

CORRUPTION PREVENTION

Members of Parliament,
Judges and Prosecutors

CONCLUSIONS AND TRENDS



GRECO
Anti-corruption Body
of the Council of Europe

**GROUP OF STATES
AGAINST CORRUPTION**
4th Evaluation Round



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

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

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Foreword

Marin MRČELA, President of GRECO

GRECO is the Council of Europe's anti-corruption body. It comprises all 48 European States, plus the United States of America. Its job is to monitor compliance of these States with the Council of Europe's anti-corruption standards and the extent to which they are implemented in practice.

Since its creation in 1999, GRECO has made a difference in the life of over 1 billion people living in our geographical space: laws have been changed, practices improved, institutions set up or reformed, and the authorities are now better able to cope with corruption at all levels than ever before. In doing so, GRECO has gradually become a benchmark for anti-corruption efforts across Europe and the US.

Yet, corruption remains one of the biggest challenges facing our countries; it spares no country, organisation or sector of activity. Our citizens are increasingly worried by the way public affairs are managed. More must and can be done. It is precisely in times when the public demands integrity and corruption-free societies that there is need for a prompt and determined response to deal with the problems and to make reforms. Public office holders (whether in the executive, legislative or judicial branches of government) have a key duty in this respect: their integrity and honesty, and their commitment to counter corruption,

are instrumental for gaining and retaining people's confidence in their institutions.

This study is intended to add to GRECO's knowledge base and encourage both State institutions and civil society organisations to learn more on the main trends, challenges and good practices for corruption prevention in the legislature and the judiciary. I wish to thank the drafters of the study, Anna Myers, Laura Stefan and Yüksel Yilmaz for their substantive work.

I acknowledge with gratitude and respect the contributions of Jose Manuel Igreja Martins Matos, President of the European Association of Judges and Vice-President of the International Association of Judges, Portugal, Anca Jurma, Chief Prosecutor at the National Anticorruption Directorate, Romania, and Jane Ley, former Deputy Director of the US Office of Government Ethics, United States of America. With their expertise and experience, they provided precious comments and suggestions at various stages of the development of this study.

Finally, I highly value the support provided by the GRECO Secretariat, who was responsible for following the preparation of the study. I particularly wish to thank Laura Sanz-Levia for steering the drafting process and ensuring its successful conclusion.

Introduction

The Group of States against Corruption (GRECO) launched its 4th evaluation round examining “Corruption prevention in respect of members of parliament, judges and prosecutors” on 1 January 2012.

In choosing this focus, GRECO member states recognised that preventing corruption within the different branches and functions of the major institutions of state is vital to ensuring the effectiveness of any overall anti-corruption strategy. It is also incumbent on the individuals within these systems to nurture a culture and practice of strong ethics and public service within their own ranks. Those who perform key roles as legislators and in enforcing the law, as judges and prosecutors do, need to lead by example. They must apply, and be seen to apply, the same rules to their own conduct that they apply to the conduct of others. And as public office holders in positions of authority and power - whether elected or not - holding themselves up to the highest standards of public service is essential if they wish to tackle corruption effectively and maintain or improve the trust, respect and support of the public.

Methodology and approach

In the 4th Evaluation Round GRECO examined corruption prevention measures taken by three main groups within the legislative and judicial functions in each of its 49 member states.¹ Members of parliament

(MPs) are responsible for developing and deciding on national law and policy, including with respect to corruption. Prosecutors are the key actors in the pre-judicial phase of law enforcement, overseeing investigations and determining whether there is sufficient evidence to prosecute. Judges are responsible for the courts and trial process, and have the authority to decide, either alone or with a jury, whether the law was breached and the appropriate level of penalty. Judges and prosecutors are responsible for independently applying the law within their national legal and constitutional frameworks.

By virtue of a systematic evaluation process, GRECO Evaluation Teams (GETs) examine each country on its merits, taking into account national legal, political and constitutional systems, and tailor their recommendations for each country based on information provided to them and gathered on site.

Each country report in the 4th Round describes the structure and function in which each group under examination operates. For readers, this provides the context and the basis for the recommendations. Every report is reviewed and probed in detail in GRECO plenary sessions before being adopted. This acts as the final quality check in the peer evaluation process.

The 4th Round clearly builds on GRECO’s previous work, notably its early emphasis in the 1st Round on the independence of the judiciary; its examination of public administration and corruption in the 2nd Round; and its focus on corruption and political financing in the 3rd Round. GRECO draws on the international instruments and standards relevant to its anti-corruption remit and the focus chosen for each round (a [list of reference texts and standards for the 4th Round](#) is available on GRECO’s website). The GRECO peer evaluation process - review, recommend, report (compliance) - is dynamic and encourages member states to deepen their commitment to shared standards ensuring they are authoritative and capable of evolving over time. This is particularly important in the area of corruption prevention which relies on instilling and maintaining a culture of integrity throughout the functions and activities of government and which cannot be accomplished by repressive measures alone.

1. GRECO member states by date of accession: Belgium, Bulgaria, Cyprus, Estonia, Finland, France, Germany, Greece, Iceland, Ireland, Lithuania, Luxembourg, Romania, the Slovak Republic, Slovenia, Spain, Sweden (founding states – 1/05/1999); Poland (20/05/1999), Hungary (9/07/1999), Georgia (16/09/1999), the United Kingdom (18/09/1999), Bosnia and Herzegovina (25/02/2000), Latvia (27/05/2000), Denmark (3/08/2000), the United States of America (20/09/2000), “the former Yugoslav Republic of Macedonia” (7/10/2000), Croatia (2/12/2000), Norway (6/01/2001), Albania (27/04/2001), Malta (11/05/2001), the Republic of Moldova (28/06/2001), the Netherlands (18/12/2001), Portugal (1/01/2002), the Czech Republic (9/02/2002), Serbia (1/04/2003), Turkey (1/01/2004), Armenia (20/01/2004), Azerbaijan (1/06/2004), Andorra (28/01/2005), Ukraine (1/01/2006), Montenegro (6/06/2006), Switzerland (1/07/2006), Austria (1/12/2006), the Russian Federation (1/02/2007), Italy (30/06/2007), Monaco (1/07/2007), Liechtenstein (1/01/2010), San Marino (13/08/2010), Belarus (1/07/2006 – effective participation from 13/01/2011).

The 4th Round reviewed each group (MPs, judges and prosecutors) with respect to the same five priority issues, namely:

- ▶ ethical principles, rules of conduct and conflicts of interest;
- ▶ prohibition or restriction of certain activities;
- ▶ declaration of assets, income, liabilities and interests;
- ▶ enforcement of the applicable rules;
- ▶ awareness.

And within these five areas, the GETs examined in more detail:

- ▶ transparency of the legislative process (members of parliament)
- ▶ transparency of the function of the service (judicial and prosecutorial services)
- ▶ remuneration and economic benefits
- ▶ recruitment, career and conditions of service
- ▶ prohibition or restriction of certain activities
- ▶ monitoring, supervision as well as enforcement of the rules
- ▶ advice and training

Framing the evaluation in this way allowed the GETs to reflect on the efforts made by the actors concerned and the results they have achieved, as well as to identify possible shortcomings and make recommendations for further improvement. The recommendations focus on steps to encourage self-regulation, clarify rules and limits, improve oversight and ensure sanctions are effectively applied when needed.

In keeping with the practice of GRECO, recommendations are addressed to the authorities of the country, which determine the relevant institutions/bodies responsible for taking the requisite action. Within 18 months following the adoption of a Report, the country reports back on the action taken in response to the recommendations made.

About this study

Following the structure of the evaluation process itself, this study provides an overview of the results of the 4th Round². The reader is informed throughout of key facts and figures and directed to some novel approaches and good practices that were revealed during the evaluation process. Issues of concern are also flagged and specifically highlighted where they appear to be more widespread.

This study is intended to add to GRECO's knowledge base and encourages anyone interested in corruption prevention to learn more about the ways and means by which key actors within important democratic institutions should work to maintain the integrity of the public services they provide. It is also meant to aid the key actors themselves by identifying trends and practices that will strengthen their capacity to prevent corruption among their ranks. GRECO member states are encouraged to provide the resources needed to do this effectively.

Section One provides an overview of the evaluation as it relates to all three groups under examination.

Section Two reviews the key trends and conclusions with respect to MPs.

Sections Three and Four review the conclusions drawn and recommendations made for judges and prosecutors respectively.

The study concludes with a summary of the main themes and offers some final remarks.

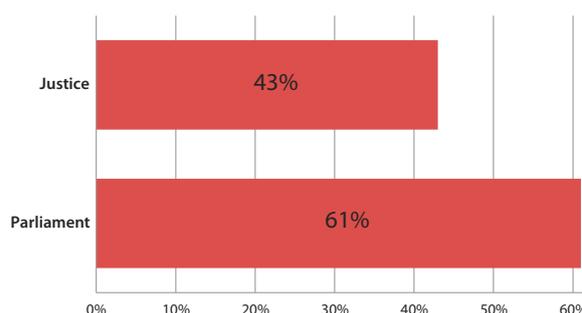
2. At the time of conclusion of the present study, a total of 45 GRECO member states had undergone 4th Round evaluation.

Section one: Overview of the 4th Evaluation Round

The 4th Round examined corruption prevention measures with respect to MPs, judges and prosecutors; it took stock of existing tools and instruments to promote integrity among the respective professions in the specific country under review, but also identified areas where more needs to be done. In point of fact, a key theme of GRECO's 4th Round is that promoting integrity in public service is essential to preventing corruption within key functions in the major institutions of state. Integrity must be internalised by MPs, judges and prosecutors and inform their daily work and decision-making. Methods of accountability must also be balanced with maintaining an appropriate separation of powers, and ensuring the necessary autonomy, independence and impartiality in decision-making. All three groups under examination serve the public through different functions and each must shoulder the primary responsibility for preventing corruption within their ranks.

At the start and throughout the 4th Round, independent perception-based surveys indicated that public trust in MPs and the judiciary in many GRECO members was low; while trust was not a focus of the round, information gathered during the evaluations did not contradict this perception. Parliamentarians and political parties were, on average, the least trusted of the three groups. While surveys tend not to identify prosecutors as a separate group, judges and prosecutors embody the rule of law and both act as a check on power and are important in the fight against corruption.

Box 1: Levels of public mistrust in categories under review 4th Round (Eurobarometer 11/2016)



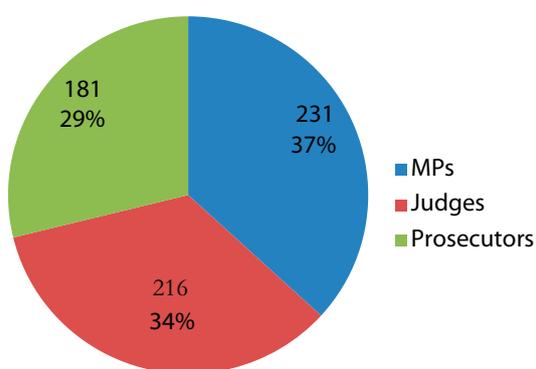
In countries where surveys revealed high levels of public mistrust with regard to one or more of the three groups, perceptions did not always align with any evidence of widespread corruption. However, public trust and confidence in MPs, judges and prosecutors can be an indicator of the public's willingness to cooperate and work with their leaders and institutions to tackle and prevent corruption.

GRECO's evaluations examined the rules and written standards of conduct, and importantly focused on how these are understood and acted on in practice. The vast majority of the resulting recommendations require MPs, judges and prosecutors to take more responsibility for raising and maintaining high standards of conduct and integrity. This includes implementing active oversight mechanisms and ensuring sanctions follow where conduct falls below expected standards and rules are breached. A limited number of recommendations seek action from other powers, acknowledging that safeguarding

independence and having adequate resources is not solely within the control of the groups themselves and that these too can have a significant impact on corruption prevention.

The experience of anti-corruption agencies in the countries where they exist is also a valuable resource for member states. GRECO has made a limited number of recommendations with respect to these institutions whose functions impact horizontally across all three groups. The recommendations focus on shoring up their independence and resources, promoting better coordination and responsibility for corruption prevention across all government functions.

Recommendations per category of professionals



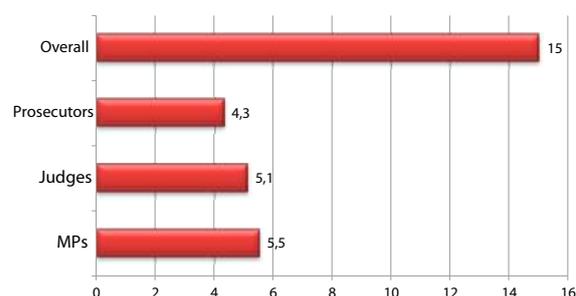
In examining anti-corruption measures, two broad approaches emerge in most GRECO member states. The first, known as strict incompatibilities, prohibits public officials from holding other positions or exercising other functions. Strict limitations however are not always appropriate or indeed desirable. For instance, MPs tend to hold office for a limited term and expect to return to the workforce. A complete ban on exercising any outside activities could limit the range and diversity of representatives willing to participate in national political life.

The other approach focuses on transparency and control. An example is the obligation on public officials to report on their financial interests and relationships (and those of close family members) and for the information to be made publicly available. The objective is to identify and regulate interests that could exert an undue influence over the decision-making of public officials. Either way, it is important for the subjects themselves to see the value in upholding high ethical standards and to actively take steps to minimise conflicts of interest or clarify the lines between their private interests and serving the public interest.

Overall the trend in member states has been to focus on improving access to information in the courts and in the legislature - thus to focus on the function. This is important work and great progress has been made in this regard. However, GRECO has identified instances

in many member states where failures to publish in a timely way, or provide enough relevant information undermines the purpose of such measures to allow for public oversight and meaningful contribution. Further, implementing appropriate transparency measures in relation to matters of individual conduct may be less straightforward, particularly as these measures tend to rely on the willingness of the members of the groups to comply. It is on these issues that the bulk of GRECO's 4th Round recommendations are focused.

Average No. of recommendations per category



In some member states positive initiatives relating to one or more of the groups under examination have stalled. In these cases, the legal and policy framework (i.e. codes of conduct or rules of ethics) may be strong and the tools to fight corruption available, but little is being done to implement these effectively. If political will is also lacking, public perception of the integrity of public services in general is compromised.

Moreover, there is a tendency in many GRECO countries to rely on repressive measures to fight corruption and to underestimate the benefits of prevention or to miss them altogether. Examining individual conduct and responsibility within essential functions of the major institutions of state reveals the benefits of corruption prevention in practical terms. These include a) improved consistency and impartiality in decision-making, b) greater capacity to address unclear or problematic situations before they escalate or become criminal, and c) increased success rates in prosecuting corruption cases, including with respect to establishing criminal intent. Any one of these outcomes has a concurrent positive effect: increasing the credibility of core functions of the state - political and institutional - and strengthening public confidence in MPs, judges and prosecutors to carry out their duties properly and in the public interest.

Section two: Members of Parliament

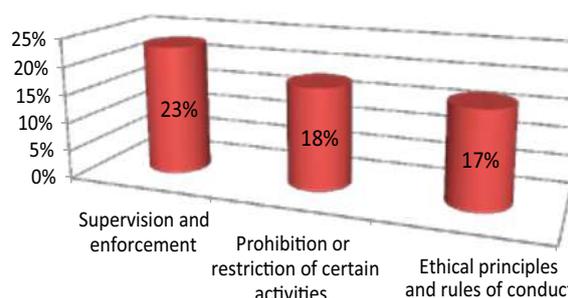
Members of parliament

Covers members of national parliaments, including all chambers of parliament and regardless of whether the members of parliament are appointed or elected.

Parliament is at the heart of democracy. It is responsible for helping ensure government is accountable to its citizens and for developing and adopting national laws. Members of parliament (MPs) exercise and/or have direct access to political power and influence and must be vigilant when it comes to identifying their own vulnerabilities to corruption. The focus of the 4th Round offers an opportunity for parliamentarians throughout GRECO member states to reflect on the measures they have taken so far; consider how well these have been communicated to the wider public; and determine what else they need to do at a time when surveys show that public confidence in their commitment to putting the interests of their countries and their people ahead of their own can be very low.

GRECO's country-specific suggestions and recommendations reinforce the fact that rules that support *high standards* of conduct - when actively developed, reviewed and maintained - are important tools and resources for MPs. Regularising asset reporting, clarifying the restrictions on outside business activities, and ensuring MPs are open about their interactions with those seeking to influence legislative agendas or reforms, help MPs fulfil their public service mandate with integrity. These measures also help MPs manage the potentially frequent conflicts of interest that can arise during their terms in office. Clear standards of conduct help MPs and others understand what is expected conduct and when that conduct falls below acceptable levels, as well as the consequences that can follow.

Members of parliament - main areas targeted by GRECO's recommendations



MPs are uniquely placed within the state as representatives of the people to lead by example and demonstrate the standards expected of those in public service. When they fail to do so, pressure to limit MPs' powers of discretion and increase external oversight may and often does increase.

Individual and collective failures by parliamentarians to acknowledge conflicts of interest or openly address misconduct in public office damages public confidence in the proper functioning of parliament.

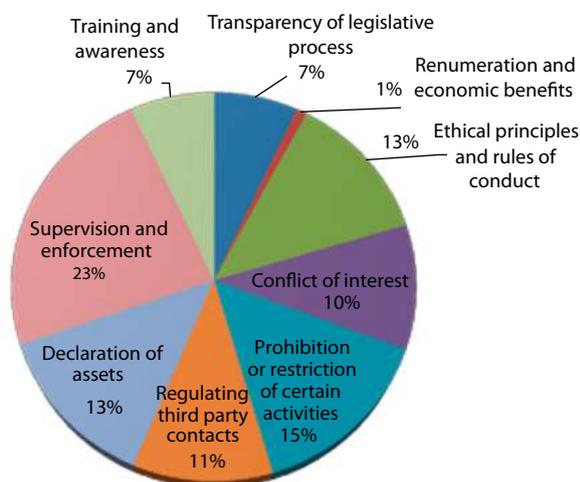
Frameworks, tools and mechanisms for promoting integrity in Parliament

MPs received a higher overall number of recommendations in the 4th Round than each of the other two groups. This may reflect that judges and prosecutors have more formalised training and have more developed institutionalised integrity systems than have parliaments. As parliaments are also responsible for passing laws governing corruption, it is not surprising that MPs' own conduct is under increasing scrutiny.

Well publicised scandals have caused political crises and civil unrest, leading to an increased call for reforms. Controversies have, for example, arisen in relation to the misuse of parliamentary expenses and allowances, employment of family members, and payments for access to ministers. In other instances, MPs have been found guilty of serious corruption offences involving big government projects and

large sums of taxpayers' money. In other situations, MPs allegedly involved in corrupt activities have not been fully investigated or indicted, giving rise to the suspicion that MPs (and other important public officials) are somehow above the law.

Distribution of recommendations per topic for MPs



Conflicts of interest

Identifying and addressing conflicts of interest is at the heart of GRECO's examination of corruption prevention with respect to MPs. Every country received at least one recommendation that would in some way help to address actual or potential conflicts. The types of recommendations issued by GRECO included extending MPs' reporting of financial and outside interests, establishing or enhancing the range of activities that could be considered to conflict with MPs' decision-making processes, and emphasising the importance of MPs' duty to self-regulate. A typical example in the latter category is ad hoc declarations. These require MPs to be proactive in protecting the integrity of their decision-making and the functions of parliament, and can be seen as epitomising the internalisation of high standards of conduct.

United States of America: A holistic integrity framework for Congress

In so far as Members of Congress are concerned, in order to address inappropriate but non-criminal conduct, a developed system of rules on ethics and conduct has been adopted in the Senate as well as in the House of Representatives.

Each house has a code of conduct that covers such topics as gifts, partiality, conflicts of interest, use of official resources, relationship with lobbyists, outside activities, negotiating for employment after Congressional service and post-employment.

There are also requirements for public financial disclosure and a system of confidential counselling and training. In so far as the enforcement of the rules is concerned, the Constitution makes each house responsible for the conduct of its Members and each has an ethics committee. Both ethics committees rely on nonpartisan, professional staff with expertise in ethics law and investigations. The House of Representatives in recent years created an additional entity to add another element of independence to the disciplinary process. The Office of Congressional Ethics, an independent and non-partisan entity, which also relies on a professional staff consisting primarily of attorneys and other professionals with expertise in ethics law and investigations, is responsible for conducting preliminary investigations of complaints against Members and staff of the House of Representatives. The Office of Congressional Ethics makes recommendations to the House of Representatives ethics committee to either dismiss a matter or further review the allegations. The House of Representatives ethics committee then conducts its own de novo review of the allegations and recommends appropriate actions to be taken by the Member or imposed by the full House of Representatives.

Furthermore, as a result of the existence of a large lobbying industry, the United States established, a long time ago, far reaching lobbying disclosure rules in respect of lobbyists' contacts with Members, their staffs and other public officials.

It is worth recalling that all of these measures - prohibiting certain activities (repressive measures) or requiring high visibility in the process of decision-making (transparency) - help ensure that actual or potential conflicts of interest are addressed before they undermine the legitimacy of MPs' decisions or allow more serious corruption to take root. They are, therefore, key preventive measures.

Declarations of assets and other interests

Virtually all GRECO member states (all but two of the 45 countries evaluated to date) collect information from MPs about their financial assets, income and liabilities at the start of their service as an MP. This information is typically made available to the public. Whether the systems are designed to provide public notification of interests and benefits which might be thought to influence MPs' parliamentary conduct or actions, or to detect unexplained wealth, GRECO found most countries needed to do more to meet these systems' objectives.

Specific recommendations included: expanding the scope of information to benefits such as gifts, travel, and unpaid directorships (i.e. non pecuniary interests); including all assets, income and liabilities above a

certain threshold or indeed lowering the threshold to capture more relevant information; and increasing the level of detail required (including quantitative information) with respect to significant assets, including shareholdings, as well as MPs' liabilities. In response to concerns expressed during on-site visits that registration/declaration systems can be circumvented by channelling assets to family members, GRECO recommended a majority of member states to consider extending declaration requirements to MPs' spouses and close family members. Member states were urged to take into account privacy concerns when determining whether or how to include information on close relatives on a public register.

To make transparency effective, a number of member states were reminded of the importance of the timely publication of information that is both up-to-date and easily accessible to the public.

Georgia's asset declaration system: a good model in continuous improvement

In Georgia, MPs (like other officials) are to submit rather detailed asset declarations electronically to the Civil Service Bureau within two months of their election, annually during their term of office, and within one year after their term of office. Moreover, those standing for election as an MP are to submit an asset declaration within one week of registering as candidates. The Civil Service Bureau prepares instructions on how to correctly complete the declarations, ensures that those who are to make a declaration have unhindered access to the Unified Declaration Electronic System, receives and keeps the asset declarations, monitors that they comply with the law, and ensures public availability of their contents.

Gifts and other benefits of parliamentary service

A significant number of member states received recommendations to specifically develop, clarify or adopt rules on the acceptance of gifts and other benefits such as in-kind travel or hospitality, or to address these topics in MPs' codes of conduct. In some countries, restrictions with respect to requesting or receiving gifts in relation to parliamentary work were clear but no guidance was provided on when the benefits received were not directly connected to parliamentary work. Similarly, in some instances, where the rules on registering or declaring gifts and benefits were clear, GRECO found that the value thresholds that trigger such requirements were too high; thus a range of benefits that could create a conflict of interest or lead to circumvention of other integrity standards would go unreported.

In many societies gifts are regularly bestowed on guests or as a matter of courtesy and are not intended to unduly influence the recipient. However, MPs hold positions of authority and have a fiduciary duty not to abuse, or appear to abuse, such courtesies. GRECO has flagged the existence of appropriate standards for the receipt of gifts and other benefits as relevant to MPs in their daily practice and important for a comprehensive corruption prevention framework.

GRECO commended some member States for their adoption of robust rules, but for those members, as well as those who received recommendations to develop and implement rules, there should be an on-going and consistent focus on ensuring that these rules are properly understood and applied in practice. In the case of MPs, these rules and their effective implementation may mean a significant change in working practices and culture. Limits and restrictions must not only be well constructed. The continuing challenge is to ensure that all MPs a) know the rules; b) receive continuing guidance on how to translate these into daily practice; c) understand what corrective or disciplinary action can be taken for violations; and d) take collective responsibility as an institution to ensure that such action is taken.

Ad hoc declarations

The vast majority of GRECO recommendations encourage MPs to take responsibility for regulating conflicts of interest and engage in both personal and organisational monitoring. Proactive personal involvement is fundamental when it comes to ad hoc declarations, a practice GRECO found was rarely specifically regulated or applied in its member states.

Given the number of recommendations to institute an ad hoc declaration system to complement more formal declaration systems, GRECO clearly expects a more proactive action to follow. These "case by case" disclosures require MPs to understand what a conflict of interest is and what it means with respect to their parliamentary activities. It means that MPs have to regularly evaluate their (and oftentimes their family's) personal professional interests with respect to their public duties and ensure they respond appropriately when these affect, or could be seen to affect, their official actions. While GRECO recommendations emphasise the MPs' duty to safeguard the public interest in their decision-making, ad hoc declarations also act to protect MPs from actions they would find difficult to defend after the fact, as well as to protect parliamentary actions from criticism based on the undisclosed potential or actual conflicts of interest of a member.

Understanding the circumstances that call for an ad hoc declaration highlights the importance of having access to advice and guidance - a key element of

recommendations received by most member states. Different situations will create different questions of conflicts of interest and MPs should have a source of advice as to whether a conflict exists and what steps, if needed, they should take as a result. Some situations may require no action, but others may call for an ad hoc disclosure and possibly recusal from a duty, inquiry or vote.

Interactions with third parties and lobbying

What constitutes appropriate interactions by MPs with third parties seeking to influence the legislative process continued to be a source of confusion across most member states, both for MPs and for the groups that interact with them.³ Rules in this regard should not inappropriately limit public access to MPs nor MPs' access to a wide range of views and expertise. Thus it is important for MPs to understand the need not to unfairly favour the interests of one group or person that seek their attention and to be supported by their parliaments in doing so.

GRECO has issued a number of recommendations for the development of guidelines for MPs on how they are meant to interact with lobbyists and other third parties. While member states may rely on reporting requirements for gifts and benefits, as well as other financial arrangements, as a way to monitor and to help make relationships with third parties public, GRECO clearly expects most member states to address conduct in relationship to those wishing to influence legislative activities in codes of conduct and related guidance for MPs.

Accessory activities, prohibitions and post-employment restrictions

For the most part MPs engaging in accessory activities or holding outside positions considered incompatible with being an MP appears to be well regulated. Possibly because parliamentary duties in most GRECO member states require full time dedication, there is a well-developed system of declarations. Existing rules on accessory activities are clear, strict and well understood across the majority of GRECO members. However, in the small number of member states where significant problems were found, GRECO made strong recommendations to amend or enforce the rules on such activities. In more than one country,

3. The conduct of lobbyists or the regulation of lobbying was not, strictly speaking, an item under review in the 4th Evaluation Round. Rather, it was the conduct of MPs, and in this particular area, their conduct with regard to any person or organisation that attempted to persuade the member with regard to his or her legislative duties that was looked into. A number of GRECO members have regulated lobbying or made lobbying more transparent, but it is the MPs' side of the lobbying equation that was the focus of GRECO's review.

GRECO found that the lack of enforcement of current restrictions on accessory activities, or the lack of restrictions, had jeopardised the legitimacy or independence of certain parliamentary actions.

Spain: Monitoring parliamentary incompatibilities

Spain has opted for a strict system of incompatibilities, based on three main rules: (i) exclusive dedication to the parliamentary mandate; (ii) incompatibility with a secondary activity in the public sector (with the exception of a) posts held in local government, but in any case the MP has to opt for one or the other salary; and b) part-time lecturing work in a public university); (iii) incompatibility with a secondary activity in the private sector which may run counter the principle of exclusive dedication referred to above or which could raise a conflict of interest. The public nature of the debate and the vote on accessory activities by the assembly seem to be dissuasive enough to persuade MPs to abide by the rules. A particularly strong asset of the system, is the role played by the clerks, in both the Congress and the Senate, as they become *de facto* advisors for MPs on incompatibility criteria, and more generally, on ethical matters.

In most member states few, if any, restrictions apply to MPs' employment or other activities after leaving parliament. This is understandable in light of the fact that MPs tend to be elected for a limited term with the expectation of returning to civilian life and regular employment. GRECO reports describe serious concerns in many member states about the influence of business on national legislative and regulatory agendas and of MPs moving into positions in private sector entities that had been highly interested in and affected by the areas of parliamentary responsibilities of the newly hired MPs. Similar concerns related to a concentration of power in the executive branch, where MPs secured high level civil service or official positions. Both situations raise questions about whether or how such prospects may have influenced MPs decision-making while in parliament.

GRECO recognised that in some member countries MPs are not full time and thus already have outside employment. While it could be questionable to ask for post-employment limitations where there are no restrictions on secondary jobs or positions while in parliament, GRECO has, however, conveyed the following expectation to the member states concerned: to examine whether post-employment provisions are necessary as part of developing or elaborating codes of practice for MPs. In the limited occasions where GRECO has issued a separate recommendation on post-employment, it only called for the issue to be studied or considered and after that, and if so needed, to develop regulations.

Codes of conduct, awareness and advice

As has been clearly indicated throughout this section, the vast majority of member states received a recommendation with respect to adopting, elaborating or implementing a Code of Conduct for MPs. While some countries already had codes in place, and a good number were on the verge of doing so, many had yet to develop clear guidance to help MPs apply the codes in practice. GRECO clearly believes that the codes of conduct and complimentary guidelines provide an important framework for MPs to grapple effectively with some of the complexities of their roles and functions.

Resolution (97) 24 of the Committee of Ministers of the Council of Europe on the Twenty Guiding Principles for the Fight against Corruption

Principle 15

...to encourage the adoption, by elected representatives, of codes of conduct and promote rules for the financing of political parties and election campaigns which deter corruption.

GRECO has pointed out that a parliament giving serious consideration to the elaboration of a code of conduct also sends a strong signal to the public of MPs' commitment to achieving and maintaining high standards of integrity. A code of conduct does not guarantee high ethical conduct, but it does set the standards of behaviour and helps clarify the limits of parliamentary discretion. It is an important resource for MPs to use in navigating the myriad of responsibilities they must fulfil, and for the public with reference to their expectations of MPs' conduct. It can also provide parliament with a basis for establishing and implementing appropriate oversight and accountability mechanisms.

Such codes need to be effectively implemented in practice. Hence, where codes have already been adopted, GRECO sought to determine how well they were understood, whether MPs had received any training or had access to advice, how conduct was monitored and what, if any, mechanisms to sanction MPs were in place or indeed had been used.

Unlike most judges and prosecutors, MPs are not formally trained to fulfil their functions. In some countries, new MPs with little or no experience indicated a strong desire to better understand what is expected of them in terms of rules and procedures and their responsibilities in regulating their own conduct. In one country anecdotal evidence suggested that when ethical principles were adopted there was a noticeable improvement in the way MPs behaved with one another and in their relations with others, including the press.

Even where a code of conduct provides initial guidance, access to on-going advice and training to help MPs manage their official actions and/or personal and professional interests in a variety of situations is seen as a good practice and included in most GRECO recommendations.

It is clear from GRECO recommendations that the aim must be to ensure that a code of conduct is a living document. This means it must be part of a broader integrity framework with an institutional framework for implementation, awareness-raising and advice, as well as strong enforcement. Including in the code or elsewhere clear investigatory and enforcement procedures is as much a safeguard for MPs and for the body of parliament as it is a reassurance to the public.

Transparency

Most member states now make publicly available a wide range of information via government websites and e-communication tools. Information about schedules, meeting agendas, impending consultations and draft bills - whether in committee or in plenary session in national assemblies - are now online; as is livestreaming and recordings of parliamentary and committee sessions, along with details on the number of votes and who cast them. Ensuring public access to information on the functioning of parliamentary activities enhances accountability and supports effective civic engagement. It also helps monitor the range and number of external contributions, encouraging MPs to be proactive and responsive and further enhancing their own efforts to raise the quality and impact of law and policy.

Virtually all GRECO member states have taken important steps to enhance the transparency of their legislative processes and thus only a small number of countries received basic recommendations on improving access to information. However, while progress has been made, GRECO has made recommendations with respect to specific transparency measures to nearly half of the countries evaluated.

These recommendations primarily address failures to implement existing rules in a way that fulfils their intended purpose. For example, GRECO found in some countries that draft laws are regularly posted but not before first reading, or not posted early enough to allow experts and members of the public to contribute in a meaningful way from an early stage. In some cases, the speed at which draft laws are finalised and late amendments adopted makes it virtually impossible for the public to participate or know who influenced the process.

Cooperation between Parliament and civil society in Montenegro

Practical measures have been implemented in recent years to improve interaction with civil society organisations and the public in general. In 2011, a Memorandum of Cooperation exists to this effect, with four cornerstone principles: partnership, transparency, responsibility and mutual informing. Tangible steps have been taken to open up parliamentary work and facilitating public access to information regarding the legislative process; the introduction of modern communication techniques has created new possibilities for capturing and reporting parliamentary proceedings (e.g. audio/video recording, live web streaming, parliament's own website, etc.). The Parliament publishes an Annual Report on its activity, as well as an Action plan for Strengthening the Legislative and Oversight Role of the Parliament of Montenegro (including a legislative work plan which is then coupled with implementation reports at regular intervals, twice a year) to facilitate public oversight as regards the anticipated activities and their implementation throughout the year. Further, the Parliament amended its rules of procedure in 2012 to introduce more regular hearings and two parliamentary committees on European integration and anticorruption, which are chaired by opposition MPs.

Some recommendations focused on specific problems, as in countries where MPs appear to rely on exceptional rules (i.e. intended for urgent or special matters) to hold sessions in private, waive any consultation, or pre-empt public debate prior to voting to adopt a new law.

The importance of transparency in parliamentary committees was also a topic addressed in many reports. Committees are responsible for reviewing in detail draft laws or existing and investigating specific issues or sectors; committee reports are a primary vehicle for MPs to make recommendations to the government. Often committees serve as a point of entry for citizens to engage in parliamentary business through inviting expert testimony and holding public hearings. In short, a great deal of law-making and oversight of the executive functions takes place in committees. Thus, GRECO recommendations focused on safeguarding open and accountable meetings, including ensuring the timely availability of meeting agendas, lists of participants, minutes of meetings, etc. and the need to guard against unwarranted use of discretionary powers or special rules to limit access.

Transparency of committee work in Finland

Information on the composition of parliamentary committees is published on the website of Parliament. The meetings of parliamentary committees are as a rule not open to the public; however, a committee may open its meeting to the public during the time it is gathering information for the preparation of a matter. Minutes are kept of committee meetings, indicating the members present and the experts heard as well as the proposals and decisions taken, with voting results. Committee minutes are stored in an information network accessible to the public and preparatory documents concerning a matter become public when consideration of the matter by the committee has been concluded - unless the committee decides that for a compelling reason the documentation is to be kept secret, e.g. if divulging information would cause significant harm to Finland's international relations or to capital or financial markets. It is the general understanding that the possibility for a committee to decide to restrict public access to its documentation is to be used only exceptionally.

In some countries, committee meetings are not generally open to the public. Even where this is offset by other means for public engagement, GRECO urged member states to monitor the situation closely. GRECO reports identified in many cases that an absence of rules or a lack of clarity on how the rules should be applied meant that the default instinct of MPs to hold closed meetings - including relying on exceptional rules to keep meetings closed or accelerate the process to pass laws - tended to prevail. These shortcomings and actions do not serve the public interest well and miss an opportunity for corruption prevention within parliaments.

Supervision, monitoring, enforcement

GRECO reports revealed weak implementation of many of the valuable and important corruption prevention measures member states have already adopted. It is important for MPs to understand that corruption prevention measures are not passive; they require instead action by MPs and their parliaments. While GRECO has recommended that certain measures be adopted, amended or further elaborated, the tenor and substance of the majority of GRECO recommendations are aimed at ensuring that MPs take more responsibility for raising expectations and maintaining high standards of ethical conduct amongst their ranks. The idea that MPs need only informally to monitor each other - which seemed to be accepted in many member states at the time of evaluation - is neither satisfactory nor realistic.

The strength and effectiveness of, and the true internal support for an integrity system, are put to a real test when misconduct occurs. However, it is the work done at earlier stages - to clarify the substance of rules and how they will be monitored, to provide the necessary support to those who must abide by the rules, and to identify the steps that will be taken when they fail to do so - that lays the foundations for appropriate enforcement.

In some cases GRECO has recommended that the existing system of measures be reviewed entirely to eliminate contradictions, ensure it meets its aims, and be amended or replaced as needed. Some recommendations addressed specific issues such as the lack of clarity between rules on incompatibilities - prohibitions on serving MPs from certain outside activities or posts - and conflicts of interests or activities which, while not prohibited, may conflict with certain parliamentary activities or decisions and may/ should require recusal.

A simple example of monitoring is the requirement to declare financial interests coupled with the expectation that the information will be checked by others and that the identified problems are dealt with appropriately. In some countries MPs are well-schooled in their duties to be open, information is easily accessible, and public oversight is highly developed. In those systems, where discrepancies have been exposed, MPs have formally apologised to parliament and/or voluntarily divested themselves of problematic financial interests. It was not uncommon in these countries for MPs to be prosecuted for their conduct.

GRECO reports show that, over time, the efficiency of systems designed to support integrity and transparency is improving, which in itself allows for better monitoring. This is certainly the case for asset declaration systems with the implementation of e-declarations, better targeted reporting requirements, more accessible and timely on-line publication. The 4th Round makes it clear, however, that asset and interest declarations are only one element in helping MPs regulate the conflicts of interest that inevitably arise when entering parliament. More needs to be done to maintain high standards of integrity in public life.

GRECO was very critical of those instances where parliaments did not take enough responsibility for addressing MPs' misconduct. In one case, GRECO was told that MPs have refused to resign despite being found in breach of incompatibility rules with little or no action taken by the respective house of parliament to enforce the appropriate sanction. Clearly this is unacceptable.

Some countries have independent authorities to monitor conflicts of interest and/or standards of conduct. Often monitoring is conducted through the review of reportable information but it can also include the investigation of complaints. GRECO found in some

instances that these bodies lacked the resources or powers to fulfil their tasks and made specific recommendations to enhance supervisory arrangements by better resourcing and supporting the relevant oversight bodies (generally, anticorruption agencies). However, GRECO has taken pains to clarify that the role of independent authorities must be understood within a context of MPs and parliaments working together with these institutions. Self-responsibility comes first; for an integrity framework to work in a given sector, it needs to be, firstly, understood and secondly, regarded as legitimate and "internalised" by those who have to abide by the rules.

Immunity

Immunity must not be confused with impunity. In some member states the interaction between criminal law, formal rules on parliamentary immunity and, more specifically, the process by which some parliaments are involved in lifting immunity, have given rise to the perception that MPs are somehow exempt from punishment, particularly when it comes to corruption offences. Broadly speaking, parliamentary immunity - or parliamentary privilege - grants MPs protection from civil or criminal liability for action or statements made in the course of fulfilling their legislative duties. It forms part of the law of the land and, while not intended to protect MPs who commit crimes, it does safeguard the right of MPs to challenge government action.

Interestingly, and despite the fact that GRECO did recommend the abolition of administrative immunities in one case (even though noting that in the state concerned, in practice, these no longer shielded MPs from prosecution), GRECO reports show that the problem rarely lies with formal immunity. Instead, it is parliamentary authority to allow (or not) the use of special investigative techniques, or other failures by legislators to ensure laws do not conflict (for example, amending the criminal law appropriately after immunity has been abolished) that has derailed important investigations involving MPs and third parties associated with them.

The few recommendations GRECO has made with respect to legal and practical problems identified in some member states have been specific and clear. GRECO requires that obstructions to the proper investigation of alleged corruption offences committed by MPs or their associates be removed while ensuring that MPs can avail themselves of all the legal rights and evidentiary safeguards available to any accused person or innocent bystanders⁴.

4. GRECO has been equally clear in this respect in its expertise assessing the integrity framework of the Parliamentary Assembly of the Council of Europe. See: [Assessment of the Code of Conduct for Members of the Parliamentary Assembly of the Council of Europe. Greco\(2017\)5-fin](#).

Section three: Judges

Judges

Covers professional and lay judges, regardless of the type of court in which they sit, who are subject to national laws and regulations.

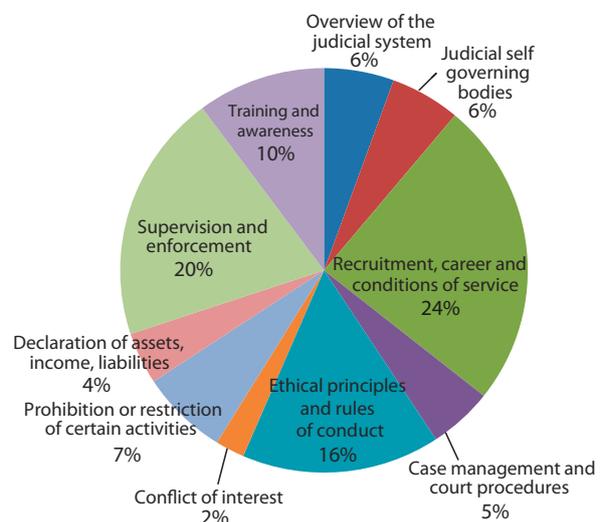
Judges are the public face of justice. While the public interacts with police as daily law enforcers, it is to the courts that citizens and the state turn to make binding legal decisions that can have a great impact on people's lives. As such when judges do not live up to the high standards of integrity and impartiality expected of them, public disquiet is palpable.

The judiciary forms one of the three main branches of state power. Judges uphold the rule of law; they adjudicate disputes between individuals, between the state and the individual, and between different levels of government within the state. In doing so, judges assess the evidence presented to them, and control how hearings and trials unfold in their courtrooms. They also determine guilt. Hence, preventing corruption within the judiciary is of utmost importance given its instrumental role in combating it.

It is society's confidence in the impartiality of individual decisions that forms the core strength of the judiciary as an institution. This of course highlights the importance of safeguarding the independence of judges, and the risks associated with dysfunction within the court system and within the body of judges.

In this evaluation round GRECO focused on the elements that ensure judges can deliberate cases without fear or favour, are free from undue influence in their career progression, and are able to take responsibility for ensuring strong and appropriate oversight of judicial conduct. Failings in any one of these three areas cast doubt on the legitimate authority of the court, the judges who serve in them, and ultimately undermine the rule of law.

Distribution of recommendations issued for judges



Frameworks, tools and mechanisms for promoting integrity in the judicial system

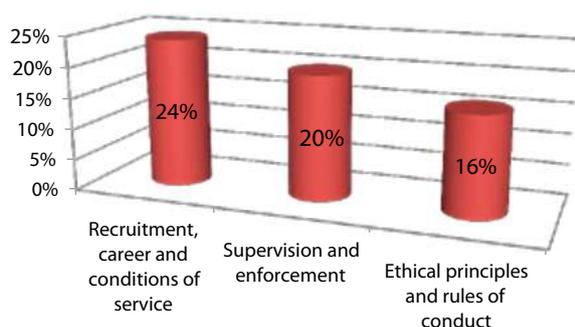
In many GRECO countries, judges enjoy strong levels of confidence of society. In others, public polls reveal low levels of trust, and in a small but significant number of countries, judges are perceived to be the most corrupt of all three groups under review in the 4th Round. In some jurisdictions this gives rise to concerns about a culture of impunity. Primarily this is focused on judges' capacity to convict powerful individuals. GRECO has made a number of strong recommendations which in some cases will require political will to implement.

Throughout the 4th Round, GRECO identified serious problems with respect to judicial independence and weaknesses in the structures separating the three branches of power. GRECO has been unequivocal in this respect: judicial independence must be

recognised and guaranteed by all branches of government. Judicial capacity to make decisions expertly and independently is essential to the proper functioning of the judicial system. Pressure on judges to refrain from fully exercising their judicial functions or to do so in a biased way not only taints individual judges but also undermines the authority of the judiciary as a fair and impartial arbiter for all citizens.

Judges train either as lawyers first or specifically for judgeship. They are meant to have detailed technical and expert knowledge of the law, its application and the judicial proceedings of their countries. GRECO's 4th Round emphasised the responsibility of judges themselves for running their courts properly, and maintaining high standards of ethical conduct and quality decision-making. All of the GRECO reports emphasise that judges must play an active role in ensuring their members act with integrity and put their duties to serve the public well above their own personal or career advancement interests.

Judges - main areas targeted by GRECO's recommendations



Independence and recruitment

The vast majority of member states received a recommendation on judicial independence. In some cases these were foundational, such as recommending judicial independence be asserted and reinforced as an explicit principle by judicial governing bodies. In others, the recommendations were aimed at specific practices, primarily to do with judicial appointments and conditions of service; an area that clearly needs improving in a number of member states.

A majority of countries received recommendations with respect to the recruitment, transfer or promotion of judges and court presidents. Judicial positions need to be awarded on merit and GRECO made it clear that career progression and other conditions of employment, such as transfers between courts, must be made fairly. This means that decisions should be taken on clear and objective merit-based criteria.

GRECO made a number of recommendations to ensure that transparent and uniform procedures are implemented with a view to maintaining judicial independence and promoting high standards including:

- ▶ that judicial appointments are made as transparently as possible based on formal and objective criteria and that, along with evaluation procedures, these are applied with due regard to the independence, integrity and impartiality of judicial appointees;
- ▶ increasing the security of tenure of judges (includes reducing the number of positions or years in "time limited" terms), regulating the transfer of judges between courts to limit circumstances where this can be done without consent;
- ▶ reserving dismissal for only the most serious misconduct and ensuring disciplinary processes are clear and transparent, that reasons are provided and that clear appeal or review mechanisms are available;
- ▶ reducing or eliminating the participation of non-judges (other than lay members of court) and increasing the number of judges on judicial councils, particularly the executive bodies.

In Europe, methods of judicial appointment vary according to different traditions and legal systems; they can also differ within the same system depending on the type of judge being appointed. GRECO evaluation reports show that the number of countries where the executive or legislative branches (up to and including a President) are actively or decisively involved in the appointment of judges is limited. In most countries governing judicial councils now play the pivotal role.

Denmark: Strong structural features of its judicial system

The Danish judicial system has several strong structural points. For various tasks there are independent bodies within the judiciary, such as the Appeals Permission Board, the Court Administration, the External Activities Board, the Judicial Appointment Council and the Special Court of Indictment and Revision. These bodies do not only add to the institutional autonomy and independence of the judiciary vis-à-vis the other public powers, but they also foster impartiality inside of the system – e.g. through their multidisciplinary composition and the procedures for nominating their members. They also establish a quite sophisticated system of checks and balances inside the judiciary. In this context, it is noteworthy that the formation of the Court Administration – like that of the Judicial Appointment Council – in 1999 was explicitly aimed at strengthening the autonomy and independence of the judiciary and demonstrating its position as the third power of the state.

In the few systems where the executive branch has traditionally and continues to play a role in appointments, judicial independence has been maintained by cultures and traditions that restrain executive power. Where these are not well established, most countries have adopted specific constitutional or legal provisions to prevent political abuses of power in the appointment of judges.

GRECO examined each country's situation on its own merits and has urged continued vigilance on this issue in all member states, even where the standards of judicial professionalism, integrity and independence are considered high.

A balance must be struck between guarding against undue external influence and a system where the preponderance of judges gives rise to concerns about self-protection, self-interest and cronyism in the selection and oversight of judges. However, where judicial independence is at stake GRECO clearly supports judges playing the decisive role.

GRECO has pointed out that appointments to judicial governing bodies themselves must be made with due regard to judicial independence and recommended in more than one instance that the composition of judicial councils be made up of a majority of judges elected by their peers.

United Kingdom: Striving for excellence in diversity

The judiciary ranks as the most trusted institution by the public in the United Kingdom. For those operating in the judiciary system the rule of law presupposes the permanent presence of the three "I"-s: impartiality, independence and integrity. In the United Kingdom there is trust in this commitment, as well as credible efforts to engage in continuous reform demonstrating little or no passivity or self-indulgence in the system. This proactive attitude is illustrated, for example, regarding the search for satisfactory solutions to what is recognised as a persistent challenge in the judiciary, namely ensuring diversity so that no one is, or feels, excluded on the basis of gender or ethnicity from the judicial profession. Ensuring diversity also serves to better guarantee the independence of the judiciary so that the public do not perceive judges to be drawn predominantly from a specific group or class of society. In the last few years, the respective Lord Chancellors have encouraged efforts towards diversity in the gender and diversity of persons appointed. Discussion has been launched as to how the "diversity" and "merit" requirements would be accomplished in the current selection process. This is an on-going challenge for the UK's judiciary.

In addition, as a response to calls for greater diversity on the bench, judicial councils and appointment

panels are starting to include lay members and explore other steps they might take to better reflect the societies they serve. GRECO clearly supports these efforts to ensure the judiciary is not isolated.

Transparency and court administration

The evaluation reports show that most countries respect an open court system. However, the principle of open justice is broader and includes public access to courts and to legal decisions (to allow them to be understood and challenged) and, increasingly, to more information about the judicial function and individual judges. Open justice is therefore multi-purpose, it informs and educates the public, enhances judicial accountability, deters misconduct and offers important assurance that justice has been done.

In this vein, GRECO made a number of recommendations to help secure the progress most countries have made towards making court judgements fully accessible to the public and easily searchable, to streamline public complaint channels and to minimise unjustified delays in all court processes.

Slovenia: Case management allocation transparency

The Supreme Court of Slovenia is in charge of the computerisation of the judicial system and has introduced new technologies in the courts, to implement the rules on case assignment and on publicity, among others. Court registers are entirely computerised and publicly available. About 95% of cases are registered and allocated electronically. The annual schedules of all courts are published on the website of the judiciary. This positive feature of the system guarantees that no one can tamper with the random case assignment to judges. Computerisation has visibly increased public trust in the case allocation system - complaints from parties have almost completely ceased.

Systems of random case allocation protect judges from arbitrary case assignment decisions that can serve to reward or punish them. These, along with fair procedures where cases must be individually assigned, also help ensure fair and equitable workloads. Importantly these systems reassure the public that cases are heard by an impartial arbiter. A significant number of countries received recommendations to implement such systems and to ensure that the public is aware of them.

Codes of conduct, awareness and advice

It is not only open justice that promotes professionalism and deters misconduct. GRECO emphasises peer support and oversight of clearly established standards of judicial conduct to ensure integrity.

The recommendations urge greater judicial commitment to continuing professional development; to support and guide judges in meeting expected ethical standards in difficult or complicated situations, as well as having the mechanisms in place to address misconduct when it arises.

The vast majority of GRECO member states received recommendations on codes of conduct. A third of these were to adopt such codes and the rest focused on substance and implementation. GRECO insisted on the importance of active involvement of all members of the profession, i.e. judges from all levels, in the development of a set of standards which should ideally be agreed upon following an open debate and discussion on their particular content.

For GRECO, the fact that judges from all different levels engage in such a discussion represents an ideal opportunity to exchange views and experiences about the ethical dilemmas and the potential conflict of interest situations they may face in the fulfilment of their tasks. Such discussion in itself could only be beneficial towards agreeing on shared values and to restating the commitment of the profession towards integrity. The adoption of a code of conduct could also represent a key opportunity to translate core values into behavioural norms. Furthermore, GRECO stressed the relevance of adopting a clear set of deontological standards to assist in creating joint expectations among judges and vis-à-vis the public as to what conduct is to be expected in court.

Sweden: A hands-on approach to judicial ethics

In an effort to reinforce the general public's confidence in the justice system, the Swedish judiciary embarked on a reflection process on ethics. All judges were invited to give their opinion during the drafting process. As a result, a toolkit of Good Judicial Practice was issued; it revolves around four main tenets: (i) independence, (ii) impartiality and equal treatment, (iii) good conduct and treatment of others, and (iv) good expertise and efficiency. With over a hundred questions on practical situations and reference to international principles in the field, the toolkit intends to be a living instrument to guide judges in potential dilemmas they may encounter throughout their career. The Bangalore Principles of Judicial Conduct largely inspired this positive reflection and outcome in which the Swedish judiciary has engaged.

As to the substance of the codes themselves, GRECO looked to ensure that the rules explicitly promoted the independence, integrity and impartiality of judges. GRECO was particularly focused on judges taking responsibility for understanding and addressing potential conflicts of interest, not just the specific rules that may apply to them such as prohibitions

from holding certain positions outside or from accepting gifts.

Judges also have a duty to safeguard the use of public resources, promote transparency and impart knowledge. The evaluation reports showed that these issues may not always be as obvious to judges as the rules governing their ability to preside in individual cases. Thus there is a need to involve judges in the elaboration of standards to help them develop their understanding and to educate the public of the standards they should expect.

Judges exercise authority over others and thus must be responsible and accountable for their actions. GRECO stresses that codes of conduct are meant to be living documents that help guide judges in their daily practice and that judges need support to successfully fulfil their function. In keeping with safeguarding judicial independence, the support must come first and foremost from within the judiciary itself.

The vast number of recommendations that included training highlights its importance. GRECO specifically stressed the importance of practical examples to help judges work through ethical dilemmas and a range of situations where conflicts of interest might arise. GRECO clearly expects most, if not all, member states to make induction training mandatory, which many do and to provide on-going professional development thereafter. Whenever needed, GRECO has specifically called for the necessary resources to be made available to support this work.

Latvia: the Commission of Judicial Ethics

Set up in 2008, it has played since its start a commendable role in increasing the confidence and knowledge-base from which to further develop the principles of integrity and independence of the Latvian judiciary. In particular, the Commission is giving advice and guidance to individual judges on ethics-related provisions; most of the opinions it has released to date have stemmed from individual queries from judges concerning recusal. In addition to its attributions to issue explanation and interpretation of ethical standards, the Commission can also examine non-serious violations which are sent to it by the chairs of the courts.

In the 4th Round GRECO has established the expectation that judges have access to confidential advice. In the context of greater scrutiny of judicial conduct and the need to maintain judicial independence, a dedicated confidential service is deemed an important professional tool to help judges to be proactive in resolving problems early, appropriately and authoritatively.

Conflicts of interest

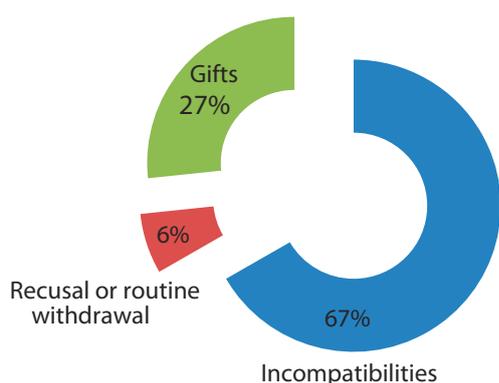
Rules on when a judge is prohibited from acting and must recuse her or himself from a case are clearly regulated in most jurisdictions. Examples include when the judge is related to one of the parties or has a personal or financial interest in the outcome of a case.

Evaluation reports showed that while judges tended to be well acquainted with these specific rules they were often less aware of conflicts of interest as a global issue. These are conflicts that not only affect their actions in court but extend to choices or decisions made outside court and in their personal life. These can prove particularly important in jurisdictions with few rules governing judges' outside activities or in countries with smaller legal communities where conflicts of interest are difficult to avoid.

GRECO has clearly concluded that increased attention to raising judicial awareness of conflicts of interest is needed. This requires training and on-going professional development to ensure judges can identify the range of potential conflicts of interests that may arise as well as knowing how best to address them.

GRECO stressed that access to advice and guidance on conflicts of interest, ethics and conduct issues should be extended to magistrates (lay judges) and to part-time or substitute judges, who in some jurisdictions play a regular or permanent part of the administration of justice.

Most relevant challenges to prevent conflicts of interest (judges)



In some countries the rules that apply to judges with respect to conflicts of interest are scattered in numerous statutes or form part of general civil service regulations and laws covering all public officials. This has led to confusion as to which provisions apply to judges, whether the rules apply to all judges at all levels, and to some important gaps.

Thus to avoid confusion and ensure that the rules are properly framed to cover the specificities of the judicial function, GRECO has recommended the rules be streamlined and that where oversight involves external authorities (asset declarations), that there is cooperation with judicial governing bodies. These findings also underline the importance of judicial codes of conduct being developed with specific attention paid to the detail of the standards expected of judges.

It should also be noted that in some countries recommendations were made jointly to judges and prosecutors reflecting the diverse legal and judicial structures in GRECO member states.

Declaration of assets and other interests

Some countries do not require asset disclosures for judges (except for bankruptcy or with respect to accessory activities), others only require it prior to appointment and, in some jurisdictions, regular and ad hoc declaration obligations are well established for all public officials, including for judges and their close relatives. GRECO identified that, where declarations are required, monitoring and follow up by the appropriate authorities must be reliable and robust and it should be clear whether the rules extend to all judicial posts. GRECO also recalled that providing false information in this area constitutes a criminal offence.

When rules are not properly implemented, the value of the exercise to ensure that judges meet their obligations and take responsibility for regulating conflicts of interest overall is diminished. However, there does appear to be a trend towards requiring declarations, even if limited to specific income or benefits. GRECO took a pragmatic approach in this evaluation round, particularly in jurisdictions with little evidence of corruption and high levels of trust. Overall however, GRECO urged judicial authorities to be ready to respond as new conflicts arise and social attitudes evolve.

Accessory activities, prohibitions and post-employment restrictions

It is clear that judicial independence must also be safeguarded by judges themselves and that judges should not put themselves into a position where their independence or impartiality may be questioned. This has justified national rules on the incompatibility of judicial office with other functions although in many countries legal traditions and culture are considered highly effective.

The range of activities that are generally considered to be compatible with the role of judges are pedagogical, linked to a judicial role such as presiding over a public inquiry or sitting on international commissions, or participating in charitable or professional bodies,

etc. Here the different traditions and systems vary across GRECO member states and GRECO has tailored only a few specific recommendations where needed.

For example, in some GRECO member states the importance of ensuring judges are integrated within the societies with respect to which they make decisions means that there are few or no rules on incompatibilities. In these instances, transparency is emphasised in order to ensure adequate oversight, the determining factor for allowing ancillary activities being that they do not disqualify judges from carrying out their tasks or undermine confidence in their impartiality or capacity to do their jobs properly.

Another area where GRECO noted concern in some states related to the political activities of judges. In most member states, whether in law or in practice, active political activity is prohibited – a judge is expected or required to resign from their judicial post prior to running for any elected office for example. Where the rules are less strict generally, or with regard to magistrates and other lay or part-time judges, GRECO has recommended clarity as to the rules or standards that should apply.

For the most part, judges have security of tenure and tend to retire rather than return to civilian professional life. However, where issues have been found with respect to possible “revolving” doors between the political and judicial spheres or indeed between judicial office and working with the private sector, GRECO has urged clarity and made specific recommendations, including with respect to post-employment (e.g. in relation to work for private law firms, where judges could potentially end up representing clients in front of their former court).

Gifts and other benefits

Most GRECO member states prohibit judges, and in some cases their families, from receiving gifts and these are regulated closely in law or respected in practice. While judges may be reimbursed for travel and accommodation costs associated with permissible activities such as delivering a lecture, they must be wary of any gifts or hospitality which might appear to relate in some way to their judicial office. Judges have a duty to avoid anything that could be construed as an attempt to attract judicial goodwill or favour. In case of doubt judges are expected to err on the side of caution or seek the opinion or permission from a higher judicial authority such as a judicial council, or from dedicated confidential services whenever these exist.

Even in countries where judges may accept gifts in limited circumstances and under certain value thresholds – as typically regulated in rules governing all public officials – evaluation reports revealed

that judges themselves do not believe the accepting of gifts to be appropriate under any circumstance.

Where GRECO determined that rules needed to be reinforced as they did in only a small number of cases, recommendations were made: to review the criteria for the awarding or receipt of specific honours or distinctions, reinforcing compliance of existing rules, or making specific changes with respect to the rules that apply to judges.

Confidentiality and interactions with third parties

As with gifts, judges were generally found to be highly aware of their duty to keep confidential the information they receive in the course of legal proceedings. In many jurisdictions the disclosure or misuse of such information is a criminal offence. GRECO made no direct recommendations in respect of confidentiality and judicial interaction with third parties. Instead, evaluation reports highlighted the need to be vigilant as to the potential for outside pressures or influence and a perception of bias, as well as that of any close relationships, outside the court or indeed between the professions within the court itself. These can give rise to concerns about impartiality, if not independence.

The fact that GRECO did not make any specific recommendations regarding confidential information with respect to judicial proceedings, in no way diminishes the importance of this issue. Again, GRECO supported codes of conduct and continuing professional development and training as being very helpful in this regard.

At a time when awareness of the value of rule of law is increasing and the judiciary is under pressure to be accountable, GRECO identified that judges need support in handling communications with the media and relevant civil society organisations. In this area, caution must be exercised. It is clearly vital that judges refrain from public statements or remarks that may give rise to reasonable doubt as to their impartiality in individual cases or with respect to colleagues.

However, judges should be free to discuss shortcomings generally with respect to the judiciary or the judicial process and should not fear sanctions for doing so. In fact this information is important to public education. The public should have access to information about how the system works – or is meant to work – to ensure as reasonable and robust a public discussion as possible in relation to the law and the value of an independent judiciary for society.

Lithuania: Recasting public trust through better communication

The Judicial Council is trying to address the gap between the perception and the reality of corruption in the judiciary in Lithuania. A judicial communication policy has been developed including: a public relations committee, spokespersons have been appointed in courts, rules on the provision of information on court cases and activities to public information providers have been approved by the Judicial Council, training courses on communication have been organised and judges have been encouraged to publicly comment and explain their decisions. Pilot projects are underway to appoint press judges; in this connection, it is considered that judges are better equipped than lay persons to explain judicial decisions and they can also discuss with their colleagues the need to release certain information about a case to the public, while respecting the principle of confidentiality. As a result of the aforementioned actions, the public image of the judiciary has been improving somewhat in recent years, especially among court users.

GRECO has also flagged with concern the issue of the executive branch not acting with restraint in commenting on the judiciary. GRECO underscored that institutional boundaries must be firmly drawn within the government to allow greater independence for the judiciary to conduct its work. In GRECO's view, attacks on the judiciary from authorities within the executive or legislative branches not only undermine the credibility of the judicial branch, but also erode the vitality and legitimacy of the legal system as a whole. It is thus paramount to ensure that members of the executive and legislature respect the authority of the judiciary and abstain from improper, non-objective or solely politically-motivated public criticism of individual judges and their judgements as well as of the judiciary in general.

Supervision, monitoring, and enforcement

The 4th Round has demonstrated the need to increase the responsibility and independence of the judiciary for maintaining high standards of integrity and ethical conduct among their ranks. This is a matter of continuing professional development as well as supervision and support. As such, GRECO recommendations have naturally focused on the role of judicial councils and judicial governing bodies in terms of structure and independence.

It is also important that ethical principles and codes of conduct are not unnecessarily conflated with discipline or sanctioning serious misconduct. A key issue

is to ensure that the supervision and monitoring of judicial conduct does not interfere with judges' independence in decision-making. This requires precision in defining misconduct in a disciplinary sense and gross misconduct that could lead to dismissal. GRECO made a number of recommendations in this regard.

GRECO identified several factors that are therefore necessary to ensure appropriate monitoring and the enforcement of rules including

- ▶ clear structures
- ▶ sufficient capacity of authorities (judicial)
- ▶ objective criteria
- ▶ transparent procedures
- ▶ review and appeal mechanisms
- ▶ sufficiently detailed record keeping of cases and measures taken
- ▶ publicly accessible "case law" (redacted where necessary)

The other important way that judge's conduct is monitored is through public complaints procedures. In many GRECO countries, these were found to be fairly well established. Some are separated between issues that occur within the court room and complaints about the conduct of a judge outside the court. Clearly parties to legal disputes have appeal mechanisms but issues of possible judicial bias may arise including circumstances where a judge does not recuse her or himself, or oversteps the boundaries of proper judicial conduct (with respect to sexual or disability discrimination, etc.). Thus there are processes for the public to complain and for possible actions to be taken. GRECO has recommended to member states to gather and publish key data concerning complaints, including the number and their outcomes.

France: Public complaint system

Subsequent to the constitutional reform of July 2008, members of the public may complain to the Higher Council of the Judiciary (CSM) if they consider that a member of the national legal service has committed a disciplinary offence, and provision is made for admissibility conditions and for a complaints investigation procedure. Where a complaint is declared admissible, the Commission asks for comments and any useful material from the head of the court where the subject of the complaint works, then forwards the file to the competent section of the CSM.

Immunity

Clearly judicial office holders must enjoy functional immunity from civil and criminal liability in respect of their official activities. Any interference with the impartiality and independence of judges must also

be addressed robustly and may itself be subject to criminal proceedings. However, when not exercising judicial functions, judges need to be accountable under law in the same way as any other citizen.

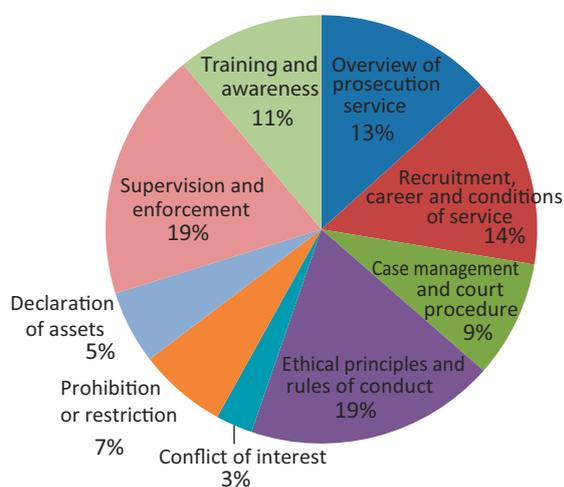
Criminal allegations against a judge should be dealt with properly through the criminal justice system. In some systems, depending on the gravity of the offence, the judicial authorities can consider disciplinary actions at the conclusion of any criminal proceedings.

Overall, GRECO found that immunities were no longer a significant barrier to taking action where warranted against a judge and in the few cases where some systems of procedural or administrative immunities were still on the statute books, GRECO recommended that these be abolished.

Section four: Prosecutors

Prosecutors serve a very important role in the criminal justice system – they are the ones who present cases before courts and in most of the countries they also have a very strong investigative function with regard to serious crimes, among which corruption. Very few countries allow for direct access to courts for citizens or police prosecution, so in the vast majority of the cases the prosecutors take the first step to determine which investigations should be subjected to judicial review and which should not. From this perspective, the entire discussion about the independence of the criminal justice system should start with the capability of the prosecution systems to act autonomously from the other branches of government and to take decisions based solely on the merits of the cases.

Distribution of Recommendations issued for Prosecutors



While judges are the public face of justice, only seldom do citizens understand the importance of the work of prosecutors in the context of criminal justice. By its very nature the investigation phase is covered up to a certain moment in the procedure and communication to the public is limited. Given this limited insight into the work of prosecutors it is challenging for the public to assess the objectivity and efficiency of their work in terms of which cases are investigated and which are not. In this area, maybe more than

in others, it is crucial that ethical and responsible conduct is the norm and that this is also perceived by the public to be the norm. When the shadow of mistrust permeates the prosecution service, endless discussions may emerge regarding sensitive cases and the perceived reasons behind them.

Public knowledge of the activity of prosecutors tends to be limited and only comes to the fore either when high profile cases are prosecuted, or conversely, when high profile cases are not prosecuted or cases dropped (but still may put blame elsewhere). Prosecutors perform a key function and work closely with the courts and with other law enforcement and investigation bodies, some of whom may not enjoy as much public confidence. Consequently, it is pivotal that integrity and corruption prevention matters are core guiding principles in the prosecution service and that individual prosecutors lead by example in this domain.

Frameworks, tools and mechanisms for promoting integrity in the prosecution service

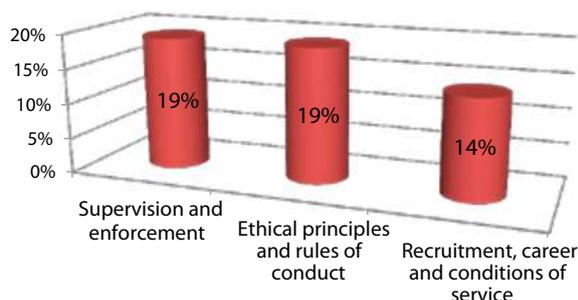
Prosecution systems come in many shapes and forms, some are part of the broader judiciary system, while others are closer to the executive branch. The different models of organisation of prosecution services posed an inherent difficulty to the evaluators under the 4th Round. The emphasis of the 4th Round was placed on assessing systems towards their capacity to act independently when performing investigation and on the use of internal and external safeguards against corruption.

In the area of the fight against corruption, in particular against high-level corruption, the potential pressure put on prosecutors may be coming from the top levels of decision-making in a country. Therefore, it would not be wrong to say that this area of criminal law proves in practice to be a true test for the independence, impartiality and professionalism of the justice system as a whole. Apart from the public attention attracted by these high-level investigations, the work of prosecutors is little understood by citizens in some of the evaluated countries, mainly due to the lack

of proper communication policies implemented by prosecution systems – several jurisdictions received recommendations aimed at improving these policies.

Appointment procedures – both at the highest managerial levels and within the prosecution service in general – as well as revocation processes were assessed to ensure that they provide enough guarantees against undue political interference, and where this was not the case, certain recommendations were issued. Fair, transparent and merit based appointments and revocations are core to building trust in the prosecution system and are a pre-requisite to independent investigations into the high-level corruption cases. Case management systems, in particular rules about the assignment of cases and the possibility to remove a case from a prosecutor, were also examined, as ensuring the independence of individual prosecutors in conducting their investigations is an important safeguard against pressures within the system itself, but also from other branches of power.

Prosecutors - main areas targeted by GRECO's recommendations



In light of the relevance for the prosecution service to have adequate integrity mechanisms to prevent corruption within its ranks, GRECO issued a series of recommendations focused on the design or refinement of codes of conduct that should be accompanied by implementation mechanisms, advice and training and an effective sanctioning regime.

Independence and recruitment

Many countries received recommendations in the area of recruitment in the prosecutions system and independence in conducting prosecutorial work. It is not just the sheer number of such recommendations that is important, even more significant is the depth of their scope while taking into account the diversity of prosecution systems. GRECO aimed at striking a balance between the independence of prosecutors in handling individual cases and the hierarchical nature of the prosecution system.

Italy: a long-standing regulatory framework for the independence of magistrates

In Italy, prosecutors and judges belong to the same professional order of magistrates. While the debate has been and remains alive about whether this arrangement should continue, the fact is that magistrates in Italy are governed by a very solid legislative framework enshrining their independence, including by recognising this cornerstone principle in the Constitution. Italian magistrates have security of tenure.

In 2006, a reform of the prosecution service took place aimed at enhancing the role of chief prosecutors and his/her decision-making powers in order to better guarantee efficiency and uniformity in prosecutorial offices' work. Cases are generally allocated on a random basis, according to the general criteria laid out in the relevant organisation programme of the prosecutorial office and taking into consideration the specialised groups of magistrates within the office. Detailed rules and procedures are in place regulating those instances where the chief prosecutor can withdraw a case assignment; these require motivation and allow for written comments from the subordinate prosecutor as well as a control mechanism by the High Council of the Judiciary.

In some countries, recommendations covered the mechanisms for appointment and termination of office for the Prosecutor General stressing the importance of open and transparent procedures based on professional merits of potential candidates. In Europe, there are various ways to appoint the General Prosecutor often involving the President of the country, the Parliament, the Executive or the Minister of Justice, and sometimes, the Judicial/Prosecutorial Council. It is therefore very challenging to strike a proper balance in terms of the roles to be played by each actor in order for the outcome to be as politically unbiased as possible.

The recommendations in this field attempt to limit risks of improper political influence in the process. The limitation in the number of mandates a person may serve as General Prosecutor was also seen by GRECO as a tool to prevent undue consolidation of excessive power in the hands of one individual. Given the hierarchical structure of prosecution systems, and the impact the leader may have on the functioning of the system, strong safeguards against undue pressure were deemed important. Open, transparent and merit-based procedures for key appointments are also a way to raise public trust in an institution that is otherwise not very transparent to the public, sometimes because of the very nature of the investigative work – confidentiality being indeed critical to the integrity and success of an investigation. Citizens tend to build their opinions on the national prosecution system also by assessing the way in

which the head of the system is selected, appointed or revoked. Strong associations with politicians tend to cast doubt upon the fairness of prosecution and its capacity to handle sensitive cases, in particular high-level corruption cases. In other words, the appointment of the Prosecutor General should not only be fair, but should also be perceived by the public as fair, in order to foster a public perception of a prosecution service that is not vulnerable to improper influence (or to counter-act the opposite perception, when that is the case).

With regard to the career management of regular prosecutors, GRECO looked at initial appointment, periodic assessments and termination of office. Entry to the service must take place through objective and merit-based criteria and transparent processes. Moreover, a decisive role in the selection of candidates should belong to professional, non-political panels or commissions; the role of the executive or the legislature being restricted to formal appointment. Access to judicial remedies should be available for unsuccessful candidates and the rules governing such remedies should be clear and set in legislation. Life-tenure or security of tenure for all prosecutors is also an important ingredient to build a professional and independent system.

In terms of periodic assessments, GRECO recommended that they are conducted by professional bodies and include integrity and ethics appraisal, as well as quantitative indicators reflecting the work of individual prosecutors. Termination of office should only occur for serious breaches – of either disciplinary or criminal nature. It is essential that the threat to terminate office is not used as a constraint mechanism to influence investigations. Where applicable in the national constitutional context, GRECO recommended that the statute of prosecutors is further approximated with the statute of judges in order to increase prosecutors' autonomy in relation to other branches of power.

Ireland: the Office of the Director of Public Prosecutions

The Director of Public Prosecutions (DPP) independently enforces the criminal law in the courts. One of the cardinal principles of the operation of the Office of the DPP is its independence from all other bodies including Government and government ministers. The Office has defined its mission as to provide on behalf of the people of Ireland a prosecution service that is independent, fair and effective. The DPP first developed a set of Guidelines for Prosecutors in 2001, aimed at giving general guidance to prosecutors so that a fair, reasoned and consistent policy underlies the prosecution service; they have been regularly updated since then.

As to independence, many recommendations focus on the need to ensure that prosecutors can conduct

investigations independently and that undue influence from within and outside the system is avoided. Being a hierarchical system, instructions and orders from superiors are being used in the prosecution. GRECO recommended that hierarchical instructions and decisions are formalised in writing and that all prosecutors are informed that verbal orders are not compulsory. In some countries, the Minister of Justice or Interior also enjoys the right to give instructions in individual cases. GRECO recommended that this right be abolished or, if it is kept in the legislation, that proper guarantees of transparency and equity are introduced. When such instructions consist of orders not to prosecute a case, proper control mechanisms should be introduced.

Where Judicial Councils or Prosecutorial Councils exist, recommendations were issued to the extent that they should play a stronger role in ensuring independence of prosecutors including by protecting them from undue influence, both perceived and real. GRECO also recommended that these Councils act on career management issues in a composition in which prosecutors form the majority. Participation ex officio of representatives of the executive and legislative powers in these Councils should be abolished. Over-concentration of functions regarding career management and disciplinary matters in the hands of the same members of the Judicial/Prosecutorial Councils should be avoided, so that potential conflicts of interest, detrimental to the individual independence of the members are not created.

Transparency and case management

Resources in the prosecution systems should match the competence of various prosecution offices. This allocation should also take into account the complexity of the offences under investigation by each prosecution office. Overburdening some structures, while other units have a lower turnover of cases, generates problems in the system and tends to demotivate the prosecutors working in the overstretched structures. The latter will have obvious difficulties in coping with their tasks in a satisfactory manner and this will constitute a weak point in the structure, which could be exploited by others to criticise the efficiency of the entire prosecution service as such. Finding a proper balance between tasks and resources is therefore not merely related to the technical aspects of managing a prosecution system, but feeds into the issue of independence as well.

Case management in the prosecution system (i.e. available mechanisms to allocate cases to individual prosecutors) is undoubtedly a key area for corruption prevention purposes; it is key to ensure that all situations in which prosecutors may be removed from a case are clearly defined and justified in order to guard against the improper use of hierarchical tools against individual prosecutors. GRECO recommended the introduction of clear and objective

criteria for case allocation; if random allocation was in use, GRECO asked for it to be subject to adequate control to prevent any possible manipulation, and with due regard to a fair and equitable workload for prosecutors. Re-allocation or discontinuation of cases should be made in writing and be reasoned by pre-defined, clear and objective criteria. GRECO understands that while prosecution systems are hierarchical, functional independence of prosecutors in handling their investigations is paramount to ensuring overall independence of the system.

Proper checks and balances should also exist to ensure that this functional independence is not abused or diverted from its initial purpose. GRECO recommended that general policies are drafted within the prosecution system (in particular with regard to the use of prosecutorial discretion, plea-bargaining and case dismissal), that these policies are made public and that their implementation is monitored. GRECO also recommended that a possibility to appeal decisions of prosecutors taken in the pre-investigative phase be introduced.

Another type of recommendation of GRECO was aimed at understanding the reasons for which, in some countries, the general public distrusts the prosecution systems. In-depth studies were recommended to better articulate public concerns as a first step in the process of building more trustworthy institutions. In the same realm, GRECO recommended that improvements to the communication between the prosecutors and the public be made and that specific training in this field is introduced. Understanding that the work of prosecutors is by its nature covert, particularly in the preliminary stages, GRECO recommended the development of proper communication strategies to be applied throughout the system on how to communicate with the media, NGOs and the general public in order to improve transparency and accountability of the system.

The Netherlands: A novel approach for the prosecution service to communicate with the public

Each prosecution office now has a press team to handle communication on cases. The teams are composed of press officers and of “press prosecutors”. Press prosecutors divide their time between prosecution and media work. This innovation has been positively received. Much discontent with the prosecution service stemmed from a lack of understanding around decisions not to prosecute or to discontinue prosecution in individual cases. Press prosecutors with technical knowledge can discuss with the prosecutor in charge of a case why some detail should or should not be disclosed and are then able to speak to the media and answer questions more clearly and precisely.

Codes of conduct, awareness and advice

The vast majority of countries received recommendations in the 4th Round regarding codes of conduct for prosecutors, awareness and advice. GRECO invited countries to build integrity frameworks that go beyond the mere adoption of general codes of conduct. Concrete wording, available guidance, control mechanisms and appropriate sanctions were among the essential ingredients suggested by GRECO. The wording of the recommendations in this area is very similar across the countries, though they of course take into consideration the specific situation in each country – some already having strong ethical mechanisms at the time of GRECO’s evaluation visit, others being in the process of developing them.

Codes of conduct should include a clear set of ethical standards applicable to all prosecutors, including on conflict of interests and related issues. The code should be publicly accessible so that the general public also understands what rules of behaviour should be followed by prosecutors and what remedies in case of misbehaviour. Codes of conduct should include explanatory comments and/or practical examples to ease implementation.

GRECO also emphasised the role of training, advice and counselling as prevention mechanisms aimed both at raising the awareness within the prosecution service as to the importance of following ethical rules and at avoiding misconduct by encouraging proper conduct. Training on the codes of conduct should be part of induction as well as of career-long training.

Training on ethics: the German Judicial Academy

The German Judicial Academy, an in-service training institute jointly supported by the Federation and the Länder, offers one-week conferences each year on subjects such as “Judicial Ethics – Basics, Perspectives, Worldwide Comparison of Judicial Ethical Standards” and “On the Independence of the Judiciary – A European Comparison”. Participation is open to judges from all the Länder and is voluntary. Between 2009 and 2013 a total of 766 judges and public prosecutors participated in such courses. The authorities add that many judges and public prosecutors participate in other training activities organised by the Academy which do not exclusively focus on ethics but nevertheless include questions of ethics and conduct. They furthermore indicate that the Academy plans to change its format dedicated to ethical questions to explicitly target judges as well as prosecutors with the new title: “Judicial and Prosecutorial Ethics: Behavioural Standards in a Cross-Border Comparison”.

The prosecution service should also set up advisory mechanisms, more precisely confidential counselling for prosecutors on matters pertaining to ethics. As in the case of judges, GRECO strongly believes that prosecutors would benefit from private discussions with their peers about the ethical dilemmas they encounter in their daily work, stressing the importance of proper management of problematic situations. When it comes to sanctioning, GRECO recommended that breaches of the code of conduct be included in the list of disciplinary offences so that adequate sanctions may be applied.

Croatia: Ethical Committee of prosecutors

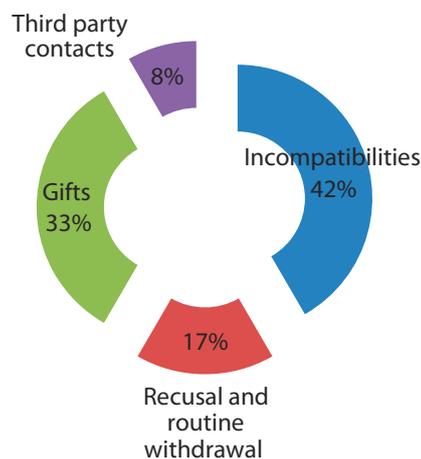
The establishment of an Ethical Committee in the prosecution service of Croatia, which is given an advisory role in relation to adherence to and interpretation of the code of ethics of prosecutors, can certainly be considered as a step forward in fostering a climate of integrity within the profession. The Ethical Committee consists of the president and two members, appointed by the Extended Collegiate Body of the Public Prosecution Office. Its role is, on the one hand, to respond to prosecutors' requests to interpret the ethical principles applicable to them, and, on the other hand, to issue opinions/recommendations regarding complaints against the behaviour considered by the submitter as contrary to the code. In practice, the Committee receives a broad range of questions from the prosecutors e.g. on how to act outside court or prosecution office in relation to a party in a case, on potential restrictions they should place on their social contacts, on possible membership of clubs and associations etc., which proves their need for guidance in this field, especially in relation to potential incompatibilities and situations of conflict of interest. The approach of the Ethical Committee is an informal one, its opinions are not binding, and breaches of ethical rules are not addressed by this Committee. If the breach of the Code of Ethics is serious enough, it will be considered as a disciplinary offence and it will be up to the State Prosecutorial Council to sanction it.

Conflicts of interest

Like for judges, rules on recusal of prosecutors are clearly set in procedural codes in most jurisdictions. Family relations with parties in the investigations or personal interests in the investigations are among the examples of situations demanding recusal. These rules seem to be working properly in practice since very limited recommendations refer to recusal and withdrawal. This could be the result of the inclusion of such rules in the procedural codes that are taught and applied constantly throughout the professional

career. However, other aspects that are relevant in the context of conflicts of interests, such as conduct in private life, are less well understood or discussed within the profession.

Most relevant challenges to prevent conflicts of interest (prosecutors)



GRECO has made it clear in recommendations pertaining to the establishment of codes of conduct, awareness, training and counselling that the area of conflict of interest and related matters should receive due attention. Proper management of potential conflicts of interests within the system would not only lead to the avoidance of a sanction applied to the prosecutor in question, but would also contribute to building a more trustworthy system in the eyes of the public.

Conflicts of interests and ethical dilemmas occur in the professional life of prosecutors. This issue is particularly relevant in smaller countries or smaller communities where the risk of occurrence of conflicts of interests rises. Prosecutors should be encouraged to seek advice and disclose potential conflicts of interests.

GRECO recommended that uniform rules applicable to judges and prosecutors be set and that they be accompanied by a proper supervisory and enforcement regime. Disclosure of private interests – done regularly or ad-hoc – should be subject to regular checks to ensure that the rules are effectively applied in practice and that inter-institutional cooperation functions properly. Apart from general rules on conflicts of interests, practical guidelines, with hands-on examples and cases, should be issued.

Declaration of assets and other interests

Many countries, though not all GRECO members, use asset and interest disclosure as a tool to promote transparency, prevent conflict of interests or illicit enrichment of prosecutors. GRECO recommended making rules applicable in this field uniform for all

categories of prosecutors, as well as introducing more clarity with regard to concepts that are relevant for these disclosures such as “family member”, “movable property”.

Comprehensiveness of the disclosures was also targeted by GRECO who invited countries to consider including information on assets of spouses, dependent family members and close relatives, as well as liabilities and gifts above a certain threshold. Recommendations on making these statements publicly available as a transparency tool were also formulated. The institutions tasked with verifying these disclosures should also have a mandate to check statements coming from prosecutors.

Accessory activities, prohibitions, and post-employment restrictions

Independence of the prosecution system is also conditioned by the types of additional activities in which prosecutors may engage. Some countries regulate restrictions for prosecutors by making reference to the ones imposed for judges, while others have stand-alone incompatibility regimes for prosecutors. Restrictions may cover both the period while in office and the post-employment phase. The rationale behind these restrictions is that additional activities generate perceived or real tensions with the official duties that prosecutors should perform independently and may open the gate to conflicts of interest, either real or perceived.

An interesting discussion regards political involvement where countries covered in the 4th Round display very diverse varieties of regime ranging from total interdictions on prosecutors from taking part in political life to permission to be a party member. In some countries, while party membership is allowed for prosecutors, the expectation is that political beliefs are not displayed in the workplace.

In some countries, prosecutors are allowed to take a second paid or unpaid job with the written permission of the superior provided that no conflict of interests arises with the performance of official duties. Other countries have a clear prohibition on secondary employment with certain exceptions. In general, teaching, creative work or research activities are allowed for prosecutors. Prosecutors are also usually allowed to serve as experts in international projects related to their field of activity – this is in many countries subject to prior approval from their hierarchy.

Most criminal procedure codes introduce post-employment restrictions for prosecutors: they cannot interact with prosecution offices in the area where they have served as prosecutors for a number of years after ending their mandate. GRECO has recommended that clear rules and guidelines are introduced for the situations when prosecutors move to the private sector.

Gifts and other benefits

In most countries rules about gifts are very detailed. They entail prohibition for prosecutors and sometimes related persons to receive gifts that are above a certain threshold, the obligation to disclose gifts – sometimes even if they were not accepted – and differentiations between gifts received in a private capacity and gifts received while acting in the official capacity. Prosecutors should be careful in ensuring that gifts are in no way related to the manner in which they conduct their investigations or other official duties as in many countries breach of this interdiction may qualify as bribe taking or acceptance of undue benefits.

GRECO recommendations in this field refer to the need to develop policy guidance to clarify the standards for acceptable courtesy gifts and the procedure for their reporting. GRECO has also recommended the harmonisation of the relevant procedures regarding acceptance, reporting and management of gifts, as well as the development of effective monitoring systems for compliance. GRECO has also urged further clarifications of the meaning of “benefits” to ensure that the term covers any kind of benefits (and not solely those valued in monetary terms) for the prosecutor or his/her entourage.

Confidentiality and interactions with third parties

Prosecutors deal with confidential or secret information routinely in their investigative activities and their work is, at least in the initial stages, covert. Only in the more mature stages of the investigations do parties have access to the materials gathered in the case. These rules exist in order to ensure efficiency in combating crime. In the area of corruption, in particular at the highest levels, keeping investigations confidential is key. Having sound prosecution systems able to ensure that sensitive information remains within the case files and is not leaked to unauthorised persons is paramount.

The unauthorised disclosure of information regarding on-going investigations, information or evidence gathered in the case constitutes either a criminal offence, or a serious breach of ethical rules. There are mechanisms in place to ensure that breaches of these rules are swiftly identified and sanctioned.

The need to keep confidentiality of investigation is at times at odds with the need of the prosecution service to communicate with the public, NGOs and the media. Communication strategies developed by the prosecution service need to address this challenge as, particularly in high-profile cases, there is a justified public interest in obtaining information regarding the on-going investigations.

In countries where the Minister of Justice exercises authority over the prosecution service, there is again sensitivity regarding access to investigation-related information. In such a case, and once again to shield the prosecution system from undue political interference or pressure, GRECO has recommended that the capacity of the Minister of Justice to ask or obtain information in a particular case be rigidly regulated as to its purposes. This is extremely relevant for high-level corruption investigations targeting political appointees in the close circles of a minister of justice, or other ministers or parliamentarians.

Supervision, monitoring, and enforcement

In these areas, GRECO places emphasis on ensuring that disciplinary mechanisms are effective, objective and safeguarded from undue political influence and that they are not used as a threat against prosecutors conducting sensitive investigations. A proper balance should be struck between, on the one hand, the need to ensure that prosecutors comply with ethical standards and other rules of conduct, and, on the other hand, the actual performance of their daily work. GRECO has supported, through its recommendations in this area, the strengthening of internal mechanisms of control, mainly through Prosecutorial Councils or any other competent bodies vested with the requisite autonomy to deal with these issues.

GRECO has recommended that disciplinary rules be revised in order to allow for timely and effective handling of misconduct committed by prosecutors. Similarly, in order to ensure that disciplinary cases concerning improper conduct by prosecutors are not time barred, GRECO has recommended reviewing/extending the applicable statute of limitation, as necessary.

Disciplinary rules should be clear, and disciplinary offences be precisely defined, in order to ensure that both prosecutors and the public have an exact understanding about what is allowed and not allowed in the prosecutorial activity. Effective, proportionate and dissuasive sanctions should be available, but severe sanctions such as exclusion from public office should only apply in the most serious cases. Appeal to court should be provided for prosecutors regarding disciplinary decisions, including those of dismissal. GRECO sees judicial review as a key guarantee against potential abuses.

In terms of institutional arrangements, as highlighted above, GRECO recommended that disciplinary mechanisms are put in the hands of professional bodies such as the Judicial/Prosecution Councils or the Office of Disciplinary Council. These procedures should be handled outside the immediate hierarchy in order to

increase trust and objectivity. These bodies should be provided with proper tools and powers to be able to conduct these investigations.

As part of disciplinary proceedings, due regard should be given to the verification of declarations of assets and interests of prosecutors, particularly in terms of identifying economic interests. Proper cooperation between the disciplinary bodies and those that are entrusted with verifying assets and interests disclosures should be ensured. Criminal liability should be introduced for providing false information in disclosure forms.

GRECO has also encouraged Prosecutorial/Judicial Councils to carry out pro-active integrity risk evaluations as a tool for early warning on sensitive or corruption-prone areas within the prosecutorial service. Independence in handling disciplinary investigation against prosecutors was stressed by GRECO in several recommendations.

Information about disciplinary procedures should be generated by disciplinary bodies and be made available in the appropriate format both to the public and to the prosecutors themselves. This is a tool to increase awareness about integrity challenges within the prosecution system and to ensure that prosecutors learn what is the expected behaviour in problematic situations. GRECO has recommended that reliable and sufficient information and data is kept about disciplinary proceedings concerning prosecutors, including the possible publication of the relevant case-law while respecting the anonymity of the persons concerned. Development of public statistics regarding disciplinary complaints was also recommended by GRECO.

Norway: Accountability of prosecution system

Investigations regarding punishable offences committed by prosecutors – as well as police officers – in their duties are carried out by the Norwegian Bureau for the Investigation of Police Affairs (hereafter the Bureau). The Bureau is an independent national investigative and prosecuting authority, which was established by law in 2004 and became operational on 1 January 2005. One of the objectives in its creation was to strengthen the general public's confidence in the community's ability and willingness to investigate and prosecute crimes committed by members of the police and prosecuting authority. The Bureau can receive complaints about the actions of prosecutors or police officers from the aggrieved party or his/her lawyer, the police or other persons, such as witnesses. It can also take up a case on its own initiative.

An important part of the Bureau's mandate is also to inform the public about its activities and raise awareness among prosecutors about ethical issues. To this end, the Bureau's annual reports, available online, contain a summary of all cases in which criminal sanctions have been taken and a sample of cases submitted for administrative consideration. The homepage of the Bureau contains anonymous decisions in cases regarded as being of public interest, as well as a bi-annual summary of all cases sent for administrative decision and cases in which a criminal sanction has been applied. As from 1 January 2014, the Bureau presents short summaries of all decided cases on its homepage.

Immunity

In most countries evaluated under the 4th Round prosecutors enjoy only functional immunity – meaning that they cannot be investigated or be subject to civil procedures for the conduct of their judicial activities. This is similar to the rules prescribed for judges. However, if prosecutors commit crimes in relation to their official duties – such as bribe taking for examples – or any other crime or misconduct in their private capacity, they will be investigated as any other private individual. As such prosecutors are not above the law, but accountable to it and this is an essential element for building a system that is perceived by the public as being trustworthy. In countries where remainders of immunity of prosecutors that go beyond functional immunity exist, GRECO has made recommendations to eliminate the excessive administrative or criminal immunity. The low number of recommendations in this field shows that immunity is no longer a major problem in conducting investigations against prosecutors.

Conclusions

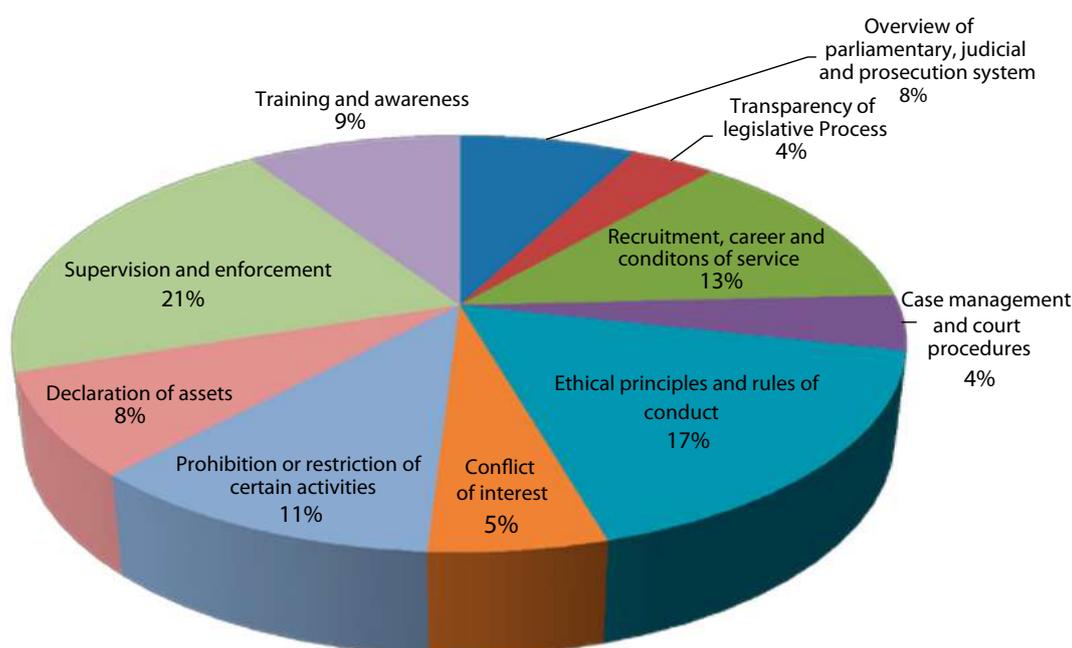
Corruption is for many the root cause of all evils. It has been at the origin of (at times, severe) political instability, democratic crisis, economic and financial collapses, extremist and populist tendencies, human rights violations, poverty, environmental disasters, looting of a country's natural resources, to mention but a few. Our citizens thus deserve a strong preventive and repressive response to corruption, in all its forms or manifestations.

A credible response must aim, first and foremost, at early and effective prevention and not rely solely on criminal law and penalties. Combating corruption is not only a matter of enacting new laws, but also of ethics and individual behaviour. When approaching corruption prevention policies, it has been clear to GRECO that there is no "one-size-fits-all" approach. Preventive policies need to take into account each country's circumstances. As such, GRECO recommendations have been carefully tailored to individual country contexts. That said, as this report has shown, there are a few basic principles that are applicable across the board.

Horizontal findings

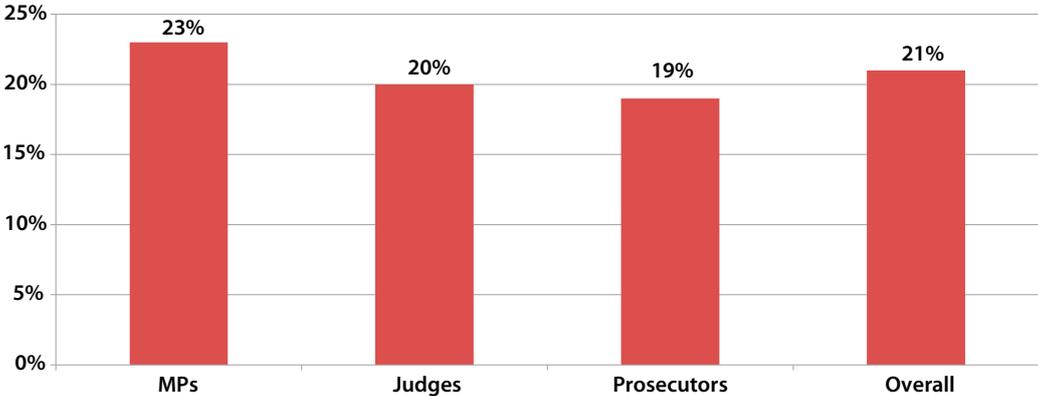
It is incumbent on the three groups under examination - as the evaluation has demonstrated - to effectively monitor themselves, create proper oversight mechanisms, address unethical conduct where it occurs, and take swift and decisive action to enforce the rules and sanction misconduct. It is also important to ensure there is public access to information about the prevention measures that exist, the steps each group takes to meet, if not surpass, the standards of conduct expected of them.

Recommendations per topic



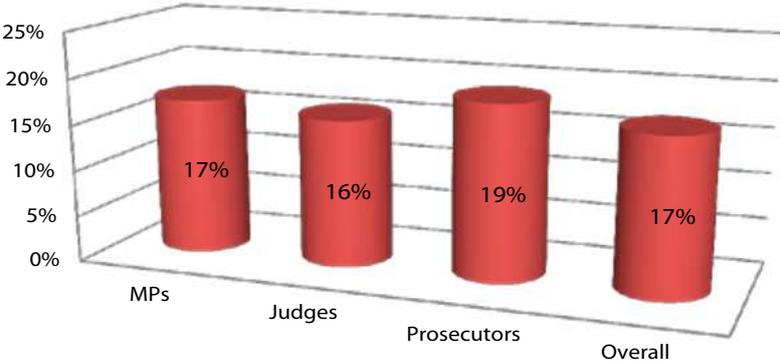
The overwhelming conclusion with respect to the 4th Round is that while solid foundations have been laid in most jurisdictions to tackle corruption, including examples of good (even excellent) practices, there is an overall lack of regard to effective implementation. One in every five recommendations refers to supervision and enforcement of the legislative framework in place. This is a clear sign that the actual implementation of the existing rules and regulations is a concern area for each group under GRECO’s review.

Supervision and Enforcement Per Category



Likewise, all three categories of persons under review in the 4th Round were called to step up their efforts regarding their internal reflection on ethics and common shared values, as well as the necessary counselling/ advisory mechanisms and tools to give effect to standards of conduct.

Ethical Principles and Rules of Conduct



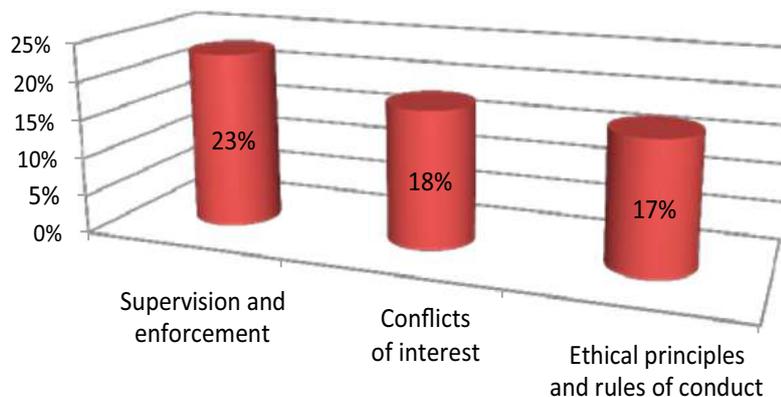
It is vital that these three groups maintain the integrity of their work; for the judiciary to function independently and impartially, for MPs to serve the public interest and for all of them to remain open and accountable.

Challenges per category in a nutshell

Members of Parliament

The great bulk of recommendations for MPs refer to three main areas: supervision and enforcement, incompatibilities and rules of conduct:

Main areas targeted by GRECO's recommendations for members of parliament

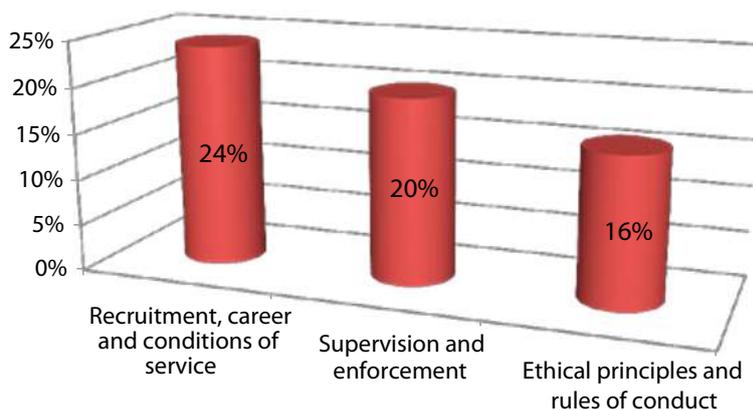


- ▶ 67% of the recommendations issued under the category of ethical principles and rules of conduct ask member states to **adopt a code/rules of conduct**
- ▶ 54% of the recommendations issued under conflicts of interest ask member states to **introduce a system that allows for ad-hoc disclosure of conflicts of interests**
- ▶ 11% of the total number of recommendations call for the introduction of **rules that better govern their interactions with lobbyists and other third parties seeking to influence the legislative process**
- ▶ 50% of the recommendations issued under training and awareness are asking member states to establish **dedicated confidential counselling**
- ▶ it is clear that immunity provided to MPs has been dealt with under some sort of discipline in member states because only 2% of the recommendations ask countries to **make sure that immunity rules do not hinder corruption prosecutions**
- ▶ more than 80% of the total recommendations under prohibition or restriction of certain activities deal **with gifts and contracts with State authorities and the misuse of public resources**
- ▶ 48% of the recommendations issued under the category of **transparency of the legislative process** call for further improvements to prevent undue interests permeating law-making
- ▶ remuneration and economic benefits and misuse of confidential information are sections that received a negligible number of recommendations.

Judges

Most recommendations for judges are confined to three main areas: career life, supervision and enforcement, and judicial ethics:

Main areas targeted by GRECO's recommendations for judges

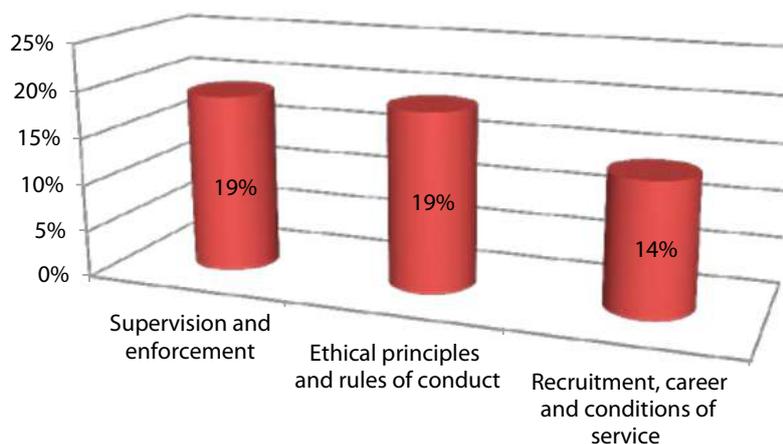


- ▶ the majority of the recommendations dealing with judicial career call for **higher transparency in recruitment processes and adequate safeguards against potential undue outside influence in the selection, transfer and promotion of judges**
- ▶ **supervision and enforcement** of existing rules is another area where significant concern was expressed
- ▶ 29% of the recommendations issued under ethical principles and rules of conduct ask member states to adopt/establish rules of conduct and 26% call for improvements, updates or revision in the existing codes of conduct. Hence, 55% of the recommendations under this category deal with **codes of conduct and the provision of guidance/advice on ethical matters**
- ▶ although the prohibition or restriction of certain activities is not particularly problematic for judges, the issue of incompatibilities send out early warning “lights”: 67% of the recommendations issued under this category are about **incompatibilities**; the **move of judges to the political arena** is reputed to be highly controversial for the doubts on the real, and perceived, independence and separation of powers it may give rise to
- ▶ 54% of the recommendations issued under training and awareness ask member states to **introduce some sort of training on integrity matters for judges**
- ▶ recusal and routine withdrawal mechanisms in the judiciary appear to be adequately regulated in GRECO member states
- ▶ similarly, conflict of interest regimes for judges seem adequate with only 2% of recommendations targeting this area.

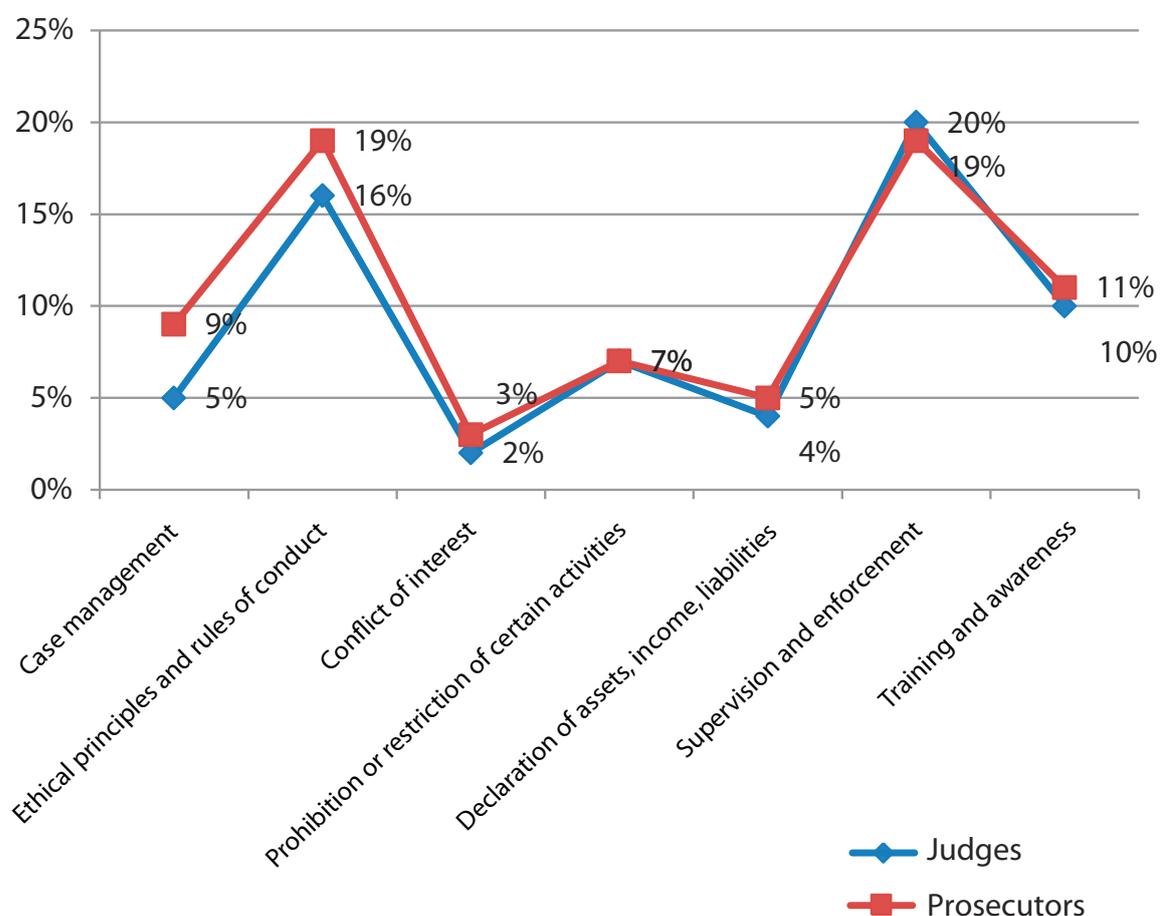
Prosecutors

The vast number of recommendations for prosecutors can be grouped under three main headings: supervision and enforcement, ethical standards and career life. As the graph below shows, the trends for prosecutors are generally similar to those already described for judges:

Main areas targeted by GRECO’s recommendations for prosecutors



Similar trends for GRECO's recommendations issued to judges and prosecutors



- ▶ most of the recommendations pertaining to career life of prosecutors ask for **higher transparency in the selection, transfer and promotion of prosecutors, as well as the introduction of arrangements to shield the prosecution service from undue influence and interference in the investigation of criminal cases**
- ▶ **supervision and enforcement** of existing rules is another area where significant concern was expressed
- ▶ 35% of the recommendations issued under ethical principles and rules of conduct call for the **adoption of rules of conduct**
- ▶ although the prohibition or restriction of certain activities is not particularly problematic for judges, the issue of incompatibilities sends out early warning “lights”: 42% of the recommendations issued under this category are about **incompatibilities**, again with the **move to the political field** triggering GRECO’s concerns
- ▶ 60% of the recommendations issued under training and awareness ask member states to **introduce effective ethical training modules** for prosecutors, both as part of initial and rolling training programmes
- ▶ recusal and routine withdrawal mechanisms in the judiciary appear to be adequately regulated in GRECO member states
- ▶ similarly, conflict of interest regimes for judges seem adequate with only 3% of recommendations targeting this area.

The way forward

Each of the target groups under GRECO's 4th Evaluation Round needs to take ownership and responsibility to implement, in cooperation with other relevant country's authorities, GRECO's recommendations. It is important to ensure that the work done so far in the corruption prevention domain, both in the legislature and the judiciary (judges and prosecutors), is adequately supported and that progress is maintained rather than regressing. Each of these groups works within key national institutions whose effectiveness helps determine whether the seeds of corruption flourish in a given country or not.

In times of increased citizens' demands for trustworthiness of core state institutions, it is paramount that holders of public office act with integrity, and are perceived as doing so, by the wider public.

GRECO will continue contributing to support reforms through its compliance reports, notably as regards the action taken by member states in response to its recommendations. It is our strong conviction that full compliance with our recommendations will not only improve people's trust in the institutions under evaluation and increase the honesty and integrity of the latter, but also ameliorate the everyday life of our citizens.

Membership of the Council of Europe's anti-corruption body spans the whole European continent and also includes the United States of America.

GRECO members (49) by date of accession:

Belgium, Bulgaria, Cyprus, Estonia, Finland, France, Germany, Greece, Iceland, Ireland, Lithuania, Luxembourg, Romania, the Slovak Republic, Slovenia, Spain, Sweden (founding states – 1 May 1999).

Poland (date of accession: 20 May 1999), Hungary (9 July 1999), Georgia (16 September 1999), the United Kingdom (18 September 1999), Bosnia and Herzegovina (25 February 2000), Latvia (27 July 2000), Denmark (3 August 2000), the United States of America (20 September 2000), "the former Yugoslav Republic of Macedonia" (7 October 2000), Croatia (2 December 2000), Norway (6 January 2001), Albania (27 April 2001), Malta (11 May 2001), the Republic of Moldova (28 June 2001), the Netherlands (18 December 2001), Portugal (1 January 2002), the Czech Republic (9 February 2002), Serbia (1 April 2003), Turkey (1 January 2004), Armenia (20 January 2004), Azerbaijan (1 June 2004), Andorra (28 January 2005), Ukraine (1 January 2006), Montenegro (6 June 2006), Switzerland (1 July 2006), Austria (1 December 2006), the Russian Federation (1 February 2007), Italy (30 June 2007), Monaco (1 July 2007), Liechtenstein (1 January 2010), San Marino (13 August 2010), Belarus (1 July 2006 – effective participation as of 13 January 2011).

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The Council of Europe is the continent's leading human rights organisation. It comprises 47 member states, 28 of which are members of the European Union. All Council of Europe member states have signed up to the European Convention on Human Rights, a treaty designed to protect human rights, democracy and the rule of law. The European Court of Human Rights oversees the implementation of the Convention in the member states.



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

