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Groupe d'États contre la corruption

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

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## FOURTH EVALUATION ROUND

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

### COMPLIANCE REPORT

### SERBIA

Adopted by GRECO at its 77<sup>th</sup> Plenary Meeting  
(Strasbourg, 16-20 October 2017)

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## **I. INTRODUCTION**

1. The Compliance Report assesses the measures taken by the authorities of Serbia to implement the recommendations issued in the Fourth Round Evaluation Report on Serbia which was adopted at GRECO's 68<sup>th</sup> Plenary Meeting (19 June 2015) and made public on 2 July 2015, following authorisation by Serbia ([Greco Eval IV Rep \(2014\) 8E](#)). 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 authorities of Serbia submitted a Situation Report on measures taken to implement the recommendations. This report was received on 1 April 2017 and served, together with the information submitted subsequently, as a basis for the Compliance Report.
3. GRECO selected Norway and Poland to appoint Rapporteurs for the compliance procedure. The Rapporteurs appointed were Mr Jens-Oscar NERGARD, Senior Adviser, Ministry of Local Government and Modernisation, on behalf of Norway and Ms Alicja KLAMCZYNSKA, Chief specialist, European and International Criminal Law Division, Legislation Department, Ministry of Justice, on behalf of Poland. They were assisted by GRECO's Secretariat in drawing up the Compliance Report.
4. The Compliance Report assesses the implementation of each individual recommendation contained in the Evaluation Report and establishes an overall appraisal of the level of the member's compliance with these recommendations. The implementation of any pending recommendation (partially or not implemented) will be assessed on the basis of a further Situation Report to be submitted by the authorities 18 months after the adoption of the present Compliance Report.

## **II. ANALYSIS**

5. GRECO addressed 13 recommendations to Serbia in its Evaluation Report. Compliance with these recommendations is dealt with below.
6. As a preliminary note, the authorities of Serbia stress that specific parts of GRECO recommendations call for amendments of the 2006 Constitution. According to the National Judicial Reform Strategy for the period 2013-2018, the constitutional reform is scheduled for the fourth quarter of 2017, based on a wide and inclusive consultation process, in line with European standards and bearing in mind recommendations of the Venice Commission. As a result, Serbia will be able to fulfil some parts of GRECO's recommendations only after these constitutional amendments have taken place.

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

#### **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. As regards the first part of the recommendation, the authorities explain that, in view of the concerns expressed by GRECO, special attention has been paid to ensure that all National Assembly Rules of Procedure are strictly adhered to in practice. The National Assembly's website is regularly updated with new content (both in Serbian

and in English) aimed at informing the general public about the legislative process in a user friendly and easily accessible manner. All bills and other legislative proposals are uploaded online as soon as they enter the legislative procedure. Convocations to sessions and meetings are published immediately after they are convened. Reports, committee amendments and other documents are published as soon as the meetings are held. Minutes of the sessions of the National Assembly and its working bodies are published immediately upon their adoption. Stenographic notes of parliamentary session proceedings, results of the votes and all legislative acts enacted may be found on the Assembly's website.

9. In respect of amendments to bills, the authorities indicate that all legislative proposals and amendments to these proposals are entered into the e-parliament system (electronic document management system) as soon as they are formally submitted to the National Assembly. This has been the case since the beginning of 2012. From that moment onwards, all documents pertaining to the legislative procedure, including reports and opinions are filed electronically and may be accessed on the premises of the Assembly or remotely from a personal computer. The e-parliament system is reserved for MPs and National Assembly staff.
10. Concerning timeframes for the submission of amendments and the urgent procedure, the authorities acknowledge that the 24 hour-period latest deadline during which urgent procedure amendment proposals may be proposed may seem short. However, they stress that MPs may refuse such proposals, which then remain in the regular legislative procedure and cannot be placed on the agenda of the National Assembly until the expiration of a 15-day deadline from the submission date. Moreover, the emergency procedure may only be applied in exceptional circumstances as indicated in art. 167 of the Rules of Procedure of the National Assembly – except when there is a clear exigency for fulfilling international obligations and harmonising domestic legislation with the EU *acquis*, which is the most frequent case in which this procedure is used in practice.
11. In 2015, 231 draft laws and other acts were submitted to the National Assembly for adoption by urgent procedure. The National Assembly adopted 315 acts in total, of which 182 in emergency procedure: 196 laws, 119 decisions and other acts. The authorities also provide several examples in which the proposal for use of the emergency procedure was not accepted by the National Assembly.
12. As regards the second part of the recommendation, the authorities recall that arts. 83 and 84 of the Rules of Procedure provide for the possibility to organise public hearings for various purposes connected to the legislative and oversight functions of the National Assembly. In 2015, 14 public hearings were held and in 2016, seven. It is to be noted, however, that early parliamentary elections were held in 2016 and the Assembly only carried out current and urgent tasks until the new legislature was constituted on 3 June 2016. Under the new legislature, several public hearings have already been held.
13. Transparency of the public hearings was enhanced by the creation in 2013 of a dedicated page on the National Assembly's website. It contains explanations, offers direct contact with the committees and the possibility for the public to suggest topics for future public hearings. Live transmission of all public hearings, an archive of previous broadcasts, a table with reports, agendas and annexes and a search option are provided for a total of 94 public hearings organised since November 2008.
14. The authorities finally submit that there is a rising tendency to organise committee meetings outside the National Assembly to cities throughout the country, in order to foster direct contacts between MPs and the public.

15. As regards the first part of the recommendation, GRECO welcomes the attention paid by the authorities to the actual implementation of the existing Rules of Procedure of the National Assembly concerning timely publication of information on the legislative process. That said, a large majority of laws and decisions are still adopted under the emergency procedure, which in effect prevents timely information and participation in legislative work. According to the Rules of Procedure of the National Assembly, it is still possible and it is still the rule to a large extent, to present amendments up to 24 hours before the discussion in the emergency procedure and no additional safeguards have been introduced to either curb the use of this procedure or provide for new deadlines for submitting amendments. Thus, most of GRECO's concerns regarding this part of the recommendation remain valid and it is therefore to be regarded as partly implemented.
16. As regards the second part of the recommendation, GRECO welcomes the creation of a dedicated page on public hearings on the National Assembly's website and the tendency to organise committee meetings throughout the country. It recalls, however, that the recommendation calls for further development of the existing rules regarding both public hearings and public debates, as well as for ensuring their implementation. This has not yet taken place and this part of the recommendation is also only partly implemented.
17. GRECO concludes that recommendation i has been partly implemented.

**Recommendation ii.**

18. *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 standards expected of them and by providing them with confidential counselling and dedicated training.*
19. The authorities explain that, for several reasons, the draft Code of Conduct referred to in the Evaluation Report is still pending for adoption. First, the current term of the National Assembly began, on 3 June 2016, and the new MPs needed time to become acquainted with the draft code which was prepared under the previous legislature. The draft also needed to be aligned with the activities set out in the negotiation process with the EU, as well as with other GRECO recommendations.
20. As compared to the version of the draft code assessed in the Evaluation Report, the new draft contains a provision for a second-degree authority, the High Ethical Council, to deal with objections to the decisions of the Ethics Council in its advisory and preventive role.
21. The authorities add that the future code of conduct is to be applied together with the Law on the National Assembly and its Rules of Procedure, as well as the Law on the Anti-Corruption Agency (LACA), which is expected to be adopted in the near future.
22. As regards the second part of the recommendation, the authorities explain that the Ethics Council will have to submit annual reports to the National Assembly, which will be published on the latter's website. Awareness-raising and training activities will also be planned after the code's adoption.
23. GRECO takes notes of the current advancement of the preparations towards the adoption of the draft Code of Conduct. As there does not seem to have been much

progress since the adoption of the Evaluation Report, GRECO concludes that recommendation ii has not been implemented.

**Recommendation iii.**

24. *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.*
25. The authorities explain that there is no law regulating this matter in Serbia. A needs-assessment analysis is currently being conducted with a view to drafting a new law on lobbying aimed at public officials – including MPs – during the second half of 2017. It is expected that this law will provide for a public register of lobbyists. GRECO analysis and recommendations will be duly taken into account during the drafting process.
26. Further to the future law's adoption, the National Assembly plans to consider the adoption of a special by-law, which would regulate specifically the issue of lobbying with regard to MPs in greater detail.
27. GRECO takes note of the National Assembly's intention to consider the adoption of specific rules regulating MPs' contacts with lobbying, which is precisely the point of the recommendation. It looks forward to assessing these rules in due course.
28. GRECO concludes that recommendation iii has not been implemented.

*Corruption prevention in respect of judges*

**Recommendation iv.**

29. *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.*
30. The authorities state that, as explained in the Evaluation Report, implementation of the first part of the recommendation requires amendments to the Constitution. According to the Action Plan on EU accession, constitutional reform is foreseen for the end of 2017. No progress towards implementation could therefore take place during the reporting period.
31. That said, as regards the composition of the High Judicial Council (HJC), the authorities point out that half of the members of the HJC are judges elected by their peers; six of the 11 members of the HJC must be judges, who are elected by the National Assembly. However, they are nominated by the HJC itself, following the result of an election by judges according to the Law on the HJC.
32. Concerning the second part of the recommendation, the authorities provide the following information:

- the Law on the HJC was amended on 21 December 2015. Amendments provide for public sittings of the HJC, reasoned decisions and publication of the HJC's decisions and progress reports on its website<sup>1</sup>;
- the HJC amended its Rules of Procedure accordingly on 13 January 2016. All agendas, minutes and decisions of the HJC's sessions, which are now public, are published on its website, along with a calendar of its activities;
- on 8 March 2016, the HJC adopted a Communication Strategy covering the period 2016-2018, both within the Council itself and between the Council on the one hand and the courts, the public and target groups on the other. It aims at making the work of the judiciary more accessible and transparent to the public;
- in response to GRECO's concern that judges are left on their own in case of public pressure, the HJC adopted, on 25 October 2016, a decision amending its Rules of Procedure, providing a clear procedure on necessary actions to be undertaken to publicly respond in case of undue political influence on the judiciary; it includes an obligation to issue public statements. Accordingly, the HJC issued for instance, on 24 February 2017, a statement concerning frequent media articles on sensitive family disputes which should be excluded from public attention;
- regarding GRECO's suggestion of a separate budget for the judiciary to be administered by the HJC, the National Assembly amended on 29 December 2016 the Law on Organisation of the Courts, which changed the deadline for transferring budgetary jurisdiction from the Ministry of Justice to the HJC. The new deadline is set for 1 January 2018;
- finally, GRECO's remark that an appropriate methodology was needed to measure workload among courts and judges, the HJC established a working group in order to draft a programme for a case weighting system, that will be used for a fair and uniform allocation and management of cases. This work is currently in progress.

33. As regards the first part of the recommendation, GRECO reiterates that changing the composition of the HJC is crucial to strengthening its independence and creating the conditions for restoring public trust in the judiciary. No change occurred in the institutional and procedural set-up assessed by GRECO in the Evaluation Report and its concerns expressed therein therefore remain. Even if the National Assembly merely elects candidates nominated by the HJC and previously selected by their peers, it can still refuse to elect proposed candidates and thereby trigger a new selection process. GRECO understands that full compliance with this part of the recommendation implies a constitutional reform, which it hopes will occur swiftly. This part of the recommendation has not been implemented for now.

34. Concerning the second part of the recommendation, GRECO welcomes the various measures reported, that seem to be appropriate responses to its concerns expressed in the Evaluation Report. A practice needs to be established and further developed within the HJC for a transparent and proactive action, as a genuine self-governing body. GRECO looks forward to receiving further information on the evolution of the HJC's practice and decisions to address the judiciary's problems. For this reason, this part of the recommendation is partly implemented.

35. GRECO concludes that recommendation iv has been partly implemented.

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<sup>1</sup> [www.vss.sud.rs](http://www.vss.sud.rs)

## **Recommendation v.**

36. *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.*
37. The authorities explain that clear procedures have been introduced for the first election, appointment to permanent positions and career progression for judges, thanks to the adoption by the HJC on 15 November 2016 and 29 March 2016 of several rulebooks: (i) Rulebook on criteria for evaluation of qualifications, competence and worthiness of candidates for judicial positions to be elected for the first time; (ii) Rulebook on 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) Rulebook on the criteria, standards, procedures and competent authorities for the assessment of the work of judicial assistants. The rulebooks were prepared by a working group including judges of all levels, members of the HJC, representatives of judicial and prosecutorial assistants and various other stakeholders, as well as the OSCE.
38. These rulebooks provide for merit-based criteria and standards for the objective evaluation of candidates to judicial positions. For beginning of career positions, an examination, scoring system and establishment of a final list of candidates are foreseen. Interviews held with candidates to positions at all levels are open to the public and are recorded. Access to the recordings by anyone is possible on the premises of the HJC. For both beginning of career and higher judicial positions, the opinions of the candidates' colleagues and judges from the court immediately superior are also sought.
39. Regarding the positions of court presidents, the authorities mention that the HJC proceeded to a number of nomination proposals to the National Assembly, and that selection is on-going for several other positions. Accordingly, there are currently acting presidents in 11 of the 162 courts in Serbia. Except for two of them, acting presidents have been in their positions since September 2016 at the latest. Appointment procedures are on-going for these positions.
40. As regards the necessary constitutional amendments to exclude the National Assembly from the process of appointment of judges, the Ministry of Justice has been organising a series of roundtables throughout the country, including representatives of civil society, academics and the media. This process is to finish by mid-November 2017, after which the Ministry will begin drafting amendments.
41. GRECO welcomes the steps taken to improve the objectivity and transparency of the procedures for the recruitment and promotion of judges and court presidents, in particular the introduction of an examination for beginning of career posts, rulebooks containing objective criteria and the on-going selection or appointment process of a number of court presidents. However, it does not appear that the HJC is bound by the results obtained by the candidates in the selection procedure nor that it has to motivate its decision when it chooses to propose for appointment another candidate than the one who received the highest score. There is thus still room for bias in the recruitment and promotion of judges. Moreover, work on amending the Constitution, which is necessary in order to exclude the involvement of the National Assembly in the process of appointing judges, is at its very beginning.
42. GRECO concludes that recommendation v has been partly implemented.

### **Recommendation vi.**

43. *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.*
44. The authorities refer to the Rulebook on evaluation of the work of judges and court presidents, which was adopted by the HJC in July 2014 and implemented first in a pilot phase that lasted until the end of 2014. According to them, this enabled the inclusion of both quantitative and qualitative criteria in the evaluation. Previously, during the drafting stage of the Rulebook, the HJC had taken the view that the evaluation should not rely only on productivity elements. Hence, the working group that prepared the Rulebook determined, on the basis of the work of judges in 2013, a necessary minimal timeframe for rendering written decisions which does not jeopardise the quality of the work of judges. The HJC believes this criterion to be clear, objective, measurable and applicable in practice. Another criterion used is the number of cases carried out by judges compared to the expected monthly norm, which was determined by taking into account remarks from judges on this norm.
45. The authorities also explain that the provisions on evaluation ensure participation of the evaluated judges throughout the process and that a permanent commission has been established within the HJC to coordinate the work of the evaluation committees, consider disputes and provide guidance and proposals for improvement of the evaluation.
46. During the pilot phase, that covered 20 courts, judges were closely associated to the process and their remarks taken into account. OSCE and TAIEX experts also monitored the process and offered their recommendations. One of these recommendations was to rescind any link between the process of evaluation and disciplinary procedures. Accordingly, the HJC suggested to the Ministry of Justice, on 7 April 2015, to amend the Law on Judges so that a negative evaluation of judges should not give rise to grounds for dismissal. However, the draft amendments to the Law on Judges have not yet entered the parliamentary procedure.
47. Finally, the authorities dispute GRECO's statement that unsatisfactory results systematically lead to dismissal of the judges concerned. The Rulebook on evaluation provides that a judge whose performance is assessed as unsatisfactory is referred to mandatory training. 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.
48. While acknowledging the efforts undertaken by the Serbian authorities to put in place a sound system of appraisal of judges' performance, GRECO points out that the information provided only offers further explanation of the evaluation system as already assessed in the Evaluation Report and that not more than intentional steps are reported towards the implementation of the recommendation. The criteria highlighted above are clearly of a quantitative nature and the proposal by the HJC that any link between the appraisal of judges' performance and their dismissal should be severed has not yet led to any changes to the Law on Courts in this regard.
49. GRECO concludes that recommendation vi has not been implemented.

### **Recommendation vii.**

50. *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.*
51. With regard to the first part of the recommendation, the authorities explain that the Code of Ethics for judges is available on the HJC's website. Moreover, the HJC adopted, on 8 March 2016, a Code of Ethics for members of the High Judicial Council, which is also available on its website. On 13 January 2016, the HJC decided to establish an Ethics Committee as a working body of the Council. This Committee is tasked with monitoring the implementation of both codes of ethics, implementing evaluation and training activities in the field of ethics and analysing the need for changing the Code of Ethics in order to closely regulate the provisions for disciplinary responsibility of judges in case of non-compliance with the code.
52. The authorities add that upon request of a judge on ethical questions, the HJC may draw conclusions at its sessions, which are notified to the judge and the public and announced on the HJC's website.
53. Concerning the second part of the recommendation, the authorities report that the HJC adopted, on 18 January 2017, a Programme for continuous training of judges and court staff in 2017. The Programme includes dedicated training on ethics for judges and prosecutors covering the following main topics: international standards on judicial/prosecutorial ethics and their application in the legislation of the Republic of Serbia; conflicts of interest (incompatibility of functions, reporting suspicions of conflicts of interest, exemption); hypothetical questions and practical examples of real life scenarios; disciplinary proceedings for violation of the Code of Ethics and establishment of clear channels for consideration of dilemmas on ethical issues. In the implementation of this programme, four seminars on the Code of Ethics took place in Novi Sad, Kragujevac, Niš and Belgrade at the end of September 2017. A brochure on the Code of Ethics has also been prepared and will be distributed to all courts.
54. In cooperation with the OSCE, the HJC conducted a comprehensive analysis of the decisions of disciplinary bodies and the HJC in disciplinary proceedings. The brochure containing this analysis has been published and is available on the HJC's website. Finally, the HJC has established cooperation with the Anti-Corruption Agency (ACA), *inter alia*, via regular meetings.
55. GRECO takes the view that the measures reported go some way towards implementing the second part of the recommendation. The training programme for judges (and prosecutors) seems appropriate and the analysis of the decisions in disciplinary proceedings could have some educational value if they are to be adequately disseminated and used during training. That said, more determined action is needed. No confidential counselling system has been put in place and conclusions by the HJC on ethical dilemmas are hardly an adequate substitute. Given the lack of trust in the HJC highlighted in the Evaluation Report and the public nature of these deliberations, it is doubtful that this avenue will be much used by judges. Designating a mechanism for confidential counselling – for instance by experienced judges – outside the HJC is necessary, as explained in the Evaluation Report.
56. As regards the first part of the recommendation, no measures have been taken to respond directly to the concerns expressed in the Evaluation Report. The Code of Ethics is available on the HJC's website, but this was already the case at the time of adoption of the Report, which nevertheless highlighted a lack of awareness of the Code by judges. The Evaluation Report also points out the vagueness of the Code

and the need to issue complementary guidance on its provisions. This has not yet been done, nor does it seem to fall explicitly within the remit of the newly created Ethics Committee.

57. GRECO concludes that recommendation vii has been partly implemented.

*Corruption prevention in respect of prosecutors*

**Recommendation viii.**

58. *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 proactive and transparent manner.*

59. Concerning the first part of the recommendation, the authorities explain that the constitutional reform necessary to implement it is foreseen for the end of 2017. No progress towards implementation could therefore take place during the reporting period.

60. Concerning the second part of the recommendation, the authorities provide the following information:

- a multi-year strategic plan has been drafted by the State Prosecutorial Council (SPC) with the support of the World Bank and the IPA 2013 twinning project, in order to strengthen the SPC's role and capacities as a genuine self-governing body;
- implementation of the IPA 2013 project started in August 2015 and continued in 2016, with expert analysis of the legal framework, seminars and study visits intended to contribute to the SPC capacity building. These activities focused in particular on strategic planning, modernisation of the administrative office, human resources management, budgetary planning and allocation, transparency and cooperation with other authorities, media and civil society etc.; further strengthening and capacity building of the SPC are foreseen within the framework of the upcoming IPA 2017 project which is currently being programmed;
- the Parliament adopted amendments to the Law on the SPC in 2015. They provide for publicity of the sessions and acts of the SPC sittings via its website<sup>2</sup>;
- the SPC adopted, on 23 March 2017, amendments to its Rules of Procedure. Changes include (i) establishment of clear rules on the SPC's public response in case of political interference in the work of public prosecutors; (ii) specification and standardisation of operational working procedures and (iii) improvement of the efficiency of the SPC. To that end, several working bodies of the SPC were established in addition to the existing Ethical Board, namely the Commissioner for autonomy in cases of political and other undue influence, a working group for the monitoring of judicial laws, a working group for educational programmes, as well as working bodies competent to monitor certain areas, with a view to meeting obligations from the Action

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<sup>2</sup> [www.dvt.jt.rs](http://www.dvt.jt.rs)

Plan on EU accession. The rights and obligations of the SCP's President and members were further specified and an obligation was set out that the Council's decisions are to be motivated. A right of appeal of certain decisions is also foreseen.

- All Public Prosecutors' Offices were informed of the establishment of the Commissioner for autonomy in cases of political and other undue influence and of the possibility to contact him about concrete cases of undue influence. Cases may be registered as classified if necessary.

61. GRECO takes note of the lack of progress regarding the first part of the recommendation. Concerning the second part of the recommendation, GRECO welcomes the various measures reported, that seem appropriate responses to its concerns as expressed in the Evaluation Report. It looks forward to assessing further progress in its next report, particularly as regards the establishment of a practice for transparent and proactive action of the SPC as a genuine self-governing body.
62. GRECO concludes that recommendation viii has been partly implemented.

#### **Recommendation ix.**

63. *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.*
64. The authorities indicate that the SPC is engaged in a reform process of the selection and promotion of public prosecutors and deputy public prosecutors within the existing constitutional and legal framework. On 29 May 2014, the SPC adopted a Rulebook on criteria and performance evaluation of public prosecutors and deputy public prosecutors. It has been applied as from 15 January 2015, after an initial period of trial implementation in a number of public prosecution offices. Consequently, the SPC elected on 2 February 2015 for the first time deputy public prosecutors on permanent positions, in line with the provisions of the new Rulebook. Subsequently, public prosecution offices were requested to submit to the SPC performance evaluations of the candidates who applied for posts.
65. Moreover, the SPC adopted, on 7 September 2017, a Rulebook on criteria for the evaluation of qualifications, competence and worthiness of candidates during the procedure for nominating deputy public prosecutors to first election. The Rulebook states, *inter alia*, that the final assessment mark of the candidates who undergo initial training at the Judicial Academy is considered to be a measurable and valid criterion of competence and qualification for the first election as a deputy public prosecutor in a basic public prosecution office.
66. Detailed information on the evaluation procedure is posted on the SPC's website and forwarded to all public prosecution offices in order to promote the importance of performance evaluation and its influence on promotion.
67. The information provided does not enable GRECO to assess the recommendation as implemented, even partly. While understanding that the pending constitutional reform prevents the implementation of some elements of the recommendation, notably the exclusion of the National Assembly from the process, GRECO underlines that the criteria used by the SPC for the recruitment and promotion of public prosecutors and deputy public prosecutors remain unclear. Moreover, nothing

indicates that the government's discretion in the process has been curbed, or that positions of heads of offices are being filled on a permanent basis.

68. GRECO concludes that recommendation ix has not been 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. The authorities provide further explanations on the existing Rulebook for performance evaluations, underlining that it provides for circumstances under which an extraordinary performance evaluation may be carried out, contains qualitative evaluation criteria, does not permit automatic dismissal based on unsatisfactory marks and provides for a right of appeal prior to the adoption of the final decision on evaluation. Nevertheless, a revision of the Rulebook is planned, during which relevant GRECO recommendations will be considered in order to increase the degree of clarity, objectivity and uniformity of the system in place.
71. First part of the recommendation: as regards extraordinary performance evaluations, the authorities point out that art. 9 of the Rulebook leaves no room for arbitrariness, by clearly defining the conditions for deciding to carry out an extraordinary evaluation as follows: when establishing lists of candidates for election of public prosecutors; during the selection process; when determining any valid reasons for dismissal; in case of an unsatisfactory performance; as well as in any other circumstances deemed appropriate by the SPC.
72. Concerning evaluation criteria, the Rulebook provides for the following three criteria for evaluating the performance of deputy public prosecutors: (i) promptness in handling cases; (ii) professionalism, skills and success rate in handling cases; (iii) professional commitment and cooperation.
73. The authorities submit that only the first criterion is quantitative, since performance is assessed by examining the number of processed cases by the deputy public prosecutor against the number of total assigned cases over the evaluation period. The other two criteria evaluate the quality of prosecutors' performance. The second one is evaluated based on a percentage of final convictions passed as a result of indictments. The authorities underline that such a criterion, which is objective, reliable and measurable, does not make it quantitative in nature. The third criterion is also qualitative in nature, since it is based on benchmarks such as accuracy and clarity of issued acts and procedural actions, argumentation and legal reasoning skills, respect of rights and dignity of the participants in legal procedures etc.
74. The evaluation of the performance of public prosecutors, for its part, is based on the following three criteria: (i) general management ability skills; (ii) monitoring and control ability; (iii) overall results of the public prosecutor's office performance. To assess them, reports data on offices' performance, plans and programmes adopted, monitoring reports of prosecutorial and judicial practice, etc. are used, according to detailed rules for objectively measuring performance provided for in the Rulebook.
75. Second part of the recommendation: the authorities dispute the idea contained in the Evaluation Report according to which the Rulebook contains a rule that unsatisfactory evaluation results systematically lead to dismissal. On the contrary, art. 8 of the

Rulebook sets out an obligation to issue a written warning in case of a clear likelihood that a prosecutor will be given an "unsatisfactory" mark. The evaluator is also obliged to propose measures to remedy deficiencies identified in the work of the evaluated prosecutor. Art. 92 of the Law on Public Prosecution prescribes an incompetent performance of prosecutorial functions as a valid reason for dismissal. Art. 93 further elaborates what constitutes incompetent performance to include an "unsatisfactory" performance evaluation mark. The Rulebook also provides an obligation to conduct an extraordinary performance evaluation of prosecutors who received "unsatisfactory" marks, so that the mark can be improved, thereby avoiding systematic dismissal from office. No prosecutor received an "unsatisfactory" mark during the reporting period and there was no dismissal for incompetent performance of prosecutorial functions.

76. A new Regulation of work of the SPC is planned, which will enable the SPC to define criteria for referring prosecutors to additional training based on performance appraisal results.
77. Finally, the authorities stress that the Rulebook provides for a right of appeal to the SPC against a performance evaluation. It enables a second instance performance evaluation, which guarantees the right of prosecutors to be heard prior to the adoption of a final evaluation.
78. GRECO notes that no new development has occurred in this area since the adoption of the Evaluation Report. At that time, GRECO deemed the situation, and the rules that the authorities reiterate today, as not satisfactory. The authorities now indicate that a revision of the Rulebook on performance evaluations is planned and that GRECO's concerns will be taken into account in this context. This intention is welcome, as the explanations provided above on the current evaluation system do not dispel GRECO's concerns, except as regards the clarification regarding the right of appeal of prosecutors against the result of an evaluation and the possibility to request a second instance evaluation. On this basis, the second part of the recommendation may be regarded as partly implemented. Yet, giving prosecutors additional possibilities to contribute to their evaluation, for instance by commenting on a preliminary draft or being heard during the process, would be welcome improvements. There is also a clear link between unsatisfactory performance marks and dismissal procedures, even if one does not systematically lead to the other, as the authorities suggested. GRECO, therefore, awaits concrete developments in this respect. The first part of the recommendation remains not implemented, as no changes to the current evaluation criteria, which rely heavily on quantitative benchmarks, have been reported.
79. GRECO concludes that recommendation x has been partly implemented.

#### **Recommendation xi.**

80. *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.*
81. The authorities indicate that dedicated training on ethics is being provided on a regular basis by the Judicial Academy. In 2015 and 2016, a total of eight seminars were conducted on the Code of Ethics, which 116 prosecutors attended. Four further seminars took place at the end of September 2017. An international seminar on ethics for judges and prosecutors also took place, in October 2016, under the IPA 2013

project on "Capacity building for the HJC and SPC". Moreover, under that project, a report on the Code of Ethics is being prepared, which contains comments by representatives of the Ethical Board and disciplinary bodies.

82. In May 2014, the SPC established an Ethical Committee as an ad hoc working body of the Council. It is tasked with promoting ethical standards, providing upon request practical guidance and explanations in case of ethical dilemmas and providing confidential counselling on the implementation of ethical standards. Further to the Evaluation Report, the role and powers of the Ethical Committee were further strengthened in order to raise awareness about the Code of Ethics. No practical guidance or explanations have been issued so far as no requests were received.
83. The authorities also submit that cooperation was established between the SPC and the Anti-Corruption Agency (ACA) in order to ensure that prosecutors submit asset declarations to the ACA in a timely manner and that the ACA is informed of staff changes within the prosecution service for the purpose of detecting conflicts of interest. Finally, the SPC is participating in the development of integrity plans for public prosecution offices, as a member of a working group on this issue.
84. GRECO takes note of the information reported as regards training and the counselling role of the Ethics Committee within the SPC. In the Evaluation Report, a 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 a main rule. The second part of the recommendation is partly implemented.
85. As regards the first part of the recommendation, no measures in addition to the training activities have been taken to effectively communicate the Code of Ethics to prosecutors. The Ethics Committee is competent to provide written guidance on its provisions, which is welcome. However, no guidance has actually been provided yet. It seems that the Report on the Code of Ethics currently under preparation could contribute towards implementation of the first part of the recommendation as well, although the content of this document remains to be seen. Therefore, this part of the recommendation is also partly implemented.
86. GRECO concludes that recommendation xi has been partly implemented.

*Regarding all categories of persons*

**Recommendation xii.**

87. *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.*
88. The authorities indicate that the Ministry of Justice working group drafting the new Law on the Anti-Corruption Agency (ACA) prepared a draft in October 2016. This draft was published on the Ministry of Justice's website and a public consultation was then organised by the Ministry of Justice, which lasted until mid-November 2016. The working group is currently being consulted on the draft again, after which it will be sent to the government.
89. Changes to be introduced by the draft law include dedicating separate chapters to conflicts of interest and accumulation of public offices, in order to clearly distinguish both issues. A new definition of conflicts of interest excludes the notion of private

interest which “seems to have an influence” on public officials in the exercise of their functions, hence avoiding the possibility of a wide interpretation of the law. Draft changes are brought to the provisions on notification of the existence of a private interest and the time limit during which the ACA may initiate *ex officio* proceedings on the existence of a conflict of interest has been upped to five years.

90. Regarding disclosure of assets and income, the obligation to report has been expanded to cover also the public official’s (adoptive) parents and children, regardless of whether they share the official’s household. Draft changes were also brought to the sanctioning regime, such as the inclusion of income in the criminal offence of failure to file a declaration or provision of false information and the removal of gaps in misdemeanour offences. Finally, rules concerning the accumulation of offices are intended to be changed by providing that one person can only hold one public office.
91. GRECO takes note of the changes included in the draft law on the ACA. Some of them seem to go in the right direction, for instance the extension of the scope of asset declarations to a broader range of relatives of public officials or the removal of gaps in misdemeanour offences. GRECO will need to analyse in more detail the provisions of the adopted law to verify that they do indeed meet the concerns that gave rise to the recommendation. That said, it would seem that a number of these concerns have not yet been addressed. This is the case in particular with the need for conflicts of interest provisions taking into account the specific role of MPs. Moreover, the announced restriction of the scope of the definition of conflicts of interest to exclude apparent conflicts is worrying and seems to run counter to the objective of the recommendation. GRECO urges the authorities to reconsider this issue and to take into account all the concerns regarding conflicts of interest highlighted in relation to this recommendation. Moreover, GRECO notes that the draft law on the ACA is still under consideration at the level of the working group and has not yet been endorsed by the Ministry of Justice or the government. The draft law is susceptible to undergo further significant changes and therefore, in keeping with its practice, GRECO cannot yet consider that the recommendation has been even partly implemented.
92. GRECO concludes that recommendation xii has not been implemented.

### **Recommendation xiii.**

93. *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.*
94. The authorities explain that the draft law on the ACA, which is currently being prepared by the Ministry of Justice, will further strengthen the role and independence of the ACA and it prescribes that the ACA should be allocated sufficient funds to ensure its effectiveness, as requested by the first part of the recommendation.
95. As far as the second part of the recommendation is concerned, the draft law foresees the possibility for the ACA to have direct access to data from the registers held by the Treasury, Business Register Agency and other registers held by public authorities. Other legal entities will have the obligation to submit to the ACA the documents and data necessary to perform its tasks. Another new right will be the right of direct

access for the ACA to official records and documents held by public authorities, legal entities and entrepreneurs. Moreover, the draft law provides the ACA with the competence to act upon anonymous complaints. Another innovation referred to by the authorities is that complaint proceedings may result in an opinion by the ACA on the situation, which will contain recommendations and be sent to the relevant public authority. The ACA will also be able to initiate *ex officio* proceedings to investigate suspicions of corruption at a public authority. Finally the ACA's competence is also said to be further extended to include the filing of criminal charges and the submission of requests for initiating misdemeanour or disciplinary proceedings.

96. GRECO takes note that the information provided largely follows the reform proposals described in the Evaluation Report. That said, as the draft law has not yet been endorsed by the Ministry of Justice or the government, it cannot assess that the recommendation has been implemented, even partly.
97. GRECO concludes that recommendation xiii has not been implemented.

### **III. CONCLUSIONS**

98. **In view of the foregoing, GRECO concludes that Serbia has not implemented satisfactorily or dealt with in a satisfactory manner any of the thirteen recommendations contained in the Fourth Round Evaluation Report.** Seven recommendations have been partly implemented and six have not been implemented.
99. More specifically, recommendations i, iv, v, vii, viii, x and xi have been partly implemented and recommendations ii, iii, vi, ix, xii and xiii have not been implemented.
100. With respect to members of parliament, only limited progress has been achieved as regards transparency of the activity of the National Assembly. More determined action is necessary in this regard, as well as on the adoption of a code of conduct and the introduction of rules for members of parliament on how they interact with lobbyists and other third parties.
101. As far as judges are concerned, GRECO welcomes the measures taken to further develop the role of the High Judicial Council, improve the objectivity and transparency of the procedures for the recruitment and promotion of judges, as well as to train judges on ethical issues. Beyond a necessary constitutional reform in order to change the composition of the High Judicial Council and exclude the National Assembly from the process of recruitment of judges, GRECO expects a review of the system of appraisal of judges' performance.
102. Prosecutors are in a situation largely similar to judges. Some steps have been taken to strengthen the role of the State Prosecutorial Council, to review the performance appraisal system for prosecutors and to train them on ethical issues. Further progress is conditioned by the upcoming constitutional reform. GRECO also calls upon the Serbian authorities to review the criteria for the recruitment and promotion of prosecutors.
103. In view of the above, GRECO concludes that the overall very low level of compliance with the recommendations is "globally unsatisfactory" within the meaning of Rule 31, paragraph 8.3 of the Rules of Procedure. GRECO therefore decides to apply Rule 32 concerning members found not to be in compliance with the recommendations contained in the mutual evaluation report, and asks the Head of the Serbian delegation to provide a report on the progress in implementing the pending

recommendations (i.e. recommendations i-xiii) as soon as possible, but at the latest by 31 October 2018, pursuant to paragraph 2(i) of that rule.

104. 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.