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

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

FOURTH EVALUATION ROUND

Adoption: 22 June 2018
Publication: 12 July 2018

Public
Greco RC4(2018)4

FOURTH EVALUATION ROUND

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

SECOND COMPLIANCE REPORT

ALBANIA

Adopted by GRECO at its 80th Plenary Meeting
(Strasbourg, 18-22 June 2018)

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I. INTRODUCTION

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

2. The Fourth Round Evaluation Report on Albania was adopted at GRECO's 63rd Plenary Meeting (28 March 2014) and made public on 27 June 2014, following Albania's authorisation (Greco Eval IV Rep (2013) 9E). The Fourth Round Compliance Report was adopted by GRECO at its 71st Plenary Meeting (18 March 2016) and made public on 15 April 2016, following authorisation by Albania (GrecoRC4(2016)6).

3. As required by GRECO's Rules of Procedure, the authorities of Albania submitted a Situation Report with additional information regarding measures taken to implement the nine pending recommendations which, according to the Compliance Report, had been partly implemented. This report was received on 7 March and updated on 26 April 2018 served as a basis for the Second Compliance Report.

4. GRECO selected Cyprus and "the former Yugoslav Republic of Macedonia" to appoint Rapporteurs for the compliance procedure. The Rapporteurs appointed for the current report were Ms Alexia KALISPERA, on behalf of Cyprus and Ms Ana PAVLOVSKA-DANEVA, on behalf of "the former Yugoslav Republic of Macedonia". They were assisted by GRECO's Secretariat in drawing up this Compliance Report.

II. ANALYSIS

5. It is recalled that GRECO addressed ten recommendations to Albania in its Evaluation Report. In the Compliance Report, GRECO concluded that recommendation x had been implemented satisfactorily and recommendations i-ix had been partly implemented by Albania. Compliance with the pending recommendations (i-ix) is dealt with below.

Corruption prevention in respect of members of parliament

Recommendation i.

6. *GRECO recommended that the transparency of the legislative process be further improved by i) ensuring the timely implementation of the requirement under the Rules of Procedure to publish on the official web site of the National Assembly draft legislation, including the initial bills, and amendments; and ii) regulating deputies' contact with lobbyists and other third parties seeking to influence the legislative process.*

7. In the Compliance Report GRECO considered this recommendation partly implemented. GRECO found that the first part of the recommendation had been implemented. It welcomed both the adoption by the Assembly's Bureau of a decision on the timely publication of initial bills and the greater use of information technology to increase transparency of the parliamentary process, in particular as regards the adequate publication of draft legislation.

8. As to the second part of the recommendation, GRECO considered it only partly implemented. It acknowledged that the Assembly had laid down rules and introduced certain tools (an NGO register and the Co-ordinator for Interest Groups) to better manage contacts of deputies with third parties during the legislative process and increase transparency. However, these rules were about regulating the

non-governmental sector and their participation in public hearings. Moreover, the new rules applied to official contacts of the Assembly and its committees but not to those of parliamentary groups or individual deputies, whose contacts are not subject to notification or disclosure.

9. The authorities of Albania now provide updated information concerning the first part of the recommendation, including that, in accordance with Article 105, paragraph 2/1 of its Rules of Procedure, are published on its website: draft laws and their explanatory memoranda; the Assembly's working programme; the minutes of committee meetings; the reports of committees examining draft laws; and the results of plenary votes. NGOs, based on their field of activity, may attend committee meetings when draft laws are discussed and submit comments. Moreover, in accordance with Article 10 of Law No. 119/2014 on the Right to Information, the Assembly has appointed, from amongst its staff, a co-ordinator for the right to information to co-ordinate actions taken to guarantee the public's right to information; the co-ordinator posts on a dedicated webpage of the National Assembly's website requests for information received and dealt with by the Assembly. Any member of the public whose right to information has not been respected may apply for administrative review to the Commissioner on the Right to Information and Protection of Personal Data. In addition, the Transparency Programme of the Albanian Parliament has been updated, in accordance with the Law on the Right to Information, in order to increase the transparency of its work by making its premises accessible and providing information on its official website (www.parlament.al).

10. The authorities draw attention to the Communication Strategy of the National Assembly, adopted by its Bureau in 2014 and complemented by an action plan with concrete initiatives to improve all forms of communication with the public as per the strategy. They also refer again to the e-Parliament digital platform, underlining that all documentation relating to the legislative process is published on it, and that efforts have been made to ensure that, with the new composition of Parliament, deputies use this platform.

11. As to the second part of the recommendation, the authorities now state that the Assembly adopted on 5 April 2018 a Code of Conduct for deputies, which contains rules on their contacts with lobbyists and other third parties during the parliamentary and non-parliamentary activities. Article 21, "Lobbying in the Assembly", states that contacts with lobbyists and third parties must be guided by the principles of integrity and transparency. When deputies or parliamentary committees co-operate with civil society organisations or interest groups during the legislative process, they should make public the meetings that have been held with them, the subject of discussions and the level of support they are to provide for the requests submitted by third parties. Relationships of deputies or parliamentary committees with civil society organisations or interest groups on issues related to the participation in the legislative process should be documented and recorded by the parliamentary committee concerned or the secretariat of the Assembly. Documents on concrete requests or proposals made during the legislative process should be published on the official website of the relevant parliamentary committee. In addition, deputies are prohibited from lobbying in exchange for payments, incentives or other rewards.

12. GRECO takes note of the additional information provided by the Albanian authorities concerning the first part of the recommendation, which had already been found to be implemented satisfactorily. It welcomes the further efforts to increase transparency of the parliamentary process, in particular with the appointment of a co-ordinator on the right to information whose role is to manage and publish requests for information of the public, ensuring that more information

is made available online and that deputies make full use of the e-Parliament digital platform.

13. Regarding the second part of the recommendation, GRECO welcomes the adoption of the Code of Conduct for deputies, a copy of which has been provided, and the rules it contains on contacts with third parties. GRECO is satisfied that, provided these rules are followed in practice, contacts of deputies with third parties during the legislative process will be made public and subject to public scrutiny, in particular meetings held and their content as well as specific requests or proposals made by third parties through their dealings with deputies. This meets the requirements of the second half of the recommendation. At the same time, GRECO underlines nevertheless the need for following up on the enforcement of these rules, including sanctioning (see recommendation ii).

14. GRECO concludes that recommendation i has been implemented satisfactorily.

Recommendation ii.

15. *GRECO recommended that i) the Code of Conduct for members of parliament, foreseen by the Rules of Procedure of the National Assembly, be elaborated and properly enforced; and ii) training, guidance and counselling be made available to deputies on issues such as the form, manner and scope of permissible contacts with interest groups and lobbyists, the disclosure of ad hoc conflicts of interest, ethics and corruption prevention within their own ranks.*

16. GRECO found this recommendation to be partly implemented in the Compliance Report. It took note of ongoing deliberations on a draft code of conduct which was to introduce, *inter alia*, general rules on ethics and cover conflicts of interest, incompatibilities, gifts, transparency, confidentiality and post-employment restrictions. It also noted that inter-parliamentary negotiations regarding the implementation mechanism for the Code.

17. The authorities of Albania now indicate that, by Decision No. 61/2018 of 5 April 2018, the Assembly adopted the Code of Conduct for deputies, with immediate entry into force. The purpose of this Code is, *inter alia*, to define ethical principles applicable to deputies, provide guidance to them in case of ethical dilemma in order to avoid undue pressure, increase transparency of their activities, and generally provide the public with a clear set of standards to hold deputies to account. The Code of Conduct for deputies contains basic rules on conflicts of interest, declarations of private interests, limitations on outside activities whilst in office, gifts, contacts with third parties, post-employment restrictions and standards of deputies' conduct during the parliamentary and non-parliamentary activities. The Bureau of the Assembly is to issue, within three months from its entry into force, detailed guidelines for the implementation of the Code of Conduct. For this purpose, a working group has been set up – it will take into account international experience and consult an expert from OSCE/ODIHR as well as the Council of Europe. The said guidelines are to be approved by the Bureau of the Assembly on 5 July 2018. According to the above-mentioned law, the Bureau is responsible for the Code of Conduct's implementation. The authorities also mention the appointment of a contact person by the National Assembly from its services to assist in this task.

18. The authorities indicate that the rules on sanctions applicable to MPs in cases of breach of the Code of Conduct are those contained in the Rules of Procedure of the Assembly as Article 33 of Code of Conduct stipulates the Code becomes part of the Rules of Procedure (Annex No. 2). Article 63 of the Rules of Procedure provides for disciplinary measures (drawing the deputy's attention; reprimands; exclusion from plenary sittings; exclusion from participating in committee meetings and plenary

sittings for 10 days). It is for the Bureau of the Assembly to examine and decide on sanctions. The authorities point out that Article 6 of the Code of Conduct on "non-parliamentary and discriminatory language" makes express reference to sanctions provided for in the Rules of Procedure in cases of breach. In January 2018 some amendments were filed by a political group regarding, *inter alia*, sanctions applicable in cases of breach of the Code of Conduct. These amendments will be discussed within each political group. A working group with the different political groups has been created and the amendments to the Rules of Procedure will be discussed in plenary within this session.

19. The High Inspectorate for the Declaration and Audit of Assets and Conflicts of Interest (HIDAACI) provides training and counselling to the Responsible Authorities designated by the various public institutions' (including in the case of the Assembly). It is for the Responsible Authority to provide information, training and counselling to the officials coming under the public institution concerned. With the adoption of the Code of Conduct for deputies, the authorities also state that the HIDAACI is to decide, in close co-operation with the Assembly, on training needs for deputies and will ensure the smoothness of this process through the technical assistance provided by the three-year project on "supporting the formulation, co-ordination and implementation of anti-corruption policies in Albania", funded by the European Union.

20. In addition to the above-mentioned information, the authorities provide more general information on the broader constitutional and legislative reform aimed at strengthening public confidence in public office holders, including deputies.[1] Reference is made to the self-declaration forms having to be filled in by candidates to parliamentary elections and deputies concerning their eligibility (such as not having been convicted in a final judgment in Albania or abroad or not holding another elected post). The verification of self-declaration forms by the Central Election Commission led in 2016 to the mandate of two deputies being terminated. In 2017, the self-declaration forms of 2 723 candidates were assessed and crosschecked with other sources by the Central Election Commission, which found that 57 candidates had been convicted and could therefore not run for election. The same year, the Central Election Commission invalidated the election of two deputies who had failed to indicate in their self-declaration forms detentions, investigations and the use of false identity on the Italian territory.

21. GRECO takes note of the information provided by the authorities. It welcomes the adoption of the Code of Conduct for deputies, which covers areas of relevance to corruption prevention, in particular, conflict of interest; outside activities; contacts with third parties (see recommendation i); gifts; and post-employment restrictions. GRECO notes that the Bureau of the Assembly is to publish detailed guidelines for the Code's implementation. This will be a critical tool to make the standards contained in the Code, in particular on conflict of interest, more concrete and therefore contribute to their effective implementation.

22. At the same time, GRECO regrets that the Code of Conduct for deputies does not include any rules on sanctions applicable to deputies in cases of breach of the Code. The authorities indicate that, as part of the Rules of Procedure of the Assembly, the sanctions contained in the Rules would apply to breaches of the Code. However, while Article 6 of the Code expressly makes reference to the application of these sanctions, no other provision – including on integrity-related matters – makes such

[1] In particular, Law No. 137/2015 "On some amendments and addenda to Law No. 8417, dated 21.10.1998, "Constitution of the Republic of Albania', as amended"; Law No. 138/2015 "On guaranteeing the integrity of the persons being elected, appointed or assuming public functions"; Law No. 38/2016 "On some addenda and amendments to the law no 138/2015 'On guaranteeing the integrity of the persons being elected, appointed or assuming public functions'".

a reference, therefore creating some uncertainty. Should the sanctions from the Rules of Procedure apply to other provisions than Article 6, it would need to be clarified, possibly in the provisions concerned or in a general provision in the Code of Conduct. GRECO understands that there are ongoing discussions in the Assembly on the matter of sanctions and hopes that some clarity will be brought to the issue. Moreover, the Code of Conduct only indicates in general terms that the Bureau of the Assembly is responsible for its implementation and that a contact person was appointed to assist in this task. Enforcement is an essential part of any integrity system and the effectiveness of a set of standards depends on the awareness of those to whom it is directed, on their willingness to comply with its provisions but also on appropriate tools to secure its implementation, i.e. ensuring that misconduct comes to light, through adequate control, and attracts appropriate sanctions. This issue is also linked to clarifying the application of sanctions contained in the Rules of Procedure to breaches of all provisions of the Code of Conduct as the Rules establish that the Bureau of the Assembly is responsible for examining and deciding on sanctions.

23. GRECO considers that the adoption of the Code of Conduct for deputies responds to a significant gap in Albania. However, further measures are needed to ensure that the enforcement of the Code of Conduct is clarified, with proper guidance, notably on applicable sanctions. The adoption of practical guidelines and organisation of dedicated training and counselling for deputies concerning standards contained in the Code of Conduct, as required by the second part of the recommendation, will be important to ensure that it is properly enforced. Therefore, there is still some distance to cover to ensure the enforcement of the Code of Conduct for deputies. The recommendation has thus to be assessed, for the time being, as partly implemented.

24. GRECO concludes that recommendation ii remains partly implemented.

Recommendation iii.

25. *GRECO recommended that a mechanism for the "case by case" notification of conflicts of interest by members of parliament be established within the National Assembly and that the operation of this mechanism be subject to monitoring.*

26. In the Compliance Report, GRECO found this recommendation to be partly implemented. It welcomed the steps undertaken to implement the provisions of the Law on Prevention of Conflicts of Interest in the Exercise of Public Functions (LPCI) to the ad hoc declaration and registration of "case by case" conflicts of interest by deputies. However, it expressed concern that only one case had been registered between March 2014 and the adoption of the Compliance Report. It referred to several issues of concern at the time of the evaluation visit: not all deputies were in agreement as to whether the LPCI applied to them at all; which situations qualified as "case by case" conflicts of interest in the context of deputies' functions; and to which authorities such conflicts were to be reported. The latter appeared to have been resolved in that two persons from the Assembly's Human Resources Services and deputies' Benefits Department had been designated Responsible Authority. GRECO also considered that training by the Responsible Authority was not sufficient and that guidance, advice, support and training had to be made available to deputies.

27. The authorities of Albania now reiterate that in March 2014 all measures have been taken to establish the Responsible Authority in the Assembly, in accordance with the LPCI, as amended. The Responsible Authority operates in accordance with the LPCI, as well as the orders issued by the HIDAACI, and they are monitored on a regular basis on the activity being carried out. They add that another monitoring is

based on concrete cases presented to the Responsible Authority, the actions and considerations of which are to be notified to HIDAACI. However, they also indicate that there was no case presented during the reporting period and therefore that it had not been necessary to carry out the monitoring process. They add that the implementation of this recommendation is linked to the recently adopted Code of Conduct for deputies.

28. GRECO takes note of the information provided by the authorities. GRECO notes that the recently adopted Code of Conduct for deputies provides for the notification of ad hoc conflicts of interest involving deputies and occurring during the legislative process as well as their publication on the Assembly's website (Article 13). Deputies are to make a declaration at the beginning of the plenary session of the meeting of a parliamentary committee or other body, which is to be recorded in the minutes. When such a conflict of interests arises during the legislative process, the MP's written statement of conflict of interest is published on the Assembly's website. With such a statement, deputies forfeit their right to vote on the draft law concerned or any other political document.

29. GRECO welcomes the fact that a clear procedure on making ad hoc declarations of conflicts of interest has been laid down in the Code of Conduct for deputies. Up until the adoption of this Code, there was no evidence that ad hoc declarations had been made. The success of the procedure under the Code of Conduct will depend to a large extent on how the enforcement of the Code is ensured and it has already been noted that the Code makes no reference to sanctions in case of breach. Further to the adoption of the Code of Conduct, adequate training on conflicts of interest will also have to be devised within the Assembly. Given the uncertainty that remains as to how monitoring of the enforcement of the rules of the Code of Conduct is going to be ensured, which is part and parcel of this recommendation, and the absence of a general provision on sanctions in the Code or a cross reference in Article 13 to sanctions contained in the Rules of Procedure (see recommendation ii), this recommendation cannot be considered fully implemented at this stage.

30. GRECO concludes that recommendation iii remains partly implemented.

Recommendation iv.

31. *GRECO recommended the contents of asset declarations of members of parliament are made public on an official web site and in a timely manner, with due regard to the privacy and security of deputies and persons related to them who are subject to a reporting obligation.*

32. In the Compliance Report, GRECO considered this recommendation partly implemented. It welcomed, in particular, the lifting of many obstacles to the disclosure of deputies' asset declarations. At the same time, it recalled that, under the Law "On the declaration and audit of assets, financial obligations of elected officials and some public officials" the contents of each form are to be made available to an interested party only *upon his/her request*. While noting that the disclosure procedure had been facilitated and streamlined by removing the administrative fee and the compulsory prior audit, it found no evidence of a change to the legal framework to ensure that all deputies' forms be made promptly available to the public on a designated official website. GRECO therefore urged the authorities to introduce such a disclosure tool without further delay.

33. The authorities of Albania now indicate that on 6 April 2017 the Assembly adopted Law No. 42/2017 "On some addenda and amendments to Law No. 049 'On the declaration and checking of assets, financial obligations of the elected persons and

some public employees'" which, *inter alia*, provides for the publication of asset declarations of deputies on the HIDAACI's website, in accordance with the applicable legislation on the right to information and protection of personal data.

34. The authorities add that one of the priorities of HIDAACI for 2016 was "improving the current system for completing, administering and controlling the declaration forms, in order to increase the efficiency and quality of work of the High Inspectorate, moving towards online disclosure". For this purpose, in October 2016, the HIDAACI began implementing the three-year Horizontal Cooperation project co-funded by the EU and the Council of Europe "*Action against Economic Crime in Albania for the Western Balkans and Turkey*" – one of its main objectives being the improvement of Albania's Declaration and Asset Control System. The authorities underline that the establishment of a new electronic system for HIDAACI, publication and on-line access to asset declarations and conflict of interest is important to strengthen HIDAACI's investigative and auditing mechanisms.

35. The establishment of an online asset declaration system will allow for the collection in real-time of asset declarations; processing them entirely electronically; increasing the effectiveness of the control process and administrative investigations; and online disclosure of private interests statements in real time. Technical and financial support has been provided by USAID, enabling the design and construction of *software* for the on-line declaration system. The authorities indicate that they are currently in the phase of evaluating/selecting the operators who have expressed interest in developing software for the on-line asset declaration system. The system is currently being developed and should be operational in February 2019.

36. Meanwhile, the content of asset declarations of members of parliament submitted to the HIDAACI is already published on an official website.[2]

37. GRECO takes note of the information provided. GRECO welcomes the work underway to revamp the asset declarations and control system so that asset declarations are made online and processed electronically, thus ensuring the effectiveness of the control system and allowing for asset declarations to be published on the HIDAACI's website, with the support of the Council of Europe, the EU and USAID. In the meantime, asset declarations of deputies are already made public on an official website.

38. GRECO concludes that recommendation iv has been implemented satisfactorily.

Recommendation v.

39. *GRECO recommended that i) the asset declarations of members of parliament be subject to more frequent full audits; and ii) the co-operation between the High Inspectorate for the Declaration and Audit of Assets and relevant state institutions be stepped up.*

40. In the Compliance Report, GRECO considered this recommendation partly implemented. GRECO recalled in respect of the first part of this recommendation that it had found the three-year time lapse between full audits of deputies' assets to be insufficient to identify any potential abuses of the asset disclosure regime, bearing in mind also the rather lengthy procedure performed by the HIDAACI. It had therefore welcomed proposed amendments to the Law "on the declaration and audit of assets, financial obligations of elected officials and some public officials" to introduce more frequent full audits. As to the second part of the recommendation,

[2] http://spending.data.al/en/moneypower/list/pos_id/6

GRECO considered the signing of protocols on co-operation between the HIDAACI and a range of institutions, including the tax authorities, to be a positive development. This had led to a significant number of criminal referrals and administrative measures taken in respect of deputies in connection with violations of their asset disclosure obligation. GRECO concluded that this part of the recommendation was implemented satisfactorily.

41. With regard to the first part of the recommendation, the authorities of Albania now state that aforementioned Law No. 42/2017 led to amending Article 25/1 of Law "on the declaration and checking of assets, financial obligations of the elected persons and some public employees" so that the interval for performing full control of asset declarations of deputies has been brought down from once every three years to once every two years.

42. As for the second part of the recommendation, the authorities now indicate that inter-institutional co-operation has intensified and the HIDAACI has signed several memoranda of co-operation, including with the Minister of State for Local Issues (also National Co-ordinator against Corruption) and Partners Albania for a project on the protection of whistle-blowers, with the Ministry of Finance on the functioning of the AFCOS (Financial Inspection-OLAF) reporting network, with USAID on raising the electronic private interest disclosure system. During the period 2016-2017, the HIDAACI filed six referrals to the prosecution concerning deputies.

43. GRECO takes note of the information provided by the authorities. GRECO welcomes the fact that as a result of amendments to Law "on the declaration and checking of assets, financial obligations of the elected persons and some public employees" the interval for performing full control of deputies' asset declarations has been reduced to two years. Therefore, this part of the recommendation can be considered as fulfilled. As to the second part of the recommendation, which had already been found to be implemented satisfactorily in the Compliance Report, GRECO is pleased to see that further inter-institutional co-operation involving the HIDAACI has been pursued.

44. GRECO concludes that recommendation v has been implemented satisfactorily.

Corruption prevention in respect of judges

45. As a backdrop to this report, the Albanian authorities provide information on the vast judicial reform initiated in 2014, involving constitutional amendments[3] and a set of organic laws aimed at strengthening guarantees of independence, impartiality, professionalism and integrity within the judicial system as well as improving its functioning. A number of new institutions have been created – some of which are still in the process of being set up – including the High Judicial Council; the High Prosecutorial Council; the High Justice Inspectorate; the Justice Appointment Council (already established and composed of judges from different court levels); the Court against Corruption and Organised Crime; the Re-evaluation institutions, etc. The High Judicial Council, which will replace the High Council of Justice, is to be composed of 11 members, six of whom will be elected by judges themselves, while the remaining five will be appointed by the Assembly from amongst the legal professional community. The latter have already been appointed by the Assembly, whilst the election of the six other members by the judiciary is linked to the vetting process (see below). The Chair of the High Judicial Council is to be elected at its first meeting from amongst non-judicial members. Similarly, the

[3] Venice Commission, "Interim Opinion on the draft constitutional amendments on the judiciary of Albania", adopted at the 105th plenary session (Venice, 18-19 December 2015), CDL-AD(2015)045; "Final Opinion on the revised draft constitutional amendments on the judiciary of Albania", adopted at its 106th Plenary Session (Venice, 11-12 March 2016), CDL-AD(2016)009, for instance paras. 7-8, 52-57, 74 and 86-87.

High Prosecutorial Council is to be composed of 11 members, with six members elected by prosecutors and five by the Assembly from amongst the legal professional community. The latter have already been appointed. In the meantime, some transitory measures have been taken such as the fact that the High Council of Justice is to remain in place until the High Judicial Council is set up and the appointment by the Assembly of a pro-tempore General Prosecutor. The authorities also mention the establishment of the Independent Commission for Co-ordination, Monitoring and Implementation of Law No. 115/2016 on the governance bodies of the judicial system which will, inter alia, monitor the selected process of candidates and the election/appointment of members of the justice system governance bodies and report to the Assembly on the implementation of the aforementioned law.

46. A large exercise of vetting of judges has been initiated with a view to fighting corruption in the judiciary.[4] The re-evaluation process is being carried out on the basis of three criteria: asset assessment based on asset declarations, background check on possible contacts with persons involved in organised crime and professional competences assessment with an evaluation of ethical and professional conduct, including breaches of professional ethics and delaying the judicial process. A number of institutions are involved in this process, notably the HIDAACI and the Independent Qualification Commission, with the support of the High Council of Justice and the Prosecutor General's Office. Updates on the vetting process are published on the Independent Qualification Commission's website to ensure transparency. For instance, on 15 January 2018, 36 judiciary subjects were selected for vetting, including eight judges of the Constitutional Court, the General Prosecutor, six judges of the Supreme Court, and three judges from appeal courts. In March 2018, the Commission decided to dismiss one judge from the Constitutional Court. Two other judges of the Constitutional Court and one judge of the Supreme Court have resigned since the beginning of this exercise. Between April and June 2018, were dismissed three judges of the Constitutional Court, one judge from an Appeal Court and one prosecutor, while the Chair of Constitutional Court, one Supreme Court judge, two first instance judges, and three prosecutors were confirmed. GRECO asks the authorities to continue providing updates on both the unfolding of the judicial reform and the vetting process concerning judges.

Recommendation vi.

47. *GRECO recommended i) the selection and appointment of the High Court justices be made transparent and that the opinion of the judiciary (e.g. the High Council of Justice itself) be sought in those processes; and ii) the periodic evaluation of professional and ethical performance of a judge is conducted in a timely manner and that consideration be given to ensuring that the criteria for evaluating a judge's ethical conduct are objective and transparent, with due regard to the principle of judicial independence.*

48. This recommendation was considered partly implemented in the Compliance Report. GRECO recalled that the aim of the first part of the recommendation was, *inter alia*, to depoliticise the selection and appointment of justices to the High Court. Changes in the procedure, whereby justices of that Court were to be appointed by the President of the Republic based on a selection of candidates by the Council for High Court Appointments was overall welcomed and so was the enhanced transparency of the selection/nomination procedure. However, the new process had not been applied in practice and was soon to be replaced by another arrangement whereby responsibility for the selection/nomination of candidates was to be entrusted to the future High Judicial Council, set to replace the High Council

[4] Venice Commission, "Albania - Amicus Curiae Brief for the Constitutional Court on the Law on the Transitional Re-evaluation of Judges and Prosecutors (The Vetting Law)", adopted at its 109th Plenary Session (Venice, 9-10 December 2016), CDL-AD(2016)036-e, for instance paras. 59 to 64.

of Justice and composed of a majority of judges elected by their peers (see paragraph 43). GRECO considered that this reform would be fully in line with the recommendation but, owing to the ongoing transition period, it was too early to take a definite view. This part of the recommendation was therefore considered partly implemented.

49. Regarding the second part of the recommendation, GRECO had not found any meaningful progress. The significant time-lapse between evaluation and reference periods had not been reduced and the applicable ethical requirements had been given a narrow interpretation. As long as a judge's performance continued to be measured by the number/results of complaints and the number of final disciplinary convictions within the reference period, and not observance of the Code of Judicial Ethics, the fundamental objective of evaluation, which should be to re-confirm that each judge has the requisite "high moral qualities", would not be fulfilled.

50. The authorities now indicate, regarding the first part of the recommendation, that Article 136 of the Constitution, following the judicial reform, provides that judges of the High Court are to be appointed by the President of the Republic upon the proposal of the High Judicial Council, for a non-renewable nine-year term. Article 136 also stipulates that High Court judges are elected from the ranks of judges with at least 13 years of experience as judges. One-fifth of High Court judges are to be selected from amongst prominent lawyers with no less than 15 years of experience as lawyers, professors or law lecturers, high-level lawyers in public administration, or in other areas of law. The candidates being selected from jurists must have a scientific degree in law. A non-judge candidate should not have held a political office in public administration (i.e. Prime Minister, Deputy Prime Minister, Minister, Deputy Minister or officials, members of the cabinet of the President of the Republic, Speaker of the Assembly, Prime Minister, Deputy Prime Minister of Minister, holding the position of the Director of Cabinet, advisor, assistant, speaker or personal secretary to the head of the Cabinet), or leadership positions in political parties (i.e. belonging to the steering bodies of a party) over the last 10 years before becoming a candidate. Other criteria and selection procedure for judges are provided by law.

51. As to the second part of the recommendation, the authorities reiterate that the first round of evaluation of judges for the period 2005-2006 was completed in 2014 and concerned 279 judges, while the second evaluation round for the period 2007-2009 was completed in 2017 and concerned 296 judges. The third evaluation for 2010-2012 is ongoing and 18 judges and one inspector have been evaluated so far. In addition, 13 accelerated assessments have been completed. The authorities add that, in parallel, a performance evaluation for 2013-2015 is being carried out in connection with the above-mentioned vetting exercise.

52. The authorities add that standards of objectivity and transparency in the criteria used for assessing the ethical behaviour of judges are defined in Law No. 96/2016 "On the status of judges and prosecutors in the Republic of Albania", and more specifically Chapter II entitled "Criteria, sources and grades of evaluation" and Article 7 which sets as evaluation criteria: (a) judicial professional capacity; (b) organisational skills; (c) ethics and commitment to judicial professional values; (ç) personal qualities and professional commitment. Article 75 of Law No. 96/2016 identifies as one of the criteria of proficiency of the judge and their dedication to ethics and professional values and specifically (i) skills for work ethics, integrity and impartiality; (ii) work ethics, specifically on commitment and accountability; (iii) integrity, specifically their immunity from any external influence or pressure; and (iv) impartiality in being mindful of conflicts of interest.

53. GRECO takes note of the information provided by the authorities. As to the first part of the recommendation, GRECO welcomes the constitutional amendments which resulted in the role of the President of Republic in the selection and appointment of members of the High Court being limited to the formal appointment of those judges on the proposal of the High Judicial Council, composed of a majority of judges elected by their peers, which overall meets the objective of the recommendation. GRECO notes that there is reference to the fact that candidate judges should not have held a political office in public administration or a leadership position in political party over the last 10 years.

54. In respect of the second part of the recommendation, GRECO notes that the gap between the reference years and corresponding rounds of evaluation of judges remains staggeringly wide, as the evaluation round initiated in 2018 deals with the period 2010-2012. While it notes that the evaluation for 2013-2015 is said to have been initiated in parallel, as part of the vetting exercise concerning all judges (see paragraph 46), GRECO nevertheless considers that, in view of the significant backlog, the gap remains a concern. Whilst criteria for the evaluation of judges have been laid down in Law No. 96/2016, this part of the recommendation cannot therefore be considered more than partly complied with.

55. GRECO concludes that recommendation vi remains partly implemented.

Recommendation vii.

56. *GRECO recommended that i) the "Ethics, mandate verification and continuous professional development Committee" under the National Judicial Conference fulfils its mandate and ensures, in a proactive manner, the enforcement of ethical rules; and that ii) guidance, counselling and mandatory in-service training be provided to judges on ethics, conflicts of interest and corruption prevention within their own ranks.*

57. In the Compliance Report, this recommendation was found partly complied with. GRECO found in respect of the first part of the recommendation that no tangible steps had been taken. It expressed concern about the fact that the Ethics Committee did not react to breaches of the Code of Ethics in a proactive manner and about the splitting of oversight functions between the Ethics Committee and the High Council of Justice's inspectors. It was not clear whether transferring responsibility for adopting the rules on judicial ethics and monitoring their observance to the future High Judicial Council, as per the judicial reform, would terminate the mandate of the Ethics Committee. GRECO urged the authorities to prioritise, within the judicial reform, the enforcement of ethical rules applicable to judges. It had also warned against multiplying bodies with overlapping powers as the perception that judicial ethics have been neglected was likely to prevail. GRECO concluded that this part of the recommendation had not been implemented.

58. As to the second part of the recommendation, GRECO welcomed that new in-service training on professional ethics for judges had been launched with good attendance levels, and thus concluded that this part of the recommendation had been implemented satisfactorily.

59. The authorities now state, in respect of the first part of the recommendation, that Article 290 of Law No. 115 (3 November 2016) repealed Law No. 77/2012 "On the Organisation and Functioning of the National Judicial Conference" and as a consequence the Ethics Committee became defunct. Article 83, entitled "Judicial Ethics", of Law No. 115/2016 gives the High Judicial Council responsibility for adopting standards of judicial ethics and rules of conduct for judges, as well as for monitoring compliance with them, making it the decision-making body in this area.

The High Judicial Council is also to decide in disciplinary cases investigated by the High Justice Inspectors. The implementation of ethical rules is to be subject to re-evaluation by the re-evaluation bodies under Law No. 84/2016 "on temporary re-evaluation of judges and prosecutors in the Republic of Albania", and further part of the professional assessment of magistrates by the High Inspector of Justice, according to Chapter II "Criteria, Sources and Valuation Levels" of Law No. 96/2016 whose Article 75 is dedicated to ethics and commitment to professional values.

60. In respect of the second part of the recommendation, which had already been considered implemented satisfactorily, the authorities report a number of seminars for judges dealing with ethical and integrity matters. The High Judicial Council appoints an Ethics Adviser from amongst judges who meet the legal requirements for being a member of the High Court and have experience and knowledge of ethics issues. The Ethics Adviser is to give advice to judges on ethical dilemmas; can seek the opinion of the HJC on matters relating to the behaviour of judges in general; prepares and updates a manual on ethical dilemmas; organises, in co-operation with the School of Magistrates, initial and continuous training on ethics; and reports at least once a year to the HJC.

61. GRECO takes note of the information provided by the authorities. As to the first part of the recommendation, which is the only one to remain pending, it notes that, as part of the judicial reform described above, the High Judicial Council is to become responsible for adopting judicial ethical standards and rules of conduct and monitor compliance with them, the Ethics Committee having been dissolved, which responds to the concerns expressed by GRECO. It notes that integrity standards have been put at the heart of the exercise of re-evaluation of judges that is currently being undertaken to root out corruption from the judiciary (see paragraph 46). That said, the judicial reform still needs to be fully implemented, including the HJC being operational. GRECO therefore considers this part of the recommendation as partly fulfilled for the time being.

62. With regard to the second part of the recommendation, which had already been found to be fulfilled, GRECO welcomes the establishment of the Ethics Adviser to provide advice to judges in case of ethical dilemma, work on training on ethical matters, and publish and keep up to date a manual on ethical standards.

63. GRECO concludes that recommendation vii remains partly implemented.

Recommendation viii.

64. *GRECO recommended that i) with a view to ensuring protection against arbitrary intervention in the administration of justice, the extent of the right of the Ministry of Justice to examine the functioning of judicial services and court administration, as provided under Article 31 of the law "On the organisation and functioning of the High Council of Justice" be clearly defined; and that ii) the respective court presidents, including the High Court Chief Justice, be vested with the right to initiate disciplinary proceedings against judges.*

65. In the Compliance Report, GRECO found this recommendation partly implemented. It considered the transfer of responsibility for the inspection of courts from the Ministry of Justice to the independent justice inspector, as envisaged by the judicial reform, could potentially be a positive step. However, the exact scope of such inspections had not been determined, the right of the inspector to conduct inspections *ex officio* had not been clarified and, most importantly, it was unclear whether the Minister of Justice could conduct inspections in parallel. The situation was also compounded by the Minister's right to "inspect" the activities of the High Justice Inspector which seemed problematic.

66. As for the second part of the recommendation, GRECO recalled that at the time of the evaluation the Minister of Justice had the exclusive right to initiate disciplinary proceedings against judges and that this had been seen as creating opportunity for inappropriate influence. GRECO considered that the constitutional amendments appeared to provide for a balanced procedure whereby the power of the "accuser" was attributed to the independent High Justice Inspector and the decision-making function was vested in the High Judicial Council. However, the status of the Minister of Justice as a "privileged petitioner" in the matter of investigation into a presumed disciplinary breach by a judge, seemed to discriminate against other petitioners, as the Inspector appeared to have some margin of discretion as to whether or not to react to the latter's complaints.

67. The authorities now state that the judicial reform has led to the creation of the High Justice Inspector, who has authority to investigate disciplinary violations and appeals against all judges (apart from those of the Constitutional Court) and prosecutors as well as to inspect courts' and prosecutors' offices. According to Article 147/d of the Constitution, the High Justice Inspector is responsible for the verification of complaints, investigation of violations on its own initiative and the initiation of disciplinary proceedings against all judges and prosecutors, members of the High Judicial Council, High Prosecutorial Council and the Prosecutor General. S/he is elected by a three-fifth majority of the Assembly, for a non-renewable nine-year term, from amongst prominent jurists with no less than 15 years of professional experience and of high moral and professional integrity. S/he should not have held a political office in public administration (i.e. Prime Minister, Deputy Prime Minister, Minister, Deputy Minister or officials, members of the cabinet of the President of the Republic, Speaker of the Assembly, Prime Minister, Deputy Prime Minister of Minister, holding the position of the Director of Cabinet, advisor, assistant, speaker or personal secretary to the head of the Cabinet), or leadership positions in political parties (i.e. belonging to the steering bodies of a party) over the last 10 years. The High Justice Inspector is elected from a list of five candidates selected and ranked based on merits by the Justice Appointment Council, in an open procedure. In case no candidate reaches the three-fifths' majority in the Assembly within 30 days of receiving the list, the candidate ranked first is appointed. The High Justice Inspector has not yet been elected because the process of applying and selecting candidates for this post is conditioned by the functioning of the Justice Appointments Council and the re-evaluation process of the candidates (see paragraphs 45 and 46). Two expressions of interest have been received and are being given priority in the re-evaluation process.

68. The relation between the Minister of Justice and the High Judicial Council are provided for in detail in Article 71 of Law No. 115/2016 "On justice system governance bodies". The Ministry of Justice prepares draft legal acts in the justice field and consults the High Judicial Council in the process. The Minister of Justice may participate in joint meetings of the High Judicial Council and High Prosecutorial Council. The Minister of Justice or persons authorised by him/her may participate as observers in the General Meeting of judges, meetings of the General Council of the National Chamber of Advocacy, Academic Staff Assembly and Steering Council of the School of Magistrates, the Special Meeting of the Heads of Institutions for the selection of judge members of the High Judicial Council. The Minister of Justice may file a complaint with the High Justice Inspector for the alleged disciplinary misconduct of judges and it may request the High Justice Inspector to conduct institutional and thematic inspections in courts. Article 119 of Law No. 96/2016 also stipulates that the Minister of Justice can file complaints with the High Inspector of Justice when there are reliable data that a magistrate has committed a disciplinary breach.

69. The Minister of Justice may participate, without the right to vote, in the meetings of the High Judicial Council when issues of strategic planning and budget of the judiciary are discussed (Constitution, Article 147/a). According to Article 13 of Law No. 98/2016 "On the organisation of the judicial power in the Republic of Albania", in case the assessment provides facts that the judicial map does not meet the objectives, principles and criteria as set out in Articles 14 and 15 of the said law, the High Judicial Council and the Minister of Justice will elaborate a joint proposal for the re-design of judicial districts and the territorial competences of courts.

70. Article 31 of the Law "On the Organisation and Functioning of the High Council of Justice" has been abrogated" and Law No. 98/2016 "On the organisation and functioning of the judicial power in the Republic of Albania" stipulates that the functioning of the judicial administration is no longer within the competence of the Minister of Justice, but of the High Judicial Council which has the competence to organise and operate services, which relate to the judicial administration.

71. As to the second part of the recommendation, within the framework of the judicial reform, Article 37 on "competences of a chairperson of a court" of aforementioned Law No. 98/2016, the president of a court, including the High Court Chief Justice, has overall responsibility to ensure that judicial ethics are observed, to co-operate with the High Judicial Council regarding the ethical and professional evaluation of judges and to oversee judges' work discipline and request that investigations into alleged misconduct be initiated.

72. GRECO welcomes that, following the judicial reform, the functioning of judicial administration is no longer within the competence of the Ministry of Justice but of the High Judicial Council. The Minister of Justice can attend meetings of the High Judicial Council, without the right to vote, when they deal with strategic planning and the judiciary's budget. When it comes to the judicial map, re-organisation has to be the result of a joint project of the ministry and the High Judicial Council.

73. GRECO also welcomes the creation of the High Justice Inspector as the responsible authority for processing complaints, investigating violations on its own initiative and initiating disciplinary proceedings against all judges. The Ministry of Justice can apply to the High Justice Inspector if there is reliable information that a judge may be responsible of misconduct. It notes that the mode of selection of the High Justice Inspector leading to their appointment by the Assembly appear to provide sufficient guarantees of competence and independence (in terms of professional experience required and high moral criteria and their term of office). GRECO notes that there is reference to the fact that candidates for the post of High Justice Inspector should not have held a political post in the administration or a leadership position in political party over the last 10 years. The Minister of Justice has no power of oversight over the activities of the High Inspector of Justice, contrary to what seemed to be contemplated during the reform process, and the independence of the post is enshrined in Article 196 of Law No. 115/2016 "On justice system governance bodies". These are positive developments, but GRECO notes that the post of High Justice Inspector remains to be filled and therefore this part of the recommendation can only be considered partly implemented for the time being.

74. As to the second part of the recommendation, GRECO notes that Law No. 98/2016 "On the organisation and functioning of the judicial power in the Republic of Albania" presidents of courts have overall responsibility to ensure that judicial ethical standards are respected within their respective court and to ask that investigations be initiated into any alleged breach. Moreover, as said above, in addition to the possibility that remains for the Minister of Justice to ask for disciplinary investigations to be started, the High Justice Inspector can of his own

motion initiated disciplinary proceedings. Therefore, GRECO considers that this part of the recommendation has been fulfilled.

75. GRECO concludes that recommendation viii remains partly implemented.

Corruption prevention in respect of prosecutors

Recommendation ix.

76. *GRECO recommended to further refine the criteria for assessing a prosecutor's ethical qualities, in particular by ensuring that the criteria are objective and transparent.*

77. GRECO considered this recommended partly implemented. It welcomed in the Compliance Report the revision of internal rules on the regular appraisal of prosecutors, with a view to better ascertaining their integrity and ethical qualities. At the same time, the criteria were restricted to a handful of components considered critical for the fulfilment of the prosecutorial function. GRECO was of the view that it would be desirable to link these criteria more explicitly with the integrity expected of a prosecutor. GRECO considered that observance of the Rules on Ethics for prosecutors ought to be conditional to a positive evaluation. The authorities had thus been encouraged to pursue their efforts to strike the right balance between detailed prescription and a sufficiently flexible evaluation framework.

78. The authorities now state that the constitutional amendments to Law No. 76/2016, Article 149/a, define the responsibility of the High Prosecutorial Council in evaluating prosecutors, the adoption of rules on the ethics of prosecutors as well as the supervision of compliance. Article 184 of Law No. 115/2016 stipulates that, in accordance with the Law "On the Status of Judges and Prosecutors in the Republic of Albania", the High Council of Prosecutor's Office is responsible for assessing the ethical and professional activity of prosecutors. However, they indicate that the High Prosecutorial Council is yet to be established.

79. They add that the assessment of the professional skills of magistrates, i.e. judges and prosecutors, is based on a new legal framework, whose evaluation criteria, resources and levels of professional evaluation are defined in Law No. 96/2016 "On the Status of Judges and Prosecutors in the Republic of Albania". Article 4 of this law defines the standards of ethics and rules of conduction as follows: magistrates are to take all reasonable measures to maintain the dignity of the office, including in relation to activities undertaken when they are not performing their official duties. They are to take all measures to protect and enhance the dignity and standards of the profession; the reputation of judicial institutions and public trust in the judicial system; and the status of the magisterial profession. Councils are to publish Standards of Ethics and Rules of Conduct in accordance with this provision and are to appoint a magistrate as Ethics Advisor under the provisions of the Law "On the Governance Institutions of the Justice System. Article 71 lays down the following evaluation criteria: (a) prosecutorial professional capacity; (b) organisational skills; (c) ethics and commitment to prosecutorial professional values; (ç) personal qualities and professional commitment. Article 75 identifies as one of the criteria of proficiency of prosecutors their dedication to ethics and professional values, more specifically: (i) skills of the prosecutors for work ethics, integrity and impartiality; (ii) work ethics, specifically commitment and accountability; (iii) integrity, specifically immunity from any external influence or pressure; (iv) impartiality, specifically being mindful of conflicts of interest.

80. GRECO takes note of the information provided by the authorities. It welcomes the legal framework for the evaluation of prosecutors, including more criteria connected to integrity and ethical standards and the High Prosecutorial Council as being responsible for the evaluation of prosecutors. However, considering that this framework is not operational yet, the recommendation cannot be considered entirely fulfilled.

81. GRECO concludes that recommendation ix remains partly implemented.

III. CONCLUSIONS

82. **In view of the foregoing, GRECO concludes that Albania has implemented satisfactorily or dealt with in a satisfactory manner four of the ten recommendations contained in the Fourth Round Evaluation Report.** The remaining six recommendations have been partly implemented.

83. More specifically, recommendations i, iv v and x have been implemented satisfactorily and recommendations ii-iii and vi-ix have been partly implemented.

84. Insofar as members of parliament are concerned, a positive step forward has been made with the adoption in April 2018 of the Code of Conduct for deputies. This instrument covers areas of relevance to corruption prevention, in particular situations of conflicts of interest; accessory activities; gifts; and post-employment restrictions. Conflicts of interest must be declared by deputies as they arise (on an ad hoc basis) and a procedure is also set out to ensure that contacts of deputies with third parties during the legislative process are reported, recorded and made public. At the same time, there is a certain lack of clarity about the enforcement of the rules and sanctions in case of breach, which are not mentioned expressly in the text of the Code of Conduct. An enforcement mechanism, including sanctions, would be an important guarantee of the effectiveness of such an instrument. Moreover, guidelines to cast light on the rules contained in the Code of Ethics are planned but yet to be adopted, and awareness and training of deputies on these rules are still to be defined. The periodicity of checks of deputies' declarations of assets has been shortened, which is a welcome development, and these declarations are published on an official website.

85. In respect of judges, a vast judicial reform is ongoing and so is a vetting process for judges, with a view to fighting corruption in the judiciary. More specifically on the recommendations addressed to Albania in the Evaluation Report, GRECO welcomes that this reform has resulted in limiting the role of the President of Republic to the formal appointment of High Court judges on proposal of the High Judicial Council, composed of a majority of judges elected by their peers. Moreover, the functioning of judicial administration is no longer within the remit of the Ministry of Justice but of the High Judicial Council. In addition, the High Judicial Council is responsible for establishing ethical standards and monitoring them, which is another promising development once the reform is completed. The creation of the High Justice Inspector as the authority responsible for dealing with complaints, investigating violations, on its own initiative, and the initiation of disciplinary proceedings against all judges is a positive feature of the ongoing judicial reform, but the post remains to be filled. That said, the delays concerning the periodic evaluations of judges remains critical.

86. Insofar as prosecutors are concerned, there was only one recommendation to be addressed concerning the use of objective and transparent criteria for assessing prosecutors' ethical qualities. The legal framework for the evaluation of prosecutors, including more criteria connected to integrity and ethical standards

has been decided, but the High Prosecutorial Council, which is to be responsible for evaluating prosecutors, has yet to be established.

87. GRECO notes that reforms are underway in respect of a number of the pending recommendations. It encourages the country to pursue these reforms. GRECO, in accordance with Rule 31 revised, paragraph 9 of its Rules of Procedure, invites the Head of delegation of Albania to submit additional information regarding the implementation of the pending recommendations ii-iii and vi-ix by 31 March 2019 at the latest.

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