision by the Constitutional Court [Decision 13/2021 (iv.14) AB] broadened the possibilities of review against the results of applications procedures for judicial positions.
19. GRECO takes note of the information provided by the authorities (including that a review may be possible in respect of judicial appointments). However, it does not appear that any pertinent measures have been taken to review the powers of the PNJO and provide for a stronger role of the National Judicial Council in the process of appointing and promoting candidates for judicial positions - as recommended by GRECO - since the adoption of the Evaluation Report.
20. GRECO concludes that recommendation viii remains not implemented.

Recommendation x

21. *GRECO recommended that the power of the President of the National Judicial Office to re-assign ordinary judges without their consent be reduced to a minimum in time and only for precise and particular reasons of a temporary character.*
22. GRECO recalls that this recommendation was not implemented in the Second Interim Compliance Report. Throughout the compliance procedure, GRECO has taken note of the information provided by the authorities, inter alia, that the PNJO can only transfer a judge to another post if s/he has successfully applied to an empty judicial position in the other court in question or if it has been decided to abolish the court where a judge works or to substantially reduce its territory. If not consenting, a judge can only be seconded to guarantee the even distribution of workload between courts for one year within a three-year period, however, all secondments are to be decided on with due consideration to a judge's reasonable interest and personal situation. No judge has been seconded without his/her consent since 2012, according to the authorities.
23. The authorities now reiterate their earlier position and add that the emergency situation caused by the pandemic justifies maintaining this regulation.
24. GRECO takes note of the information provided. As expressed in the Evaluation and Compliance Reports, the provision currently in place is broad. It maintains the view that it should not be possible to reassign a judge without his/her consent as often as is provided for in the Act on the Legal Status and Remuneration of Judges (Section 31.3) every three years for up to one year, given that the irremovability of judges is an important feature of their independence.² No new development has been reported in this respect.
25. GRECO concludes that recommendation x remains not implemented.

² See in this respect also the [Opinion](#) (CDL-AD(2012)20) of the Venice Commission on the Cardinal Acts on the Judiciary (as amended following the adoption of opinion CDL-AD(2012)001), para. 54 and further.

Recommendation xii

26. *GRECO recommended that the immunity of ordinary judges be limited to activities relating to their participation in the administration of justice ("functional immunity").*
27. GRECO recalls that this recommendation was not implemented in the Second Interim Compliance Report. GRECO took note of the authorities' opinion that, in order to ensure the highest possible level of independence of judges, it is necessary to maintain the immunity of judges in its current form in order to protect judges and the judiciary from harassment through unfounded accusations, including from persons initiating private prosecutions against judges for alleged minor offenses in order to delay proceedings.
28. The authorities now reiterate that reducing the scope of immunity would lead to an increase in the number of bad faith accusations brought by clients against judges in order to delay proceedings. The authorities also stress that limiting immunity of judges could potentially have adverse effects on their level of independence.
29. GRECO takes note of the information provided. It reiterates once again its regret that the immunity provided to judges has not been limited to functional immunity.
30. GRECO concludes that recommendation xii remains not implemented.

Corruption prevention in respect of prosecutors

Recommendation xiv.

31. *GRECO recommended that i) the possibility to re-elect the Prosecutor General be re-considered and ii) the possibility to maintain the Prosecutor General in office after the expiry of his/her mandate by a minority blocking of the election in Parliament of a successor be reviewed by the Hungarian authorities.*
32. GRECO recalls that this recommendation was partly implemented in the Second Interim Compliance Report. At the time of the adoption of the Interim Compliance Report consideration of the first part of the recommendation had duly taken place, but the second part of the recommendation had not been subject to any review by the Hungarian authorities. In the Second Interim Compliance Report the authorities emphasised that it is essential for the proper functioning of the prosecution service that the Prosecutor General's position is filled even during the transitional period, until the required majority is formed.
33. The authorities reiterate their position that it is essential for the proper functioning of the prosecution service that the Prosecutor General's position is filled even during the transitional period, until the required majority is formed.
34. GRECO takes note of the information repeatedly provided by the Hungarian authorities. No measures have been taken to review the situation that the Prosecutor General may remain in office after the expiry of his/her mandate.
35. GRECO concludes that recommendation xiv remains partly implemented.

Recommendation xv.

36. *GRECO recommended that the removal of cases from subordinate prosecutors be guided by strict criteria and that such decisions are to be justified in writing.*

37. GRECO recalls that this recommendation was partly implemented in the Second Interim Compliance Report as the removal of cases from subordinate prosecutors had to be justified in writing (Decree of the Prosecutor General) but the requirement of "strict criteria" was not fulfilled.
38. The authorities now highlight that Section 60/A of Order 12/2012. (VI. 8.) issued by the Prosecutor General on the Organization and Operation of the Prosecution Service has been amended in order to implement a strict criteria system for the removal of cases from subordinate prosecutors. The new regulation entered into force on the 8th September 2021. The new Section 60/A reads as follows:
- "(1) The prosecutorial employee authorized to allocate and assign cases under the records and case management regulations of the Prosecution Service may remove a given case from the designated caseworker to another caseworker.*
- (2) If a case handled in the field of criminal or non-criminal law is re-assigned, the reason for re-assignment needs to be briefly indicated in the paper-based documents.*
- (3) A case may be re-assigned exclusively:*
- a) for health reasons (in particular, sick-leave, sick-leave with reduced sick pay);*
 - b) for objective reasons concerning work organization (in particular, ensuring proportional workload, qualification);*
 - c) for reason of the caseworker's exclusion;*
 - d) on personnel grounds (transfer to another office, secondment, termination of employment).*
- (4) The re-assignment of cases shall be recorded in the case management system the same way as the assignment of cases."*
39. GRECO welcomes the entry into force of the amendment in Section 60/A of Order 12/2012. (VI. 8.) issued by the Prosecutor General which includes a list of precise criteria and an obligation to provide written justifications for the removal of cases from subordinate prosecutors, in line with the recommendation.
40. GRECO concludes that recommendation xv has been implemented satisfactorily.

Recommendation xvi.

41. *GRECO recommended that the immunity of public prosecutors be limited to activities relating to their participation in the administration of justice ("functional immunity").*
42. GRECO recalls that this recommendation was not implemented in the Second Interim Compliance Report. In previous Compliance Reports the authorities had already outlined that they considered it necessary to maintain the broad immunity of prosecutors in order to protect them from harassment by way of groundless accusations. No further progress was reported regarding this recommendation in the Second Interim Compliance Report.
43. The authorities now reiterate their position that they consider the present regulation necessary to protect prosecutors from harassment of unfounded accusations. The authorities also stress that limiting immunity of prosecutors could potentially have adverse effects on their level of independence.
44. GRECO takes note of the information provided. It reiterates once again its regret that the immunity provided to prosecutors has not been limited to functional immunity.
45. GRECO concludes that recommendation xvi remains not implemented.

Recommendation xvii.

46. *GRECO recommended that disciplinary proceedings in respect of prosecutors be handled outside the immediate hierarchical structure of the Prosecution Service and in a way that provides for enhanced accountability and transparency.*
47. GRECO recalls that this recommendation was partly implemented in the Second Interim Compliance Report. It welcomed the entry into force of the Amendment to the Act CLXIV of 2011 on the Status of the Prosecutor General, Prosecutors and Other Prosecution Employees and the Prosecutor Career (ASPGPC) that made the involvement of a disciplinary commissioner compulsory in all disciplinary proceedings, who cannot be in a hierarchical relationship to the persons under investigation and s/he is entrusted with investigating a breach of discipline (which would then be followed by a decision on the merits of the case by the superior prosecutor or the Prosecutor General). While welcoming this amendment, GRECO found that the role of the disciplinary commissioner remained limited to investigating the case, with the superior prosecutor still leading the overall procedure.
48. The authorities reiterate their view that the appointment of a disciplinary commissioner and the safeguards foreseen in the relevant laws offer a proper solution to the question raised by the recommendation.
49. GRECO remains concerned that it is still the direct superior prosecutor who decides on the merits of the case, rather than an impartial body. Objections filed on the ground of bias also appear to be handled within the immediate hierarchical structure (and in cases where the Prosecutor General him/herself would decide the case on merit, s/he would also decide on the objection of bias made against him/her). As such, while improvements have been made, GRECO cannot yet say that disciplinary proceedings are now handled outside the immediate hierarchical structure of the Prosecution Service in a way that provides for enhanced accountability and transparency, as required by the recommendation. The involvement of the immediate superior prosecutor is particularly striking in this respect.
50. GRECO concludes that recommendation xvii remains partly implemented.

III. CONCLUSIONS

51. **In view of the foregoing, GRECO concludes that Hungary has implemented satisfactorily or dealt in a satisfactory manner six of the eighteen recommendations contained in the Fourth Round Evaluation Report.** This represents a slight improvement from the Second Interim Compliance Report. Of the twelve remaining pending recommendations, three recommendations have now been partly implemented and nine recommendations remain not implemented.
52. More specifically, recommendations vii, ix, xi, xiii, xv and xviii have been implemented satisfactorily or dealt with in a satisfactory manner. Recommendations vi, xiv and xvii have been partly implemented and recommendations i-v, viii, x, xii and xvi not implemented.
53. In respect of members of parliament GRECO stresses that more determined measures are necessary to improve the current integrity framework of Parliament, in particular as regards the level of transparency and consultation in the legislative process (including the introduction of rules on interactions with lobbyists), to adopt a code of conduct for members of parliament, to further develop rules obliging MPs to disclose in an *ad-hoc* manner potential conflicts between their parliamentary work and their private interests, to ensure a uniform format of asset declarations and to

review the broad immunity enjoyed by MPs as well as to ensure the effective supervision and enforcement of rules of conduct, conflict of interest and asset declarations.

54. As regards judges, no further progress has been achieved regarding the three remaining recommendations. GRECO's findings on the need to review the powers of the President of the National Judicial Office, both as regards the process of appointing/promoting candidates for judicial positions and in respect of the of re-assigning judges remain areas of particular concern, closely linked to the independence of the judiciary. The far-reaching immunity of judges is also a concern.
55. As regards prosecutors, the amended order of the Prosecutor General now provides for strict criteria and written justifications to guide the removal of cases from subordinate prosecutors. This is to be welcomed. As regards disciplinary proceedings, GRECO already appreciated in previous reports the introduction of a disciplinary commissioner. However, disciplinary proceedings are still not handled outside the direct hierarchical structure, which remains a concern. Furthermore, no progress has been achieved regarding the prolongation of the term of the Prosecutor General and the broad immunity enjoyed by prosecutors.
56. GRECO concludes that the overall low level of compliance with the recommendations remains "globally unsatisfactory" in the meaning of Rule 31 revised, paragraph 8.3 of the Rules of Procedure.
57. Pursuant to Rule 32 2. (i) of the Rules of Procedure, GRECO requests the Head of the Hungarian delegation to provide a report on the progress in implementing the pending recommendations (i.e. recommendations i to vi, viii, x, xii and xiv to xvii) as soon as possible, but at the latest by 31 December 2022.
58. It is noted that on 4 October and on 8 November 2021 the Secretary General of the Council of Europe held a meeting with the Minister of Justice of Hungary, inter alia, drawing the attention to the non-compliance with GRECO's recommendations addressed to Hungary. GRECO therefore decides not to apply Rule 32, paragraph 2 subparagraph (ii c) in respect of the current report.
59. Finally, GRECO invites the authorities of Hungary to authorise, as soon as possible, the publication of the present report, to translate it into the national language and to make this translation public.