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FOURTH EVALUATION ROUND

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

COMPLIANCE REPORT

ALBANIA

Adopted by GRECO at its 71st Plenary Meeting
(Strasbourg, 14-18 March 2016)

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I. INTRODUCTION

1. The Compliance Report assesses the measures taken by the authorities of Albania to implement the recommendations issued in the Fourth Round Evaluation Report on Albania which was adopted at GRECO's 63rd Plenary Meeting (28 March 2014) and made public on 27 June 2014, following authorisation by Albania ([Greco Eval IV Rep \(2013\) 9E](#)). 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 Albania submitted a Situation Report on measures taken to implement the recommendations. This report was received on 29 January 2016 and completed by further written information presented on 9 March 2016. Both served as a basis for the Compliance Report.
3. GRECO selected Cyprus and "the former Yugoslav Republic of Macedonia" to appoint Rapporteurs for the compliance procedure. The Rapporteurs appointed were Ms Theodora PIPERI-CHRISTODOULOU, Counsel of the Republic, the Law Office of the Republic, on behalf of Cyprus and Ms Aneta ARNAUDOVSKA, Director of the Academy for Judges and Public Prosecutors, on behalf of "the former Yugoslav Republic of Macedonia". They were assisted by GRECO's Secretariat in drawing up the Compliance Report.
4. The Compliance Report assesses the implementation of each individual recommendation and establishes an overall appraisal of the level of the member's compliance with these recommendations. The implementation of any outstanding 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 10 recommendations to Albania in its Evaluation Report. Compliance with these recommendations is dealt with below.

Corruption prevention in respect of members of parliament

Recommendation i.

6. *GRECO recommended that the transparency of the legislative process be further improved by i) ensuring the timely implementation of the requirement under the Rules of Procedure to publish on the official web site of the National Assembly draft legislation, including the initial bills, and amendments; and ii) regulating deputies' contact with lobbyists and other third parties seeking to influence the legislative process.*
7. In respect of part (i) of the recommendation, the authorities of Albania explain that in February 2014, the Assembly's Bureau adopted a Decision on "Regulation of the functioning of the Assembly's Internet web page". Pursuant thereto, draft legislation and associated explanatory reports are to be published promptly, "following the notification of the next scheduled plenary". The authorities state that the foregoing has a direct bearing on the working schedule of standing committees to which draft legal acts are referred and where they are initially debated. Each committee works according to a three-week schedule aligned to the agenda of the Assembly's Plenary. Consequently, if the discussion of an initial bill is included in a committee's schedule and the schedule is approved, then the bill is to be immediately published on the Assembly's web page. The authorities insist that

subsequent amendments are also published promptly: following a committee debate on an initial bill or presentation to it of amendments. Also, since January 2016, the Assembly has a new official web site (www.parlament.al), where all parliamentary documents are published. In the section "Documents", all information on draft legal acts, decisions, resolutions, declarations and reports can be found, and specifically, under the sub-heading "Draft laws", bills deposited by the Council of Ministers and MPs as well as all related data (i.e. status, accompanying reports, reports by parliamentary standing committees, amendments proposed by MPs, voting results and the finally adopted texts) are presented.

8. Reference is furthermore made to an E-Parliament digital platform, which is at the first stage of implementation. Paving the way towards full digitalisation of the Assembly's activities, it facilitates the execution of rudimentary tasks by MPs and the Assembly's staff and is intended to further enhance the transparency of the legislative process.
9. Turning to part (ii) of the recommendation, in November 2014, the Assembly's Bureau approved a Manual "On public participation in the decision-making process of the National Assembly". The goal of the Manual is three-fold: 1) to promote and regulate the participation of civil society, experts and interest groups¹ in the legislative process; 2) to establish guidelines for the preparation and holding of public hearings by parliamentary committees, in accordance with Article 36¹ of the Rules of Procedure; and 3) to control and monitor MPs' contacts with interested third parties. Moreover, a Coordinator for Interest Groups (a member of the administration) has been appointed to facilitate the Assembly's co-operation with interest groups, civil society and social partners.²
10. Additionally, an Electronic Register of Civil Society connected to the Integrated Tax System of the General Tax Directory, which registers all NGOs, has been set up and made accessible on the Assembly's web site. The Register is open to all NGOs and today some 2 740 civil society organisations can be identified therein through their tax number, contact persons and activity object. The authorities underline that the Register has improved the Assembly's interaction with the public and often been used e.g. to send invitations to public hearings. The authorities underscore that all MPs' contacts with third parties have now been regulated. The procedures for contacting MPs, "sending recommendations" and participating in the legislative process have now been prescribed in detail and standardised in regard to all committees, and the publication of pertinent information on the Assembly's web site has rendered the legislative process more transparent.
11. As for part (i) of the recommendation, GRECO is satisfied with the adoption by the Assembly's Bureau of a Decision clarifying when initial bills are to be published. It also welcomes the wider application of information technology to parliamentary work and the introduction of tools capable of automatically aggregating and organising information and thus redress the other concern underlying this recommendation, namely to ensure the timely implementation of the requirement in the Rules of Procedure to also publish amendments to draft legal acts. GRECO recalls that, at the time of the evaluation visit, despite the existence of rules on disclosure, tracking amendments to individual pieces of draft legislation – during the examination process – proved impossible and that the situation was not

¹ The Manual contains definitions of "civil society", "expert", "interest group" and "other interest group".

² The Coordinator *inter alia* provides information on draft legal acts that are to be analysed and discussed by parliamentary committees, solicits written opinions from interested third parties, disseminates information on committee meetings and invites interested third parties when deemed reasonable by the committee chairs, informs interested third parties of the approved legislation and whether suggestions were taken into account of, if rejected, for which reason.

remedied by public access to detailed plenary and committee minutes.³ Although GRECO concludes that this part of the recommendation has now been implemented satisfactorily, it encourages the authorities to keep this matter under close scrutiny, bearing in mind that, while they have proven effective in many instances, the most useful IT tools require the availability of parliamentary data in machine-readable open data formats, which remains a challenge in certain contexts.

12. Regarding part (ii) of the recommendation, GRECO acknowledges that the Assembly has laid down some rules and introduced certain tools (an NGO register, the Coordinator for Interest Groups) to better manage MPs' relations with representatives of public and private interests in the context of the legislative process and to augment transparency in this area. Notwithstanding, the bulk of the measures reported seem to be oriented towards regulating the non-governmental sector and, in particular, civil society, notably as regards their participation in public hearings. As for the "other side" of the process, the new rules are rather fragmented. They apply to the official contacts of the Assembly and its committees (e.g. in the framework of public hearings or when recourse is had to outside experts) but not those of parliamentary groups. As for individual deputies, the conduct expected has not been defined and their contacts, even if they have a direct impact on legislation debated in parliament, are not subject to notification or disclosure (or limitation) and it is unclear whether and how the future Code of Conduct for MPs (cf. recommendation ii) will redress this. In view of the foregoing, it is felt that the authorities' assertion of due controls and monitoring of MPs' interaction with interested third parties in the context of the legislative process is unjustified. GRECO concludes by recalling that the focus of the Fourth Evaluation Round is on standards applicable to MPs, not those who lobby them. For this reason, this recommendation is considered only partly implemented.
13. GRECO concludes that recommendation i has been partly implemented.

Recommendation ii.

14. *GRECO recommended that i) the Code of Conduct for members of parliament, foreseen by the Rules of Procedure of the National Assembly, be elaborated and properly enforced; and ii) training, guidance and counselling be made available to deputies on issues such as the form, manner and scope of permissible contacts with interest groups and lobbyists, the disclosure of ad hoc conflicts of interest, ethics and corruption prevention within their own ranks.*
15. With respect to part (i) of the recommendation, the authorities of Albania indicate that, in 2014, based on an Order by the Assembly's Secretary General, the Legal Service Department drafted a Code of Conduct for MPs. The purpose of the Code, which is rooted in international good practices, is two-fold: to determine due standards of conduct for MPs while exercising a public function and to guarantee the necessary transparency and accountability to enhance public trust. When adopted, the Code will be added as an Annex to the Assembly's Rules of Procedure. In May 2015, a roundtable was held on this matter within the Assembly, and in December 2015, a working party composed of representatives of the three major parliamentary groups was set up with a view to improving the draft and strengthening the implementation mechanism of the Code. That work is under way.
16. Turning to part (ii) of the recommendation, reference is made to a training event organised on 13 November 2014 by the High Inspectorate for the Declaration and Audit of Assets and Conflicts of Interest (HIDAACI) for the authorities/structures

³ Cf. paragraph 26 of the Evaluation Report.

within public institutions responsible for the prevention, ascertainment and resolution of conflicts of interest pursuant to the relevant law⁴. Among some 90 participants were also representatives of the National Assembly (its secretariat). The event had as its focus the outcomes of GRECO's Fourth Evaluation Round for Albania and addressed theoretical and practical cases of prevention and settlement of conflicts of interest as well as the role and functions of responsible authorities.

17. GRECO takes note of the deliberations on the draft Code of Conduct and hopes that this work will be pursued with determination to ensure its speedy adoption. GRECO acknowledges that the draft will *inter alia* introduce the general rules on ethics and deal with issues such as conflicts of interest, incompatibilities, gifts, transparency, confidentiality and post-employment restrictions. GRECO also observes that the intra-parliamentary negotiations regarding the implementation mechanism for the Code are in progress. It concludes that part (i) of the recommendation has been partly implemented. As concerns part (ii) of the recommendation, it can only be assessed once the Code has been adopted and enforced in practice⁵.
18. In addition, even if this point goes beyond the scope of the recommendation, GRECO notes with interest the on-going constitutional reform, aimed *inter alia* at strengthening and safeguarding the integrity of Albanian public officials, including MPs, by subjecting them to comprehensive integrity checks. In essence, the purpose of the draft law "On guaranteeing the integrity of public officials", which is being discussed together with the constitutional amendments, is to prevent the election/appointment to public office, and to dismiss, those officials who have been convicted of (a long list of) criminal offences, who are subject to security measures in Albania or abroad, or in respect of whom a final verdict for the commission of the crimes provided for by the law is pending. GRECO would appreciate being kept abreast of the reform and it would be curious to learn, in particular, whether any of the currently serving or future MPs fail the integrity checks.
19. GRECO concludes that recommendation ii has been partly implemented.

Recommendation iii.

20. *GRECO recommended that a mechanism for the "case by case" notification of conflicts of interest by members of parliament be established within the National Assembly and that the operation of this mechanism be subject to monitoring.*
21. The authorities of Albania indicate that, for the purpose of preventing conflicts of interest among the MPs and receiving from them "case by case" notifications on the existence of such conflicts, in March 2014 a "responsible authority" in the meaning of the Law on Prevention of Conflicts of Interests in the Exercise of Public Functions (LPCI) was established at the Assembly, by virtue of an Order of its Secretary General. Two persons from the Human Resources Service and the MPs' Benefits Department have been designated respectively as the authority's head and member. The "authority" is to act in pursuit of the LPCI and the HIDAACI's orders and is subject to monitoring by the latter. The authorities further explain that since the notification mechanism essentially relies on voluntary disclosure, so far only one *ad hoc* disclosure has been made (an MP refrained from voting in an election procedure involving his spouse who was a candidate for a public office). For this

⁴ Under the Law on Prevention of Conflicts of Interests in the Exercise of Public Functions, responsible authorities in public institutions are mandated to directly support, provide advice, guidance and training to public officials subject to the duty to declare their private interests and assets, according to this Law and the Law on the Declaration and Audit of Assets.

⁵ GRECO is aware of the promotional activities of the HIDAACI with regard to so-called "continuing" conflicts of interests and asset declarations.

reason, the Assembly is now considering adopting an act which would oblige MPs to sign a declaration on the absence of conflicts of interest prior to attending any committee meeting; such an act might also forbid an MP voting on an agenda item if a conflict of interest is present.

22. GRECO welcomes the concrete steps taken to implement the provisions of the LPCI relevant to the declaration and registration of "case by case" conflicts of interest by MPs. Still, the fact that only one case has been registered since March 2014 is a source of concern. GRECO recalls that several issues were found to be problematic at the time of the evaluation visit. The views of the MPs interviewed diverged on whether the relevant LPCI chapter was applicable to MPs at all, which situations qualified as a "case by case" conflict of interests in the context of an MP's functions, and to which authority *ad hoc* conflicts were to be reported. While the latter issue has now been solved, it would appear that the preceding two would merit further attention and additional clarification, whether by means of amendments to the Rules of Procedure, adjustments to the future Code of Conduct for MPs or adoption of a separate legal act as suggested above. Also, offering training to the "responsible authority" (cf. paragraph 16) may not be considered sufficient as long as it does not translate into relevant guidance, advice, support and training being made available to MPs themselves throughout their mandate (as is also required by law). GRECO reiterates that the disclosure of conflicts of interest, including *ad hoc* disclosure, is increasingly seen as a minimum requirement for parliamentarians and as an important dimension of corruption prevention. Therefore GRECO underscores the importance and urgency of addressing all pending matters under this recommendation to establish a credible and well-functioning notification mechanism for "case by case" conflicts of interest.
23. GRECO concludes that recommendation iii has been partly implemented.

Recommendation iv.

24. *GRECO recommended the contents of asset declarations of members of parliament are made public on an official web site and in a timely manner, with due regard to the privacy and security of deputies and persons related to them who are subject to a reporting obligation.*
25. The authorities of Albania report a series of measures taken to implement this recommendation: 1) the rescinding of an administrative fee to access an MP's asset declaration form; 2) the revision in 2014 of the Law "On the declaration and audit of assets, financial obligations of elected officials and some public officials" (LDAA) with the effect that a filed declaration may now be disclosed without a prior mandatory audit and the issuance of a compliance certificate by the HIDAACI; and 3) the revision by the HIDAACI of internal rules in pursuit of greater transparency and more efficient implementation of the Law "On access to information" which establishes *inter alia* a 15-day period for responding to any information request.
26. At the time of reporting, the authorities noted that the HIDAACI had received and satisfied 10 requests for disclosure of MPs' asset declaration forms and thus the information on assets in respect of all MPs for the period 2003-2014 was made available to interested parties and published by them – in full or as a summary – in the press and on certain websites. It is also underlined that, despite the high volume of requests for "copies of declaration forms" emanating mainly from the media and civil society (and not confined to MPs but also other officials with a duty to declare their assets), the HIDAACI has responded positively to all such requests and within the legally prescribed ten-day timeframe. The absence of any complaints is said to be a testimony to that.

27. GRECO takes note of the information provided and welcomes, in particular, the lifting of many impediments to the disclosure of MPs' asset declaration forms. Yet, it recalls that, under the LDAA, the contents of each form are to be made available to an interested party only *upon his/her request*. While GRECO is reassured that the disclosure procedure has now been facilitated and streamlined by removing the administrative fee and the compulsory prior audit, it has found no evidence of a change to the legal framework, whether primary or subsidiary, requiring that the filed forms in respect of all 140 MPs be made promptly available to the public on a designated official web site, with due regard being had to the privacy and security of deputies and persons related to them who are subject to a reporting obligation. GRECO therefore urges the authorities to introduce such a disclosure tool without further delay.

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

Recommendation v.

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

30. With regard to part (i) of the recommendation, the authorities of Albania refer to draft amendments to the LDAA and, specifically, to Article 25 thereof. At present, this Article provides for the carrying out of full audits of MPs' asset declarations every three years⁶, while the draft proposes to increase the frequency of audits to every two years. The amendments will be adopted only once the judicial reform, which will alter the titles of certain judicial institutions referred to in the LDAA and which requires constitutional amendments (see further below), is completed.

31. As for part (ii) of the recommendation, memoranda of understanding have been signed by the HIDAACI and the Internal Audit and Anti-Corruption Department under the Prime Minister's Office (September 2014), the Directorate General of Taxation (December 2014), the Directorate General of Customs (January 2015), the Commissioner for Freedom of Information and Protection of Personal Data (June 2015), the State Police (July 2015), the FIU (2015), the National Co-ordinator against Corruption (December 2015) and the Ministry of Finance (February 2016). As to the impact of these measures, the authorities insist that, for the first time, a considerable number of files on high-ranking officials, including 7 MPs, as well as 14 judges (including a member of the High Council of Justice and the President of the Tirana Court of Appeal) and 2 prosecutors were referred to the Prosecution Service for criminal proceedings. Administrative measures (i.e. fines) were imposed on certain MPs.

32. With respect to part (i) of the recommendation, GRECO recalls that the duration of an MP's mandate is four years and that, in the Evaluation Report, it had found the three-year time lapse between full audits of MPs' assets to be insufficient to identify any potential abuses of the asset disclosure regime, bearing in mind also the rather lengthy procedure performed by the HIDAACI. It therefore welcomes the proposed amendments to the LDAA which will introduce more frequent full audits of MPs' assets. However, as long as the amendments are merely in draft form, GRECO cannot conclude that this issue has been addressed even partly.

⁶ GRECO notes that, in respect of MPs who are Ministers, declarations are already fully audited every two years.

33. Turning to part (ii) of the recommendation, the signing of protocols aimed at fostering co-operation between the HIDAACI and a range of institutions, including the tax authorities, is a positive development which has led, as evidenced by the statistics presented by the authorities, to a significant number of criminal referrals and administrative measures taken not only in respect of MPs but also other public officials in connection with violations of their asset disclosure obligation. GRECO concludes that this part of the recommendation has been implemented satisfactorily.
34. GRECO concludes that recommendation v has been partly implemented.

Corruption prevention in respect of judges

35. The authorities state that, in the second half of 2015, Albania embarked on a fundamental justice system reform called for due to a lack of quality and coherence in the constitutional and legal regulations, high levels of corruption, poor integrity and low levels of professionalism of judges and prosecutors, the absence of efficient mechanisms of control and accountability within the judiciary, a lack of clear division of powers among the bodies governing the justice system and the disproportionate impact of politics on justice. Preliminary draft amendments to the Constitution were published in October 2015 and have been broadly debated. These include *inter alia* the provisions on "Transitional Qualification Assessment of Judges and Prosecutors", which provide for the vetting of *all* sitting judges and prosecutors. The formal presentation of the constitutional amendments to parliament for approval is imminent and depends on the integration of suggestions made by the Venice Commission in its Interim and Final Opinions on the revised draft constitutional amendments on the judiciary⁷.
36. Although the constitutional amendments, as developed in October 2015, were examined by GRECO, it is not in a position to familiarise itself with the most recent changes as the reform is in progress and amendments are being introduced continually.

Recommendation vi.

37. *GRECO recommended i) the selection and appointment of the High Court justices be made transparent and that the opinion of the judiciary (e.g. the High Council of Justice itself) be sought in those processes; and ii) the periodic evaluation of professional and ethical performance of a judge is conducted in a timely manner and that consideration be given to ensuring that the criteria for evaluating a judge's ethical conduct are objective and transparent, with due regard to the principle of judicial independence.*
38. In so far as part (i) of the recommendation is concerned, the authorities of Albania refer to the 2014 amendments to the Law "On the organisation and functioning of the High Court". These demand that relevant vacancy notices be published on the web sites of that Court and of the President of the Republic and that the lists of eligible candidates be made available on the latter's web page within a week of the deadline set for applications. A Council for High Court Appointments, composed of the President of the High Court, the President of the Constitutional Court, the Minister of Justice, the Prosecutor General, the Deputy Chair of the High Council of Justice (HCJ), the President of the Bar and one High Court judge elected by his/her peers, has been established. It is a collegial advisory body under the President of

⁷ The Interim Opinion was adopted in December 2015 ([http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2015\)045-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2015)045-e)) and the Final Opinion was adopted on 11 March 2016 ([http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2016\)009-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2016)009-e)).

the Republic tasked with verifying candidates' eligibility. At the end of that process, the Council is to prepare a report (adopted by a majority vote) and to rank the candidates who qualify for recruitment. The report is then sent to the President of the Republic who is to publish it on the web site. Since no vacancies have been announced at the High Court since the amendments entered into force, the new procedure has not been tested in practice.

39. The authorities furthermore draw attention to the on-going judicial reform and the draft constitutional amendments. These foresee that High Court judges will be appointed by the President of the Republic based on a proposal by the HCJ, pursuant to a transparent selection procedure grounded in objective and measurable criteria⁸. The HCJ will thus acquire the competence to verify the criteria and to evaluate and nominate suitable candidates.
40. On part (ii) of the recommendation, the authorities report that in 2014 the HCJ concluded the first round of evaluations of judges. The second round is currently on-going and covers the period 2007-2009. By 3 March 2016, final assessments had been issued by the HCJ in respect of 186 of the 316 judges subject to this procedure, assessments in respect of 46 other judges were pending, 21 judges were exempted from the procedure for various reasons, assessments of 15 judges were being finalised by the Chief Inspector, 43 other assessments were being drafted, and background documentation on 7 judges were being collected at the respective courts. This round of assessment will be closed in March 2016. The third round is currently underway too and is due to be completed by the end of 2016; the holding of the fourth round covering the period between 2010 and 2012 depends on the outcome of the judicial reform. Moreover, for the first time performance reviews, based on the specific HCJ-approved criteria have been carried out also in respect of the thirty seven court presidents and court inspectors. By 3 March 2016, the review in respect of one court president had been completed, for three others, evaluations had been submitted to the HCJ, three more evaluations had been drafted, and in the case of other court presidents background documents had been collected at the respective courts.
41. All the evaluations have been carried out pursuant to the criteria established by the HCJ in 2010 - in particular, the principle of independence. Reference is furthermore made to a draft law "On the evaluation of judges" which was presented to the parliament in 2015 as part of the constitutional and justice reform package. Pursuant thereto, each judge would be evaluated once every three years against the following four criteria: capacity, organisational skills, ethics and commitment to judicial values, personal qualities and professional commitment. The text of Article 10 thereof is provided below:

Draft Law "On the evaluation of judges in the Republic of Albania"

Article 10 - Ethics and commitment to judicial values

- 1. By this criteria the skill of the judge for showing work ethics, integrity and impartiality is measured.*
- 2. Work ethics of the judge in the sense of commitment and accountability in duty, is measured by indicators extracted from the sources of evaluation like the results of complaints and their verification, opinion of the chair of courts and final disciplinary convictions within the evaluation period in this regards.*

⁸ In particular, the HJC's decisions nominating candidate judges will be adopted by a qualified majority vote, after a formal evaluation; if a candidate is rejected, the President of the Republic will have to provide the grounds for that decision, and in the case of inaction by the President within a specified period, the candidate proposed by the HJC will be considered elected.

3. The integrity of the judge in the sense of the judge's immunity against any external influence or pressure is measured against indicators like the results of the complaints and their verification, opinion of chairs of courts and final disciplinary convictions within the evaluation period in this regard.

4. The impartiality in the sense of the carefulness of the judge towards conflicts of interest and in respecting issues of vulnerable groups, as well as including gender and minority issues. This capacity is measured by the indicators like the use of discriminatory language or of an extraordinarily high number of admitted requests of parties for recusing the judge and involving other indicators as extracted by other sources of evaluation.

42. Finally, the authorities indicate that, in 2014, there was only one case where a judge had appealed the HCJ-approved evaluation before an administrative court; in 2015, only three such cases were registered.
43. GRECO recalls that the thrust of part (i) of the recommendation was *inter alia* to depoliticise the selection and appointment of justices of the High Court as it is competent to hear, as the first-instance court, cases concerning high-level officials. Consequently, the change of procedure, whereby justices of that Court are now to be appointed by the President of the Republic based on a selection and non-binding ranking by the Council for High Court Appointments (and not by the President with the Assembly's consent) is overall a welcome development, as is also the enhanced transparency of the selection/nomination procedure as laid down in law. Still, the new collegial advisory body, although it admittedly has a broad composition and includes several representatives of the judicial branch, only has one single HCJ representative acting *ex officio*. Also, in the absence of information on issues such as the voting process, the powers of the Ministry of Justice in the Council, the modalities of formation of the Council's budget and the procedure to be followed in case the President of the Republic justifies turning down of the candidate/s nominated by the Council, it is not feasible to ascertain whether the procedure is shielded well enough from potential conflicts of interest and undue pressure. Furthermore, not only the new selection/nomination process has not been applied in practice but it will also soon be replaced by another arrangement whereby responsibility for the selection/nomination of candidates will be conferred exclusively on the HCJ⁹ (it will also have a new composition and new substantial powers). Although such a reform would be fully in line with the recommendation, given the early stage of the legislative process it is premature to draw a definitive conclusion as to its aptness. This part of the recommendation is therefore considered as partly implemented. Concomitantly, GRECO observes that the constitutional reforms will deprive the High Court of the power to adjudicate - at first instance - cases concerning high-level officials; which court will acquire this competence remains to be seen.
44. Regarding part (ii) of the recommendation, GRECO is unable to underscore any meaningful progress. As evidenced by the above, the significant time-lapse between evaluation and reference periods has not been reduced and the applicable ethical requirements have been given a narrow interpretation. Bearing in mind that continued public disquiet as regards the poor integrity of judges was the primary trigger of the judicial reform, it would seem essential to transform the periodic reviews into a viable tool capable of anticipating, preventing and capturing in a credible manner any signs of a judge's misconduct in an efficient and timely manner. Also, as long as a judge's performance continues to be measured by the number/results of complaints and the number of final disciplinary convictions within

⁹ GRECO observes that, pursuant to the draft amendments to the Constitution, a new High Administrative Court would be established and its justices would be selected, nominated and appointed in the same manner as the High Court justices.

the reference period, not observance of the Code of Judicial Ethics¹⁰, the fundamental objective of evaluation, which should be to re-confirm that each judge has the requisite "high moral qualities", would not be fulfilled.

45. Statistics on appeals are not informative as, at the time of adoption of the Evaluation Report, the performance of only three judges had ever been rated "acceptable" and no judge had been considered "incapable"¹¹. The situation is unlikely to have altered since and might – at least partly – explain why authorities are envisaging the introduction of an extraordinary vetting procedure. Although this goes beyond the scope of the recommendation, GRECO notes a proposal to subject all sitting judges (and prosecutors) to a procedure to vet their professionalism, assets and background/connections with the criminal world, to be carried out by specially created independent qualification commissions (IQS).
46. GRECO concludes that recommendation vi has been partly implemented.

Recommendation vii.

47. *GRECO recommended that i) the "Ethics, mandate verification and continuous professional development Committee" under the National Judicial Conference fulfils its mandate and ensures, in a proactive manner, the enforcement of ethical rules; and that ii) guidance, counselling and mandatory in-service training be provided to judges on ethics, conflicts of interest and corruption prevention within their own ranks.*
48. As for part (i) of the recommendation, the authorities of Albania report that, in 2014-2015, the "Ethics, mandate verification and professional development committee" under the National Judicial Conference, at the request of the Inspectorate placed under the HCJ, adopted eight advisory opinions and some "recommendations" on the compliance of the conduct of certain judges with the Code of Judicial Ethics. For the time being, however, as long as no changes have been made to the Law "On the National Judicial Conference" or the Code, the Committee will continue to play only an advisory role, which is confined to issuing recommendations and providing advice *at the request* of the Inspectorate, the Minister of Justice or of individual judges, or if a judge's actions or activity conflict with the Code. Consequently, at present, the Committee does not have instruments at its disposal that would enable it to assume proactive, on-going and effective supervision of the Code's enforcement. Under the current legal framework, oversight powers in this field reside in the court presidents, and if a suspected case of non-compliance with the ethical rules arises, it is to be presented for further inspection to an Inspector under the HCJ.
49. With respect to part (ii) of the recommendation, the authorities refer to the following initiatives undertaken or foreseen by the School of Magistrates as the authority in charge of judges' in-service training: 1) a new compulsory 72-hour training course on professional ethics for first year magistrates; 2) the organisation in 2015 of four compulsory training sessions on professional ethics for young and experienced judges (and prosecutors)¹²; 3) the planned organisation in February 2016 of three training sessions on professional ethics for candidate magistrates and appointed judges; 4) the planned organisation in 2016 of two training sessions for judges (and prosecutors) on professional and ethical evaluation; and 5) participation of representatives of the HCJ, the Constitutional Court and the High

¹⁰ The Code of Judicial Ethics was adopted by the National Judicial Conference in 2000 and amended in 2006 (cf. paragraph 85 of the Evaluation Report).

¹¹ See paragraph 73 of the Evaluation Report.

¹² In 2014-2015, 40 judges in total had attended such training.

Court in a training organised by the HIDAACI for “responsible authorities” as defined in the LPCI (November 2014, cf. paragraph 16).

50. As concerns part (i) of the recommendation, GRECO is disappointed by the absence of tangible steps. It recalls that the Ethics Committee, the official “keeper” and body in charge of interpreting the Code of Judicial Ethics, has for years had a low profile, its role being reduced to issuing ethical performance certificates to judges in connection with a promotion, at their request, or if solicited by other judicial bodies on which the Committee’s opinions do not have a binding effect. The persisting lack of proper ownership of the Code, specifically that the Committee does not react to breaches of the Code in a proactive manner, as is required by Article 12 of the Law “On the organisation and functioning of the National Judicial Conference”, and the splitting of oversight function between several bodies (the Ethics Committee, court presidents and the HCJ’s inspectors) is a continued source of concern. Moreover, GRECO notes a proposal to shift to the HCJ, as part of the justice system reform, responsibility for adopting the rules on judicial ethics and monitoring their observance. Whether this new arrangement will terminate the mandate of the Ethics Committee has not been made clear. GRECO urges the authorities to prioritise, within the on-going judicial reform, the issue of enforcement of ethical rules applicable to judges. It also warns against multiplying bodies with overlapping powers as the perception that judicial ethics have been neglected again is likely to resurface. GRECO concludes that this part of the recommendation has not been implemented.
51. Turning to part (ii) of the recommendation, GRECO welcomes the inception of new in-service training on professional ethics for judges, where attendance rates are already rather good. It concludes that this part of the recommendation has been implemented satisfactorily.
52. GRECO concludes that recommendation vii has been partly implemented.

Recommendation viii.

53. *GRECO recommended that i) with a view to ensuring protection against arbitrary intervention in the administration of justice, the extent of the right of the Ministry of Justice to examine the functioning of judicial services and court administration, as provided under Article 31 of the law “On the organisation and functioning of the High Council of Justice” be clearly defined; and that ii) the respective court presidents, including the High Court Chief Justice, be vested with the right to initiate disciplinary proceedings against judges.*
54. The authorities of Albania refer to the most recent draft constitutional amendments which will establish a new independent High Justice Inspector (HJI) with authority to investigate disciplinary violations and complaints against all judges (except those of the Constitutional Court) and prosecutors and to inspect courts and prosecutor’s offices. The incumbent will be elected by the parliament (the exact type of voting procedure remains to be agreed upon) from a list of candidatures proposed by the Justice Appointments Council (a new body to be established under the revised Constitution) and will have the status of a High Court judge. The establishment of this new structure is expected to solve the present institutional conflict between the Ministry of Justice and the Inspectorate under the HCJ while concentrating the inspection powers in one body and providing for a more efficient use of the limited human resources.
55. A decision on whether or not to impose a disciplinary measure will be taken in respect of judges by the HJC, and in respect of the HJC members by the High Disciplinary Tribunal. The latter will also hear appeals against disciplinary measures

imposed by the HJC. The Tribunal will consist of the Presidents and one senior member of the Constitutional Court, the High Court and the High Administrative Court as well as the Prosecutor General and the President of the Bar. As for judges of the Constitutional Court, the organic law of that Court establishes a specific disciplinary procedure, and in the case of proven misconduct, the only applicable measure is dismissal from office.

56. GRECO takes note of the information on the most recent draft amendments to the Constitution, which it was not in a position to examine. While the envisaged transfer of responsibility for the inspection of courts from the Ministry of Justice to the independent Justice Inspector may be considered - overall - as a positive step, the exact scope of such inspections has not been determined, the right of the Inspector to conduct the inspections *ex officio* has not been clarified and, most importantly, it is unclear whether the Minister of Justice has been deprived of the power to conduct such inspections in parallel. The situation is compounded by the Minister's right to "inspect" the activities of the High Justice Inspector which, given the latter's status of a High Court judge, seems problematic. As for part (ii) of the recommendation, GRECO recalls that at the time of the evaluation the Minister of Justice had the exclusive right to initiate disciplinary proceedings against judges and that this was seen as creating ample opportunity for inappropriate influence. While the constitutional amendments admittedly provide for a balanced procedure whereby the power of the "accuser" is attributed to the independent High Justice Inspector (in the previous draft constitutional amendments, the Inspectorate was conceived as a collegial body) and the decision-making function is vested in the HCJ, the status of the Minister of Justice as a "privileged petitioner" in the matter of investigation into a presumed disciplinary breach by a judge, seems to discriminate against other petitioners, as the Inspector appears to have some margin of discretion as to whether or not to react to the latter's complaints. GRECO expects that these concerns will be addressed by the on-going reform. In view of the early stage of the legislative process and a number of important issues awaiting solution, this recommendation is assessed as only partly implemented.
57. GRECO concludes that recommendation viii has been partly implemented.

Corruption prevention in respect of prosecutors

Recommendation ix.

58. *GRECO recommended to further refine the criteria for assessing a prosecutor's ethical qualities, in particular by ensuring that the criteria are objective and transparent.*
59. The authorities of Albania refer to the recent adoption of the Rules of ethics and conduct of prosecutors (cf. recommendation x) and the implications this has for the Annual Evaluation System of Prosecutors. In particular, the Prosecutor General's Office, in consultation with the body of prosecutors and other structures of that Office, has drafted the following amendments to the 2012 Regulation "On the Work Evaluation System and professional and moral skills of prosecutors":

"Article 40 – Ethical qualities of a prosecutor

Ethical qualities include the components:

- 1.1. *Ethic of prosecutor in the exercise of criminal prosecution and participation in court hearings.*
- 1.2. *Respect of individuals rights, equal treatment and avoidance of any kind of discrimination or prejudice in relation to the parties and subjects of criminal proceedings;*

- 1.3. *Protection of confidential and personal data of the injured party, witness, etc. especially where if juvenile;*
- 1.4. *Non-use of information provided because of the duty for the personal interest or third parties.*
- 1.5. *Liability of the prosecutor in the administration to manage and maintain procedural acts, evidence, seized items, etc.*
- 1.6. *Formal and serious presentation in communication and outfit".*

"Article 41 - Integrity and avoidance of conflicts of interest

Integrity and avoidance of conflicts of interest include the components:

- 1.1. *Attitude towards internal and external pressures and impacts;*
- 1.2. *Attention toward conflicts of interest and prohibition of benefits or preferential treatment because of the function;*
- 1.3. *Renunciation or giving to the parties the opportunity to request the exclusion of the prosecutor from the case if there are any partiality reasons.*
- 1.4. *Conduction of outside activities in accordance with legal requirements*
- 1.5. *Attention to protect the prosecutor's image outside working time".*

The authorities furthermore state that these new elements have already been integrated into a draft annual evaluation form under Section IV - "organisational skills"¹³ (Sections IV-3 and IV-4) and accompanied by clear assessment criteria (cf. Annex 1).

60. In the opinion of GRECO, the revision of internal rules on the regular performance appraisal of prosecutors, with a view to better ascertaining their integrity and ethical qualities, represents a positive development and is a step in the right direction, particularly when compared to similar provisions introduced in respect of judges (see paragraph 41). Yet, as is clear from the afore-quoted text and the appended draft evaluation form, the criteria elaborated are restricted to a handful of components deemed to be critical for the fulfilment of the prosecutorial function. While their relevance is not put into question, it would be desirable to link them more explicitly with the "high moral qualities" expected of a prosecutor. GRECO recalls that "high moral qualities" are a general requirement for prosecutors' appointment and promotion. It also refers to the recently adopted and rather comprehensive Rules on ethics that bind all prosecutors and provide for disciplinary action for infringements (cf. recommendation x). GRECO takes the view that successful periodic evaluation should be made conditional on observance of those Rules, that this be clearly articulated and that the performance appraisal tool be adjusted so as to capture compliance with or failure to respect all applicable ethical standards. The authorities are therefore encouraged to further pursue their efforts to strike the right balance between detailed prescription, as embodied by the Rules, and a sufficiently flexible evaluation framework that should be capable of shedding light on any issue potentially falling under the Rules' purview. GRECO concludes that this recommendation has been partly implemented.

61. GRECO concludes that recommendation ix has been partly implemented.

Recommendation x.

62. *GRECO recommended that i) a set of clear ethical standards/code of professional conduct applicable to all prosecutors be elaborated and properly enforced; and ii) guidance, counselling and mandatory in-service training be made available to*

¹³ The evaluation comprises 6 main modules: professional skills (Section I), Personal skills (Section II), Capacities and social position (Section III), Organisational skills (Section IV), Respect for labour discipline (Section V) and the disciplinary measures (Section VI).

prosecutors on ethics, conflicts of interests and corruption prevention within their own ranks.

63. As for part (i) of the recommendation, the authorities state that on 19 June 2014, the new Rules of Ethics and Conduct of prosecutors were adopted by order of the Prosecutor General. The adoption procedure included *inter alia* the following stages: 1) expert support throughout; 2) a workshop for all prosecutor's offices (7-8 April 2014); 3) a debate at the General Prosecutor's Office (20 June 2014); and 4) consideration and approval by the Council of Prosecutors. The Rules consist of four chapters¹⁴ and define the principles, norms and guidelines that are meant to ensure and guarantee professionalism, independence, impartiality, honesty, integrity and correctness of prosecutors in the efficient exercise of their constitutional and legal functions, in the interest of criminal justice, and to increase public trust.
64. A violation of the Rules, unless it constitutes a criminal offence, forms the grounds for launching a disciplinary procedure.¹⁵ An Ethics Inspector, appointed by the Prosecutor General, ensures the observance of the Rules and is to verify a potential violation *ex officio* or within 10 days from being notified of one. The checks end up with a recommendation to the Prosecutor General to open a criminal or disciplinary procedure or to order that special training be followed. The Inspector also acts in an advisory capacity and is to give prompt written response to prosecutors who are uncertain as to whether or not a specific conduct might infringe ethical rules. The Rules are binding on all prosecutors and oblige them to co-operate with the Inspector and to report to him/her any wrongdoing by their superiors, peers or subordinates. The Rules were published in a brochure, distributed across the Service and made accessible on an official web site (www.pp.gov.al).
65. The authorities state that the Ethics Inspector has handled numerous cases concerning breaches of ethics referred to him directly by prosecutors or employees of the Prosecution Service, or citizens' complaints regarding prosecutorial decisions. The Inspector has issued recommendations and provided counselling in several cases; in one case he has initiated disciplinary proceedings and in five other cases investigation is underway.
66. Turning to part (ii) of the recommendation, subsequent to the adoption of the Rules of ethics, the Training Board under the Prosecutor General's Office introduced mandatory periodic training on internal ethics and integrity-related matters for all prosecutors (it is complementary to similar annual training provided by the School of Magistrates). The authorities refer to the following initiatives: 1) the organisation of training on the new Rules¹⁶ covering all prosecutors (December 2014 – April 2015); 2) the inclusion of a two-day training course on ethics and conflicts of interest into an annual in-service training programme for prosecutors; and 3) participation of representatives of the Prosecutor General's Office in training organised by the HIDAACI for "responsible authorities" as defined in the LPCI (November 2014, cf. paragraph 16). The authorities further indicate that one training event on the Rules of ethics hosted a representative of a GRECO member State, in view of that State's positive experience in this area.
67. GRECO commends the authorities for conceiving an inclusive and credible process culminating in the adoption of the Rules of ethics for prosecutors. The Rules are not only designed to promote the observance of high standards of professional

¹⁴ General provisions, institutional and inter-institutional relations, violation of rules and inspections for their implementation and final provisions

¹⁵ This also pertains to cases when a prosecutor's action/conduct is not explicitly covered by the Rules but the effect it produces is considered to be similar to an infringement of the Rules.

¹⁶ Training *inter alia* on the advisory role of the Ethics Inspector

comportment within the Service but also to offer guidance and to increase accountability through a built-in enforcement mechanism. The statistics provided shows that this mechanism is taking root and gradually being implemented in practice. GRECO is equally impressed with the extensive training organised subsequent to the adoption of the Rules and satisfied that a mandatory two-day course on ethics and conflicts of interest has now been added to the annual in-service prosecutorial training programme.

68. GRECO concludes that recommendation x has been implemented satisfactorily.

III. CONCLUSIONS

69. **In view of the foregoing, GRECO concludes that only one of the ten recommendations contained in the Fourth Round Evaluation Report has been implemented satisfactorily or dealt with in a satisfactory manner by Albania.** Nine recommendations have so far been partly implemented.
70. More specifically, recommendation x has been implemented satisfactorily and recommendations i-ix have been partly implemented.
71. With respect to members of parliament, certain positive steps have been made towards the fulfilment of GRECO's recommendations. The moment of publication of initial bills has been clarified and certain tools have been introduced to better manage MPs' relations with representatives of public and private interests. The Code of Conduct for MPs is currently being developed, an internal mechanism for *ad hoc* disclosure of conflicts of interest by MPs has been set up and the scrutiny of MPs' assets has arguably been improved due to an accelerated disclosure of the filed asset declaration forms to interested third parties upon their request. Still, the progress made has been partial and fragmented and some of the measures reported have had as their primary targets other actors or structures, not MPs themselves. GRECO therefore reiterates the urgency of introducing a Code of Conduct for MPs and of regulating their contact with lobbyists and other third parties seeking to influence the legislative process. Also, the "case by case" notification of conflicts of interest by MPs has to become a regular practice so does the carrying out of more frequent full audits of the asset declaration forms filed and their prompt publication on an official web site.
72. As far as judges and prosecutors are concerned, Albania has embarked on a fundamental constitutional and justice system reform, which, if endorsed, would not only overhaul the entire judicial set-up but also affect all sitting judges and prosecutors by subjecting them to an unprecedented vetting procedure. Also, although certain reforms carried out so far have produced discernible positive effects (e.g. the new mode of selection/nomination of the High Court justices, the development of the Rules of ethics and conduct of prosecutors), other reported initiatives still fall short of meeting all the concerns underlying GRECO's recommendations. Notably the inadequate system for periodic evaluation of judges' performance, the deficient or too rigid criteria established for the evaluation of judges' and prosecutors' integrity and the persisting lack of enforcement of the ethical rules specifically with regard to judges. GRECO is confident that these and other relevant matters, will be given due attention in the on-going reform.
73. In view of the preceding, GRECO notes that in the absence of decisive achievements, further significant material progress is necessary to demonstrate that an acceptable level of compliance with the recommendations within the next 18 months has been achieved. However, bearing in mind that substantial reforms are underway and on the understanding that the authorities of Albania will further pursue their efforts, GRECO concludes that the current low level of compliance with

the recommendations is not “globally unsatisfactory” in the meaning of Rule 31, paragraph 8.3 of GRECO’s Rules of Procedure. GRECO invites the Head of delegation of Albania to submit additional information regarding the implementation of recommendations i-ix by 30 September 2017.

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

Annex 1

DRAFT EVALUATION FORM FOR PROSECUTORS

IV-3. Ethical qualities of prosecutor
3.1 Describe and assess communication skills, dignified behaviour, cold judgment of the prosecutor in the exercise of criminal prosecution and participation in court hearings.
3.2 Describe and assess the skills of the prosecutor in respect of individuals' rights, equal treatment and the avoidance of any kind of discrimination or prejudice.
3.3 Describe and assess the skills of prosecutors to ensure the protection of confidential and personal data of the injured party, etc.
3.4 Describe and assess the skills of prosecutors to ensure the non-use of information for personal interest or third parties provided because of duty.
3.5 Describe and assess the skills of the prosecutor to manage and preserve files, procedural acts, evidence, seized items etc.
3.6 Describe and assess the communication skills of the prosecutor in relation to superiors, colleagues, subordinates and administration.
3.7 Describe and assess the qualities of the prosecutor in formal and serious appearance.

IV-3. Ethical quality	Very good	Good	Enough	Incapable
Communication skills in and out of the process				
Respect of individual rights and equal and non-discriminatory treatment				
Protection of personal data				
Non-use of information for personal interest				
Procedural material management, effective management of working time				
Communication skills in relationships with superiors, colleagues, subordinates and administration				
Formal and serious appearance in clothing				

IV-4. Integrity and avoidance of conflicts of interest
4.1 Describe and assess the prosecutor's skills to avoid being influenced by internal and external factors.
4.2 Describe and assess the prosecutor's ability to manage cases of incompatibility with the function under the law in force, the prohibition of preferential benefits, gifts or any other benefit for the function.
4.3 Describe and assess the prosecutor's skills to ensure the avoidance of conflict of interest if there are any partiality reasons in the process.
4.4 Describe and assess the performance of external activities of the prosecutor according to the legislation.
4.5 Describe and assess the prosecutor's care in preserving the pristine of prosecutor's image outside working time.

IV-4. Integrity and avoidance of conflict of interest	Very good	Good	Enough	Incapable
Attitude towards internal and external pressures and impacts				
Compliance with the function				
Avoiding conflicts of interest				
Outside activities of the prosecutor				
Protection the prosecutor's image outside working time				