



Group of States against Corruption
Groupe d'États contre la corruption



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FOURTH EVALUATION ROUND

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

SECOND *INTERIM* COMPLIANCE REPORT

Including

FOLLOW-UP TO THE AD HOC (RULE 34) REPORT

POLAND

Adopted by GRECO at its 93rd Plenary Meeting
(Strasbourg, 20-24 March 2023)

I. INTRODUCTION

1. This second 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 ([Greco Eval IV Rep \(2012\) 4E](#)). Between December 2014 and June 2018, three compliance reports were adopted by GRECO at its 66th Plenary Meeting (12 December 2014), 75th Plenary (20-24 March 2017) and 80th Plenary Meeting (18-22 June 2018) and made public on 24 February 2015 ([Greco RC-IV \(2014\) 1E](#)), 28 March 2017 ([GrecoRC4\(2017\)2](#)) and 28 June 2018 ([GrecoRC4\(2018\)11](#)), respectively.
3. In addition, in light of the judicial reforms 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 Meeting 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to the Fourth Round Evaluation Report ([Greco-AdHocRep\(2018\)3](#)) (hereafter: the Rule 34 Report), which re-assessed outdated parts of the Fourth Round Evaluation Report.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](#)) and the Interim Compliance Report ([Greco RC4\(2021\)18](#)), which were adopted at GRECO's 84th Plenary Meeting (2-6 December 2019) and the 88th Plenary meeting (20-22 September 2021) and made public on 16 December 2019 and 22 September 2021, respectively. In both reports, 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 and decided to apply its "non-compliance procedure" in accordance with Rule 32. In the Interim Compliance Report, the Head of the Polish delegation was asked 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 (extended to 31 December 2022).
5. As required, the authorities of Poland submitted a Situation Report on measures taken to implement the outstanding recommendations. This report was received on 30 December 2022 and, together with the information submitted subsequently, served as a basis for the current second Interim Compliance Report.
6. GRECO selected the Czech Republic and Portugal to appoint Rapporteurs for the compliance procedure. The Rapporteurs appointed were Ms Helena KLIMA LIŠUCHOVÁ on behalf of the Czech Republic and Mr António DELICADO on behalf of Portugal. They were assisted by GRECO's Secretariat in drawing up the Second 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 i-iii, v, vi, ix, xii, xiv and xvi as well as Rule 34 recommendations i, ii, iv, v and vi had not been implemented. Compliance with the outstanding recommendations is dealt with below.

Corruption prevention in respect of members of parliament

Recommendations i, ii, iii and v

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); and*
- *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).*

9. GRECO recalls that recommendations i-iii and v were not implemented in the previous compliance report. No steps towards implementation of those recommendations had been taken.

10. The Polish authorities now report that certain statutory amendments² have introduced incompatibilities between the exercise of the mandate of a Sejm deputy and senator and other functions, thus avoiding any potential areas of conflicts of interest. They admit that the amendments do not directly affect the areas covered by the GRECO recommendations, however, they significantly expand the scope of the so-called relative formal incompatibility of the parliamentary mandate set out in Article 30 of the Act of 9 May 1996 on the exercise of the mandate of deputy and senator. While they do not prohibit the combination of mandates with certain

² Act of 14 October 2021 amending the Act – Criminal Code and certain other acts (Journal of Laws 2021, item 2054).

functions, the statutory amendments prohibit the employment of deputies and senators in commercial companies in which the State Treasury or a local government unit directly or indirectly holds at least 10 % of the shares. The Sejm and Senate will continue to implement the outstanding recommendations.

11. GRECO takes note of the statutory amendments, which, as admitted by the authorities, do not have any bearing on the areas covered by the four outstanding recommendations. It regrets the continued absence of any tangible progress in the implementation of these four outstanding recommendations.
12. GRECO concludes that recommendations i, ii, iii and v remain not implemented.

Recommendation vi

13. *GRECO recommended 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.*
14. GRECO recalls that recommendation vi was not implemented in the previous compliance report.
15. The Polish authorities now report that a special trusted advisor has been appointed in the Senate since 2020, who has provided advice on ethical issues and conflicts of interest. Mandatory and optional training courses take place before the first sitting of the Senate of the next term, in which certain ethical issues are addressed.
16. GRECO welcomes that, as regards part (i) of this recommendation, a trusted advisor has been appointed in the Senate to provide counselling to senators. For this part of the recommendation to be fully implemented, a confidential counsellor would also have to be appointed in respect of the Sejm deputies, which is not yet the case. Consequently, this part of the recommendation has only been partly complied with. Concerning part (ii), some mandatory and optional training courses appear to have taken place in respect of senators and only before the first sitting of the term, while the authorities have provided no precise information regarding the number of senators attending such courses, their frequency, scope and content as well as the ethical issues addressed therein. GRECO regrets that no more than limited training has been introduced in respect of the senators. It cannot be said that this part of the recommendation has been complied with more than partly.
17. GRECO concludes that recommendations vi has been partly implemented.

Corruption prevention in respect of judges

Recommendation ix

18. *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.*
19. GRECO recalls that this recommendation was partly implemented in the previous compliance report. 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. However, connected draft legislation on asset declarations had not materialised.

20. The Polish authorities have reported no further progress.
21. GRECO concludes that recommendation ix remains partly implemented.

Corruption prevention in respect of prosecutors

Recommendation xii

22. *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).*
23. GRECO recalls that this recommendation was partly implemented in the previous compliance report. The first part had been implemented satisfactorily with the distribution of the "Collection of Ethical Principles governing the Prosecutors' Profession" among prosecutors and to the public³. As regards the second part of the recommendation, other than adding certain provisions on conflicts of interest to the Collection of Ethical Principles governing the Prosecutors' Profession, no guidance on conflicts of interest and other related issues (such as the acceptance of gifts and other advantages, incompatibilities and additional activities), including practical examples, had been offered.
24. The Polish authorities have reported no further progress, other than referring to previously submitted information according to which certain provisions on conflicts of interests had been added to the Collection of Ethical Principles governing the Prosecutors' Profession (see the preceding paragraph and paragraph 23 of the Interim Compliance Report).
25. GRECO notes the absence of any tangible progress and 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 was partly implemented in the previous compliance report. As regards the first part, the National Prosecution Council (NPC) had been entrusted with the power to enact the "Collection of Principles of Professional Ethics for Prosecutors" (through a legislative amendment), to interpret these principles when so requested and supervise them. That said, it had not been provided with adequate tools and powers to effectively supervise compliance with

³ The document was posted on the website of the National Public Prosecutor's Office (www.gov.pl/web/prokuratura-krajowa).

ethical principles for prosecutors. Concerning the second part of the recommendation, no measures had been put in place to ensure a more in-depth scrutiny of prosecutors' asset declarations.

28. The Polish authorities now report that, as regards the first part of the recommendation, a resolution of 29 August 2022 by the NPC, reiterating its position adopted at a meeting of 16 March 2021 (see paragraph 29 of the Interim Compliance Report), provides that there is no need to empower it with competences and tools to supervise and ensure the observance of ethical principles for prosecutors. Violation of the rules of professional ethics may give rise to disciplinary proceedings, which are conducted by a Disciplinary Ombudsman who may decide to initiate or refuse to institute such proceedings. The proceedings are usually carried out before the Disciplinary Court, acting as a first-instance court, and, subsequently, the Supreme Court's Disciplinary Chamber, on appeal. Concerning the second part of the recommendation, the authorities consider that this recommendation is inappropriate, as the prosecutors' asset declarations are subject to checks by a superior prosecutor, the tax offices and, ultimately, the Central Anti-corruption Bureau.
29. As regards the first part of the recommendation, GRECO points to the Interim Compliance Report⁴, the Addendum to the Second Compliance Report⁵ and the Evaluation Report⁶, according to which the Law on the Prosecution Service mandates the National Prosecution Council (NPC) to supervise the observance by prosecutors of the ethical principles governing the prosecutors' profession. However, as noted in those reports, the fact and the practice remain that the law does not specify the measures the NPC is entitled to take in the supervision process, nor its tools or powers. Consequently, this part has not been complied with. Concerning the second part of the recommendation (which is identical to recommendation ix. made in respect of judges), no new and relevant information has been provided.
30. GRECO concludes that recommendation xiv remains partly implemented.

Recommendation xvi

31. *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.*
32. GRECO recalls that this recommendation was partly implemented in the previous compliance report. Training activities on ethical matters had been provided to prosecutors, and they would continue in the future. As regards confidential counselling, the authorities had not considered it necessary to appoint ethics advisors for prosecutors.
33. The Polish authorities now report that, owing to the Covid-19 pandemic, no trainings have been organised for prosecutors in 2021 and 2022. They maintain their position that the appointment of dedicated ethics advisors for prosecutors is not warranted.

⁴ See paragraph 30.

⁵ See paragraphs 22 and 23.

⁶ See paragraph 205.

34. GRECO notes the absence of any tangible progress with the implementation of this recommendation and concludes that recommendation xvi remains partly implemented.

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

35. The Rule 34 Report, which was an Addendum to the Fourth Round Evaluation Report, assessed the context of wide-ranging reforms in the organisation of the judiciary in Poland, which included, in particular, the reforms resulting from the adoption of a new law on the Supreme Court in 2017 (hereinafter the 2017 Act on the Supreme Court), and certain amendments made to the Law on the National Council of the Judiciary (NCJ) in 2017, which entered into force in January 2018 (hereinafter the 2017 Amending Act on the NCJ) and to the Law on Common (Ordinary) Courts of 27 July 2001 (hereinafter the 2001 Act on Common (Ordinary) Courts). In 2019 and in 2022 substantial amendments were introduced to the 2017 Act on the Supreme Court and the 2001 Act on Common (Ordinary) Courts (hereinafter the 2019 Amending Act and the 2022 Amending Act).
36. As a general observation, the Polish authorities reiterate their previously held position that GRECO has exceeded its mandate by assessing the changes in the organisation of the judiciary, as it is only authorised to assess legislative changes in individual countries from the point of view of corruption prevention. In their view, there is no basis on which to claim that the judicial reforms have negatively affected the standards for combating and preventing corruption.
37. GRECO reiterates its previous position that the judicial reforms critically affect issues relating to the prevention of corruption in respect of the judiciary, specifically on judicial independence as an essential pre-condition for the fight against corruption, and in respect of which GRECO has issued similar recommendations to other member States.

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 this recommendation was not implemented. No steps had been taken to amend the applicable legislation on the election of judges to the NCJ to ensure compliance with the recommendation.
40. The Polish authorities report that the situation remains unchanged. In the authorities' view, the election of judges to the NCJ by the *Sejm* (the lower house of the Polish Parliament) has increased the representativeness and democratic legitimacy of NCJ members⁷.
41. GRECO regrets that the authorities have taken no concrete steps to ensure compliance with this recommendation. As a result of the 2017 Amending Act on the NCJ, effectively 23 of 25 members of the NCJ are still appointed by the legislative or

⁷ The Polish authorities submit that, according to the judgment of 22 March 2022, [Getin Noble Bank, C-132/20](#), the Court of Justice of the European Union (CJEU) held that, "insofar as a request for a preliminary ruling emanates from a national court or tribunal, it should be presumed that it satisfies the requirements laid down in its case-law, irrespective of its actual composition" (paragraph 69).

executive powers or represent those authorities⁸, contrary to this recommendation and Council of Europe standards⁹. GRECO also wishes to point to the European Court of Human Rights (ECtHR) *Grzęda v. Poland*¹⁰ judgment of 15 March 2022, which, by reference to, *inter alia*, GRECO's recommendation, found that the judiciary, and the remodelling of the NCJ, had been exposed to interference by the executive and legislature, aiming at substantially weakening judicial independence.

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

Rule 34 recommendation ii

43. *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.*
44. GRECO recalls that this recommendation was not implemented in the previous compliance report. As regards the first part of the recommendation, the establishment of the Chamber of Extraordinary Appeals (Review) and Public Affairs and the Disciplinary Chamber had not been reconsidered. Their competences had been expanded, going in the opposite direction of the intentions of this part of the recommendation. Concerning the second part of the recommendation, GRECO remained concerned by the far-reaching involvement of the President of the Republic in the internal proceedings of the Supreme Court.
45. The Polish authorities now report that the Act of 9 June 2022 amending the 2017 Act on the Supreme Court and certain other Acts, as amended (the 2022 Amending Act), abolished the Disciplinary Chamber and created the Chamber of Professional Responsibility (Liability). The new Chamber of Professional Responsibility (Liability) consists of 11 judges, appointed for a joint five-year term by the President of the Republic from among the judges of the Supreme Court sitting in all its chambers (including the former Disciplinary Chamber), drawn by lot, in advance, at a meeting of the College of the Supreme Court (sometimes referred to as the Supreme Court Board). The President of the Chamber of Professional Responsibility (Liability) is appointed by the President of the Republic, after consultation with the First President of the Supreme Court. The Chamber of Professional Responsibility (Liability) will consist of the First Division (a first-instance court) and the Second Division (a second-instance/appellate court). Since a judge sitting in the Chamber of Professional Responsibility (Liability) continues to sit in the chamber in which s/he occupies the position of judge of the Supreme Court, the share of caseload in the Chamber of Professional Responsibility (Liability) may not be more than half of the allocation of cases of a judge of the Supreme Court. The 2022 Amending Act has also re-established the jurisdiction of the Chamber of Professional Responsibility (Liability) and the Chamber of Extraordinary Appeals (Review) and Public Affairs. Moreover, the 2022 Amending Act has reconfirmed the role and powers of the President of the Republic over the internal organisation of the Supreme Court.

⁸ The NCJ members are: the First President of the Supreme Court, the Minister of Justice, the President of the Supreme Administrative Court, an individual appointed by the President of the Republic, fifteen judges elected from among the judges of the Supreme Court, ordinary courts, administrative courts and military courts by the Sejm, four members elected by the Sejm from among its deputies and two members elected by the Senate (upper house of the Polish Parliament) from among its senators.

⁹ See, for example, [Recommendation \(2010\)12](#) of the Committee of on Judges: independence, efficiency and responsibilities, para. 46; [Venice Commission Report on the Independence of the Judicial System Part I: The Independence of Judges](#) (CDL-AD(2010)004-e), para. 32; [Opinion No. 10 \(2007\) of the Consultative Council of European Judges](#) (CCJE) on the Council for the Judiciary at the service of society, para. 18; [CCJE, Magna Carta for Judges](#) (Fundamental Principles), paragraph 13.

¹⁰ [https://hudoc.echr.coe.int/eng#{%22appno%22:\[%2243572/18%22\]}](https://hudoc.echr.coe.int/eng#{%22appno%22:[%2243572/18%22]})

46. The authorities further provide that on 13 January 2023 the Sejm passed another Act amending the Act on the Supreme Court and certain other acts. This Act has not yet entered into force, as it is currently pending before the Constitutional Court following a referral request for its constitutionality made by the President of the Republic. Under the Act, it is proposed *inter alia* that all disciplinary cases against judges of the Supreme Court, ordinary courts and military courts be assigned to the Supreme Administrative Court. Other proposals relate to the examination of cases involving judicial immunity, and further amendments to the rules of disciplinary liability of judges of the Supreme Court, and of ordinary, military and administrative courts.
47. As regards the first part of the recommendation, GRECO notes that the authorities have not reconsidered the establishment of the Chamber of Extraordinary Appeals (Review) and Public Affairs, while reconsideration has been given to the Disciplinary Chamber. Thus, the 2022 Amending Act has abolished the Disciplinary Chamber and replaced it with the Chamber of Professional Responsibility (Liability). GRECO understands that there have been some changes affecting the appointment of judges of the new Chamber of Professional Responsibility (Liability). They are now appointed by the President of the Republic out of a list of Supreme Court judges drawn by lot (as opposed to the previous appointment by the President of the Republic acting on a recommendation from the NCJ). GRECO takes note of these developments. Also, it will follow domestic developments before the Constitutional Court of Poland, which has been called upon to examine the constitutionality of additional statutory amendments envisaging *inter alia* the allocation of disciplinary cases against judges to the Supreme Administrative Court. However, GRECO is concerned that the general framework remains the same, since the jurisdiction accorded to both special chambers remains substantially unchanged and the appointment of judges to both chambers has its origin on recommendations made by a deficient NCJ, which is not in line with European standards and in respect of which European tribunals have found that none of the special chambers is a 'lawful tribunal'¹¹. As regards the second part of the recommendation, the President of the Republic maintains the same far-reaching controlling role and powers over the organisation, structure and functioning of the Supreme Court.
48. In these circumstances, in particular having regard to the changes made in respect of the Disciplinary Chamber, GRECO concludes that Rule 34 recommendation ii has been partly implemented.

Rule 34 recommendation iv

49. *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.*

¹¹ In [Reczkowicz v. Poland](#) (no. 43447/19, 22 July 2021) and [Juszczyszyn v. Poland](#) judgment (no. 35599/20, 6 October 2022), the ECtHR held that the Disciplinary Chamber of the Supreme Court was not a 'tribunal established by law', mainly on account of appointment of its judges on recommendation of the NCJ which lacked independence from the executive and legislative powers, and found a violation of Article 6 § 1 of the European Convention on Human Rights (the Convention). The same finding was reached by the ECtHR in the [Dolińska-Ficek and Ozimek v. Poland](#) judgment (nos. 49868/19 and 57511/19, 8 November 2021) in respect of the deficiently appointed judges of the Supreme Court's Chamber of Extraordinary Appeals (Review) and Public Affairs and in the [Advance Pharma sp. z o.o. v. Poland](#) judgment (no. 1469/20, 3 February 2022) in respect of the deficiently appointed judges of the Supreme Court's Civil Chamber. In addition, the Court of Justice of the European Union (CJEU) held in [Commission v. Poland \(Disciplinary Regime for judges\)](#) judgment of 15 July 2021, C-791/19, that the Disciplinary Chamber did not provide all the guarantees of impartiality and independence and, in particular, was not protected from the direct or indirect influence of the Polish legislature and executive owing to, *inter alia*, the appointment of its members by the NCJ.

¹¹ In this connection, see also the Joint Urgent Opinion of the Venice Commission and the Directorate General of Human Rights and Rule of Law of the Council of Europe ([Opinion no. 977/2020](#) of 20 June 2020)

50. GRECO recalls that this recommendation was not implemented in the previous compliance report. The formulation of disciplinary offences, as introduced by the 2019 Amending Act, rather represented a step backwards. Prohibiting “public activities incompatible with the principles of judicial independence and impartiality of judges” could 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 judicial body” increased the potential for disciplinary proceedings being misused and being motivated by other reasons than judicial misconduct. Concerns were also expressed about the offence concerning “actions that question...the legitimacy of a judge’s appointment”.
51. The Polish authorities now report that the 2022 Amending Act brought about amendments to sections 29 and 72 of the 2017 Act on the Supreme Court as amended by the 2019 Amending Act. According to the amended section 29, an interested party may make an application to have the alleged lack of independence and impartiality of a Supreme Court judge examined, within one week of the notification of the composition of the Supreme Court bench, if, in the circumstances of the case, this may lead to a breach of the standard of independence or impartiality affecting the outcome of the case, taking into account the circumstances relating to the right holder and the nature of the case. In addition, section 72 of the Supreme Court Act has been supplemented with a new paragraph 6, exempting certain actions from disciplinary liability, such as the circumstances that a court decision is vitiated by an error in the interpretation and application of the law or in the establishment of facts or the assessment of evidence, the filing of preliminary questions to the CJEU and the examination of independence and impartiality of a judge, taking into account the circumstances surrounding his/her appointment and his/her post-appointment behaviours, if, in the circumstances of the case, this may lead to a breach of the standard of independence or impartiality affecting the outcome of the case, taking into account the circumstances relating to the right holder and the nature of the case. Further, the disciplinary offence of “refusal to exercise justice” has been introduced as section 72 (1) (1a).
52. GRECO takes the view that the provisions of section 72 (6) of the 2022 Amending Act exempt certain actions (relating to the content of court decision, the filing of a preliminary request to the CJEU and the examination of independence and impartiality of a judge) from engaging the disciplinary liability of the Supreme Court judges. It would appear that this amendment, which was a response to the Court of Justice of the European Union’s judgment of 15 July 2021 in *Commission v. Poland* (see footnote 6 above), goes in the right direction. GRECO would welcome to see their judicial interpretation and application in practice. However, for this recommendation to be fully implemented, provisions contained in section 72 (2)-(5) about disciplinary offences relating to “acts or omissions which may prevent or significantly impede the functioning of an organ of the justice system”, “actions that question the existence of the official relationship of a judge, the effectiveness of his/her appointment” and “public activity incompatible with the principles of independence of courts and impartiality of judges” should be repealed. In addition, the newly introduced offence of “refusal to exercise justice” may be subject to broad interpretation and used to punish judges who refuse to sit in panels composed of peers appointed by the deficient NCJ. For these reasons, this recommendation has not been more than partly implemented.
53. GRECO concludes that Rule 34 recommendation iv has been partly implemented.

Rule 34 recommendation v

54. *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.*
55. GRECO recalls that this recommendation was not implemented in the previous compliance report. GRECO was concerned about the strong involvement of the Minister of Justice (who is also the Prosecutor General) in the process of appointing and dismissing court presidents and vice-president (the Minister of Justice having dismissed around 160 court presidents and vice-presidents between late 2017 to early 2018).
56. The Polish authorities reiterate the same position that the Minister of Justice's powers to appoint court presidents (and vice-presidents) does not violate the principle of the separation of powers. The appointment of court presidents (and vice-presidents) does not constitute a promotion, as it is not related to a judge's progression to a higher judicial position, but only to the periodic assignment of a function in the management structure. The presidents and vice presidents of courts are subject to the guarantees of independence granted to all judges by virtue of them being active judges. Dismissal of court presidents (or vice-presidents) does not take place on the basis of an arbitrary decision of the Minister of Justice, but it is subject to the safeguards set out in section 27 of the Common (Ordinary) Courts Act.
57. GRECO considers that no changes have been introduced to the procedure for the appointment and dismissal of court presidents (and vice-presidents) since its last compliance report. The Minister of Justice (who, in the Polish system, is also the Prosecutor General) continues to maintain unfettered discretion in the appointment of these positions, without consulting the NCJ or otherwise involving the judiciary, which is not subject to a merit-based process¹² (bearing in mind that vice-presidents are appointed on the motion of courts' presidents). The dismissal of presidents and vice-presidents by the Minister of Justice suffers from the same shortcomings and lack of adequate and effective safeguards which have been described in prior compliance reports.
58. GRECO concludes that Rule 34 recommendation v remains not implemented.

Rule 34 recommendation vi

59. *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.*
60. GRECO recalls that this recommendation was not implemented. It noted that the Act on Common (Ordinary) Courts, as amended, mirrored almost identical provisions to the Act on the Supreme Court, as amended, which made it possible for disciplinary proceedings to be misused and to be motivated by other reasons than judicial misconduct. GRECO also considered that the statutory amendments brought about by the 2019 Amending Act had increased the potential influence of the executive in disciplinary proceedings, leaving judges increasingly vulnerable to political control and having a cumulative chilling effect on the judiciary as whole. GRECO also expressed concerns in respect of the Minister of Justice being involved in the disciplinary proceedings against judges of ordinary courts.

¹² See [CCJE Opinion No. 19 \(2016\)](#) on the "Role of the Presidents", paragraph 38.

61. The authorities report that the Minister of Justice can submit motions or appeals, under section 114 (1), (9) and (11) and section 121 (1) of the Common (Ordinary) Courts, while s/he is not entitled to take procedural decisions in disciplinary proceedings. They further provide that the 2022 Amending Act introduced identical provisions to the Act on Common (Ordinary) Courts as those relating to the 2017 Act on the Supreme Court (see paragraph 49 above).
62. GRECO stands by the assessment made in paragraph 50 above, and welcomes, that the 2022 Amending Act has introduced provisions exempting certain actions (relating to the content of court decision, the filing of a preliminary request to the CJEU and the examination of independence and impartiality of a judge) from engaging the disciplinary liability of common (ordinary) courts' judges. However, it reiterates its concerns about the existence of other problematic disciplinary grounds which ought to be removed. In this connection, GRECO wishes to point to the recent ECtHR's *Juszczyszyn v. Poland* judgment¹³ which found that the suspension of the applicant, who was a judge, had been for reasons other than those set out in the Convention, namely for the purposes of discouraging him from examining the appointment procedure for certain judges. GRECO further observes that the role and involvement of the Minister of Justice throughout the disciplinary proceedings of common (ordinary) courts' judges has remained unchanged. For these reasons, this recommendation has not been more than partly implemented.
63. GRECO concludes that Rule 34 Recommendation vi has been partly implemented.

III. CONCLUSIONS

64. **In view of the foregoing, GRECO notes some progress and 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).** Of the remaining recommendations, five recommendations of the Fourth Evaluation Round and three recommendations of the Rule 34 Report have been partly implemented and four recommendations of the Fourth Round Evaluation Report and two recommendations of the Rule 34 Report have not been implemented.

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. Recommendation vi, ix, xii, xiv and xvi of the Fourth Evaluation Round as well as Rule 34 recommendations ii, iv, and vi have been partly implemented, recommendations i-iii and v of the Fourth Evaluation Round as well as Rule 34 recommendations i and v remain not implemented.

65. As regards Members of Parliament, it is welcomed that a trusted ethics advisor has been appointed in respect of senators, and the authorities are encouraged to do the same in respect of the Sejm deputies. It is however highly regrettable that no progress has been made towards the implementation of the remaining outstanding recommendations more than ten years after the adoption of the Evaluation Report.

¹³ The ECtHR found a breach of Article 8 of the Convention, because the Disciplinary Chamber's characterisation of the action of a judge - who was the applicant in that case - to verify the appointment of other judges after March 2018, as both compromising the dignity of judicial office and as constituting an obvious and gross violation of the law within the meaning of section 107(1) of the 2001 Act on the Organisation of the Ordinary Courts, as amended, was manifestly unreasonable and the applicant could not have foreseen that the issuance of his order could have led to his suspension. In addition, the predominant purpose of the disciplinary offences introduced by virtue of the 2019 Amending Act, and the specific disciplinary measures that had been taken against the applicant leading to his suspension, had been to sanction him and to dissuade him from assessing the status of judges appointed upon the recommendation of the recomposed NCJ by applying the relevant legal standards, including those stemming from Article 6 § 1 of the Convention. This ulterior purpose was incompatible with the Convention, thus leading to a breach of Article 18 of the Convention.

66. Furthermore, as regards judges, there have been some developments concerning the abolishment of the Disciplinary Chamber (and its replacement with the Chamber of Professional Responsibility), and the introduction of certain grounds exempting judges from disciplinary liability. However, the fact remains that the fundamental problem, which ought to become the authorities' utmost priority - also stemming from international courts' decisions, is the composition of the National Council of the Judiciary (NCJ), namely the election of its judicial members by the legislative power, thus depriving the Polish judiciary of the right to elect judicial members of the NCJ. Urgent remedial action is required to ensure that at least half of the NCJ members are judges elected by their peers and, consequently, to restore its independence, as mandated by the Constitution, from the legislative and executive powers. The existence of other disciplinary grounds, which have negative effects on judicial independence and engage judges' disciplinary liability, present strong incentives for an intervention by the executive in the disciplinary proceedings. Regrettably, the appointment and dismissal of court presidents and vice-presidents continues to be influenced by the extensive involvement of the Minister of Justice.
67. With respect to prosecutors, it is regrettable that the authorities have remained almost inactive in taking any concrete steps to fully implement the three outstanding recommendations relating to the provision of guidance on ethical principles, the provision of tools and powers to the National Prosecution Council to monitor compliance with the ethical principles, the adoption of appropriate measures to ensure a more in-depth scrutiny of prosecutors' asset declarations, and the provision of continuous training and proper dedicated counselling.
68. 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.
69. In application of paragraph 2 (i) of Rule 32 of the Rules of Procedure, GRECO 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 31 March 2024.
70. In addition, in accordance with Rule 32, paragraph 2, sub-paragraph (ii) (b), GRECO invites the President of the Statutory Committee to send a letter to the Permanent Representative of Poland to the Council of Europe, drawing the 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.
71. 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.