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## FOURTH EVALUATION ROUND

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

## INTERIM COMPLIANCE REPORT

### SERBIA

Adopted by GRECO at its 82<sup>nd</sup> Plenary Meeting  
(Strasbourg, 18-22 March 2019)

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## **I. INTRODUCTION**

1. The [Fourth Evaluation Round Report on Serbia](#) was adopted by GRECO at its 68<sup>th</sup> Plenary Meeting (19 June 2015) and made public on 2 July 2015, following authorisation by Serbia. GRECO's Fourth Evaluation Round deals with "Corruption Prevention in respect of Members of Parliament, Judges and Prosecutors".
2. As required by GRECO's Rules of Procedure, the Serbian authorities submitted a Situation Report containing information on measures taken to implement the recommendations. GRECO selected Norway and Poland to appoint Rapporteurs for the compliance procedure.
3. In the Compliance Report, adopted at GRECO's 77<sup>th</sup> Plenary Meeting (20 October 2017) and made public on 15 March 2018, following authorisation by Serbia ([GrecoRC4\(2017\)8](#)), it was concluded that Serbia had not implemented satisfactorily or dealt with in a satisfactory manner any of the 13 recommendations contained in the Fourth Round Evaluation Report (seven recommendations (i, iv, v, vii, viii, x and xi) had been partly implemented and six (ii, iii, vi, ix, xii and xiii) not been implemented). In the light of these results, GRECO concluded that the very low level of compliance with the recommendations was "globally unsatisfactory" within the meaning of Rule 31, paragraph 8.3 of its Rules of Procedure. It therefore decided to apply Rule 32, paragraph 2.i) in respect of members not in compliance with the recommendations contained in the mutual evaluation report and called on the Head of the Serbian delegation to submit a report on progress in implementing the pending recommendations by 31 October 2018 (which was prolonged by GRECO to 30 November 2018).
4. On 30 November 2018, the Serbian authorities submitted information regarding the actions taken to implement the pending recommendations, which served as a basis for the current Report, drawn up by the rapporteurs, Mr Jens-Oscar NERGARD, on behalf of Norway and Ms Alicja KLAMCZYNSKA, on behalf of Poland. They were assisted by GRECO's Secretariat in drawing up the Compliance Report.
5. This [Interim Compliance Report](#) assesses the implementation of the 13 recommendations since the adoption of the Compliance Report, and provides an overall assessment of Serbia's level of compliance with these recommendations.

## **II. ANALYSIS**

6. As a preliminary note, [the authorities of Serbia](#) recall that specific parts of GRECO recommendations call for amendments of the 2006 Constitution. These amendments, on which the Venice Commission issued an opinion in June 2018<sup>1</sup>, have been sent to the Parliament (which is to adopt it with a two-thirds majority, following a public debate) and will have to be followed by a referendum. As a result, Serbia will only fulfil some parts of GRECO's recommendations once these constitutional amendments have entered into force.

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<sup>1</sup> See Opinion of the Venice Commission on the draft amendments to the constitutional provisions on the judiciary, CDL-AD(2018)011-e, [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2018\)011-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2018)011-e). This opinion was followed by a memorandum of the Venice Commission Secretariat in October 2018 on the compatibility of the draft amendments to the constitutional amendments on the judiciary of Serbia (CDL-AD(2018)023-e), [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2018\)023-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2018)023-e).

**Recommendation i.**

7. *GRECO recommended that the transparency of the legislative process be further improved (i) by ensuring that draft legislation, amendments to such drafts and the agendas and outcome of committee sittings are disclosed in a timely manner, that adequate timeframes are in place for submitting amendments and that the urgent procedure is applied as an exception and not as a rule and (ii) by further developing the rules on public debates and public hearings and ensuring their implementation in practice.*
8. GRECO recalls that this recommendation was partly implemented at the time of adoption of the Compliance Report. As regards the first part of the recommendation, GRECO welcomed the attention paid by the authorities to the actual implementation of the existing Rules of Procedure as regards the timely publication of information on the legislative process. It considered, however, that most of the concerns outlined in the Evaluation Report remained valid (given that a large majority of the laws and decisions continued to be adopted under urgent procedure and most amendments were still introduced up to 24 hours before the discussion in urgent procedure) and therefore concluded that this part of the recommendation was partly implemented. As regards the second part of the recommendation, GRECO welcomed the creation of a dedicated page on public hearings on the website of the National Assembly (NA) and the organisation of committee meetings throughout the country. However, it also considered this part of the recommendation to be partly implemented, as the rules on public debates and public hearings (and their implementation) had not been further developed yet.
9. The Serbian authorities now report as regards the first part of the recommendation that, on the issue of disclosure of legislation, in accordance with Article 11 of the Law on the NA and Article 260 of its Rules of Procedure all proposed laws, adopted laws, agendas and minutes of the sessions of the NA and its working bodies are timely and publicly announced on the [official website](#) of the NA and that this website is updated on a daily basis.
10. Furthermore, as regards the urgent procedure, in accordance with article 167-168 of the Rules of Procedure of the NA, laws may only be adopted under urgent procedure in exceptional circumstances<sup>2</sup> and a proposal to adopt a law under urgent procedure may be refused by Members of Parliament (MPs). The authorities indicate that the urgent procedure is mostly approved when the procedures for a public debate have previously been strictly adhered to and, for this reason, the co-ordination body<sup>3</sup> led by the Ministry of Justice has recommended that all ministries, when sending their draft legislation for adoption, submit a brief outline of the conducted public debate to the NA. In the period 1 November 2017 until 1 October 2018, the NA adopted 237 acts, of which 124 under urgent procedure (i.e. 70 out of 177 adopted laws and 54 out of 60 adopted decisions and other acts were adopted under urgent procedure). The authorities consider this to be a reasonable number (especially considering that Serbia is a candidate for EU accession and harmonising domestic legislation with EU *acquis* is the most frequent case in which

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<sup>2</sup> As also indicated in the Evaluation Report (footnote 35) and the Compliance Report (para. 10) the urgent procedure can be applied when – if the law does not get adopted by urgent procedure – it would cause detrimental consequences to human life and health, national security or the work of institutions and organisations or when the urgent procedure is necessary for fulfilling international obligations and harmonising domestic legislation with the *acquis* of the European Union.

<sup>3</sup> On 29 May 2018, the government of Serbia set up a co-ordination body to facilitate the implementation of GRECO recommendations. This co-ordination body is composed of high-level representatives of all relevant institutions (National Assembly, High Judicial Council, State Prosecutorial Council and the Anti-Corruption Agency) led by the Minister of Justice of Serbia.

this procedure is applied), which should demonstrate that the procedure is not applied as a rule.

11. As regards the second part of the recommendation, on the issue of public debates, the authorities indicate that Article 41 of the Rules of Procedure of the government provides that the organisation of a public debate during the preparation of governmental draft laws is mandatory in case of significant changes to the law or if the law governs a matter of particular interest to the public. In the period 1 November 2017 to 24 October 2018, public debates were held on 42 pieces of draft legislation (of which 28 were new laws and 14 were amendments to existing laws) out of a total of 114 legislative proposals (which also included 58 draft laws on ratification of international treaties for which a public debate is not prescribed by law). Furthermore on the issue of public hearings, the authorities recall that articles 83 and 84 of the Rules of Procedure of the NA provide for the possibility to organise public hearings for various purposes connected to the legislative and oversight functions of the NA.
12. GRECO considers, as regards the first part of the recommendation, that with 124 acts out of 237 still being adopted under urgent procedure, it cannot conclude that this procedure is now applied as an exception, as required by the recommendation. Furthermore, it is still possible (and a regular practice) to present amendments up to 24 hours before the discussion in the urgent procedure. As before (see the Compliance Report), no additional safeguards have thus been introduced to either further curb the use of the urgent procedure or provide for new deadlines for submitting amendments. Furthermore, even if all proposed and adopted laws seem to be announced on the website of the NA, which is updated daily, GRECO also notes the information in the Compliance Report that amendments to legislative proposals are entered into the e-parliament system, which is reserved for MPs and staff of the NA only. The first part of the recommendation remains partly implemented.
13. As regards the second part of the recommendation, GRECO notes that more public debates appear to be organised than before, but also notes that this is not the result of a further development of the rules, as required by the recommendation (and therefore might not be a sustainable development). While welcoming the recommendation of the co-ordination body, which could lead to more information from public debates to be shared with the NA, GRECO considers that the deficiencies highlighted in the Evaluation Report remain (*inter alia* that public debates only have to be organised for governmental legislative drafts, not for those proposed by MPs or citizen groups and that the criteria lack clarity<sup>4</sup>). Specifically as regards public hearings, no further development of the rules appear to have taken place and the organisation of public hearings remains at the discretion of the parliamentary committees. GRECO therefore considers this part of the recommendation also to remain partly implemented.
14. GRECO concludes that recommendation i remains partly implemented.

#### **Recommendation ii.**

15. *GRECO recommended (i) swiftly proceeding with the adoption of a Code of Conduct for members of parliament and ensuring that clear guidance is provided for the avoidance and resolution of conflicts of interest and (ii) ensuring that the public is given easy access to the future Code and that it is effectively implemented in practice, including by raising awareness among members of parliament on the*

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<sup>4</sup> As mentioned in paragraph 11, according to Article 41 of the Rules of Procedure of the NA public debates are to be organised in case of "significant changes" to the way a matter has been addressed legally or if it concerns a matter of particular public interest.

*standards expected of them and by providing them with confidential counselling and dedicated training.*

16. GRECO recalls this recommendation was not implemented at the time of adoption of the Compliance Report, as it did not seem that much progress in the adoption of the draft Code of Conduct for members of parliament had been made since adoption of the Evaluation Report.
17. The authorities report - as regards the first part of recommendation - that a Code of Conduct has not been adopted yet, as it was considered that it would be better not to finalise such a text until adoption of the Law on Lobbying (adopted on 9 November 2018) and the Law on Corruption Prevention (which has not been adopted yet). Both laws provide the legal framework for, respectively, the interaction of members of parliament with lobbyists and other third parties that seek to influence the parliamentary process and the prevention of conflicts of interest. As regards the second part of the recommendation, the authorities recall that the draft code, once adopted, will be published on the NA's website and will impose an obligation on the Ethics Council to submit annual reports to the NA, which will be published on the latter's website. Awareness-raising and training activities will also be planned after the code's adoption.
18. As no substantive progress can be reported since the adoption of the Compliance Report, GRECO concludes that recommendation ii remains not implemented.

**Recommendation iii.**

19. *GRECO recommended introducing rules for members of parliament on how to interact with lobbyists and other third parties who seek to influence the parliamentary process and making such interactions more transparent.*
20. GRECO recalls that this recommendation was not implemented at the time of adoption of the Compliance Report, as at that stage only a needs-assessment with a view to drafting a law had been carried out and the National Assembly was considering the adoption of a by-law, which would regulate specifically the issue of lobbying with regard to MPs in greater detail.
21. The authorities now report that, following a public debate in March and April 2018 (which included a roundtable on the draft law on 17 April), the NA adopted a Law on Lobbying on 9 November 2018 (Official Gazette 87/18, which will enter into force on 14 August 2019). The new law contains a definition of lobbying, to distinguish it from activities which cannot be deemed to be lobbying activities (articles 2 and 3), tasks the Anti-Corruption Agency (ACA) with setting up a code of conduct for all parties affected by lobbying activities (article 9) (with which the Code of Conduct for MPs as mentioned under recommendation ii will be harmonised), prescribes a cooling-off period of 2 years after leaving public employment or public office before a public official (including an MP) can become a lobbyist (article 12). Moreover, the law envisages the establishment of a mandatory (public) register of lobbyists (and entities authorised to perform lobby activities, which is to be maintained by the Anti-Corruption Agency (article 19). The law also prescribes the conditions for carrying out lobbying activities (e.g. qualifications and completion of training organised by the ACA).
22. The Law on Lobbying furthermore requires both lobbyists and public officials (including MPs) to report on lobbying activities, with the lobbyists being required to provide annual reports on their activities to the ACA and public officials having to report to the ACA any contacts with lobbyists within 15 days of such contact having taken place. The ACA may seek additional information on any such activities

(including the lobbying contract), may initiate disciplinary proceedings against the public official in question for non- or untimely disclosure of pertinent information on contacts with lobbyists, and may impose sanctions (on the lobbied person or the responsible person in the lobbied entity in question) or request the court to initiate misdemeanour proceedings against on lobbyists and entities authorised to perform lobbying activities, as well as on natural and legal persons who have hired the lobbyists.

23. GRECO welcomes the adoption of the Law on Lobbying, which regulates lobbying activities in a comprehensive manner. The law has a clear potential for making interactions between MPs and lobbyists / other third parties who seek to influence the parliamentary process more transparent, as required by the recommendation. In this context, GRECO also looks forward to the development of a code of conduct for all parties affected by lobbying activities, which will undoubtedly facilitate the understanding and implementation of the law. Pending the entry into force of this law, GRECO can however not yet say that this recommendation has been fully implemented.
24. GRECO concludes that recommendation iii has been partly implemented.

*Corruption prevention in respect of judges*

#### **Recommendation iv.**

25. *GRECO recommended (i) changing the composition of the High Judicial Council, in particular by excluding the National Assembly from the election of its members, providing that at least half its members are judges elected by their peers and abolishing the ex officio membership of representatives of the executive and legislative powers; (ii) taking appropriate measures to further develop the role of the High Judicial Council as a genuine self-governing body which acts in a pro-active and transparent manner.*
26. GRECO recalls that this recommendation was partly implemented at the time of adoption of the Compliance Report. As regards the first part of the recommendation, GRECO concluded that no change had occurred in the institutional set-up for the High Judicial Council (HJC) and the concerns expressed in the Evaluation Report remained valid. As regards the second part of the recommendation, GRECO welcomed the various measures<sup>5</sup> reported and considered these to be appropriate responses to the concerns it had expressed in the Evaluation Report. It found, however, that a practice needed to be established and further developed within the HJC for transparent and pro-active action, as a genuine self-governing body, and therefore concluded that this part of the recommendation was partly implemented.
27. The authorities state that, as explained in the Evaluation Report and subsequent Compliance Report, implementation of the first part of the recommendation requires amendments to the Constitution. The final draft proposal to amend the Constitution (which has, as indicated above, been submitted to Parliament) envisages substantial changes to the composition of the High Judicial Council. According to this proposal, which as mentioned has been subject to a Venice

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<sup>5</sup> The authorities reported *inter alia* on amendments to the Law on the HJC (of 21 December 2015) providing for public sittings of the HJC, reasoning of decisions and publication of the HJC's decisions on its website; an amendment to the HJC's Rules of Procedure to provide for a procedure in case of undue political influence on the judiciary, including an obligation to issue public statements (in response to GRECO's concern that judges are left on their own in case of public pressure); an amendment to the Law on the Organisation of Courts which changed the deadline for transferring budgetary jurisdiction from the Ministry of Justice to the HJC to 1 January 2018 (to address GRECO's suggestion on a separate budget for the judiciary).

Commission opinion and has subsequently undergone further changes (which were then accorded to be in conformity with the prior Venice Commission opinion)<sup>6</sup>, the HJC is to be composed of 10 members, of whom five are judges elected by their peers (for which it is provided that equal representation of all levels of the judiciary is to be taken into account), and the other five are prominent lawyers elected by the NA. The NA will thus be excluded from electing the judge-members of the High Judicial Council and the *ex officio* membership of representatives of the executive and legislative powers will be abolished.

28. As regards the second part of the recommendation, the authorities mention that the Rules of Procedure of the HJC were again amended on 17 January 2018, providing *inter alia* that all interested parties can attend interviews for the first election to a judicial function (subject to the number of available seats) and that the interviews will be recorded. Furthermore, in accordance with the new Rulebook on the programme and manner of sitting examinations (on evaluating candidates' expertise and competences in the first election to a judicial function), the list of candidates and the grades they achieved will be made public on the official website of the HJC, ensuring transparency of the work of the HJC throughout the selection process. Moreover, following up on the earlier reported established procedure for "undue influence on the judiciary", in the period February-July 2018 since GRECO's Compliance Report the HJC has issued public statements on eight occasions condemning various statements by politicians and other developments with a bearing on individual cases, judges or the judiciary as a whole.
29. Finally, as regards the earlier-mentioned amendment to the Law on the Organisation of Courts (which set out the deadline for transferring the remaining budgetary jurisdiction from the Ministry of Justice to the HJC to 1 January 2018, which in turn was postponed by the NA to 1 January 2020), in October 2018 the Constitutional Court has declared the provision in question unconstitutional, finding that there was no legal basis for the remaining competencies of the Ministry of Justice to be taken over or abolished.<sup>7</sup> Nevertheless, the HJC remains responsible for proposing to the Ministry of Finance directly the part of the budget intended for the operation of courts as well as allocating and overseeing the spending of these budgetary funds.<sup>8</sup> In order to strengthen the role of the HJC in the preparation of the budget, draft Amendment XIII to the Constitution provides that the HJC shall "propose the budgetary funds for the work of the High Judicial Council and the work of courts and autonomously dispose of these funds".
30. GRECO takes note of the information provided. As regards the first part of the recommendation, GRECO welcomes the constitutional reform process currently underway (noting at the same time however the rather acrimonious consultation process, see further on this in paragraph 98 below). It considers that the draft constitutional amendments on the composition of the HJC would represent, if adopted as foreseen, a considerable improvement upon the current situation, in particular that half of the members of the HJC would then be judges elected by their peers and the *ex officio* membership of representatives of the executive and

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<sup>6</sup> See footnote 1 above.

<sup>7</sup> In its decision no. IY3-34/2016, the Constitutional Court declared Article 32 of the Law on the Organisation of Courts (by which the budgetary jurisdiction was to be transferred to the HJC) to be null and void, stating that this article "has artificially created the purported 'invisible norm' by which certain competences of the Minister of Justice were amended or altogether abolished although these competences of the Ministry remain unaltered by other [material] provisions regulating the jurisdiction and competences of the Ministry of Justice and HJC within the Law on the Organisation of Courts itself".

<sup>8</sup> Apart from salaries of judges (which falls directly within the budgetary competence of the HJC), the authorities explain that the HJC proposes the necessary budget for the costs of expert witnesses and interpreters during court proceedings; costs of defence attorneys; costs incurred for trials within a reasonable time; the costs of compensation for damages in the proceedings for unlawful deprivation of liberty in criminal proceedings; the costs of compensation of damages based on Constitutional Court decisions; as well as costs of compensation for damages based on the judgments of the European Court of Human Rights.

legislative powers would be abolished. Nevertheless, GRECO's recommendation also calls for the complete exclusion of the NA from the election of the members of the HJC (and not just from electing the judge-members as it is proposed now), as the government has also committed itself to in its own National Justice Reform Strategy and Action Plan for Chapter 23.<sup>9</sup> However, as in any case the constitutional amendments have not been adopted yet, GRECO can only consider this part of the recommendation to be partly implemented.

31. As regards the second part of the recommendation, GRECO welcomes the further measures that have been taken. GRECO recognises that building the capacity of the HJC as a self-governing body will require time and a practice to be developed, also given that the transfer of the remaining budgetary and administrative authority from the Ministry of Justice to the HJC has been delayed. GRECO accepts that appropriate measures have been and continue to be taken, in line with the requirements of the recommendation, but also notes that the process is on-going. GRECO therefore requests the Serbian authorities to keep it informed of further progress in this respect, also in relation to the budgetary autonomy of the HJC. GRECO considers this part of the recommendation to remain partly implemented for the time being.
32. GRECO concludes that recommendation iv remains partly implemented.

#### **Recommendation v.**

33. *GRECO recommended reforming the procedures for the recruitment and promotion of judges and court presidents, in particular by excluding the National Assembly from the process, ensuring that decisions are made on the basis of clear and objective criteria, in a transparent manner and that positions of court presidents are occupied on an acting basis only for short periods of time.*
34. GRECO recalls that this recommendation had been partly implemented at the time of adoption of the Compliance Report. GRECO welcomed the steps taken to improve the objectivity and transparency of the procedures for the recruitment of judges and court presidents, particularly the introduction of an examination for beginning of career posts, the adoption of rulebooks<sup>10</sup> by the HJC containing objective criteria and the on-going selection process of a number of court presidents. However, it considered that the HJC did not appear to be bound by the results obtained by the candidates in the selection procedure nor that it had to motivate its decision when it proposed a different candidate for appointment than the one who received the highest score. There were thus still possibilities for bias in the recruitment and promotion of judges. Above all, GRECO considered the work on amending the Constitution, which is necessary in order to exclude the involvement of the National Assembly in the process of appointing judges, was at its very beginning.
35. The authorities now report that abovementioned draft amendments to the Constitution will provide that "the High Judicial Council shall elect and dismiss the President of the Supreme Court of Serbia and the presidents of other courts; elect

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<sup>9</sup> See the National Judicial Reform Strategy of Serbia (2013-2018), adopted in 2013, which calls for the exclusion of the NA from the process of electing members of the HJC:

<https://www.mpravde.gov.rs/en/vest/3394/the-national-judicial-reform-strategy-for-the-period-2013-2018-.php> and the Action Plan for Chapter 23 which says that there should be no "involvement of the National Assembly (unless solely declaratory), see:

<https://mpravde.gov.rs/files/Action%20plan%20Ch%2023.pdf>

<sup>10</sup> These rulebooks, adopted by the HJC on 15 November and 29 March 2016, concerned (i) criteria for the evaluation of qualifications, competence and worthiness of candidates for judicial positions to be elected for the first time; (ii) (criteria for evaluation of qualifications, competence and worthiness of judges for permanent judicial positions at the second or higher court and criteria for nomination of court presidents and (iii) criteria, standards, procedures and competent authorities for the assessment of the work of judicial assistants.



judges and lay judges and decide on the termination of their tenure (...)” (Constitutional Amendment XIII). Once the constitutional amendments have been adopted, the National Assembly would be thus excluded from this process. Furthermore, Amendment VII to the Constitution will provide that the Judicial Academy will be the gatekeeper and single entry point to a judicial function, thus eliminating any possible bias in the recruitment of judges (which had been previously expressed as a concern by GRECO). This article was introduced in the draft constitutional amendments on recommendation of the Venice Commission, which stated that it “would be advisable to protect the Academy from possible undue influence by providing it with a firm status within the Constitution”.<sup>11</sup>

36. Furthermore, the authorities emphasise the importance of the adopted Rulebooks, which have been mentioned in the Compliance Report, in ensuring that clear, impartial and merit-based procedures for the recruitment and promotion of judges and court presidents are now in place. In addition, on 17 January 2018, the HJC adopted a new Rulebook on the programme and manner of sitting examinations, which has introduced another step in the recruitment of judges, namely a written assessment (in the form of a test and a case study). The authorities indicate the grade obtained in this written assessment is the prevailing criterion for nominating a candidate to the NA.<sup>12</sup>
37. Moreover, as regards transparency, the HJC’s nomination of a candidate judge to the NA (with the candidate’s name, curriculum vitae and final assessment grade) is published on the HJC’s website. Decisions of the HJC regarding the selection of judges to permanent judicial positions at the second or higher courts must be reasoned (based on the criteria outlined in the HJC’s Rules of Procedure) and published in the Official Gazette.
38. Finally, as regards the final part of the recommendation, the authorities indicate that when a court president moves to another judicial post, there shall be an acting court president until a new court president is elected. The open competition for election of a court president will be announced immediately, in order to ensure that these positions are occupied on an acting basis only for a short period of time.
39. GRECO welcomes the constitutional amendments foreseeing the exclusion of the NA in the process of appointing and promoting judges and court presidents, but given that these amendments have not been adopted yet, GRECO cannot consider this part of the recommendation as more than partly implemented. In this context, it also considers that for the recruitment of judges in future much will depend on the method of selection of entry into the Judicial Academy and possible influence over this process. Furthermore, GRECO notes that the establishment of criteria (as reported at the time of the Compliance Report) appear now to be complemented by a Rulebook binding the HJC to propose the candidate for appointment who receives the highest score and with some measures foreseeing more transparency in the appointment and promotion procedures, which – even though for court presidents this may fall short of the procedure proposed in the Evaluation Report – is to be welcomed. Finally, as regards the issue of acting court presidents, from the information provided it cannot be deduced that any real changes have now been implemented to ensure that the positions of court presidents are occupied on an acting basis only for short periods of time.
40. GRECO concludes that recommendation v remains partly implemented.

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<sup>11</sup> See footnote 1, para. 42.

<sup>12</sup> The authorities furthermore indicate that in addition the evaluation of the work of candidates coming from the ranks of judicial assistants is being taken into account, as well as previous working experience following the bar exam, the need not to discriminate and to ensure a balanced representation of national minorities (and minority language skills).

## **Recommendation vi.**

41. *GRECO recommended that the system of appraisal of judges' performance be reviewed (i) by introducing more qualitative criteria and (ii) by abolishing the rule that unsatisfactory evaluation results systematically lead to dismissal of the judges concerned.*
42. GRECO recalls that this recommendation had not been implemented at the time of adoption of the Compliance Report. It acknowledged the efforts undertaken by the Serbian authorities to put a sound system of appraisal of judges' performance in place, but considered that the information provided only offered further explanation of the evaluation system as outlined in the Evaluation Report and that no more than intentional steps towards implementation of the recommendation had been undertaken. GRECO considered the criteria reported to be clearly of a quantitative nature and found that the proposal by the HJC to amend the Law on Judges (so that a negative evaluation of judges would not give rise to grounds for dismissal) had not led to any changes yet.
43. The authorities now recall as regards the first part of the recommendation that the Rulebook on the criteria, standards, procedures and competent authorities for evaluating the work of judges and court presidents provides for both qualitative and quantitative criteria. The qualitative criteria area assessed as a percentage of the decisions set aside in relation to the total number of decisions made in the assessed period, whereas the quantitative criteria include the number of completed cases by a judge per month as compared to the expected monthly norm. While these criteria themselves have not changed, a case weighing methodology system was adopted in May 2017, which establishes that the Commission for the evaluation of the work of judges and court president must pay attention to the difficulty of the particular case (in terms of accuracy and clarity, procedural steps, argumentation and legal reasoning). Results of this case weighing formula will be available when the system is fully operational and implemented in all courts.
44. As regards the second part of the recommendation, as also mentioned in the Compliance Report, the authorities dispute GRECO's statement that unsatisfactory results systematically lead to dismissal of the judges concerned. According to the Law on Courts, unprofessional performance of judicial functions, which is conditioned by the judge receiving an "unsatisfactory performance" mark, constitutes merely a possible reason for dismissal. The Rulebook on evaluation provides that a judge whose performance is assessed as "unsatisfactory" is referred for mandatory training. The authorities point in this respect also to the very low percentage of assessments resulting in the mark "unsatisfactory performance" (namely 0.26% of all evaluations in the period January to 21 August 2018<sup>13</sup>), noting that this cannot be regarded as a significant risk.
45. In the meantime, a draft Constitutional Amendment VIII is foreseen which provides that: "A judge may also be dismissed due to the incompetence if, in a significant number of cases, she or he clearly does not meet the benchmarks of satisfactory performance prescribed by Law, as evaluated by the High Judicial Council".<sup>14</sup>

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<sup>13</sup> 12 out of 294 regular evaluations resulted in first instance in an evaluation of "unsatisfactory performance" of the judicial function. This assessment was only upheld on appeal in 1 out of the 12 cases following a decision by the Supreme Court Commission (with the other 11 being changed to "outstandingly successful" in 7 cases and "successful" in 4 cases). In none of the 88 extraordinary evaluations was the assessment "unsatisfactory" performance of the judicial function.

<sup>14</sup> This amendment was drafted following the above-mentioned Venice Commission Opinion which found it to be "important that more detail be provided in the draft amendments regarding disciplinary responsibility and dismissal. The use of vague terminology such as 'incompetence' without further specification should be avoided and therefore taken out.

According to the authorities, amendments to the Law on Judges will follow the adoption of the amendments to the Constitution.

46. GRECO takes note of the information provided. As regards the first part of the recommendation, it maintains its previous position that the criteria reported are of a quantitative nature and it can therefore not consider this part of the recommendation to have been fully addressed. As regards the second part of the recommendation, it welcomes the information provided showing that the evaluation mark "unsatisfactory performance" is not really an issue in practice. GRECO does, however, also note the high number of extremely positive evaluation marks in the form of "outstandingly successful performances"<sup>15</sup> (which in itself may point to deficiencies in the evaluation process). GRECO is ready to concede that the mark "unsatisfactory performance" would not systematically lead to dismissal (even if Article 62 of the Law on Judges seems to suggest otherwise). It is nevertheless pleased that this issue will be further addressed in the constitutional reform process, leading to corresponding changes to the Law on Judges. Pending these amendments, it considers this part of the recommendation to have been partly implemented.
47. GRECO concludes that recommendation vi has been partly implemented.

#### **Recommendation vii.**

48. *GRECO recommended (i) that the Code of Ethics for judges be communicated effectively to all judges and complemented by further written guidance on ethical questions – including explanations, interpretative guidance and practical examples – and regularly updated; (ii) that dedicated training of a practice-oriented nature and confidential counselling within the judiciary be provided for all categories of judges.*
49. GRECO recalls that this recommendation had been partly implemented at the time of adoption of the Compliance Report. As regards the first part of the recommendation, it found that no measures had been taken to respond directly to the concerns expressed in the Evaluation Report. As regards the second part of the recommendation, it considered that the training programme for judges seemed appropriate (and that the analysis of the decisions in disciplinary proceedings could have some educational value if they were to be adequately disseminated and used during training). However, since no confidential counselling system had been put in place it could only conclude that this part of the recommendation had been partly implemented.
50. The authorities now report concerning the first part of the recommendation that, on 4 September 2018, the HJC adopted new Rules of Procedure for the Ethics Committee (a working body of the HJC). These new rules *inter alia* task the Ethics Committee with monitoring compliance with the Code of Ethics for judges, providing written guidance with practical examples and recommendations, explanations and interpretations of actual or presumed violations of the Code, proposing necessary amendments to the Code and providing clarification on any provision of the Code that is found to be vague or confusing. Furthermore, as regards GRECO's concern that a lack of awareness persists on the existence of the Code of Ethics despite it being available on the HJC's website, the Ethics Committee shall undertake the necessary measures, through judicial training programmes developed in co-operation with the Judicial Academy and interactions with

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<sup>15</sup> 278 out of 294 regular evaluations resulted in first instance in an evaluation of "outstandingly successful" performance of judicial functions, which rose to a further 285 out of 294 cases on appeal, and in 86 out of 88 extraordinary evaluations the mark "outstandingly successful" was given.

individual judges, to raise awareness amongst judges of the existence and requirements of the Code.

51. As regards the second part of the recommendation, concerning the part of the recommendation dealing with confidential counselling which had been considered not-implemented at the time of the Compliance Report, the authorities outline that according to the new Rules of Procedure the Ethics Committee's competences include the provision of confidential counselling on ethical dilemmas. Confidential counselling is available to all judges upon their request and will be provided by members of the Ethics Committee. The authorities indicate that given the introduction of complete confidentiality, it is expected that confidential counselling will be used more frequently by judges than the conclusions issued publicly by the HJC on ethical issues.
52. GRECO welcomes, as regards the first part of the recommendation, that the Ethics Committee has been given the mandate to provide further written guidance on ethical questions, make proposals for updates of the Code and will raise awareness of the Code to all judges. As these measures are still to be done (and no written guidance, updates of the Code or awareness-raising activities have yet been carried out), GRECO cannot consider this part of the recommendation to have been even partly implemented. As regards the remaining element of the second part of the recommendation, it agrees that giving the Ethics Committee also the mandate to carry out confidential counselling is a step forward, even if GRECO has a strong preference (as outlined in the Evaluation Report) for establishing such a mechanism outside the HJC. As so far the Ethics Committee has only been given a mandate and a concrete mechanism for the provision of confidential counselling is not fully operational yet, GRECO considers this part of the recommendation to be partly implemented.
53. GRECO concludes that recommendation vii has been partly implemented.

*Corruption prevention in respect of prosecutors*

**Recommendation viii.**

54. *GRECO recommended (i) changing the composition of the State Prosecutorial Council (SPC), in particular by excluding the National Assembly from the election of its members, providing that a substantial proportion of its members are prosecutors elected by their peers and by abolishing the ex officio membership of representatives of the executive and legislative powers; (ii) taking appropriate measures to strengthen the role of the SPC as a genuine self-governing body which acts in a pro-active and transparent manner.*
55. GRECO recalls that this recommendation had been partly implemented at the time of adoption of the Compliance Report. The first part of the recommendation was awaiting the constitutional reform necessary to implement it. Concerning the second part of the recommendation, GRECO found the various measures<sup>16</sup> reported to be appropriate responses to the concerns as expressed in the Evaluation Report, and looked forward to assessing progress in its next report, particularly as regards

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<sup>16</sup> Measures reported included the elaboration of a multi-year strategic plan, various capacity-building activities, amendments to the law on the State Prosecutorial Council (SPC) providing for publicity of the sessions and acts of the SPC via its website, amendments to the rules of procedure of the SPC (as regards public response of the SPC in case of political interference in the work of public prosecutors, specification and standardisation of operational working procedures and improvement of the efficiency of the SPC), the setting up of *inter alia* the Commissioner for autonomy in cases of political and other undue influence and raising awareness on the existence of this Commissioner.

the establishment of a practice for transparent and proactive action of the SPC as a self-governing body.

56. The authorities now report as regards the first part of the recommendation that the abovementioned amendments to the Constitution envisage the new High Prosecutorial Council (HPC, the changed name of the SPC) to be composed of ten members, of which four members are (deputy) public prosecutors equally representing all levels of the prosecution service (elected by their peers) and four prominent lawyers (elected by the NA), with additionally the Supreme Public Prosecutor and Minister in charge of the judiciary as *ex officio* members.
57. As regards the second part of the recommendation, the authorities recall the amended Rules of Procedure, the multi-year strategic plan and the establishment of the Commissioner for autonomy in cases of political and other undue influence.<sup>17</sup> In the course of 2017 and 2018, the aforementioned Commissioner issued eight opinions and one recommendation on allegations of political pressure exerted on public prosecutors and initiatives undertaken to assess the vulnerability of the autonomy and integrity of deputy public prosecutors. In addition, in the same period, eight workshops were held for around 180 prosecutors on how to report undue influence in their work.<sup>18</sup> Finally, the authorities report on various working groups set up by the SPC (i.e. on monitoring judicial laws, on educational programmes and on amending rules on disciplinary proceedings), the first ever annual work plan for 2018 adopted on the basis of the aforementioned multi-year strategic plan, the proposal for the human resource organisation plan for 2018, the Rulebook on internal organisation and job classification adopted by the SPC and the increase by the SPC in the number of positions of deputy prosecutors to 780 positions (which presented an increase of 14% of the total number of deputy public prosecutors in Serbia), the competitions organised by the SPC to fill these positions and the so-called "Functional Review" of the prosecution system, conducted by the Multi-Donor Trust Fund, which is currently underway.
58. As regards the first part of the recommendation, GRECO considers the draft constitutional amendments envisaging that the NA elects four out of the ten members of the SPC to represent a vast improvement to the current situation (in which the NA elects eight out of the 11 members, with the others being *ex officio* members), especially considering that the NA will no longer be responsible for the appointment of deputy prosecutors and public prosecutors (see under the next recommendation below). However, it does note that the amendments fall short of the requirements of the recommendation and of the government's own commitments as outlined in its National Justice Reform Strategy and Action Plan for Chapter 23, which call for the exclusion of the NA in electing members of the SPC.<sup>19</sup> Furthermore, GRECO notes that only four prosecutors out of ten members of the SPC are to be elected by their peers and that the *ex officio* membership of the executive power will remain in place (even if the *ex officio* membership of the legislature will be abolished, which is to be welcomed). As in any case the

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<sup>17</sup> It is recalled that the Commissioner is *inter alia* authorised to point out acts and/or omissions, which endanger the autonomy and integrity of the prosecution service, propose measures to the Council to strengthen the autonomy and integrity and inform the Council and the public about the existence of political or other undue influence on the work of the public prosecution.

<sup>18</sup> These workshops were organised by the EU / Council of Europe Horizontal Facility Programme "Strengthening Legal Guarantees for Independent and Impartial Tribunals".

<sup>19</sup> See the National Judicial Reform Strategy of Serbia (2013-2018), adopted in 2013, which calls for the exclusion of the NA from the process of electing members of the SPC:

<https://www.mpravde.gov.rs/en/vest/3394/the-national-judicial-reform-strategy-for-the-period-2013-2018-.php> and the Action Plan for Chapter 23 which says that there should be no "involvement of the National Assembly (unless solely declaratory)", see: <https://mpravde.gov.rs/files/Action%20plan%20Ch%2023.pdf>.

constitutional amendments have not been adopted yet, GRECO can only consider this part of the recommendation to have been partly implemented.

59. As regards the second part of the recommendation, GRECO accepts that appropriate measures have been and continue to be taken, in line with the requirements of the recommendation, but also notes that the reform process has not been completed. GRECO encourages the SPC to keep enhancing its role (e.g. by continuing to improve the transparency in and communication on its work, including as regards the decisions on appointments as per the recommendation below, by acting upon the opinions of the Commissioner for autonomy in cases of political and other undue influence, by adopting rules of procedure for the work of the Commissioner, by swiftly filling vacancies in the prosecution service through open competitions, by continuing to enhance its capacities in the area of human resource and budgetary planning etc.) and to keep GRECO informed of further progress in this respect, also in light of the measures taken following the "Functional Review" of the prosecution service currently underway. GRECO also considers this part of the recommendation to have been partly implemented.
60. GRECO concludes that recommendation viii has been partly implemented.

**Recommendation ix.**

61. *GRECO recommended reforming the procedures for the recruitment and promotion of public prosecutors and deputy public prosecutors, in particular by excluding the National Assembly from the process, limiting the discretion of the government and ensuring that decisions are made on the basis of clear and objective criteria in a transparent manner and that positions of public prosecutors (i.e. heads of office) are occupied on an acting basis only for a short period of time.*
62. GRECO recalls that this recommendation was not implemented at the time of the adoption of the Compliance Report. While understanding that the pending constitutional reform prevented the implementation of some elements of the recommendation (notably the exclusion of the NA from the process), GRECO underlined that the criteria used by the SPC for the recruitment and promotion of public prosecutors and deputy public prosecutors remained unclear. Moreover, nothing indicated that the government's discretion in the process had been curbed, or that positions of public prosecutors (heads of offices) were being filled on a permanent basis.
63. The authorities now report that the draft Amendments to the Constitution (Constitutional Amendments XXII and XXIV) provides that deputy public prosecutors will be elected by the HPC for a life-time tenure and public prosecutors (i.e. heads of office) for a period of six years. With the exception of the selection of the Supreme Public Prosecutor (who is to be elected by a 3/5ths majority in the NA for also a six year period), the NA will in future be excluded from the process of recruiting and promoting public prosecutors and deputy public prosecutors and the government is no longer involved in this process.
64. Furthermore, in order to ensure that decisions are based on clear and objective selection rules and procedures, the draft Amendments to the Constitution foresee the Judicial Academy as a single entry point to prosecutorial functions (with it only being possible to elect persons as deputy public prosecutors for the first time if they have completed the training at the Judicial Academy). Pending the Constitutional Amendments, the SPC has made efforts to improve the election of deputy public prosecutors within the existing constitutional framework by adopting (on 7 September 2017) a new Rulebook for evaluation of qualifications, competence and worthiness of candidates during the procedure for nominating deputy public

prosecutors to first elections, which *inter alia* prescribes the procedure and content of the exam for the applicants (with the exception of alumni of the Judicial Academy and the scale for the grading of the results).

65. Moreover, the authorities report that all decisions made on the selection of deputy public prosecutors and public prosecutors are regularly published, including the ranking lists of candidates with the examination grades they have achieved and their performance evaluations.
66. Finally, it is reported that 19 out of 90 public prosecutors (i.e. heads of office) are currently occupying their positions on an acting basis. This appointment (on an acting basis) can last up to one year, which indicates that positions of public prosecutors are occupied on an acting basis only for a short period of time.
67. GRECO welcomes the draft constitutional amendments addressing part of the recommendation (as regards the exclusion of the NA and limiting the discretion of the government, although as regards this latter point GRECO notes that much of this will also depend on the influence over the process of selection at the Judicial Academy once it becomes the single entry point for the prosecution service). As these amendments have not been adopted yet, GRECO concludes that this part of the recommendation has been partly implemented. As regards the part of the recommendation on ensuring that decisions are made on the basis of clear and objective criteria in a transparent manner and that positions of public prosecutors are occupied on an acting basis only for a short period of time, GRECO notes that no new information has been provided (as the abovementioned Rulebook has already been mentioned in the Compliance Report, it seems to still be possible to promote deputy prosecutors even if they are not top-ranked nominees, without further reasoning having to be provided, and no real changes seems to have been implemented to ensure that the positions of heads of office are occupied on an acting basis only for short periods of time).
68. GRECO concludes that recommendation ix has been partly implemented.

#### **Recommendation x.**

69. *GRECO recommended that the system for appraising the performance of public prosecutors and deputy public prosecutors be reviewed (i) by revising the quantitative indicators and ensuring that evaluation criteria consist principally of qualitative indicators and (ii) by abolishing the rule that unsatisfactory evaluation results systematically lead to dismissal and ensuring that prosecutors have adequate possibilities to contribute to the evaluation process.*
70. GRECO recalls that this recommendation had been partly implemented at the time of adoption of the Compliance Report. It considered the first part of the recommendation not implemented, as no changes to the evaluation criteria, which rely heavily on quantitative benchmarks, had been reported. It considered the second part of the recommendation partly implemented, as it was satisfied with the additional clarifications provided by the authorities (even if no new developments had occurred since the adoption of the Evaluation Report) on the right of appeal of prosecutors against the result of an evaluation and the possibility to request a second instance evaluation, which provide for the possibility that prosecutors will be heard prior to the adoption of a final evaluation. In this context however, it also considered that giving prosecutors additional possibilities to contribute to their evaluation, for instance by commenting on a preliminary draft of being heard during the process, would be welcome. Further explanations of the authorities (*inter alia* that unsatisfactory performance remarks would not systematically lead to dismissal) did not fully dispel GRECO's concerns, and GRECO therefore welcomed

the intention of the authorities to revise the Rulebook on performance evaluations, which reportedly would take GRECO's concerns into account.

71. The authorities now report as regards the first part of the recommendation that, at its session of 24 July 2018, the SCP decided to set up a working group for preparing draft amendments to the current Rulebook on performance evaluation criteria for public prosecutors and deputy public prosecutors, with a view to ensuring a higher degree of clarity, objectivity and uniformity of the appraisal system. The work of this group will go hand in hand with the constitutional amendments currently underway, to harmonise the Rulebook with the wording of (draft) Constitutional Amendment XXIV, which also has a bearing on the second part of the recommendation, stating that "a deputy public prosecutor may be dismissed due to incompetence if, in a significant number of cases, he or she clearly does not meet the benchmarks of satisfactory performance prescribed by law and evaluated by the High Prosecutorial Council", which thus imposes a higher burden of proof. The working group shall ensure that the new Rulebook will include qualitative evaluation criteria to assess the clear and persistent lack of quality of the work (as per the first part of the recommendation).
72. Further, as regards the second part of the recommendation, the authorities contest that unsatisfactory evaluation results systematically lead to dismissal. They explain that Article 92 of the Law on the Public Prosecution prescribes that an "incompetent performance" of prosecutorial functions would be a *possible* valid reason for dismissal. Article 93 in turn elaborates what is to be considered "incompetent performance" outlining that this is linked to an "unsatisfactory performance" mark in the evaluation of a prosecutor. Pursuant to Article 8 of the current Rulebook on the performance evaluation criteria, an "unsatisfactory performance" mark will first lead to a written warning, with the public prosecutor carrying out the evaluation being obliged to propose measures to remedy identified deficiencies in the work of the (deputy) prosecutor under evaluation. This usually includes a referral to mandatory training organised by the Judicial Academy and an extraordinary evaluation upon completion of this training, providing an opportunity to improve the evaluation mark pursuant to Article 10(3)(5) of the current Rulebook. In the period 1 January 2018 until October 2018, all 71 public prosecutors and 19 acting public prosecutors have been evaluated as having "performed the prosecutorial functions exceptionally" (with none receiving evaluation marks below that) and 89% of all deputy prosecutors receiving a similar mark and 1% receiving a "performed the prosecutorial functions successfully" and none receiving an "unsatisfactory" mark. Even though the provisions currently in force do not systematically lead to dismissal in case of unsatisfactory evaluation results, due to the constitutional reform process currently underway, the Ministry of Justice envisages comprehensive amendments to the legislation once the constitutional amendments have been adopted. In the process of drafting these legislative amendments, special attention will be paid to ensure that rules do not provide that unsatisfactory evaluation results systematically lead to dismissals.
73. As regards the last part of the recommendation, the authorities explain that the appraisal procedure is predominantly designed to have a constructive dialogue with (deputy) public prosecutors under evaluation. To this end, the provisions on evaluation ensure participation of the public prosecutors throughout the process, including the right to inspect the evaluation material and to submit objections enabling a second instance performance evaluation, the right to submit information on mitigating circumstances affecting his performance and the right to hold a conversation. In the dismissal procedure itself, Articles 95 and 96 of the Law on Public Prosecution provide that prosecutors or deputy public prosecutors may submit objections to any decision made by the SPC, provide counter-arguments (either directly or through an authorised representative) regarding the assertions



made against him/her and ultimately submit an appeal before the Constitutional Court within 30 days of the decision having been made. This possibility for appeal is also included in the draft constitutional amendments (Amendment XXIV) which outlines "a deputy public prosecutor shall have the right to lodge an appeal with the Constitutional Court against a decision of the SPC on cessation of tenure".

74. GRECO takes note of the information provided. As regards the first part of the recommendation, it welcomes the evaluation criteria being reviewed by a Working Group. However, given that this has not happened yet, GRECO can only conclude that this part of the recommendation remains partly implemented. As regards the second part of the recommendation, similar to the situation of judges (see under recommendation vi above), it welcomes the information provided showing that the evaluation mark "unsatisfactory performance" is not really an issue in practice (although GRECO again notes that the high number of extremely positive evaluation marks in the form of "outstandingly successful performances"<sup>20</sup>, in itself may point to deficiencies in the evaluation process) and is ready to concede that the mark "unsatisfactory performance" would not systematically lead to dismissal (even if Article 92 of the Law on Public Prosecution seems to suggest otherwise<sup>21</sup>). It is nevertheless pleased that this issue will be further addressed following the constitutional reform process, leading to further changes to the Law on Prosecution. Pending these amendments, it considers this part of the recommendation to have been partly implemented.
75. GRECO concludes that recommendation x remains partly implemented.

#### **Recommendation xi.**

76. *GRECO recommended (i) that the Code of Ethics for public prosecutors and deputy public prosecutors be communicated effectively to all prosecutors and complemented by further written guidance on ethical questions – including explanations, interpretative guidance and practical examples – and regularly updated; ii) that dedicated training of a practice-oriented nature and confidential counselling within the prosecution service be provided for all categories of prosecutors.*
77. GRECO recalls that this recommendation was partly implemented at the time of adoption of the Compliance Report. As regards the second part of the recommendation, it took note of the training on ethics provided on a regular basis by the Judicial Academy and the counselling role of the Ethics Committee within the SPC. It considered this part of the recommendation partly implemented, reminding the authorities that in the Evaluation Report a clear preference was expressed for giving this counselling role to experienced prosecutors outside the SPC, in order to clearly separate the advisory and disciplinary systems. As regards the first part of the recommendation, it considered that no measures in addition to the aforementioned training activities had been taken to effectively communicate the Code of Ethics. It furthermore took note of the authority of the Ethics Committee to provide written guidance, but also noted that no guidance had actually been provided yet. It therefore concluded that this part of the recommendation had also been partly implemented.

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<sup>20</sup> 278 out of 294 regular evaluations resulted in first instance in an evaluation of "outstandingly successful" performance of judicial functions, which rose to a further 285 out of 294 cases on appeal, and in 86 out of 88 extraordinary evaluations was the mark "outstandingly successful" given.

<sup>21</sup> Article 92 of the Law on Public Prosecution states "A public prosecutor or a deputy public prosecutor shall be dismissed when (...) incompetently performing their functions", which in turn in Article 93 is outlined to be linked to an "unsatisfactory performance" mark in the evaluation of a prosecutor.

78. The authorities now report as regards the second part of the recommendation that dedicated training on ethics is organised regularly and continuously by the Judicial Academy for all categories of deputy public prosecutors and public prosecutors, with a minimum of four seminars a year. In 2017, 85 deputy prosecutors, public prosecutors and prosecutorial assistants were trained, followed by a further 78 in 2018 (until October 2018). In addition, the SPC adopted new Rules of Procedure at its session held on 24 July 2018, which *inter alia* explicitly tasks the Ethics Committee (as an five-member ad-hoc working body of the SPC) with providing confidential counselling to prosecutors and deputy public prosecutors. As regards the first part of the recommendation, in addition to the training activities mentioned above at which the participants are provided with the Code of Ethics, in the aforementioned new of Rules of Procedure, the Ethics Committee is also tasked with promoting professional ethics and providing written guidelines with practical examples on ethical matters.
79. Regarding the second part of the recommendation, as before in the Compliance Report, GRECO takes note of the information provided as regards the training activities and counselling role of the Ethics Committee. Notwithstanding the adoption of new Rules of Procedure, no new developments have been reported as regards the provision of confidential counselling, as it was already mentioned in the Compliance Report that the Ethics Committee would have this role and it only seems to have been made more explicit than before. GRECO can only conclude that this part of the recommendation remains partly implemented. Once again, GRECO emphasises its clear preference for having confidential counselling taking place outside the structure of the SPC, completely separating the counselling and disciplinary systems. As regards the first part of the recommendation, from the information provided, it would not appear that any measures in addition to the aforementioned training activities have been taken to effectively communicate the Code of Ethics, nor that written guidance on ethical questions has actually been provided (notwithstanding the fact that the Ethics Committee has been given this role) or that there have been any measures taken to foresee an update of the Code. Therefore, this part of the recommendation also remains partly implemented.
80. GRECO concludes that recommendation xi remains partly implemented.

*Regarding all categories of persons*

**Recommendation xii.**

81. *GRECO recommended that the rules on conflicts of interest and related matters that apply to members of parliament, judges and prosecutors, inter alia, those that concern the definition and management of conflicts of interest, the holding of several public offices concurrently and secondary activities, asset declarations (scope, disclosure of information and control) and sanctions, be further developed and clarified.*
82. GRECO recalls that this recommendation was not implemented at the time of adoption of the Compliance Report. GRECO took note of the changes included in new draft law on the Anti-Corruption Agency (ACA), considered that some of these seemed to go in the right direction, but noted that a number of concerns had not yet been addressed. As in any case the draft law on the ACA had not yet been endorsed by the Ministry of Justice or the government, GRECO could not yet consider that the recommendation had been even partly implemented.
83. The authorities now indicate that the draft law on the ACA has been superseded by a new draft Law on Corruption Prevention, which was the subject of a public debate in July-August 2018 and a subsequent expert analysis (by the former president of

GRECO) in October 2018. On the basis of this analysis, improvements have been made to the draft law, on which again a public debate has been organised (in March 2019).

84. According to the authorities, on the basis of the Law on Corruption Prevention, once adopted, the ACA will draft further guidelines on the prevention of conflicts of interest.
85. GRECO takes note of the process of drafting the new Law on Corruption Prevention and the guidelines, which will subsequently be drafted on preventing conflicts of interest. GRECO will have to analyse the provisions of the law, once adopted, in detail to verify that the concerns it expressed in the Evaluation Report have been addressed. As the law may still undergo further significant changes, GRECO cannot yet consider that the recommendation has been even partly implemented.
86. GRECO concludes that recommendation xii has not been implemented.

### **Recommendation xiii.**

87. *GRECO recommended that the role of the Anti-Corruption Agency in the prevention of corruption and in the prevention and resolution of conflicts of interest with respect to members of parliament, judges and prosecutors be further strengthened, inter alia, i) by taking appropriate measures to ensure an adequate degree of independence and by providing adequate financial and personnel resources and ii) by extending the Agency's competences and rights, to include, for example, the right to immediate access to data from other public bodies, the right to act upon anonymous complaints and on its own initiative, and the right to file criminal charges, request misdemeanour proceedings and launch initiatives for disciplinary proceedings.*
88. GRECO recalls that it considered this recommendation to not be implemented at the time of adoption of the Compliance Report. It took note of the preparations of a new law on the ACA and the solutions this would offer to the concerns outlined by GRECO in its report, but as the draft law had not yet been endorsed by the Ministry of Justice or government, it could not assess this recommendation as having been implemented.
89. The authorities now report as regards the second part of the recommendation that the draft Law on Corruption Prevention (as mentioned under recommendation xii above) will considerably extend and strengthen the role of the ACA, including by providing it with the authority to assess corruption risks of draft laws, to provide opinions on draft laws regulating matters covered by international anti-corruption treaties and the implementation of the to-be-adopted Law on Corruption Prevention and to closely regulate conditions for performing lobbying activities under the recently adopted Law on Lobbying.<sup>22</sup>
90. Furthermore, as regards access to data, the draft law provides that public authorities must provide the ACA with direct access to all electronic databases they maintain. If this direct access would not be possible, the public authority in question is to provide all available documents and information within 15 days of receiving a written and reasoned request by the ACA. The ACA may obtain data from banks, financial institutions and other legal entities for the purpose of

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<sup>22</sup> As described under recommendation iii (paras. 21-22 above), The competences of the ACA under the new Law on Lobbying include maintaining the register of lobbyists, monitoring lobbying activities, providing compulsory training to lobbyists, establishing a Code of Conduct for all parties affected by lobbying activities and introducing a Rulebook for public officials (including MPs) on the form, content and means to report contacts with lobbyists.

verifying asset declarations, but only with consent of the public official concerned and may - under the new Law on Prevention of Money Laundering and Terrorist Financing (which entered into force on 1 April 2018) - initiate the process of having the Administration for the Prevention of Money Laundering obtain the necessary information (if there are grounds for suspecting corruption as a predicate offence for money laundering) and may ask this Administration for this information (this request may however be refused by the Administration).

91. The draft Law on Corruption Prevention will furthermore provide the ACA with the authority to act both in response to anonymous complaints (Articles 87-91 of the draft Law), if the information submitted raises suspicions about the existence of corruption, and *ex officio* (Article 92 of the draft Law). It also provides that the ACA may issue opinions on the state of corruption within certain public authorities, issuing recommendations to have specific measures taken to address the identified deficiencies (Article 90 of the draft Law).
92. Moreover, under Article 6 of the draft Law it is expressly provided that the ACA can file criminal charges, request misdemeanour proceedings and initiatives for disciplinary proceedings and must do so when in the course of carrying out its activities it finds that there is a reasonable ground to suspect a criminal offence has been committed, which is *ex officio* prosecutable, or that a misdemeanour or breach of fiduciary duty arising out of employment relations, took place.
93. As regards the first part of the recommendation, the authorities report that the new competencies of the ACA will be accompanied by additional financial resources (allowing for a strengthening of the human resources of the ACA). To this end, Article 4 of the draft Law on Corruption Prevention provides that the annual funds for unhindered operation of the ACA allocated by the budget of the Republic of Serbia must be sufficient to ensure its effectiveness and full independence. In addition to funds from the state budget, which will allow for extra resources to cover the implementation of the new Law on Lobbying, this law also envisages small extra revenue for the ACA earned for conducting the mandatory training to lobbyists. Finally, the draft law also foresees a strengthening of the role of the Director of the ACA and depoliticising and professionalising the Council of the ACA, which supervises the work of the Director.
94. GRECO welcomes the information provided, which further expands upon the proposals described in the Evaluation Report. Some further adjustments could be needed, for example as regards the provisions on the resources to be provided to the ACA, the autonomy of the ACA, the access to data held by public authorities, and the position of the council and its director, but from the information provided by the authorities (which however did not include the draft law as such), it would appear that the draft law will address a number of concerns expressed by GRECO in the Evaluation Report. That said, as the government has not yet endorsed the draft law, and the draft law may still change fundamentally, GRECO cannot conclude that this recommendation has been partly implemented.
95. GRECO concludes that recommendation xiii has not been implemented.

### **III. CONCLUSIONS**

96. **In view of the foregoing, GRECO concludes that Serbia has implemented satisfactorily or dealt with in a satisfactory manner none of the thirteen recommendations contained in the Fourth Round Evaluation Report.** Ten recommendations have been partly implemented and three have not been implemented.
97. More specifically, recommendations i, iii, iv, v, vi, vii, viii, ix, x and xi have been partly implemented and recommendations ii, xii and xiii have not been implemented.
98. With respect to members of parliament, an important step forward has been taken with adoption of the new Law on Lobbying. If implemented as foreseen, this law would present a stride forward in increasing the transparency of contacts of MPs with lobbyists. That said, more determined action is required: the adoption of a code of conduct for MPs should be a priority, as well as further measures to improve the transparency of the legislative process, to allow for adequate timeframes and debates on draft legislation and to avoid the use of urgent legislative procedures, unless in exceptional circumstances.
99. As regards judges and prosecutors, GRECO notes that constitutional reforms are underway, which will have a bearing on several of the recommendations outlined above. That said, GRECO is concerned about the rather acrimonious environment in which the consultation process has taken place, with various non-governmental organisations, including the Judges' Association and Prosecutors' Association, withdrawing from the process, and the criticism of not only these organisations but also the Consultative Council of European Judges on some aspects of the draft constitutional amendments.<sup>23</sup> Given the importance of the reforms and notwithstanding the positive Venice Commission opinion, GRECO can only encourage the Serbian authorities to spare no efforts to make sure that these constitutional amendments have the broadest base of support possible, ensuring that the final constitutional amendments are also in line with GRECO's recommendations and the government's own commitments on the composition of the High Judicial Council and the State Prosecutorial Council. Further, as regards judges and prosecutors, GRECO expects more work to be done on the system of appraisal of judges' performance and similarly awaits the results of the Working Group under the State Prosecutorial Council drafting amendments to the current Rulebook on performance evaluation criteria. Both for judges and prosecutors further measures are also to be taken to effectively communicate the respective codes of ethics to judges and prosecutors, to provide written guidance and confidential counselling.
100. Finally, as regards the draft Law on Prevention of Corruption, the adoption of which is imperative to change the rules on conflicts of interest and related matters that apply to MPs, judges and prosecutors and to strengthen the role of the Anti-Corruption Agency, GRECO welcomes the development of a draft law and the provision of expertise on this draft. As it has not been provided with the text of this draft law and as the draft law is still subject to further amendments, it cannot conclude that sufficient progress has been made in this respect. It urges the Serbian authorities to adopt the draft law as soon as possible, subject to certain adjustments to be made (as outlined above).

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<sup>23</sup> See *inter alia* the opinion of the CCJE Bureau on the compatibility with European standards of the newly proposed amendments to the Constitution of the Republic of Serbia which will affect the organisation of judicial power:  
<https://rm.coe.int/opinion-on-the-newly-proposed-amendments-to-the-constitution-of-the-re/168090751b>

101. In view of the above, despite the fact that none of the recommendations have been implemented, GRECO concludes that the overall level of compliance with the recommendations is no longer "globally unsatisfactory" within the meaning of Rule 31 revised, paragraph 8.3 of the Rules of Procedure. GRECO encourages the Serbian authorities to further pursue their efforts to implement GRECO's recommendations and invites the Head of delegation of Serbia to submit additional information regarding the implementation of recommendations i to xiii by 31 December 2019.
102. Finally, GRECO invites the authorities of Serbia to authorise, as soon as possible, the publication of the report, to translate it into the national language and to make this translation public.