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Group of States against Corruption

Groupe d'États contre la corruption

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FOURTH EVALUATION ROUND

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FOURTH EVALUATION ROUND

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

EVALUATION REPORT

TURKEY

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EXECUTIVE SUMMARY

1. This report evaluates the effectiveness of the systems in place in Turkey to prevent corruption in respect of members of parliament, judges and prosecutors. As has been concluded by GRECO in its previous reports on Turkey, corruption has for a long period of time been a major problem in this country. The authorities have been, and are, fully aware of this and have implemented a number of national reforms, some of which in partnership with international organisations, such as the Council of Europe and the European Union. Many of the reforms have targeted legislation and institutional settings, often connected to the need to prevent corruption and similar phenomena. The 2010-2014 National Strategy and Action Plan is an example of the Government's intentions in this respect. However, it is clear that Turkey needs to further pursue reform efforts to prevent and curb corruption in the areas covered by the current report.

2. As far as members of parliament are concerned, the report indicates that a solid institutional framework within the Grand National Assembly of Turkey (GNAT) is in place. That said, more needs to be done in order to enhance the overall transparency of the legislative process in this Assembly. Public consultations on a regular basis would serve such an end and the time period for consultation within Parliament needs to be sufficiently long to allow all members of parliament time for reflection - as a necessary part of the democratic process - before draft bills are adopted. Moreover, there is a need to regulate various forms of conflicts of interest which may appear in the daily work of the members of parliament, such as situations of gifts and other advantages, contacts with third parties, including lobbyists, the holding of accessory activities which might have an impact on their official functions. To this end, it is recommended to develop a code of ethics pertinent to members of parliament. The report also highlights the need to ensure that MPs disclose situations of personal conflicts of interests as they appear ("*ad-hoc*"), that the correctness of asset declarations submitted by MPs is verified by the authorities and that these are also subject to public scrutiny. The protection of MPs from being investigated and prosecuted through parliamentary immunity, including in respect of corruption offences (unless "caught red handed"), is widely perceived in Turkey as a major obstacle in bringing to justice MPs suspected of corruption, even if such immunity can be removed by the GNAT. The number of requests for the lifting of such parliamentary immunity in recent years is alarming and the situation calls for determined measures to ensure that parliamentary immunity does not hamper the possibilities to investigate, prosecute and adjudicate such offences.

3. It is concluded in the report that the judiciary in Turkey is not perceived to be sufficiently independent from the executive powers of the country, despite constitutional guarantees to that end. The need to strengthen its independence has been one of the main targets of judicial reform in Turkey for many years. The establishment of the High Council of Judges and Prosecutors (HCJP) as a self-governing body of the judiciary was an element to establish such independence and a constitutional reform in 2010, providing for stronger involvement of judges and prosecutors in that body, was a positive step at the time. However, public criticism in Turkey as well as by international organisations in 2014/2015 in respect of the use of disciplinary proceedings, including the dismissal of a number of members of the judiciary, has further triggered the debate concerning the role and the independence of the HCJP. The report acknowledges that there is a continued need to enhance the independence of the HCJP by reducing the potential influence of the executive power in this body. Furthermore, making the judiciary more responsible for the selection, recruitment and training of its own members would serve the same purpose. Guidelines in the form of ethical codes, taking into account the different functions of judges and prosecutors, would be useful instruments, providing guidance in respect of various situations of conflicting interests. Moreover, a dedicated oath for judges to demonstrate their obligation to adhere to fundamental constitutional principles of independence and impartiality is also recommended as a tool to safeguard judicial integrity. The report also highlights the importance of ensuring that evaluations of the

performance of judges and prosecutors as well as disciplinary proceedings against them are free from undue influence. The security of tenure of judges needs to be considerably strengthened as a fundamental cornerstone of judicial independence. Many of the recommendations contained in the current report apply both to judges and prosecutors as a consequence of their common organisational structure under the HCJP. That said, some recommendations point out the particular need also to respect the differences between the functions of judges and prosecutors, which, for example, call for separate codes of ethics and training taking into account the fundamental differences of these professions.

4. Finally, the report acknowledges that in April 2015, the Prime Minister of Turkey launched the *Judicial Reform Strategy* (2015-2019), with the aims of establishing a more reliable justice system, executing judicial services in an independent and impartial way and concluding trials within a reasonable time. This strategy appears particularly well-tuned and timely also to deal with a number of the concerns and recommendations in the current report.

I. INTRODUCTION AND METHODOLOGY

5. Turkey joined GRECO in 2004. Since its accession, the country has been subject to evaluation in the framework of GRECO's Joint First and Second (in March 2005) and Third (in March 2010) Evaluation Rounds. The relevant Evaluation Reports, as well as the subsequent Compliance Reports, are available on GRECO's homepage (www.coe.int/greco).

6. GRECO's current Fourth Evaluation Round, launched on 1 January 2012, deals with "Corruption prevention in respect of members of parliament, judges and prosecutors". By choosing this topic, GRECO is breaking new ground and is underlining the multidisciplinary nature of its remit. At the same time, this theme has clear links with GRECO's previous work, notably its First Evaluation Round, which placed strong emphasis on the independence of the judiciary, the Second Evaluation Round which examined, in particular, the executive branch of public administration, and the Third Evaluation Round, which focused on the incriminations of corruption (including in respect of parliamentarians, judges and prosecutors) and corruption prevention in the context of political financing.

7. Within the Fourth Evaluation Round, the same priority issues are addressed in respect of all persons/functions under review, 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.

8. As regards parliamentary assemblies, the evaluation focuses on members of national parliaments, including chambers of parliament and regardless of whether the members of parliament are appointed or elected. Concerning the judiciary and other actors in the pre-judicial and judicial process, the evaluation focuses on prosecutors and on judges, both professional and lay judges, regardless of the type of court in which they sit, who are subject to national laws and regulations.

9. In preparation of the present report, GRECO used the responses to the Evaluation Questionnaire (Greco Eval IV (2015) 3E) by Turkey, as well as other data, including information received from civil society. In addition, a GRECO evaluation team (hereafter referred to as the "GET"), carried out an on-site visit to Turkey from 13 to 17 April 2015. The GET was composed of Ms Zorica BAROS, public prosecutor (Bosnia & Herzegovina), Mr Noel HILLMAN, Federal district judge (USA), Mr András MÁZI, Head of Constitutional Law Department, Ministry of Justice (Hungary) and Ms Heleen SMIT, Integrity Coordinator, Prosecution Service (Netherlands). The GET was supported by Mr Björn JANSON, Deputy to the Executive Secretary of GRECO and Ms Valentina D'AGOSTINO of the GRECO Secretariat.

10. The GET was received by representatives of the Ministry of Justice, including the Head of Turkey's delegation to GRECO and the Prime Ministry Inspection Board. It interviewed members of parliament, representing all parties in the Grand National Assembly as well as representatives of the Constitution, Investigation and Justice Commissions of the Assembly and its General Secretariat. Furthermore, the GET met with representatives of the Ministry of Justice, the Inspection Board of the Ministry of Justice, the High Council of Judges and Prosecutors (HCJP), the Inspection Board of the HCJP, judges and prosecutors representing first instance courts and supreme courts, representatives of the Justice Academy, associations of judges and prosecutors. The GET's meetings also included academics representing law faculties, the Bar, notaries,

non-governmental organisations (TI, TESEV, SAYDER, YASADER), the Parliamentary Union, the European Union and several media representatives.

11. The main objective of the present report is to evaluate the effectiveness of measures adopted by the authorities of Turkey in order to prevent corruption in respect of members of parliament, judges and prosecutors and to further their integrity in appearance and in reality. The report contains a critical analysis of the situation in the country, reflecting on the efforts made by the actors concerned and the results achieved, as well as identifying possible shortcomings and making recommendations for further improvement. In keeping with the practice of GRECO, the recommendations are addressed to the authorities of Turkey, which are to determine the relevant institutions/bodies responsible for taking the requisite action. Within 18 months following the adoption of this report, Turkey shall report back on the action taken in response to the recommendations contained herein.

II. CONTEXT

12. Greco concluded in its Joint First and Second Evaluation Round Report in 2006 that corruption was a major problem in Turkey, affecting the public sector, the administration and the judiciary[1]. Although Turkey has made efforts to ensure the practical implementation of existing anti-corruption measures and has adopted new legislation (such as the Criminal Code and the Code of Criminal Procedure) in order to improve the prevention and fight against corruption in the public sector, in the following compliance procedure, ended in 2010, GRECO noted that several recommendations of principal importance had not been implemented, in particular, recommendations to broaden the representation of the anti-corruption oversight body, to enhance the independence of the judiciary and to reform the system of immunities[2].

13. Within the framework of its Third Evaluation Round[3], GRECO concluded that the Turkish legal framework for the incrimination of bribery and trading in influence was complex and contained several deficiencies in relation to the requirements established under the Criminal Law Convention on Corruption (ETS 173). In the following compliance procedure, GRECO welcomed substantial reforms carried out by the Turkish authorities, with regard to the procedural rules as well as to the criminalisation of corruption offences, largely in line with the recommendations issued in the Evaluation Report.

14. In so far as Transparency of Party Funding[4] is concerned, GRECO noted that the existing legislation on transparency in party funding was, overall, of quite a good standard and in many respects in line with European standards (i.e. the Council of Europe Recommendation Rec (2003)4). By contrast, GRECO criticised the lack of regulation and transparency concerning campaign funding to election candidates and elected representatives. Moreover, the degree of transparency in practice regarding all forms of political financing was not satisfactory. GRECO addressed a number of recommendations to remedy the situation; however, Turkey has not made any tangible progress in this respect, as concluded in 2014.[5]

15. According to Transparency International (TI)[6], Turkey faces high levels of corruption, despite steps taken by the Government, including the adoption of an anti-corruption plan in 2010 and a series of commitments in June 2010 to improve incrimination and election candidate funding. Turkey ranked 64 out of 174 countries surveyed in Transparency International's 2014 Corruption Perceptions Index. Moreover, 54% of citizens in Turkey surveyed in TI's 2014 Global Corruption Barometer (GCB) believed corruption was increasing.

16. In 2010, the Government launched the 2010–2014 National Anti-Corruption Strategy and Action Plan. However, the design process was considered relatively opaque and conducted with little participation of civil society actors. Civil society organisations appear also to have little access to related information, making it difficult for them to be effectively involved in the monitoring of anti-corruption reforms, as has been noted in several EU Progress Reports. In April 2015, the Prime Minister of Turkey made public a Judicial Reform Strategy (2015-2019), *inter alia*, to execute judicial services in an independent and impartial way, conclude trials in a reasonable time and constitute a more reliable justice system. This judicial reform strategy appears timely with the current report.

[1] GRECO Joint First and Second Evaluation Round Report, adopted in 2006
[2] GRECO Compliance Report, adopted in 2009 and Addendum
[3] Document Greco Eval III Rep (2009) 8, Theme I, adopted in 2009
[4] Document Greco Eval III Rep (2009) 8, Theme II, adopted in 2009
[5] GRECO Compliance Report, adopted in 2014
[6] TI, Turkey: overview of corruption and anti-corruption, February 2014

III. CORRUPTION PREVENTION IN RESPECT OF MEMBERS OF PARLIAMENT

Overview of the parliamentary system

17. The Republic of Turkey is a parliamentary democracy with a written Constitution. The Grand National Assembly of Turkey (GNAT), Parliament, is a unicameral body given the legislative prerogatives by the Turkish Constitution. It is composed of 550 deputies. The members of parliament- deputies - are directly elected by popular vote every four years by equal suffrage and secret ballot (Constitution, Articles 75 and 77). Seats are allocated to political parties based on the principle of the d'Hondt system.

18. In terms of eligibility, the Constitution (Art. 76) prescribes that every Turk over the age of 25 may become a member of parliament, with the following exceptions: persons who have not completed primary education, who have been deprived of legal capacity, who have not performed compulsory military service, who are banned from public service, who have been sentenced to a prison term totalling one year or more excluding involuntary offences, or to a heavy imprisonment; those who have been convicted for dishonourable offences such as embezzlement, corruption, bribery, theft, fraud, forgery, breach of trust, fraudulent bankruptcy; and persons convicted of smuggling, conspiracy in official bidding or purchasing, of offences related to the disclosure of state secrets, of involvement in acts of terrorism, or incitement and encouragement of such activities, shall not be elected as a deputy, even if they have been granted amnesty.

19. Moreover, judges and prosecutors, members of the higher judicial organs, lecturers at institutions of higher education, members of the Council of Higher Education, employees of public institutions and agencies who have the status of civil servants, other public employees not regarded as labourers on account of the duties they perform, and members of the armed forces shall not stand for election or be eligible to be a deputy unless they resign from office (Constitution, Article 76).

20. Each member of parliament represents the Nation of Turkey as a whole and not his/her own constituency (Constitution, Article 80). S/he is to remain loyal to the independence of the State, the supremacy of the law and democracy and has to take an oath on assuming office to that effect (Constitution, Article 81).

21. The Plenary of the GNAT is the final decision-making organ which carries out the legislative, scrutiny and other functions. Government bills and private members' bills debated in the committees are enacted upon approval of the Plenary. The motions on obtaining information and methods of scrutiny, except motions of written questions, are submitted for information to the Plenary or deliberated in the Plenary.

22. The Bureau of the GNAT has significant roles regarding the legislative activities and administrative matters. It consists of fifteen deputies in total, including the Speaker, four Vice-Speakers, three Quaestors and seven Secretaries and ensures the proportionate representation of all political party groups. The Plenary may increase the number of quaestors and secretaries upon proposal of the Board of Spokespersons, if necessary. The duties of the Bureau are, *inter alia*, to permit the committees to convene during the working hours of the Plenary, to examine the validity of a deputy's resignation, incompatibilities of deputies with the parliamentary mandate and some administrative questions.

23. The Standing committees (specialised committees) consist of a certain number of deputies designated according to their expertise who are to examine the texts to be debated in the Plenary. After the bills have been examined and debated in the committees, they are submitted to the Plenary. The committees are established by the Constitution, the Rules of Procedure (RoP) of the GNAT or by law. Some of the standing

committees merely deal with law-making, whereas some of them perform other tasks provided by law. Besides, some have special powers and duties. Individual applications can be made to the Committee on Human Rights Inquiry, the Committee on Petitions and the Committee on Equal Opportunity for Women and Men. The Plenary determines the number of members of the standing committees at the beginning of each legislative term. However, the number of members of the Committee on Planning and Budget is stipulated in the Constitution as 40, and the number of members of the Committee on Public Economic Enterprises is, according to law, set at 35. The number of members of the Committee on Security and Intelligence is established at 17 by its constituent law. The Constitution states that the provisions of the RoP shall be regulated in a way that ensures the participation of the political party groups in all parliamentary activities according to the ratio of numbers of their members. ROP also regulates that the number of memberships allocated to each political party group in the committees is to be determined according to the percentage of each political party group within the party groups' total number of members in the Assembly. Members of the Council of Ministers and the Bureau cannot be members of any committee. The term of office of the committee members elected at the beginning of the legislative term is two years and the elections are renewed at the end of this period. Furthermore, subcommittees may be established when there is a need to inquire or investigate an issue more thoroughly.

24. Ad hoc committees are established for a certain period of time in order to obtain information and perform supervisory functions of the GNAT. These are called to collect information or examine any issue deemed necessary by the Plenary (Article 105 ROP). The establishment of a parliamentary investigation committee is a tool of the GNAT to hold members of the Council of Ministers accountable for actions requiring penal sanctions performed during their term of office as foreseen in the RoP (Article 107). It requires at least 55 MPs to be tabled. This request is voted by secret ballot.

25. There are also other committees that are important within the parliamentary activity. The so called reconciliation committees usually established based on equal representation from all the political party groups to discuss legislative changes requiring special majority or issues of common interest across the political spectrum. There have been three such committees established in the most recent legislative term: the Reconciliation Committee on Rules of Procedure, the Reconciliation Committee on Constitution and the Reconciliation Committee on Ethics. However, the drafts born out of these committees were not successful. Even though these committees do not have a legal base, they are important signs of a possible consensus culture about significant political issues in the GNAT; however, consensus was not reached during the recent term.

26. Furthermore, there are two types of joint committees in the GNAT. The first one is comprised of the members of the Committee on Constitution and the Committee on Justice and examines the lifting of parliamentary immunity, losing of membership for persistence in carrying out a service incompatible with membership or for non-attendance to parliamentary activities. The Chairperson, vice-chair, spokesperson and the secretary of the Committee on the Constitution serve as the chairperson, vice-chair, spokesperson and secretary of the Joint Committee respectively (Article 131 RoP). The other joint committee is comprised of the members of the Committee on Petitions and the Committee on Human Rights Inquiry. This Committee is charged with selecting all five Ombudsmen, determining three candidates to the position of the Chief Ombudsman to the Plenary of the GNAT and discussing the reports prepared by the Ombudsman Institution (Law on the Ombudsman – No. 6328, Article 3.1.f).

27. The Board of Spokespersons is also an important body of the GNAT. The Board, under the chairmanship of the Speaker or a vice-speaker, is composed of chairpersons of the political party groups, or one of their vice-chairs, or a deputy assigned by them in writing, i.e. all party groups are represented in the Board equally. In case of necessity,

government representatives and vice-speakers may attend meetings of the Board of Spokespersons upon invitation; however, they cannot vote. The Board is an organ established in order to reach consensus among political party groups on their participation in parliamentary activities. The Board of Spokespersons makes recommendations to the Plenary on issues such as determining the days and hours of the Plenary debates, setting and changing the agenda of the Plenary and determining the number of committee members etc.

28. Members of parliament benefit from immunity (inviolability); i) deputies cannot be held liable for their votes and statements during parliamentary proceedings, and ii) deputies accused of having committed an offence before or after election cannot be arrested, detained, interrogated or tried – except in cases of *in flagrante delicto* requiring a heavy penalty and in cases subject to Article 14 of the Constitution as long as an investigation has been initiated before the election – unless permission is given by Parliament. The execution of a criminal sentence imposed on an MP is to be suspended until s/he ceases to be a member.

29. Loss of membership for a deputy is set out in Article 84 constitution. According to the mentioned articles; membership is lost in cases of:

- Decision taken by the Plenary upon the resignation after the authenticity of the resignation has been determined by the Bureau;

- Notification of the Plenary about a final judicial court judgment stating that the MP is convicted for an offence hindering him/her from being a member of Parliament (*inter alia,* corruption, bribery and fraud) (Article 76 of the Constitution), or as a result of a restriction of the MP's legal capacity.

- Decision taken by the Plenary upon the failure of a deputy to attend parliamentary proceedings (five sessions in one month) without a valid excuse. (The matter is determined by the Bureau and referred to the Joint Committee comprised of the members of the Committee on Constitution and the Committee on Justice). Plenary debate is held on the basis of a report of the Joint Committee. The MP in question has the right to defend him/herself at both Committee and Plenary stages.)

- Decision taken by the Plenary in case a deputy insists on holding a position or carrying out a service incompatible with membership, which was set out in Article 82 of the Constitution (same procedure as above).

- Membership is also terminated in case of member's death, at the end of their legislative term, their loss of citizenship (Constitution, Article 76) or in case a member has been elected to a local administrative body.

Transparency of the legislative process

30. The legislative process in Turkey is regulated in the Constitution, in the Rules of Procedure (RoP) of the Grand National Assembly. Members of parliament and the Government (Council of Ministers) are alone entitled to introduce bills. In the years 2012-2014, 472 government bills were introduced in Parliament and 245 such bills were enacted. In the same period, 2 329 private member bills were introduced of which 312 were enacted, according to statistics provided by the authorities. Committees may debate government's bills and individual member's bills together and combining them whenever the subjects are of common interest. In total, 321 laws were adopted in the most recent legislative term.

31. Government bills must contain the signatures of the Prime Minister and all ministers. To introduce a bill through a committee is not acceptable even though some committees, such as the Committee on Human Rights Inquiry, have the duty to prepare draft bills in terms of their remit. The bills prepared by these committees should be introduced by MPs.

32. Bills are to be tabled with the Office of the Speaker of the GNAT and are published in the "Order paper". An Order Paper is the official document that contains information about bills, official memoranda, committee reports, questions and motions of general debate, censure, parliamentary investigation, inquiry and all stages of parliamentary proceedings. In other words, all official documents to be submitted are settled in the Order Paper. The Order Paper is published on each sitting day of the Assembly except Saturday and Sunday, distributed to deputies, and included on the web page of the Assembly. The items proposed to the Office of the Speaker, the committees to which items are referred, and items included in the agenda of the Plenary can be followed from the Order Paper.

33. The Office of the Speaker refers bills to a primary committee and secondary committee(s), based on the relevance of the bill to the competence of committees. Secondary committees submit reports to the primary committee for consideration, whereas the primary committee presents its report to the Plenary of the GNAT.

34. The Speaker determines the number of committee members allocated to each political party group in accordance with the percentages of political party groups over the total number of party groups. The political party groups notify their candidates to the Office of the Speaker in a prescribed period. Elections for all committees are completed upon approval by the Plenary of the lists of candidates submitted by their groups through voting by show of hands. Political parties in the GNAT are to be reflected in the committees proportionally (Articles 20-31 RoP).

35. Committee meetings are not open to the public; however, accredited media representatives may attend these meetings. Committee meetings are open to all members of the GNAT, ministers and government officials representing the Government, but only committee members may table a motion of amendment or vote. (Article 31 RoP). Experts may be invited to committee meetings. Only committee members and ministers have the right to attend closed sessions of the committees (Article 32 RoP).The GET was informed that committee meetings rarely are closed, and in these situations, the discussions will be kept secret.

36. Committee reports are printed and distributed to the deputies and added to the minutes of the first plenary sitting in which the debate on the report commences. The reports are also publicly available; these may be accessed through the website of the related committee and the GNAT.

37. Debates at the plenary stage are public unless otherwise decided by the Plenary upon a motion for a closed sitting that can be tabled by the Prime Minister, a minister, a political party group or twenty deputies in writing. It is openly voted by simple majority. All the minutes of the GNAT (and of the Parliament of the Ottoman Empire since 1908) are accessible on the website of the GNAT. All open debates are according to the authorities broadcast live on TBMM-TV during working days of the Plenary and/or are always online at "tbmmtv.gov.tr. Moreover, streamed debates are published on twitter and Facebook as well. Twitter accounts of the GNAT (@tbmmgenelkurulu and @tbmmresmi) are reportedly the third most followed parliament in the world with approximately 450 000 followers. Minutes of the debates are accessible on the website of the GNAT. Additionally, the website of the GNAT has been improved for people with disabilities, for instance, by offering audio options. The authorities submit that the GNAT discloses every detail from parliamentary news to the bills to citizens through twelve

different RSS feeds. Mobile application of the GNAT compatible by all major operating systems is also available.

38. There are three forms of voting in Parliament: i) vote by show of hands, ii) open vote, in which an electronic voting system is generally used, and iii) secret vote. Vote by show of hands is to be used as a main rule, when the Constitution, laws or RoP do not require another form. Voting ordinary legislation is normally done by show of hands. The result of the vote by show of hands is to be announced by the Speaker to the Plenary by saying "accepted" or "not accepted". The result of the open vote is to be announced in the same sitting by the Speaker after the counting and classification of votes by the secretaries. Open vote is to be used in respect of government bills on general and annexed budget. The secret vote procedure is used for amendments to the Constitution and some votes unrelated to legislation (election of the Speaker of the GNAT, impeachment decisions, decisions related to the loss of membership as a result of insisting on holding a position incompatible with the parliamentary mandate (Articles 139-149 ROP).

39. Public consultations on draft bills can be organised by the committees; however, there is no obligation to do so, nor are there any rules of procedure for such consultations. Committees may decide on organising hearings with experts, representatives of non-governmental organisations, academics etc. After the debates, the committee is to draw up a report on the bill to be submitted to the Plenary. The GET was informed that an important public consultation mechanism was initiated in 2011, namely the "New Constitution Website" and citizens were free to submit their opinions and contributions during the drafting process on-line to the Reconciliation Committee on Constitution. These consultations were highly successful, according to the authorities, including communications with several thousand civil organisations, NGOs, universities, political parties, professional organisations, media representatives etc. and more than 60 000 users had expressed their views about the drafting of the Constitution, according to information received by the GET.

40. The GET was also informed that in order to increase the public consultation process, the GNAT organises public seminars for NGOs, universities etc. in order to reach out with information about the legislation process and to increase the awareness about the legislative system among citizens. The GNAT has also determined a "Public Day" on which guidance is provided to visitors.

41. There is no regulation in respect of deputies' contacts with third parties (lobbyists) before or during the public consultations in respect of the legislative process in Turkey. This issue, closely related to transparency of the legislative process, will be dealt with under "third party contacts", below.

42. The transparency of the legislative process in Turkey was extensively discussed with a large number of members of parliament, representing the ruling party as well as the opposition, with representatives of political parties not represented in the GNAT and with NGOs. Although all interlocutors agreed on the necessity to provide for broad consultations within the GNAT as well as through public consultations, the overwhelming majority of interlocutors met were very firm that, currently, the level of such consultations was insufficient. It would appear that the website established in 2011 within the work of the Reconciliation Committee on Constitution for public consultations appears to have been the exception to the rule of a general lack of consultation and transparency in respect of the legislative process. The GET is aware that political polarisation in Turkey cannot be neglected in this context; however, it is not controversial to conclude that the area of public transparency in respect of the legislative process needs considerable attention in Turkey.

43. The GET also heard from various sources that legislation is often pushed through Parliament without the necessary time for consultation, including for the MPs. More particularly, the GET was repeatedly informed that, even though the Rules of Procedure of the GNAT would allow for reasonable timing, these rules were sometimes set aside in order to speed up the process when draft legislation was amended at a very late stage of the plenary process. Another connected issue raised by several interlocutors was that draft legislation was often presented in "packages", containing a large number of amendments to various unrelated laws - "omnibus bills" - (up to 100 amendments in one bill was mentioned), which also made it difficult to have an impact, even by the MPs themselves.

44. The GET learned that debates of the plenary sessions are as a main rule to be broadcast live and that citizens can follow the work of the GNAT online, except in situations where there are "closed sittings", which are exceptionally provided for under Article 70 RoP, concerning matters such as national security. Contrary to that, the GET was also informed by some interlocutors, including MPs, that important debates are occasionally not held within broadcasting time, for example late at night. That said, broadcasting via the Internet is continuous.

45. The GET also received information from representatives of various media groups that the accreditation of certain journalists to attend GNAT meetings (Article 168 RoP) had been withdrawn recently. The authorities explained that "Parliament Correspondence Cards" for entering the GNAT premises are being issued by the GNAT for individual press representatives (including on a temporary basis) following regulations established by the GNAT. To date there had been six cases where such cards had been cancelled, due to misconduct in respect of GNAT regulations, according to the authorities; they furthermore informed the GET that such decisions are subject to judicial review, and in one such case the GNAT decision had been revoked.

46. Even though the information gathered differed as to the current level of transparency in reality, the GET noted that all interlocutors met were in favour of providing more transparency to the legislative process. It also notes that no mechanism has been developed that ensures public consultations on a more structural basis. Committees, through their chairpersons, are free to invite external experts and to provide for public consultations; however, it would appear that this possibility is not regularly used. Moreover, the GET is concerned about the allegations from a number of interlocutors (including MPs) that despite the clear intentions of the Rules of Procedure of the GNAT, measures to speed up the legislative process, had been applied on several occasions. In this context, the submission of bills comprising large numbers of draft legislation/amendments in one single bill, the so called "omnibus bills", with limited time before adoption, was an example of a situation which makes the consultations difficult, including within Parliament, but even more so in respect of the larger public. In view of the foregoing, **GRECO recommends that the transparency of the legislative process be enhanced by (i) further developing the rules on public consultations in respect of civil society groups and citizens; and (ii) ensuring that draft legislation is presented in a reasonable format (e.g. avoiding that large quantities of unrelated pieces of legislation are treated as one single package) and within adequate timelines to allow for meaningful public consultation and parliamentary debate.**

47. The GET also wishes to emphasise the importance of providing broad media access to the legislative process in Parliament as a guarantee for information to the larger public.

Remuneration and economic benefits

48. According to the World Bank, GDP per capita in Turkey was 10 972 $ (€9 666) in 2013. The annual gross salary of a member of parliament in 2014 was 188 072 Turkish Liras (TL) (€66 653).

49. Members of parliament work full-time. Their salaries are paid on the basis of the salary paid to the highest ranking bureaucrats in compliance with Article 86 of the Constitution and Article 1 of the Act on Salary, Travel Allowance and Retirement of the Members of the Grand National Assembly of Turkey (No. 3671, Date: 10.26.1990). The monthly net amount of the remuneration, composed of salary and travel allowances, was 13 795TL (€4 886) in October 2014. The annual gross salary of members of parliament was - in 2014 – 188 072TL (€66 653), as stated in the previous paragraph.

50. In addition, members of the Bureau are paid duty allowance in accordance with the Act on Duty Allowance of the Speaker of the Grand National Assembly of Turkey and Members of the Bureau, and Allowance of the Auditor Elected by the Committee on Examination of the Accounts of the Grand National Assembly of Turkey (No. 3054, Date: 9.10.1984). The monthly net allowance for the Speaker is 461.99TL (€164), 384.99TL (€136) for the Deputy Speaker and 277.99TL (€98) for the quaestors.

51. Members of parliament are also entitled to additional benefits, such as

- special medical treatment, (Act on Salary, Travel Allowance and Retirement of the Members of the Grand National Assembly of Turkey, No.3671, Date: 10.26.1990, Article 4);

- payment of the social security premiums of the members of parliament who did not retire at the end of his/her term of office by the GNAT for four years within twenty five service life, (Act on Social Insurance and Universal Health Insurance, No. 5510, Date:1.17.2012, Additional Article 7);

- payment of communication expenditures per year amounting to as much as two times their monthly remuneration consisting of salary and travel allowance, (Regulation on Communication of the Grand National Assembly of Turkey);

- employment expenditure of three personnel. (e.g. secretary or advisor)(Act on Administrative Organization of the Grand National Assembly of Turkey, No. 6253, Date: 12.1.2011, Article 30).

52. The authorities explain that while the economic value of the payment of communication expenditures is fixed, the economic value of the other benefits mentioned is not generally foreseeable as it depends on the personal situation of each member of parliament. The additional benefits are regulated by the related legislation, and thus accessible to the public. Payment of communication expenditures (phone, internet bills etc.) is valid only for the term of office. However, special medical treatment and payment of the social security premiums mentioned above can be used after the term of office. The Control over the legitimate use of these benefits is carried out by the Court of Accounts of Turkey which is entitled to examine all the accounts of the GNAT.

53. Members of parliament have at their disposal offices within the premises of Parliament and the linked expenditures are borne by the GNAT.

Ethical principles and rules of conduct

54. In addition to the regulations contained in the Constitution and legislation, concerning conflicts of interest and the like, there are no written codes of ethics or codes of conduct with respect to members of parliament. However, on the initiative of the Speaker, a parliamentary committee was established in 2012 (the Reconciliation Committee on Ethics) to prepare a draft code of ethics, based on principles of ethics for open, accountable politics and integrity of MPs. The principles of ethics that were prepared by the Reconciliation Committee on Ethics were presented in the Bill on the Membership of the GNAT, and initiated during the 24th legislative term. The Bill was discussed in the Committee on Planning and Budget, the report resulting from the work of the Committee was published (No. 712) for plenary debate. However, it failed to go further as the legislative term in June 2015.

55. It was explained to the GET by a number of opposition MPs that the work on a code of ethics had failed in the Reconciliation Committee as, according to them, the draft proposal was not sufficiently far-reaching. They all agreed to the need for a code of ethics/conduct for MPs.

56. Members of the Grand National Assembly of Turkey, on assuming office, are to take the following oath: *"I swear upon my honour and integrity, before the great Turkish Nation, to safeguard the existence and independence of the state, the indivisible integrity of the Country and the Nation, and the absolute sovereignty of the Nation; to remain loyal to the supremacy of law, to the democratic and secular Republic, and to Atatürk's principles and reforms; not to deviate from the ideal according to which everyone is entitled to enjoy human rights and fundamental freedoms under peace and prosperity in society, national solidarity and justice, and loyalty to the Constitution."*

57. The GET was puzzled by the fact that although all interlocutors met on-site emphasised the need for a comprehensive set of ethical guidelines/code of conduct of members of parliament, this position had not resulted in the adoption of such a text, despite efforts to do so. It is not for the GET to speculate about the reasons for this situation, but it would like to emphasise the importance of re-establishing this initiative as soon as a new parliament has become operational. The GET wishes to stress the repeatedly expressed preference in GRECO reports in favour of parliaments having their own sets of common standards and guidelines. This appears particularly important in a country, like Turkey, where the conduct of MPs is not subject to much regulation and where the MPs enjoy far-going immunity protection from general criminal proceedings during their mandate. Experience shows that the mere process of developing such standards would raise MPs' awareness of integrity issues, assist them to be proactive in difficult ethical situations and – not least – to demonstrate their commitment *vis-à-vis* the general public. The elaboration of ethical standards therefore requires strong involvement by the MPs themselves. Codes and guidelines may raise public confidence in parliamentary institutions when citizens know what conduct they should expect from parliamentarians and from those who work on behalf of the members as their employees, assistants etc. This is a concern that has also been expressed in several GRECO reports; ethical principles and expected conduct of MPs are also important guidelines to those who carry out work on behalf of the members. To the extent that staff of MPs in Turkey is covered by ethical standards[7], these need to be aligned to future ethical standards in respect of MPs, as appropriate. The GET also wishes to stress that codes of ethics/conduct are to be built on constitutional rules, legislation or other forms of regulation and ought to further develop such provisions, to complement, clarify and provide guidance in a flexible way in situations which may give rise to controversies and various forms of conflicting interests. Moreover, such codes are often less static than

[7] The GET was informed by the Turkish authorities that staff of the GNAT are subject to ethical rules of public officials as well as an ethical manual prepared by the GNAT.

legislation and may need to evolve over time. In view of the above and with reference to Guiding Principle 15 of Resolution (97) 24 of the Committee of Ministers of the Council of Europe on the twenty guiding principles for the fight against corruption, **GRECO recommends that a code of ethics/conduct for members of parliament be adopted covering various situations of conflicts of interests (gifts and other advantages, accessory activities, post-employment situations, third party contacts, including with lobbyists etc.).**

Conflicts of interest

58. The Constitution provides for some basic principles related to conflicts of interest, for example, concerning the holding of other offices, in state departments and public corporate bodies (Article 82 Constitution), further described below. Furthermore, the Constitution provides that other incompatible duties and activities are to be regulated by law. The only such legislation is Law No. 3069/1984 on Activities Incompatible with the Membership in the Grand National Assembly (AIMGNA), see further below.

59. There is no regulation in place for the situation where an MP has a personal interest in a subject matter being dealt with in Parliament. No reporting obligations apply and there are no prohibitions on participation. There is no particular structure foreseen within the GNAT for dealing with situations of conflicting interests.

60. The GET notes with concern that in addition to some prohibited side-occupations provided for in various acts, no regulations deal with situations where an MP is concerned personally in a matter dealt with in Parliament, whether the reason is of a personal or financial interest of any kind. Such situations, which may occur occasionally, ought to have some form of regulation based on a definition of personal conflicts of interest and would need, in order to be effective, to be coupled with a reporting obligation when such situations occur, through so called "*ad hoc* disclosures". In order to remedy this lacuna, **GRECO recommends that a requirement of "*ad hoc* disclosure" be introduced for members of parliament for situations of personal/financial conflicts of interest which may emerge during the parliamentary proceedings and that rules for such situations be developed.** The measures required could lead to amended legislation, procedural rules or possibly lead to a code of conduct/ethics (see paragraph 57).

Prohibition or restriction of certain activities

Gifts

61. As in respect of any public official, members of parliament, are covered by Act No. 3628/1990 on Declaration of Property and Fight with Bribe and Corruption (ADPBC). This law obliges MPs to submit gifts which were given by a foreign state, international organisation, international legal entity and a foreign person or an entity the value of which exceeds ten times the net minimum wage (approx. €3 400) on the date of acceptance of the gift (Article 3 ADPBC). This law also provides that the value of gifts are to be determined by the Ministry of Finance (provincial revenue offices), following a rather detailed and complex procedure. There is no particular regulation on MPs in respect of gifts.

62. The GET was concerned that the only restriction provided for in respect of gifts is linked to the value and that the value limit is high. The GET was made aware that in the draft code of ethics (that failed to be adopted) the value was more reasonable but still quite high, as set at €400. In the view of the GET, such rules should preferably go beyond that of the value and rather exclude any gift which may interfere with an impartial exercise of the MP's duties or be seen to have such an effect, whether in the domestic or foreign context. Such restrictions would be a natural part of a code of ethics/conduct, to be established as recommended in paragraph 57.

Incompatibilities and accessory activities, post-employment restrictions

63. Article 82 of the Constitution introduces restrictions on the contracts which a deputy cannot engage in as follows:

"Members of the Grand National Assembly of Turkey shall not hold office in state departments and other public corporate bodies and their subsidiaries; in corporations and enterprises where there is direct or indirect participation of the State or public corporate bodies; in the enterprises and corporations where the State and other public corporate bodies take part directly or indirectly; in the executive and supervisory boards of public benefit associations whose private resources of revenues and privileges are provided by law; of the foundations receiving subsidies from the state and enjoying tax exemption; of the professional organizations having the characteristics of public institutions and trade unions; and in the executive and supervisory boards of aforementioned enterprises and corporations which they have a share and in their higher bodies. Nor shall they be representatives, accept any contracted engagement of the boards stated above directly or indirectly, serve as a representative, or perform as an arbitrator therein.
Members of the Grand National Assembly of Turkey shall not be entrusted with any official or private duties involving proposal, recommendation, appointment, or approval by the executive organ. A deputy's acceptance of a temporary assignment, not exceeding a period of six months, given by the Council of Ministers on a specific matter, is subject to the decision of the Assembly.
Other duties and activities incompatible with membership in the Grand National Assembly of Turkey shall be regulated by law".

64. In addition, Articles 1-4 AIMGNA, which repeats the main principles of the Constitution, adds further accessory activities which are incompatible with the role as an MP, for example, to work for a fee as a lobbyist, broker or in state institutions. Moreover, MPs are not to be representatives in cases relating to the State's financial interests. When MPs exercise their professions and manage their own enterprises, they are not allowed to use their title as "Deputy" (Article 3 AIMGNA). Members are not to hold administrative duties as secretary general, secretary or in state institutions (Article 4 AIMGNA). The authorities also referred to a number of acts, according to which MPs cannot continue their previous functions after having been elected, for example, as a practising attorney, editor of a periodical, officer in a trade union etc.

65. The GET understood from discussions with various members of parliament that it is rather common in Turkey that MPs are involved in parallel activities in addition to their assignments as MPs, sometimes including activities which are clearly not allowed and therefore covered up by close relatives or through other arrangements. Having a closer look at the legal framework, the GET acknowledges that there are a variety of rules aimed at preventing various forms of interests conflicting with the functions of MPs. However, these are scattered in numerous instruments and it would appear preferable to bring such provisions under a common framework, which ought to be as exhaustive as possible. In such a context possible additional restrictions need to be considered as well. A compilation of incompatible accessory activities would in the view of the GET require enforceable legislation proper. Consequently, **GRECO recommends that the accessory activities which are incompatible with the duties and functions of members of parliament be reviewed and that comprehensive and enforceable legislation be ensured, to remedy any conflicts of interest resulting from such activities.**

66. There is no restriction on employment of the members of parliament after their term of office. In this context, the GET recalls that GRECO has held that members of parliament could well engage in particular matters (including legislation) in Parliament while having in mind interests that would come into play during their mandate or upon leaving Parliament or as a future lobbyist. The authorities are encouraged to reflect on the necessity of introducing further rules/guidelines for these situations.

Financial interests, contracts with State authorities, misuse of public resources, third party contacts (lobbying)

67. There is no particular restriction on holding financial interests for the members of parliament. The GET noticed that in the draft code of ethics (that failed to be adopted) this lacuna was addressed to some extent. Such regulations ought to be part of a code of ethics, as recommended in paragraph 57.

68. Members of parliament, like any other citizens are subject to the general criminal offences, such as misuse of public duty (Article 257 of the Criminal Code) and use of vehicles or materials in public service (Article 266 of the Criminal Code). However, at the same time they enjoy immunity from criminal proceedings, see paragraphs 78-82.

69. There is no rule setting out deputies' contacts with third parties (lobbyists) who can influence them in their decision-making or in the legislative process and the GET understood that this matter had not been subject to much debate in Turkey, some interlocutors mentioned that lobbying was not a real concern in the country, as the State itself is the main economic power. The GET takes the view that MPs' interactions with lobbyists should at least be considered from the view of enhancing the transparency; legislation or guidance in this respect would be appropriate, whether in the context of the legislative process or as a means to prevent various forms of conflicts of interest. Future work on a code of ethics/conduct ought to take this problem into account as foreseen in the recommendation in paragraph 57.

Misuse of confidential information

70. There is no specific rule for the deputies with respect to disclosure of confidential information. Instead, members of parliament are subject to the general rules set out in the Criminal Code, Articles 326-339 (State confidentiality, espionage, state security, etc.). However, at the same time they enjoy immunity from criminal proceedings, see paragraphs 78-82. For that reason, such rules would appear important to establish, for example in a code of ethics, see paragraph 57.

Declaration of assets, income, liabilities and interests

71. Members of parliament are obliged to make declarations of assets, according to Act No. 3628/1990 on Declaration of Property and Fight with Bribe and Corruption (ADPBC). This Act applies to all categories of public officials, whether elected or appointed. The purpose of the ADPBC is to combat illicit enrichment through activities such as corruption by controlling acquisition of assets. This law even goes beyond the notion of public officials, it extends to political party leaders, owners and representatives of newspapers (Articles 1 and 2 ADPBC).

72. The declarations are to be made in accordance with a "Standard Property Declaration Form", which is enclosed in Article 18 of the Regulations on Property Declaration, issued pursuant to ADPBC. The form consists of eight sections. The first section contains the identity information of the declaring person, the spouse and dependent children; the second section contains information about any immovable property (including its value, type, address, amount of shares and date of acquisition and the identity number of the owner); the third section contains information about the cooperative of which the owner is a member (including the name and place of the cooperative, the value of the shares owned, date of purchase of the shares and the identity number of the shareholder); The fourth section contains information about vehicles of the declaring person (including the registration number, type, brand, value of purchase, model year, purchase/acquisition date of the vehicle and the identity number of the shareholder) and other movable property (including the type, purchase value, model year, purchase/ acquisition date of the property and the identity number of the

owner); the fifth section contains bank and securities information (including the type, amount of the currency or the securities and the identity number of the holder); the sixth section contains information about gold and jewellery (including the type, value and amount of the assets and the identity number of the holder); the seventh section contains information about loans and credits (including the name and surname of the debtor, name and surname of the creditor, amount of debit and credit); the eighth section contains information about rights and other assets deemed necessary to be declared (including the rights and other asset elements deemed necessary to be declared, way of acquisition and the identity number of the owner).

73. The declarations are to be submitted to the Department of MPs' Services which is part of the administration of the GNAT, within two months from the parliamentary election (Article 6 ADPBC). The submissions are to be renewed by February of the next year ending with "0" or "5" (i.e. once every five years) (Article 7 ADPBC). Furthermore MPs' declarations are to be submitted within two months after the expiry of their term of office and within one month in case of a substantial change in their assets.

74. The asset declarations are to be filed with the Speaker of the National Assembly (Article 8 ADPBC). It follows from Article 9 ADPBC that the declaration of assets of MPs and their relatives are confidential documents which are to be kept in the file of each MP. Moreover, the same Article prescribes that no statement can be made and no information can be given, except for criminal investigations. Courts may request the declarations as well as the Parliamentary Investigation Committee.

75. There is no formal verification process of each asset declaration following its submission to the department of MPs' Services and there is no dedicated body for checking the declarations on a regular basis. However, there is no legal or practical obstacle to anyone submitting suspicions to the GNAT or the law enforcement authorities. If there are serious allegations or indications that illegal activities have taken place, this may lead to the initiation of a procedure for lifting the immunity of the MP in question, according to the authorities.

76. The GET welcomes members of parliament being obliged to declare their assets in accordance with a rather detailed and standardised format and also that the asset declarations are to cover the assets of spouses and dependent family members. That said, the GET noted with concern that the forms as submitted, will stay in the personal files of the MPs and that they will not be subject to any form of regular checking by the services of the GNAT, unless suspicions concerning misgivings or illegalities are discovered in connection with an MP. This is a clear weakness in the system, which was often mentioned by interlocutors met on-site. Moreover, the asset declarations are not subject to any form of public scrutiny as they will remain confidential documents in the personal files of each MP. This weakens the system even more.

77. During discussions on-site, including various members of parliament, the GET understood that the issue of making MPs' asset declarations publicly available had been discussed and several of the MPs met stressed the need for doing so. The GET was even given examples of MPs who had voluntarily made their declarations publicly available in order to protest against the lack of transparency under the current system. The GET recalls that the large number of GRECO member States that oblige MPs to declare their assets most often also provide for a system where the declarations are made available for public scrutiny, as publicly available documents, most often accessible on-line. The GET is of the firm view that the same ought to apply to MPs' declarations in Turkey, while recalling that this may not be the case as far as spouses and dependent family members are concerned for reasons of privacy, in accordance with GRECO's well established practice. Moreover, the GET also sees a need to take measures to have the forms checked in a systematic way, once these have been submitted to the GNAT. Consequently, **GRECO recommends (i) that the regime of asset declarations of**

members of parliament be accompanied by a system of verification of their accuracy and veracity as well as effective, proportionate and dissuasive sanctions for violations of the rules; and (ii) that the content of these declarations be made publicly available promptly after their submission to Parliament (it being understood that information concerning spouses and dependent family members would not necessarily need to be made public).

Supervision and enforcement

78. The Constitution provides that members of parliament in Turkey shall not be liable for their votes and statements during parliamentary proceedings (Article 83). Moreover, according to the same Article, members of parliament benefit from criminal immunity in that deputies accused of having committed an offence before or after elections cannot be detained, interrogated or tried – except in cases of *in flagrante delicto* – unless permission to lift the immunity is given by Parliament. Furthermore, the execution of a criminal sentence imposed on an MP is to be suspended until s/he ceases to be a member.

79. The procedure for lifting MPs' immunity is regulated in the Rules of Procedure of the GNAT (RoP). Article 131 RoP provides that requests for lifting the immunity of a deputy are to be referred by the Office of the Speaker to the Joint Committee comprised of the members of the Committee on the Constitution and the Committee on Justice. The Chairperson, vice-chairperson, spokesperson and secretary of the Committee on the Constitution serve as the chairperson, vice-chairperson, spokesperson and secretary of the Joint Committee respectively. According to Article 132 RoP, in order to examine the immunity files, the chairperson of the Joint Committee elects a preparatory committee by lots consisting of five members. The preparatory committee elects a chairperson and a secretary, who is also to act as a spokesperson, by secret ballot. This committee examines all documents and, if necessary, hears the related deputy, but cannot hear witnesses. The preparatory committee submits its report within one month at the latest after starting its examination and the following examination by the Joint Committee is to be included within one month's time.

80. The Joint Committee debates the report of the preparatory committee and decides on either to lift the immunity or to defer the prosecution until the term of office as a deputy or minister ends. If the report of the Joint Committee stipulates deferring the prosecution, it shall be read out in the Plenary. If no written objection is raised to the report within ten days, it becomes final. If not, it is to be debated in the Plenary. If the prosecution has been deferred and this decision has not been annulled by the Plenary, no prosecution can be performed on the related person as long as his/her term of office as a deputy continues even though a new legislative term has started.

81. Article 134 provides that the deputy whose immunity is requested to be lifted may defend him/herself, if s/he wishes, at the preparatory committee, the Joint Committee and the Plenary, or may assign another deputy to do so. If a deputy who is invited to defend him/herself ignores the invitation, a decision shall be taken on the basis of the documents. A deputy's own request for his/her immunity to be lifted is not sufficient.

82. The GET was informed that during the 24th Legislative Term (2011-2015) there were in total 1 258 files for lifting one MP's immunity submitted to Parliament. Some of these were invalid for various reasons; however, 1 049 files were to be handled by the Joint Committee. The authorities state that there were great expectations at the time that the Constitution was to be amended and as such changes were considered as prejudicial matters by the Joint Committee, the large majority of these files were not dealt with and therefore still pending at the end of the Legislative Term.

83. At the particular request of the GET, the authorities have also submitted information concerning the so-called parliamentary investigation process regarding four Ministers, suspected of having committed various offences, including corruption. These cases (known as the "*17 and 25 December 2013 cases*")[8] were initiated on 28 February 2014 at the Office of the Speaker of the GNAT, by the Office of the Chief Public Prosecutor in Istanbul. On 5 May 2014, the Plenary deliberated on these matters and established a parliamentary investigation committee for handling the cases. On 8 July 2014, the members of this committee were elected by the GNAT and its presidency the following day. The term given to the Committee expired on 9 January 2015. By then, the Committee had held 12 official meetings, heard 23 witnesses (13 of whom by a subcommittee in Istanbul), ordered experts to examine the status of the assets of the accused etc. The Committee also studied other files relating to these cases. On 5 January 2015, the Committee proposed not to refer the former ministers (they had by then resigned) to the Supreme Court to stand a trial and submitted its report to the Office of the Speaker. This report was made public and on 20 January 2015 the Plenary, by secret ballot, decided not to forward the cases to the Supreme Court. The GET notes that these ministers were also MPs; however, when MPs are also ministers the parliamentary investigation process is applicable and not the process concerning parliamentary immunity.

84. The GET heard from several interlocutors, MPs, NGO representatives, academics etc. that the issue of MPs' immunity in respect of criminal proceedings is widely known as a major obstacle to adjudicating MPs for any crime, including corruption. The GET takes the view that immunity of members of Parliament, in as far as it goes beyond their protection of free speech, opinions and voting in Parliament, may provide important obstacles to an efficient enforcement of criminal provisions and may therefore also have a negative impact in respect of the prevention of crimes, including corruption. At the same time, the GET is fully aware that criminal immunity exists in several countries as a protection of MPs against illicit accusations etc. While not ruling out that this type of immunity may be necessary in Turkey, the GET notes that criminal immunity in Turkey goes very far, not only are MPs protected from being detained, interrogated or tried, members who eventually would be convicted following the lifting of the immunity do not risk having their sentence executed as long as they stay members of parliament. However, according to Articles 76 and 84 of the Constitution, a conviction of corruption would most likely deprive the MP of his/her position. Moreover, the GET was concerned about the huge numbers (more than 1000) of requests for lifting immunities pending during the 24th Legislative Term. The GET was not made aware of any case in which a request to lift an MP's immunity had been granted.

85. The GET also notes that a prosecutor's request for the lifting the immunity of an MP has to be forwarded through to the Ministry of Justice and from there to the Prime Ministry before it comes before the Office of the Speaker of Parliament, which is a rather long "starting process". As has been stated by GRECO previously, slow procedures for lifting immunity will delay the criminal justice mechanisms in their actions, which may be particularly damaging in cases of corruption, where rapid interventions are often necessary. In view of the foregoing and with reference to Guiding Principle 6 of Resolution (97) 24 of the Committee of Ministers of the Council of Europe on the twenty guiding principles for the fight against corruption, **GRECO recommends that determined measures be taken in order to ensure that the procedures for lifting parliamentary immunity are dealt with as matters of priority and do not hamper criminal investigations in respect of members of parliament suspected of having committed corruption offences.**

86. Moving to the internal parliamentary procedures for the supervision of MPs and their conduct, there are several procedural measures and sanctions available. Firstly, the

[8] The "17 and 25 December cases" are also referred to in the chapters concerning judges and prosecutors.

Speaker of the GNAT has the power to sustain the order in Parliament; MPs may be called to order, denied the right to speak and may receive reprimands. Reprimands and the most severe disciplinary penalty, temporary exclusion, is to be decided by the plenary (Articles 156-163 RoP). The GET was informed that in the 23rd and 24th Legislative Terms (2007-2015), a total of 15 disciplinary penalties were applied. Seven of them were reprimands, three of them calls to order, two denying the right to speak and three were temporary exclusions from the Assembly.

87. Matters concerning conflicts of interest (incompatibilities) are to be handled by the Joint Committee (following a decision by the Bureau) composed of all members (including the opposition members) of the Committee on Justice and the Committee on Constitution. The Joint Committee is to prepare a report on possible incompatible activities of a member. This Committee has similar resources to those of an ordinary standing committee (e.g. in respect of acquisition of knowledge, employing committee experts, hearing experts).

88. In carrying out these functions, the Joint Committee follows the same pattern as foreseen in the RoP concerning the removal of parliamentary immunity which is regulated in Articles 131-134 RoP and described in detail above; i.e. a sub-committee of five members is set up within the Joint Committee which will carry out the preliminary examination. The Committee examines all documents and may hear the deputy in question after which it submits its report to the Joint Committee within a month. The Joint Committee holds debates based on this report. The deputy subject to the investigation has the right to defend him/herself in the preparatory committee, the Joint Committee and in the Plenary. S/he may also be defended by another deputy at all stages.

89. An MP insisting on holding a position as an MP or carrying out a service incompatible with such a membership may constitute a cause for loss of membership. This follows from Article 84/3 of the Constitution, which reads: "*The loss of membership of a deputy who insists on holding a position or carrying out a service incompatible with membership according to Article 82 shall be decided by the Plenary through secret voting, upon the submission of a report drawn up by the authorised committee setting out the factual situation".* Such a procedural situation is regulated in Article 137 RoP.

90. In respect of violations of the rules regulating the declaration of assets, Article 10 of the Law on Declaration of Assets and Fight against Corruption and Bribery (ADPBC) contains sanctions. According to Article 10 ADPBC, an MP who does not declare his/her assets on time is to be given a notification. If assets are not declared within thirty days after the notification, the person is to be sentenced to prison for up to three months. If the declaration of assets is demanded within the context of an investigation, the MP who has not declared his/her assets on time is to be sentenced to imprisonment for a period of between three months and one year.

91. Article 12 ADPBC envisages imprisonment from six months to three years for false declaration unless another act sets out a heavier sentence. Besides this sanction, an MP who engages in a false declaration is barred from public service for as long as the term of the sentence.

92. It is to be noted that a failure to declare assets is not subject to disciplinary measures within Parliament as such violations are to be handled as criminal matters. However, such matters may not be dealt with by the police and the criminal justice authorities unless the parliamentary immunity is lifted, either by the MP him/herself or by the National Assembly. This is a lacuna in the system and the need to establish adequate sanctions and enforcement in respect of violations of the rules on asset declarations complementary to criminal sanctions has been recommended in paragraph 77.

Advice, training and awareness

93. The authorities state that members of parliament are informed about their obligation to submit declarations of assets once they are elected; an "information kit" (including a guidebook) with general information on the GNAT, its various bodies and the rights and conditions of MPs and the services provided by the GNAT. Particular importance is paid to MPs' obligations concerning declaration of assets; MPs are reminded of this in writing prior to their obligation to submit these declarations (at the beginning of the term and then every fifth year ending with "0" and "5" and at the end of the term.

94. The GET welcomes the GNAT having put together some basic information for newly elected MPs. However, it notes that no institutionalised training is being provided. The GET takes the view that Turkey could well follow many good examples of such training developed in other member States. It would appear particularly important to establish additional information and training sessions for newly elected MPs as well as on a regular basis in respect of ethical conduct, anti-corruption measures etc. and all the more so should a code of ethics/conduct be established, as recommended in paragraph 57. Moreover, the GET sees a clear need to establish a form of counselling mechanism, to which MPs may turn in confidence for advice in delicate situations of conflicting interests etc. This is currently not possible under the GNAT structures and it would be an adequate tool in terms of corruption prevention, which could assist MPs in dealing with ethical issues at an early stage and thus avoid the rather cumbersome structure for examining complaints against MPs (as described above). In view of the foregoing, **GRECO recommends (i) that the parliamentary authorities establish dedicated induction and in-service training for members of parliament on corruption prevention, conflicts of interest and ethical conduct and (ii) that a mechanism for confidential counselling be established to provide advice on ethical questions and possible conflicts of interest in relation to their functions and duties.**

IV. CORRUPTION PREVENTION IN RESPECT OF JUDGES

Overview of the judicial system

95. The judicial system in Turkey is regulated in the Constitution (Part 3, Chapter 3) and several laws (in particular, the Law on Judges and Prosecutors (LJP), the Law on the High Council of Judges and Prosecutors (LHCJP) and the Law on Establishment, Duties and Capacities of the First Instance Courts, Regional Courts of Appeal in Civil Jurisdiction).

96. The judiciary consists of professional career judges and prosecutors. Judges and prosecutors belong to a single professional *corpus*, governed by the High Council for Judges and Prosecutors (HCJP) and are, to a large extent, governed by the same rules, including those relating to recruitment, career, integrity and disciplinary accountability. *As a consequence of the common system of judges and prosecutors in Turkey, this chapter (Chapter IV), dealing with judges also refers to prosecutors, wherever useful. Cross references to the current chapter are also made in the subsequent chapter (Chapter V) dealing with prosecutors.*

97. The Constitution, Article 9, provides that judicial power is to be exercised by independent courts. Pursuant to Article 138 of the Constitution, judges in performing their judicial functions are independent and responsible only to the Constitution, laws and their personal convictions. In addition, any influence on judges in the discharge of their functions is prohibited: the same Article provides that no organ, authority, office or individual may give orders or instructions to courts or judges relating to the exercise of judicial power, send them circulars, or make recommendations or suggestions; that no questions are to be asked, debates held, or statements made in the Legislative Assembly relating to the exercise of judicial power concerning a case under trial. Furthermore, it states that legislative and executive organs and the administration are to comply with court decisions; these organs and the administration shall neither alter them in any respect, nor delay their execution.

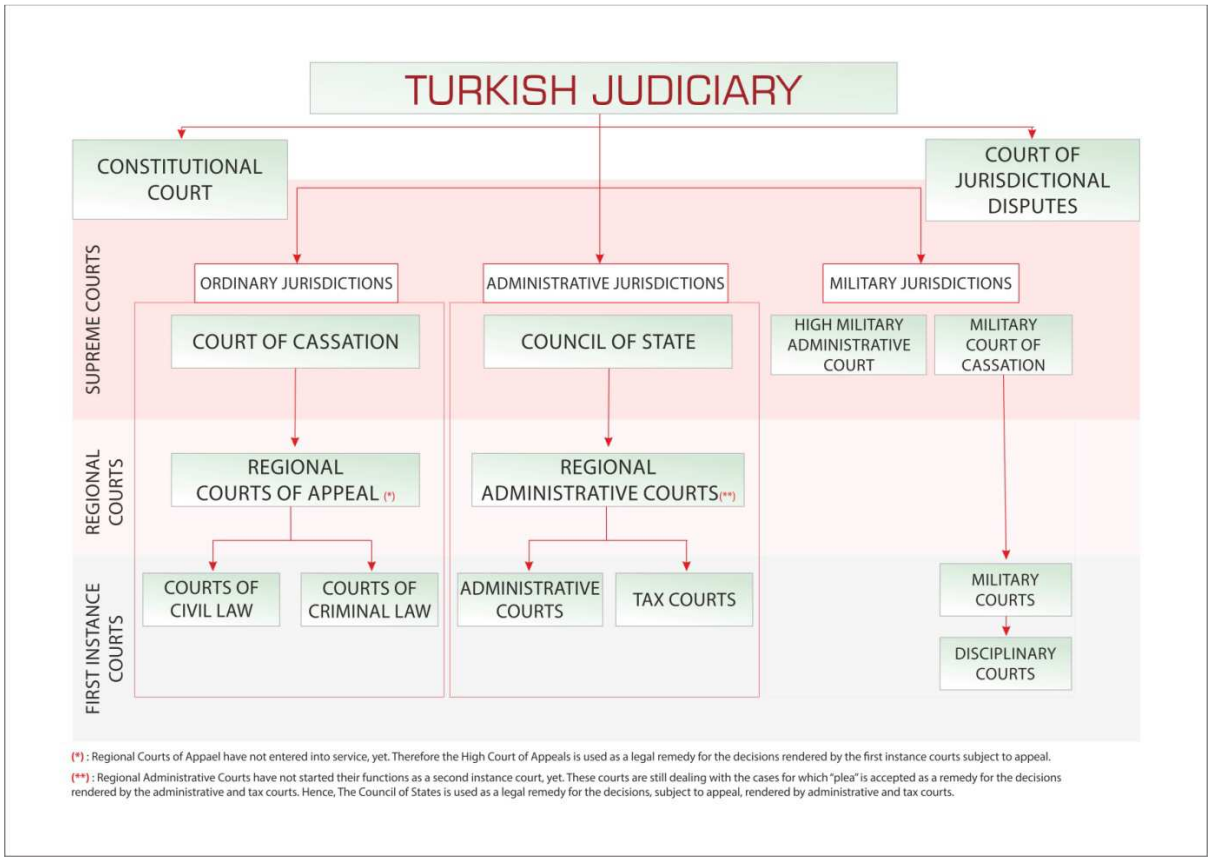
98. In accordance with Article 139 of the Constitution, judges shall not be dismissed, unless they so request, shall not be retired before the age prescribed in the Constitution; nor shall they be deprived of their salaries, allowances or other rights relating to their status, even as a result of the abolition of a court or a post. The same Article states that exceptions can be established by law in relation to those judges convicted for an offence requiring dismissal from the profession, those who are definitely established as unable to perform their duties because of ill health, or those determined as unsuitable to remain in the profession. The same principles of independence of the judiciary and security of the tenure of judges are enshrined in Article 140 of the Constitution.

99. These fundamental constitutional principles of independence are mirrored in the legislation. It is, *inter alia*, stated in the LJP that judges are to discharge their duties in accordance with the principle of independence of the courts and security of tenure of judges and that no organ, authority or individual may give orders or instructions to courts relating to the exercise of judicial powers. The law makes it clear that any single act interfering with the autonomy and independence of courts and judges is forbidden. Furthermore, Article 277 of the Criminal Code criminalises any attempt at "i*nfluencing persons charged with a judicial duty*" as an offence. This offence may lead to imprisonment of up to two years, and more if it goes beyond an attempt.

The courts

100. The Courts are, according to the law, divided into three instances, the supreme courts, the regional courts and the first instance courts. However, the second instance courts (regional courts of appeal and regional administrative courts) established by Law

No. 5235 in 2004, are still not operational as second instance courts (see also second footnote to the organigram, below). The current court system therefore operates with only two instances in reality.



101. The following provides a brief overview of the six supreme courts, the regional courts, (which are not operational) and the first instance courts. A total of 9 917 judges serve in these courts (64% men and 36% women).

102. The Constitutional Court is composed of 17 members. The Grand National Assembly elects, by secret ballot, three members and the President of the Republic appoints the other 14. The basic function of the Constitutional Court is to examine the constitutionality, in both form and substance, of laws, decrees having the force of law, and the Rules of Procedure of the Turkish Grand National Assembly and to decide on individuals' applications regarding alleged violations of fundamental rights and freedoms within the scope of the European Convention on Human Rights by public authorities[9]. Furthermore, the Constitutional Court, in its capacity as a Supreme Court, tries cases against the President of the Republic, the Speaker of the Grand National Assembly, members of the Council of Ministers (the Government); presidents and members of the Constitutional Court, Court of Cassation, Council of State, High Military Court of Appeals, High Military Administrative Court, High Council of Judges and Prosecutors (HCJP), Court of Accounts and Chief Public Prosecutors and Deputy Public Prosecutors.

103. The Court of Jurisdictional Disputes is the final authority to settle disputes concerning verdicts and jurisdiction of the judicial, administrative or military courts. The President of this Court is appointed from among the members of the Constitutional Court.

[9] By amendment to the Constitution in 2010, the right to individual application by citizens to the Constitutional Court has become a constitutional right for the first time. In this regard, everyone has the right to apply to the Constitutional Court on the grounds that one of the fundamental rights and freedoms within the scope of the European Convention on Human Rights and guaranteed by the Turkish Constitution has been violated by public authorities. In order to make such an application, ordinary legal remedies must be exhausted.

In addition to the President of the Court, there are 12 regular and 12 substitute members.

104. The Court of Cassation is the last instance court for reviewing decisions and judgments rendered by civil and criminal courts and which are not referred by law to other judicial authorities. It is also the first and last instance court dealing with specific cases prescribed by law. Members of the High Court of Appeals are appointed by the HCJP from among first category judges and public prosecutors of the judicial courts, or those considered to be members of this profession, by secret ballot and by an absolute majority of its total number of members.

105. The Council of State is the last instance for reviewing decisions and judgments rendered by administrative courts which are not referred by law to other courts. It is also the first and last instance court for dealing with specific cases prescribed by law. Three-fourths of its members are appointed by the HCJP from among the first category of administrative judges and prosecutors or those considered to be of this profession and the remaining by the President of the Republic.

106. The High Military Administrative Court is the first and last instance for the judicial supervision of disputes arising from administrative acts and actions involving military persons or relating to military service, even if such acts and actions have been carried out by non-military authorities.

107. The Military Court of Cassation is the last instance for reviewing decisions and judgments given by military courts. It is also the first and last instance for dealing with specific cases designated by law concerning military persons.

108. Regional Courts of Appeal and Regional Administrative Courts, as the second instance courts, were established by Law No. 5235. As mentioned above, these courts are not operational as second instance courts as yet and will require the recruitment and appointment of many new judges as the current number of judges is insufficient: 15 regional courts of appeal are to be established, each headed by a president and divided into chambers. Chief prosecutors (15) have been appointed and further appointments to these courts are to be made by the HCJP.

109. Civil Courts of First Instance are the general civil courts, with general and residual jurisdiction covering issues not specifically assigned to other courts; civil courts of peace, which deal with issues regulated by civil law and the Civil Procedure Code. The specialised courts (commercial courts, civil courts for maritime matters, civil courts of enforcement, land registry courts, labour courts, consumer courts, civil courts for intellectual and industrial property rights) are generally established for a territory or a province and/or specified districts, taking into account the geographical conditions and the workload of the regions. These courts generally consist of a single judge[10], but some specialised courts may consist of a president and two other judges (e.g. maritime courts).

110. Criminal Courts of First Instance are established in all provincial centres and in specified districts. They consist of a single judge. At this level, there is also the Office of the Magistrates (investigating judges, for pre-trial decisions). The Heavy Criminal Courts, which deal with severe crime, are composed of a panel of three judges (president and two judges). There are also specialised criminal courts, such as juvenile courts and their establishment and competence are also regulated by law[11]. There are also criminal enforcement courts at this level.

[10] See articles 4,5,6 and 7 of Law n. 5235
[11] See articles 8 to 15 of Law n. 5235

The High Council of Judges and Prosecutors

111. The High Council of Judges and Prosecutors (HCJP), which is the self-governing body of the judiciary, is established under Article 159 of the Constitution. The current composition of the HCJP is largely the result of a constitutional reform in 2010 when Article 159 of the Constitution and the Law on the High Council of Judges and Prosecutors (Law No. 6087) were amended. This reform was generally commended by the international community as a step in the right direction, including the transfer of competence from the Ministry of Justice to the HCJP and the broadening of the HCJP's composition (from 7 to 22 members with the judges and prosecutors in majority). This resulted in a higher degree of independence of that body, although there were some misgivings about the maintenance of Ministry of Justice representatives in the HCJP and the fact that some members were appointed by the President of the Republic[12].

112. The main functions of the HCJP are to render final decisions on Ministry of Justice proposals concerning courts (e.g. abolishment of a court or jurisdictional changes); to appoint, transfer and promote judges and prosecutors; to examine whether judges and prosecutors perform their duties in compliance with the normative framework; to deal with disciplinary matters and punishment; to investigate possible offences committed by judges and prosecutors in connection with or during the exercise of their duties and to monitor their behaviour, acts and capacities in relation to the requirements of their duties and, if necessary, to launch investigation proceedings; to issue circulars concerning the administrative duties of judges and prosecutors; to elect members to the Court of Cassation and the Council of State (supreme courts) (Articles 7-9 LHCJP).

113. Pursuant to Article 159 of the Constitution, the HCJP is to exercise its functions in accordance with the principles of independence of the courts and the security of tenure of judges. The Constitution also establishes that the Minister of Justice is the President of the Council and that the Undersecretary to the Ministry of Justice is an *ex-officio* member of the Council. For a term of four years, four regular members of the Council, the qualities of whom are defined by law, are to be appointed by the President of the Republic among lawyers and/or members of the teaching staff in the field of law; three regular and three substitute members are to be appointed by the General Assembly of the Court of Cassation among members of the Court of Cassation; two regular and two substitute members are to be appointed by the General Assembly of the Council of State among members of the Council of State; one regular and one substitute member are to be appointed by the General Assembly of the Justice Academy of Turkey among its members; seven regular and four substitute members are to be elected by civil judges and public prosecutors among those who are first category judges; three regular and two substitute members are to be elected by administrative judges and public prosecutors among those who are first category judges. They may be re-elected at the end of their term of office. The HCJP is composed of, in total, 22 members; 16 of these are judges. The Secretariat of the HCJP is headed by a Secretary General, who is appointed by the Minister of Justice in his/her capacity as President of the HCJP, among three candidates proposed by the Plenary HCJP without the involvement of the Minister (Article 11 LHCJP).

114. The organisation, duties and competence of the HCJP are further regulated in the Law on the High Council of Judges and Prosecutors (LHCJP). The Council carries out its duties in plenary and chamber settings. The HCJP plenary is the most significant decision-making setting and its duties comprise election of its Deputy President and the heads of the chambers, the proposal of three candidates to the President for appointment to the post of the Secretary General, examination of the objections raised against the decisions taken by the chambers, dealing with criminal and disciplinary investigations or prosecution regarding Council Members etc. The Plenary holds a meeting with an absolute majority of the total number of members and renders decisions with an absolute

[12] *Inter alia* by the Venice Commission, CDL-AD(2010)042, paragraphs 81-83.

majority of the total number of members. To the HCJP is attached an Inspection Board, tasked to monitor judges and prosecutors and, if necessary, to carry out inspections on behalf of the HCJP.

115. The First Chamber of the HCJP is responsible for appointments and transfers; temporary authorisation in respect of judges and prosecutors; distribution of cadres; arranging permanent authorisation; granting all sorts of permissions other than those relating to annual or other leave; granting permission in respect of in-service training activities in accordance with the planning conducted by the Justice Academy etc. The First Chamber consists of seven regular members; the Undersecretary of the Ministry of Justice, one member elected from the Court of Cassation, three members elected from among the judges and prosecutors working at civil and criminal courts, one member elected from among the judges and prosecutors working at administrative courts, and one member assigned by the President of the Republic (Article 8.1a LHCJP).

116. The Second Chamber of the HCJP is responsible for all kinds of procedures regarding promotion and classification of judges and prosecutors; decisions in respect of disciplinary and criminal investigations during the exercise of their duties; the transfer to another locality with temporary authorisations, secondment and removal of judges from office, etc.

117. The Third Chamber of the HCJP is responsible for accepting candidate judges and prosecutors to the profession; authorising the Inspection Board to supervise whether judges perform their duties in compliance with the law, regulations, by-laws and circulars. It examines notices and complaints about judges and may deal with disciplinary matters.

118. Decisions taken by the chambers are subject to review by the respective chamber and may finally be reviewed by the HCJP plenary.

119. The Minister of Justice, as President of the HCJP, is responsible for the representation and administration of the Council, together with the Secretary General. The President is also responsible for the agenda of and chairs the plenary meetings of the HCJP. According to Article 159 of the Constitution and Article 6.3 LHCJP, the Minister does not participate in the work of the three chambers, which have their specific tasks as referred to above and the Minister cannot participate in plenary meetings concerning disciplinary matters.

120. In February 2014, a new law was approved by Parliament, changing the function and composition of the HCJP[13]. Among others, the amendments provided the Minister of Justice with the power to appoint members of the three Chambers, to reorganise the HCJP, to be responsible for the duties of the Inspection Board (the body in charge of monitoring/investigating judges and prosecutors) and to appoint its president and deputy president.

121. On 10 April 2014, the Constitutional Court annulled some of the provisions of the new law, *inter alia*, the provisions transferring powers to the Minister of Justice, by declaring them as unconstitutional as they were incompatible with the principles of independence of the judiciary and the tenure guarantees for judges[14].

[13] Law no. 6524 adopted on 15 February 2014, entered into force on 27 February 2014.
[14] Constitutional Court decision E. 2014/57, K. 2014/81 dated 14 April 2014, in *Resmi Gazete* (Official Gazette), No. 29000,14 May 2014;http://www.resmigazete.gov.tr/eskiler/2014/05/20140514-21.pdf. The constitutional Court decision did not have retroactive effect, thus the consequences which the provisions found unconstitutional had caused in the meantime remained unaffected. The Law No. 6545 restored the legal situation before the entry into force of the Law 6524.

122. On 12 October 2014, elections of members to the HCJP were held. The GET was informed on-site that a majority of the judges/prosecutors elected belonged to a platform "Union for Judges and Prosecutors" that had been established prior to the elections.

123. While the authorities stressed that structural problems encountered with the newly formed HCJP in 2011-2013, such as malfunctions in respect of the inspection reports concerning judges and prosecutors, which caused the need for changing the 2010 LHCJP, the GET also heard on-site from several interlocutors representing the judiciary, the bar, NGOs, academia and the press that the 2014 amendments to the LHCJP were widely recognised in Turkey as a reaction by the Government to some criminal investigations of alleged corruption offences involving ministers and their relatives that went public in December 2013, "*17 and 25 December 2013 cases*" (also referred to under the previous chapter on parliamentarians). The GET was also told that the subsequent establishment of the platform "Union for Judges and Prosecutors", from which several judges were elected to the HCJP was yet another indication of a means for increasing government influence over the judiciary. Numerous participants also referred to a repeated use of disciplinary proceedings and punishment in respect of a number of prosecutors and judges decided by the HCJP in the aftermath of the legal amendments to the LHCJP. This information received by the GET (although the GET is fully aware of the polarised situation in Turkey) concurs with findings of the European Commission in its 2014 Progress Report on Turkey, which, *inter alia*, reads: "*…the government's response to allegations of corruption targeting high-level personalities, including members of the government and their families, raised serious concerns over the independence of judiciary and the rule of law. This response consisted in particular in amendments to the Law on the High Council of Judges and Prosecutors and subsequent numerous reassignments and dismissals of judges and prosecutors"…. "This raised concerns with regard to the operational capabilities of the judiciary…and cast serious doubts on their ability to conduct the investigations into corruption allegations in a non-discriminatory, transparent and impartial manner"*[15].

124. Moreover, the Venice Commission of the Council of Europe has recently made a declaration[16], based on information submitted to the Commission by individual judges and prosecutors in Turkey, concerning measures taken against them by the HCJP, such as the removal of prosecutors from cases, transfers of judges and prosecutors and dismissals of members of the judiciary, following their involvement in the "*17 and 25 December 2013 cases" (referred to above). In the Declaration, the Venice Commission concludes that facts provided clearly demonstrate that "there are insufficient guarantees for the independence of the judiciary in Turkey" and called, inter alia, on Turkey "to further revise the Law on the High Council of Judges and Prosecutors to reduce the influence of the executive power within the Council*".

125. Based on statements given on-site by a large number of representatives of the judiciary as well as from other legal branches, NGOs, the press etc, the GET is critically concerned about the broad perception in Turkey that the HCJP is not sufficiently independent vis-à-vis the executive/political powers of Turkey. Although government representatives take issue with the information gathered by the GET, it cannot disregard such strong opinions expressed by various representatives from society (including within the judiciary itself), not least as this perception is strongly supported by a number of separate facts, such as the detailed information received by the GET concerning prosecutors and judges involved in the corruption investigations ("17 and 25 December cases") being subject to disciplinary measures, e.g. suspension, transfer and even dismissal as decided by the HCJP, the government move to change the LHCJP in 2014, which partly was considered to be in conflict with the Constitution by the Constitutional

[15] See summary of findings of the 2014 Progress Report on Turkey, p. 3 (available at http://ec.europa.eu/enlargement/pdf/key-documents/2014/20141008-turkey-progress-report-en.pdf.
[16] Venice Commission Declaration on the Interference with Judicial Independence in Turkey, Venice , 20 June 2015

Court and the establishment of a new platform perceived as government oriented (by judges and prosecutors of the other platforms) prior to the election to the HCJP in 2014. These findings, although strongly rejected by the authorities as well as by some representatives of the judiciary, are, in the view of the GET, problematic factors that need to be considered in the context of preventive measures against undue interference and conflicts of interests etc in respect of the judiciary.

126. The GET shares the general view that the 2010 reform of the HCJP was indeed an important achievement towards more independence of this body. That said, the *ex officio* involvement of the Government in the HCJP through the Minister of Justice as the President of the HCJP and the Undersecretary of the Ministry of Justice as a member of the HCJP plenary as well as a member in one of its chambers, is a situation that casts doubts in respect of the independence of this body. It is recalled that this issue was already raised in GRECO's Joint First and Second Round Report on Turkey[17], adopted in 2006. The GET is fully aware that the Minister does not participate in the work and decisions of the chambers, nor in disciplinary matters dealt with by the plenary; however, the mere fact that the Minister presides over the plenary which has overarching functions and powers, and the fact that s/he may object to decisions taken by the chambers provide a strong impression of possible influence over the HCJP. Already the perception of such a possibility is critical in this respect. Moreover, according to Article 82 LJP, the Ministry of Justice is responsible for the decision to lift the functional immunity of judges in case they are suspected of criminal offences. According to the authorities, this power of the Ministry has in reality been transferred to the HCJP (Second Chamber), in line with Articles 4 and 9(2)a)2)LHCJP. However, the GET notes that Article 82 LJP remains unchanged and takes the view that the conflicting legislation needs to be amended to clearly establish the position of the authorities. The GET is also concerned that some of the HCJP members are appointed by the President of the Republic. That said, it is to be welcomed that the majority of the members of the HCJP are to be elected among judges and prosecutors; the GET would like to see that scheme expanded. Furthermore, the GET is concerned that the political orientation of the platforms from which judges were elected in the 2014 elections to the HCJP was perceived to play a greater role than in the past. This has increased the political dimension of this process; several interlocutors observed that the judiciary has become more "polarised", in a manner that reflects political alliances. More significantly, and potentially alarming were the allegations by some sitting judges that judicial decision-making in individual cases risks being influenced by how a particular decision might be perceived by the HCJP or the executive power. The GET takes this perception among some judges very seriously, although other judges claimed that they enjoyed independence in the exercise of their judicial functions.

127. In view of the foregoing, **GRECO recommends that determined measures be taken to strengthen the independence of the High Council of Judges and Prosecutors (HCJP) in respect of potential threats to its independence from the executive authorities and political influence.**

Recruitment, career and conditions of service

128. The Law on Judges and Prosecutors describes the procedure for appointing new judges and prosecutors[18]. The number of candidates to be admitted every year is decided by the Ministry of Justice in consultation with the Justice Academy. The announcement of the vacancies, setting out the criteria for applying, is made publicly in the most important newspapers and it is also posted on the website of the Ministry of Justice, at least 15 days before the deadline for application.

[17] Greco Eval I-II Rep (2005) 3
[18] See articles 7 to 13 LJP

129. The basic requirements for admission to the judiciary (for both judges and prosecutors) are: to hold Turkish citizenship, be under 35 years of age; to be a graduate of a law faculty; not to be banned from civil rights; not to have physical or mental diseases which would hinder the discharge of duties; not to be under criminal investigation or prosecution for, or convicted of, criminal offences (negligent offences excepted), including dishonouring offences, embezzlement, bribery, theft, etc. The authorities point out that the requirement "not to be subject of investigation or prosecution" is particularly significant as it goes beyond what is required for entering the ordinary civil service. Furthermore, candidates may not have a history of conduct which is not in line with the judicial functions (Article 8 LJP).

130. Candidates matching these requirements must successfully complete a written competitive test, on general skills and culture (20%) and professional matters (80%). The candidates are ranked following a points system and only the successful candidates are invited to the subsequent interview. Academics, professors of law etc may also be admitted to the judiciary, but without such tests.

131. The Interview Board, consisting of seven members, is chaired by the Undersecretary of the Ministry of Justice or a deputy undersecretary assigned by the Undersecretary. The other members are the chair of the Inspection Board, the Director General of Criminal Affairs, the Director General of Civil Affairs and the Director General of Personnel (Ministry of Justice) and two members of the executive board of the Justice Academy.

132. After passing the tests, the candidates (at this point it is still not decided whether they will become judges or prosecutors) have to undergo a probationary period, consisting of training at the Justice Academy as well as practical judge/prosecutor activities at first instance courts and Supreme Courts during a period of two years (it can be reduced to eighteen months). During the probation, candidates may be removed by the Ministry if it appears that they lack the qualifications required by law or if their conduct or capabilities are not up to the standards of the profession[19]. The Ministry of Justice designates candidates who have completed six months of pre-training as candidate judges or candidate prosecutors, by considering the need in the judiciary and the merits and preferences of the candidates and by consulting the HCJP[20]. At the end of the training, candidates are again subject to a written exam after which they may be appointed as judges (or prosecutors). These final appointments (confirmations) are not carried out by the Ministry of Justice, but by the HCJP, more particularly by its Third Chamber.

133. The GET acknowledges that it is appropriate for the Ministry of Justice to be involved in the organisation, establishment of criteria for the selection and recruitment of judges as this Ministry is responsible at large for judicial affairs in Turkey, e.g. the need to establish, maintain or reallocate courts and the subsequent needs for judges in these courts. Moreover, the GET was made aware of the fact that the bulk of the legal officials (if not all) employed in the Ministry of Justice are recruited among the judges and prosecutors, as part of their career. While not denying the Ministry of Justice's right to a leading role in justice affairs, the GET notes that the current selection of the individual candidates is carried out by a seven-member interview board, chaired by the Undersecretary of the Ministry of Justice or a deputy undersecretary and composed of staff from the same Ministry and the Justice Academy. Only at a later stage is the HCJP to select among the successful candidates (already selected by the Ministry) to become judges/prosecutors in a final decision of confirmation. Moreover, considering the current composition of the HCJP, it is clear that the Ministry has a strong role at all stages of the selection and recruitment process. In the view of the GET, this leading and decisive role

[19] Article 12 LJP
[20] Article 10.4 LJP

of the Ministry of Justice is obvious throughout the recruitment process and, as such, it is yet another example of its significant institutional influence over the judiciary. In the GET's view, the role of the Ministry ought to be focused on the regulatory framework for recruitment and the needs in terms of recruiting new staff, while the actual selection and recruitment procedures ought to be led by the judiciary itself, possibly by the HCJP. In view of the foregoing, **GRECO recommends that the involvement and the responsibility of the judiciary in respect of the process of selecting and recruiting candidates to become judges/prosecutors be considerably strengthened.**

134. As far as the integrity checks on candidate judges (prosecutors) are concerned, information is gathered from existing files, such as criminal records, intelligence records, etc. ("archive inquiry"). Relevant information is also provided by mentor judges and prosecutors following the candidates' educational programme, and can also be ordered by the Ministry from its Inspection Board if need be. Moreover, at the end of the probationary period, information is put together about the candidates' capabilities and achievements, commitment to and sense of duty, moral conduct, honour and dignity, etc.[21] On the basis of the information gathered and the assessments made, the Ministry of Justice is to prepare a report on each candidate[22]. The GET was concerned that these kinds of tests do not apply in respect of academics who may enter the service without any such checks[23]. The GET is of the view that all candidates need to be subject to the same integrity tests before entering the judiciary. The GET was also concerned about the meaning of the expressions used in respect of candidates' personal qualities and behaviour, expressed in terms such as "honour", "dignity" and "moral conduct". The GET believes that such notions could be valuable in assessing candidates' suitability for carrying out judicial functions provided there are clear criteria established for their meaning. The GET discussed this matter with representatives of the Ministry of Justice; however, the normative content of, for example, "moral conduct" could not be described in any detail and there is no established set of questions or guidelines that could be used during interviews in this respect. Consequently, **GRECO recommends that all candidates to the judiciary be subject to checks concerning their ethical conduct and integrity, based on precise and objective criteria which are open to the public and in accordance with European standards.**

135. The Constitution (Article 139) and the law provide, as a main rule, that judges may not be dismissed (Article 44 LJP). Nor may they be deprived of their salary, benefits and other personal rights or be forced to retire before the age of 65 even if a court or a position is abolished. That said, according to Article 53 LCP, the service of a judge (prosecutor) is to be terminated when it is decided to dismiss a judge (e.g. following disciplinary proceedings) or following criminal conviction against the judge, when the judge is found to be incapable of performing his/her duties because of health problems, has become inappropriate for the judicial profession or requests him/herself to withdraw from the service. Such decisions are to be taken by the HCJP.

136. The LJP contains a system of four categories of seniority within the judiciary: "third category", "second category", "designated first category" and the highest grade, "first category". There is also a promotion system based on degrees, comprising eight degrees. Throughout their careers, judges and prosecutors advance from the eighth to the first degree. Advancements in categories and degrees are to take place on the basis of time spent in the service, level of positions of the particular judge/prosecutor and on the assessments of the judges/prosecutors (referred to above). If judges/prosecutors have no negative marks in their "credential fiches" the upgrading takes place

[21] See articles 8 and 9 of the Regulation on Rules and Procedures for Pre-Service Training of Candidates Judges and Prosecutors at the Civil and Administrative Judiciary
[22] See article 11 LJP
[23] The authorities state that academics who are to be appointed as judges/prosecutors are subject ethical evaluations required by their academic profession.

automatically. Up-to-date information on judges' and prosecutors' advancements is made public. It is the responsibility of the Second Chamber of the HCJP to deal with promotions and classification of judges and prosecutors. To this end it collects information and opinions about the qualifications, professional competence and moral integrity of them. Specific "credential fiches" of each judge/prosecutor are based on assessments made by the authorities; these documents are included in the secret credential files of the judges/prosecutors concerned[24]. The GET was informed that, since recently, judges/prosecutors may request to see these files, under Law No. 4982 on the Right to Information. The GET takes the view that such files should as a main rule be directly available to the judges/prosecutors concerned and that their evaluations need to be subject to judicial review, in order to strengthen the position of these officials.

137. When entering into the area of promotions and transfers in respect of judges (and prosecutors), the GET notes that the organisation and administration of the judiciary is highly centralised under the auspices of the HCJP and the organisational links with the executive power are apparent; for example, there is a constant exchange of judges/prosecutors between the judiciary and the Ministry of Justice. All managerial staff of the Ministry of Justice are judges or prosecutors, and working in the Ministry is an important qualification for a career in the judiciary. Furthermore, the first instance courts consist of a single judge or courts made up of a panel of three judges. These small courts are spread out in the regions or may be situated in the same court house in larger cities, but with no administrative or institutional framework to autonomously deal with issues such as promotions and transfers which, instead, are centrally dealt with by the HCJP.

138. Practically all administrative procedures and decisions concerning judges' (prosecutors') performance are the direct responsibility of the HCJP. The Inspection Board of the HCJP assists this body in gathering the necessary information from the courts/prosecution offices where the judges/prosecutors perform - through regular evaluations (every two years) and *ad hoc* assessments of the various judges (prosecutors) when deemed necessary, for example, in disciplinary matters. These evaluations are the basis for the subsequent administrative measures and decisions taken by the HCJP in respect of individual judges. The inspections carried out may have a direct and decisive impact on judges' possibilities of being promoted. As a result of an evaluation, a judge may be awarded the following marks: "worthy of promotion"; "worthy of preferential promotion"; "worthy of privileged promotion". Those deemed not worthy of promotion may request a re-examination of their status by the HCJP; however, the law does not provide for an appeal against the decision of the HCJP. However, the person concerned has the right to contest the supporting documents for a "not worthy of promotion" decision. In case of invalidation of such documents by the court, the HCJP will be obliged to revise its "not worthy of promotion" decision. When the HCJP inspectors encounter any undue procedures, evaluations may also result in disciplinary proceedings against judges/prosecutors.

139. Presiding judges are appointed by the HCJP on the basis of the applicant's grade (at least third category judge), professional competence, positive record following inspections, if there is no other obstacle to being appointed.

140. Having regard to the importance given to evaluations (inspections) of judges and prosecutors in Turkey, such procedures, to the extent possible, need to be governed by objective criteria as a means of limiting undue influence over judges/prosecutors. Similar to its reasoning in respect of candidates to the judiciary, the GET is concerned that the terminology used in the evaluations of serving judges and prosecutors, such as "honour", "dignity" and "moral conduct" etc., which play an important part in the evaluations, are vague and need to be more precise and objective in order to protect judges/prosecutors from arbitrary assessments. Furthermore, the evaluation system in Turkey may not only

[24] See articles 23 and 24 LJP

have strong consequences for promotions, but may also lead to disciplinary measures, removal from office and dismissal etc. The GET recognises that under Turkish law, HCJP inspectors cannot interfere with judicial powers and judicial decisions (Article 7 LHCJP), which in itself supports judicial independence. Nonetheless, the GET takes the view that vague criteria for the evaluation of judges and prosecutors present a risk that the evaluated judge/prosecutor will behave in a way that may be thought to please the evaluators[25]. Such evaluations may thus negatively affect the integrity and independence of judicial office holders. In view of the foregoing, **GRECO recommends that evaluations of judges/prosecutors concerning their ethical conduct and integrity be guided by precise and objective criteria, which are open to the public and in conformity with European standards.**

141. As regards the mobility of judges, the Turkish judiciary has a rather unique system of rotation of judges/prosecutors in place. There are two by-laws which divide the locations where judges have to perform their duties into five different zones, depending on geographical and economic conditions[26]. The minimum duration of service is two years in the fifth zone, three years in the fourth zone, three years in the third zone, five years in the second zone and seven years in the first. Within these periods judges have security of tenure in the location where they perform their duties. Judges may request transfer after serving two years in their specified zones. As a principle, judges/prosecutors are appointed starting from the lower zones and then moving to the higher zones during their term of duty. Normally judges are appointed to a new position through a transfer to an equal or higher position (Article 35 LJP).

142. However, judges who have been found to fail in their duties may be sent to another location regardless of seniority. Judges/prosecutors may also be transferred as a result of personal, family or health reasons (Article 35 LJP).

143. Based on requirements of the services, judges may be transferred to other regions (Article 36 LCP). Furthermore, judges may be transferred to the Ministry of Justice (Article 37 LCP).

144. To the range of measures available in respect of transfers of judges should also be added the variety of disciplinary measures, for example, suspension of advancement and progress (in respect of promotions) and displacement of judges (transfers), further dealt with below.

145. The GET was informed that all judges' (prosecutors') positions are announced publicly and that judges/prosecutors may express interest in a certain position to the HCJP. However, as this system is also based on obligations upon judges to serve during specific periods of time in specific areas, the HCJP may also force a judge to move to a certain area. That said, the HCJP may at the same time take into account judges' individual preferences, but if a judge does not indicate a certain preference s/he will automatically be transferred to a new region at regular intervals. The GET notes that the current system of judicial careers in Turkey differs significantly from many other European systems: firstly, the obligatory rotation between regions means that the security of tenure does not cover the particular position a judge/prosecutor occupies for more than a limited period of time; (e.g. 2-3 years etc.); secondly, judges/prosecutors may be transferred by the HCJP for reasons relating to their performance, for personal reasons as well as a result of needs within the service; thirdly, judges/prosecutors may be transferred against their wish for a limited period of time (up to six months) for reasons of service need; and; fourthly, judges/prosecutors may also be transferred as a result of disciplinary proceedings. The GET notes that this broad range of transfer

[25] See also CCJE Opinion No.17 (2014) and CCPE Opinion No.9 (2014)
[26] See article 2 Law on Regulation on Appointment and Transfer of Judges and Prosecutors

possibilities makes the irremovability of judges a rather weak notion in Turkey. Additionally, it is the First Chamber of the HCJP (in which the Under Secretary of the Ministry of Justice is one of the seven members) that decides on transfers. Moreover, judges can be temporarily assigned against their wish to a different jurisdiction for no more than four months which can be prolonged by another two months. In urgent situations this power may even be exercised by the Minister of Justice (Article 47 LJP).

146. The GET understands the rationale and the need for the regular rotation system in a big differentiated country like Turkey, in which living standards vary greatly from one region to another. Statistics provided by the authorities indicate a large number of such transfers annually (around 3 500 every year). Nevertheless, such regular transfers, which surely require considerations and priorities, in conjunction with the other possibilities to transfer judges for other reasons open up a wide range of transfer possibilities. Several interlocutors met by the GET on-site, as well as a number of individual statements submitted to the GET, strongly suggest that the measure of removing members of the judiciary has been used repeatedly in Turkey as a form of retaliation against judges/prosecutors. The Turkish authorities oppose these allegations and the GET is not in a position to scrutinise the details of the cases brought to its attention which are currently on-going and have received considerable media coverage. However, it is critically concerned about the solid statements of various interlocutors in this respect as well as about the system as such, which has a clear potential of being misused, not least because the transfers may be justified under the law for so many different reasons. In view of the above, **GRECO recommends (i) that the security of tenure for judicial officeholders be considerably strengthened, by reducing the possibility to transfer judges/prosecutors against their will, that such processes be guided by objective criteria and subject to a review mechanism (appeal); and (ii) that the powers of the Ministry of Justice to intervene in the process concerning temporary assignments be abolished.**

147. As far as judges' salaries and benefits are concerned, the authorities refer to Article 128 of the Constitution, which stipulates that salaries and allowances of all civil servants are to be regulated by law. In this context, the provisions regarding the financial rights of judges are included in Article 102 and subsequent articles of the LJP, according to which judges' and prosecutors' financial rights comprise two different categories, namely reference salary and judicial allowance. According to Article 103 LJP, the salaries of judges and prosecutors follow the same grading system. The reference salary is determined upon the gross amount of all types of payments made to a civil servant of the highest seniority level as a basis. In addition, judges and prosecutors are entitled to the benefits and additional benefits provided for in article 106 LJP. Accordingly, the judiciary may earn a right for a 10% judiciary benefit out of the reference salary to be paid, which is calculated on the basis of their positions and seniority. Additionally, all judges are to be paid a monthly supplementary compensation.

148. Within the framework of the principles stated above, a judge, at the start of his/her career, receives annually, including judicial allowance and supplementary payments, a gross salary of 76 044TL (€22 300). The President of the High Court of Appeals receives an annual gross salary of 162 080TL (€47 500). The GET was informed that judges in Turkey are considered relatively well-paid.

149. Judges also receive additional benefits, established by law, such as fees for lecturing at conferences and training activities and for speaking foreign languages. Furthermore, housing is allocated to judges during their term of office. The distribution of apartments follows a points system established by the Ministry of Justice. The GET is of the opinion that in systems where significant benefits are provided to public officials, such as housing, it is critically important that these benefits are clearly regulated to avoid discretionary decisions which may be used for illicit reasons. This is even more important in respect of the judiciary, in relation to which impartiality and independence are

particularly important factors. The GET heard no allegations during the on-site visit regarding the application of regulations of housing and other benefits for judges and prosecutors.

Case management and procedure

150. The basic regulations on the jurisdiction and competence of the courts in criminal, civil and administrative cases are laid down in Law No. 5235 for Civil Jurisdiction, Law No. 2576 for Administrative Jurisdiction, the Criminal Procedure Code, the Civil Procedure Code and in the Law on the Procedure of Administrative Justice.

151. The large majority of first instance courts of ordinary jurisdiction appear as criminal courts or civil law courts, consisting of one single judge. Courts at the first instance may also be defined as criminal courts of severe cases and specialised courts and these consist of a panel of three judges (a president and two other members). In districts or cities where there are several courts, sharing the same court house, these are still separate courts. Their jurisdictions are decided by the HCJP, considering the borders of the city or the district. Consequently, there is no issue of distributing cases within these courts. Instead cases are distributed to separate courts.

152. The distribution of criminal cases to the courts has, since 2014, been based on a computerised system which enables the distribution of files at the chief public prosecutor's offices of first instance. As the prosecutors are connected to specific courts, this distribution also comprises the distribution to the courts. The computerised system has been integrated into the National Judicial Network Project (UYAP) System, following decision no. 752, dated 09.10.2013, of the HCJP. After the introduction of the new system, investigation files are automatically distributed by the UYAP system among the public prosecutors and to the courts, assigned by the chief public prosecutors to conduct investigations. Criteria such as the number of parties to an investigation, the gravity of the investigated offence, whether the investigation calls for special procedures etc. are assessed by the system prior to the distribution of the files to provide for a fair workload of the chief public prosecutors in accordance with the information provided based on a "points-system". Once these parameters have been taken into account by the system, the cases are distributed randomly among the prosecutors and the affiliated courts.

153. The duty to conclude trials as quickly as possible is enshrined in the Constitution (Article 141). Furthermore, Article 190 of the Criminal Procedure Code regulates that the main hearing is to be conducted without interruption until the judgment is rendered and the reasoned decision of the judgment shall be added into the files within 15 days, at the latest, following the judgment. Similar rules are stipulated in the Civil Procedure Code and Procedure of Administrative Justice. Court proceedings are, as a main rule, public. The Court may close the hearings to the public only in cases stipulated by law.[27]

154. According to the Civil Procedure Code (Articles 34-45), the Criminal Procedure Code (Articles 22-32) and the Code of Procedure in Administrative Jurisdiction (Articles 31, 56 and 57), it is not possible to remove judges from a particular case unless there are special reasons casting suspicion on his/her impartiality or due to close relationships with the parties to the case.

155. The GET was made aware of a number of media reports and information provided on-site regarding certain corruption investigations known as the "17 and 25 December cases", in relation to which investigating judges/prosecutors had been removed from these cases (due to disciplinary and criminal investigations against them), and that the same cases were subsequently dismissed by reassigned prosecutors. The GET is of the

[27] See articles 182, 184, 185, 186 of the Criminal Procedure Code, article28 of the Civil Procedure Code and article 18 of the Code of Procedure in Administrative Jurisdiction.

firm opinion that reassignment of judges ought to be a rare measure, occurring only in the most extreme circumstances for legally justified reasons and with no influence from the executive power. The authorities have explained that it is not possible to remove judges from a specific case unless special reasons are at hand, as explained in paragraph 154. The authorities have also explained that judges/prosecutors subject to disciplinary proceedings may be removed from all their judicial functions, including all "their cases", which was the situation in the aforementioned specific case.

Ethical principles, rules of conduct and conflicts of interest

156. The basic ethical principles concerning judges are provided for in the Constitution, Articles 138-140, which deals with their independence, impartiality and their discharge of duties. According to these principles, in performing their judicial functions, judges are independent and responsible only to the Constitution, laws and their personal conviction in conformity with the law. In addition, any influence on judges in the discharge of their functions is prohibited.

157. The GET noticed that rules on judges' conduct are not written in one single text, but are regulated under different provisions; the Law on Judges and Prosecutors, the Law on the High Council of Judges and Prosecutors, the Law on Declaration of Assets and Combat Against Bribe and Corruption, etc. Moreover, Turkey has ratified international conventions which are binding upon the country. There is no specific Code of Ethics/Conduct developed by the judiciary in respect of judges in Turkey. That said, the HCJP has adopted the United Nations' "Bangalore Principles of Judicial Conduct" and its principles are applicable to Turkish judges, also as criteria to assess judges' behaviour. These principles can be applied in disciplinary proceedings against judges.

158. The GET was informed that within the scope of IPA (Instrument for Pre-accession Assistance) a project "Strengthening Judicial Ethics in Turkey" had been initiated by Turkey and the European Union. Partners in this Project are the HCJP and Turkish Justice Academy. GRECO welcomes this initiative, which should preferably be carried out in the light of the current report.

159. There is no general definition of conflicts of interests in these instruments. The legal framework for the prevention and resolution of conflicts of interests is provided in relevant provisions of the Criminal Procedure Code, the Civil Procedure Code and Administrative Procedure Code governing various forms of disqualification, for example, recusal. According to these rules, judges cannot assume duties in cases concerning their own or their relatives' interests, or in cases where they act in a way which might raise suspicion regarding their impartiality.

160. Currently, the legal framework provides for a range of fundamental principles that apply to judges in carrying out their duties. However, these provisions are scattered under different provisions; they do not take sufficient and coherent account of conflicting interests, nor in respect of risks of corruption. Notably they do not provide a general definition of conflicts of interest, which may affect not only the judges' action in court, but might also extend to their conduct outside the court and in their personal life. Although it is to be welcomed that the so called "Bangalore Principles of Judicial Conduct" have been taken on board by the HCJP, these international standards are not specific to the particular situation in Turkey.

161. The GET shares the opinion of the Turkish authorities that a specific set of professional and personal rules of ethical conduct would be a useful tool in order to clearly identify the standards of integrity and conduct to be observed by judges, to assist them meet those standards and to inform the public of the conduct it is entitled to expect. Moreover, ethical rules need to be adapted to the particular situation in a given country in order to secure "ownership" among the users. Furthermore, such rules need to

provide for a definition of the concept of conflicts of interest, preferably coupled with references to practical examples, it being understood that such an instrument can go further than legislation. A code of ethics should only be developed with the active participation of judges in order to make it specific to the needs of this particular profession. Furthermore, it ought to be a "living instrument", i.e. be able to evolve over time as appropriate. A top-down approach for the development of a code of ethics is therefore not recommended. Furthermore, a code of ethics would also be an excellent tool for the training of judges in ethical dilemmas, whether in relation to induction or in-service training. The usefulness of an ethical code for judges in Turkey was stressed by several interlocutors met on-site as such an instrument could help assist judges not to accept any form of undue pressure or interference from outside the judiciary. In this connection, the GET wishes to stress the importance of making such a code specific to the profession of judges, which is rather distinct from other professions, including that of prosecutors.

162. In view of the above, **GRECO recommends (i) that a code of ethics be established for the particular functions of judges, including practical examples offering adequate guidance on conflicts of interest and other integrity related matters (gifts, recusal, third party contacts and handling of confidential information etc.) and (ii) that it be made accessible to the public and used in the training of all categories of judges.**

163. Furthermore, the GET notes that judges in Turkey - unlike the situation in many other countries - do not take or sign an oath specifically related to their profession as judges. The GET was informed that they do take an oath as any public official when entering as a candidate judge/prosecutor, appointed by the Ministry of Justice. In the GET's view a general oath of public officials is clearly not sufficient when the candidates are finally confirmed/appointed as judges by the HCJP. It would even appear inappropriate that future judges are to take an oath of the civil service, which is not in any way followed up at the appointment as judges. The GET is of the opinion that a dedicated oath for judges that pledges and demonstrates adherence to fundamental principles of the Constitution, in particular the independence and impartiality of the judiciary and of the individual judge and which is possibly linked to a yet-to-be established ethical code of judges would be a valuable tool as a reminder, as well as a means, to safeguard judicial integrity for all appointed judges when carrying out their specific duties. Consequently, **GRECO recommends that judges – upon appointment – be obliged to take an oath to adhere to fundamental principles of judicial independence and impartiality when carrying out their judicial functions.**

Prohibition or restriction of certain activities

Incompatibilities and accessory activities, post-employment restrictions

164. According to Article 140.5 of the Constitution, "Judges and public prosecutors shall not assume any official or private occupation other than those, specified by law". This position has been complemented in Article 48 LJP, under the title "Other works and assignments". Judges and prosecutors may not become shareholders or own dividends in commercial companies. However, judges are not banned from buying and selling shares on the stock markets, subject to declarations. Article 48 LJP states that a judge may publish scientific work and may own the copyrights of that work. According to Article 22 (b) of the Law on Justice Academy (No. 4954), judges may give lectures to the Academy and as a result of these activities, they are entitled to lecture fees (Article 38).

165. Judges and prosecutors may not engage in any other profit generating activities, apart from these specific situations. According to Article 67 (b) LJP, when judges "engage in income generating activities which members of the judicial profession are banned from

or which are incompatible with the nature of the profession", they shall be penalised by altering their rank promotion.

166. Judges and prosecutors may not join political parties (Article 51 LJP).

167. As far as post-employment restrictions are concerned, Article 2 of the Law on restriction for those who leave public posts (No. 2531), prohibits public officials, including judges, according to the authorities, to take direct or indirect duty and responsibility, to fulfil any commitment, to perform brokering and representation in administrations, institutions and bodies for a period of three years and in the area of the functions where they used to perform, within two years, subject to imprisonment up to two years.

Recusal and routine withdrawal

168. The Civil Procedure Code (articles 34-45), the Criminal Procedure Code (Articles 22-32) and the Code of Procedure in Administrative Jurisdiction (Articles 31, 56 and 57) contain the criteria on when a judge is to be excluded from trying a particular case. These criteria all aim at avoiding that a judge be involved in a case to which s/he has particular links (e.g. being a victim or a party to the case, having worked on it before at a lower court or during the investigation phase, being related by family or business relations to the parties or their representatives or if any other circumstances which may render his/her impartiality doubtful). The motion of withdrawal is to be initiated by the judge him/herself or by the parties and is decided upon by the court, without the participation of the relevant judge, or by another court, if the court consists of a single judge. Appeal against the decision on recusal is possible.

Gifts

169. Questions relating to gifts are regulated in Act No. 3628 on Declaration of Property and Fight with Bribe and Corruption (ADPBC), which apply to all public officials and even beyond that notion. The law does not provide for an autonomous definition of "gifts". Judges (as well as any other officials) may accept gifts only in cases listed in Article 3 ADPBC; however, if the financial value of the gift exceeds the sum of a ten-month net minimum salary (approx. €3 400) s/he is obliged to submit the gift to his/her institution within a month. Moreover, Article 4 of the same law provides that goods which cannot be proven to have been acquired in accordance with the law and public morality or which increase the wealth which cannot be considered commensurate with the income of the person concerned in terms of his/her social life are considered undue acquisition of property and are to be confiscated.

170. More particularly, the LJP (Article 67(e)) provides that judges (or prosecutors) who request gifts, directly or indirectly or who receive gifts for a benefit or borrow from clients even if not in the course of duty commit a disciplinary offence, which can be punished by the penalty of suspension of progress or displacement. Moreover, a judge/prosecutor who creates the impression of involvement in bribery may be subject to disciplinary punishment. Obviously, judges may also be convicted for bribery offences, under the Criminal Code.

171. The authorities also stressed that receiving or requesting gifts can be considered a disciplinary offence to be punished by dismissal, when "the act calling for disciplinary penalty undermines the honour and dignity of the profession and respectability and reputation of the public service even if it does not constitute an offence and does not require conviction" (Article 69 LJP).

172. The GET appreciates that there are rules to ensure that judges do not take undue gifts. However, these rules are scattered throughout various laws and they do not necessarily prohibit all undue forms of gifts that could be provided in respect of judges,

although the GET has no doubt that this is a main rule in Turkey as well as in most other states. A clear reference to the prohibition of gifts should be included in a future code of ethics/conduct (See recommendation, paragraph 162).

Third party contacts, confidential information

173. The authorities refer to Article 68 LJP, which, *inter alia*, provides for disciplinary punishments when a judge or prosecutor impairs the honour and respectability of the profession or loses personal dignity and reputation due to inappropriate and improper acts and relations, creates the impression, by way of acts or conduct, that s/he fails to perform duties properly and impartially or creates the impression that the work is influenced by others or by personal emotions.

174. Concerning confidential information, judges, as well as prosecutors, are bound by the general rules on confidentiality and the breach of their duties in this respect can be punished as a disciplinary and/or criminal offence. As far as criminal provisions are concerned, the authorities refer to the Criminal Code, Article 134 (*"Violation of privacy"*), Article 135, (*"Recording of Personal Data)", Article 136*, (*"Unlawful acquisition or disclosure of data")* which applies to anyone and Article 258 ("Disclosure of Confidential Information in Respect of a Duty") which applies to public officials. As far as investigations and trials are concerned, Article 285 of the Criminal Code penalises anyone who breaches the confidentiality of an investigation or trial. These offences may lead to imprisonment. Disciplinary provisions in this respect are contained in Article 65 LJP which provides that a reprimand is to be imposed when a judge or prosecutor engages in conduct in or outside the course of duty which may impair the respectability of and confidence in the judicial profession. The authorities have also referred to actual cases in this respect.

175. Article 77 LJP provides that the HCJP may apply the interim measure against judges or prosecutors of suspension or transfer to another jurisdiction by granting temporary authorisation until the conclusion of the investigation. The authorities submit that pursuant to this article, a judge/prosecutor who contacts a person in ways other than the official ways of communication for a case pending before him, shall be subject to both the above stated disciplinary provisions and the injunctions, provided for in Article 77 LJP.

176. The GET notes that the handling of confidential information is adequately regulated in law. That said, general regulations in respect of judges' third party contacts could be further developed, not least in respect of various situations comprising typical forms of conflicting interests. The elaboration of such principles in a code of ethics, would provide useful guidance to judges in respect of their day-to-day application. A recommendation to this end has been included in paragraph 162.

<u>Declaration of assets, income, liabilities and interests</u>

177. Judges are - similar to MPs, prosecutors and other public officials - obliged to submit asset declarations, according to the Act (No. 3628) on Declaration of Property and Combat Fight against Bribery and Corruption (ADPBC). The declarations are to contain assets of the judge, his/her spouse and children under his/her guardianship corresponding to five times the amount of his/her monthly net payment (Article 5 ADPBC).

178. The declarations are to be made in accordance with a "Standard Property Declaration Form", which is enclosed in Article 18 of the Regulations on Property Declaration, issued pursuant to ADPBC. The form consists of eight parts, including the identity of the judge, his/her spouse and children, information about any immovable property, cooperative ownerships, vehicles and other movable property, bank and

securities information, gold and jewellery, loans and credits, rights and other asset elements deemed necessary for declaration.

179. The form is to be submitted, after being duly signed by the judge, to the HCJP within one month from appointment and then every year ending with "0" or "5". The declarations are kept in the personal file of the judge/prosecutor by the HCJP and are not made public. The GET was informed that these files are the responsibility of the First Chamber of the HCJP and according to the law (Article 18 of the Regulation on Making Property Declarations) new forms are to be checked against those previously submitted. The "Asset Declaration Examination and Comparison Commission" has been established within the HCJP to this end. The GET was also told that in case the HCJP "receives signals that something is wrong", the declarations may be further checked. According to Article 10 ADPBC, those who do not submit the asset declarations on time are to be warned by the authority to which the declaration is addressed. The GET was also informed of a number of cases where the HCJP had imposed various disciplinary penalties on judges (and prosecutors for not having submitted declarations on time. Moreover, "false statement" regarding the contents of the declarations and false declarations are criminal offences to be punished with imprisonment.

Supervision and enforcement

180. In respect of non-judicial proceedings (administrative proceedings) against judges and prosecutors, Article 144 of the Constitution establishes that judicial services and public prosecutors in respect of their administrative duties are to be inspected by the Ministry of Justice through judiciary inspectors. Furthermore, Article 159 of the Constitution provides that the HCJP is to supervise judges and prosecutors regarding the discharge of their duties in accordance with the law, regulations, by-laws and circulars. Such investigations are handled by the Third Chamber of the HCJP through the Inspectorate of the HCJP.

181. Complaints against judges and prosecutors may be forwarded to the HCJP by anyone, and should as a main rule be investigated provided they are supported by concrete evidence. Anonymous complaints or complaints which are not substantiated or complaints concerning matters that have already been subject to proceedings are not admitted. Precise requirements are contained in Article 97 LJP.

182. The Third Chamber of the HCJP investigates complaints against judges and prosecutors. However, a decision to discontinue or continue an investigation is to be approved by the President of the HCJP (Minister of Justice). If the President approves a decision to continue the investigation, then the case is passed to the phase of "examination" by assigning a HCJP inspector to collect evidence without taking any statement from the complainant. After such an examination, a file which includes the view of the inspector, is sent to the Third Chamber of the HCJP for a new assessment on the need to continue the investigation or not. Such a decision is also subject to approval by the President of the HCJP: if s/he approves there being no need for further investigation, the file is not to be further executed. In case the HCJP President approves further investigation, the file is to be sent to the HCJP Inspectorate to take the defence statements of the accused. The Inspectorate then gathers all evidence and prepares an "investigation summary of proceedings". The case will then be examined by the Second Chamber. After the disciplinary file has been submitted to the Second Chamber and examined by a deputy secretary general of the HCJP, it is sent to a rapporteur judge, who is to examine the file, prepare a report and suggest an outcome to the Second Chamber for its final decision and possibly a disciplinary punishment. The authorities stressed that the Minister of Justice does not participate in any of the decisions taken by the Chambers (nor in the HCJP plenary in case of disciplinary matters). However, the Minister (as the President of the HCJP) may object to a disciplinary decision (according to Article 33 of Law No. 6087). The authorities stress that during this process all decisions

of the Minister of Justice are subject to judicial review before the competent administrative court[28].

183. Judges and prosecutors may be suspended if it is deemed necessary for the interest of the investigation or to protect the reputation and respectability of the judiciary. The duration of suspension for disciplinary reasons may normally not exceed three months, but the HCJP may extend this period by two months (Articles 77-81 LJP).

184. The disciplinary punishments are warning, salary cuts, reprimand, suspension of advancement and suspension of progress (temporarily blocking the career), displacement and dismissal (Article 62 LJP). Only decisions to dismiss can be appealed to a court, while other decisions of the relevant chambers are subject to objection and review (Article 33 LHCJP). As mentioned above, disciplinary proceedings and sanctions may be applied in respect of a large number of violations, such as incompatibilities with the function of being a judge, conflicts of interests, gifts, declaration of interests, handling confidential information etc.

185. The authorities submitted information concerning the use of disciplinary measures which show 567 sanctions against judges and prosecutors since 2006. Among them, 120 were subject to displacement and 64 dismissed in accordance with Article 69 LJP. The GET is critically concerned about the number of disciplinary sanctions applied as regards dismissals and displacements.

186. As mentioned elsewhere in this report, the GET gathered detailed information from various sources, such as MPs, politicians from the opposition, representatives of international organisations, non-governmental organisations, academics, judges, prosecutors as well as representatives of some of their organisations and the media according to which disciplinary proceedings and measures (such as suspension) and punishments are a tool used against judges and prosecutors considered not to apply the law correctly. In particular, the representatives mentioned referred to disciplinary measures taken against judges and prosecutors as a consequence of their involvement in the high profile cases on alleged corruption against ministers (who were at the same time MPs) and their relatives that went public on 17 December 2013. As these disciplinary measures were on-going during the on-site visit and publicly referred to, the GET could not avoid being informed of a number of details, although it is not in a position to investigate individual cases. That said, the GET is strongly concerned about certain allegations as they have a clear connection to matters of principle, such as the independence of the judiciary and the possibility for judges and prosecutors to carry out their functions free from undue influence. Without going into the substance of the allegations submitted, which were contested by the authorities, the GET is also gravely concerned about the broad perception in Turkey that disciplinary measures are being used against judges and prosecutors in order to have an impact over their decision-making or even as a form of retaliation. The official statistics provided on the number of dismissals and displacements in recent years go in the same direction.

187. Moving to the regulations as such, the GET wishes to make three concrete observations. First, the provisions regulating disciplinary processes against judges and prosecutors are formulated in a rather vague manner: for example, disciplinary measures may be applied in situations where the judge/prosecutor "impairs the honour and respectability of the profession or loses personal dignity and reputation of the profession due to inappropriate acts and relations", "creates the impression that their work is influenced by others or personal emotions" or "undermines the honour and dignity of the profession and respectability and reputation of the public service even if it does not constitute an offence and does not require conviction" (Article 67 LJP), which leaves room for wide interpretations, not necessarily strictly related to really severe cases of

[28] Article 125 of the Constitution

misconduct. Second, the fact that the Minister of Justice is to be involved in the process before a disciplinary process can go ahead (even if s/he is not involved in the work of the two Chambers concerned), as well as the fact that s/he has a right to "object" to a decision on disciplinary matters, brings strong doubts as to the independence of the HCJP in carrying out such proceedings. Third, the law does not provide for judicial review against disciplinary decisions, except for decisions of dismissal which can be appealed before a court. The GET notes that an internal review does not guarantee the transparency of the disciplinary proceeding and does not appear to be in line with European standards, which require an appeal before a court[29].

188. Consequently, the GET is of the opinion that the possibility of using disciplinary measures against judges/prosecutors needs to be regulated in a more precise and limited manner than is currently the case, that the process should preferably exclude the Minister of Justice and all disciplinary decisions ought to be subject to more public accountability and to proper judicial appeal. In view of these findings and considering the broad criticism and perception referred to above concerning the use of the current system of disciplinary measures and sanctions, **GRECO recommends (i) that the system of disciplinary proceedings against judges and prosecutors be subject to an in-depth evaluation aiming at establishing a process guided by objective criteria without undue influence from the executive powers and (ii) that this process, measures and sanctions be subject to review by judicial authorities.**

189. Criminal proceedings regarding the conduct of an investigation/prosecution against judges and prosecutors are regulated in the LJP, which divides such offences into two, namely "personal offences" and "offences committed in connection with or in the course of duty or their conduct".

190. Investigations with regard to personal offences of judges and prosecutors are regulated in Article 93 LJP. The initiation of investigations in respect of such offences does not require any special permission; however, the Ministry of Justice is to be informed immediately. Such proceedings follow the same rules as for any other citizen, except that the law provides that such offences are investigated by a chief public prosecutor and for special jurisdictional rules and that judges/prosecutors may be suspended from their service during such a process.

191. Investigations concerning offences committed by judges or prosecutors in connection with or in the course of duty or their conduct are subject to permission by the Minister of Justice (Article 82 LJP), in order to be initiated. Without such permission, suspected judges may not be arrested or interrogated, unless caught in the act of committing an offence which would fall under the remit of the heavy criminal court. The file including the allegation that such an offence was committed, is examined by the Third Chamber of the HCJP pursuant to Article 9.3 (c) LHCJP.

192. The authorities gave examples of personal offences (traffic offences, insult, theft etc.) and of offences linked to judicial duty (e.g. offences that can only be committed by public officials: embezzlement, extortion, bribery etc.). The GET can easily see that in practice, it would not always be an easy task to establish whether these offences are to be characterised as personal or duty offences, e.g. even a traffic offence may be connected to the duty of a judge.

193. In case the Minister of Justice approves the request to start the investigation concerning offences committed by judges or prosecutors in connection with or in the course of duty or their conduct, the GET was informed by the authorities that such a decision may be appealed by the judge/prosecutor concerned to a court. If permission is given, then the Third Chamber of the HCJP may assign the task of examination or

[29] See CCJE Opinion no. 10(2007), paragraph 39.

investigation to *the HCJP* inspectors or judges or prosecutors. The examining judges or prosecutors should be more senior than the person concerned. In case the Second Chamber of the HCJP deems it necessary to prosecute the judge/prosecutor, the Second Chamber of the HCJP is to refer the documentation to the prosecution office. At this stage the judge/prosecutor concerned can object to the decision to investigate and the objection shall be examined by the heavy criminal court.

194. The GET understood the distinction made in the law between, on the one hand, offences committed by judges/prosecutors "as personal offences" which can be investigated with no formal authorisation and, on the other hand, "offences committed in connection with or in the course of duty or their conduct", which require permission as providing judges with "functional immunity". While "functional immunity" as such in respect of judges/prosecutors is acceptable according to GRECO standards, the GET was concerned that the Minister of Justice (in his capacity as Minister of Justice) has the role of giving or not giving the permission to investigate such cases, according to Article 82 LJP (i.e. to lift the functional immunity) in case they are suspected of criminal offences. According to the authorities, this power has in reality been transferred to the HCJP (Second Chamber), in line with Articles 4 and 9(2)a)2)LHCJP. Nonetheless, the GET notes that Article 82 LJP remains unchanged and takes the view that the conflicting legislation needs to be amended to clearly establish the position of the authorities. Even if his/her decision to grant permission may be appealed to a court of law by the suspected official, it appears unlikely that a decision not to grant permission by the Minister would be appealed (by a prosecutor), even if that were possible according to the law. In any event, prior to such a decision, discretionary considerations are necessary. The GET therefore believes the involvement of the executive power at this stage ought to be avoided (even if the decisions may be appealed) in order to prevent unnecessary interference with judicial independence. Consequently, **GRECO recommends that the power of the Minister of Justice to grant permission for the lifting of functional immunity of judges and prosecutors be transferred to the judiciary (e.g. a panel of high-ranking judges or the High Council of Judges and Prosecutors - HCJP) and that the legislation be made clear to that end.**

Advice, training and awareness

195. The Justice Academy was established as an autonomous body in 2003 by Law No. 4954. It is tasked to conduct educational and training programmes in respect of candidates to become judges and prosecutors as well as the appointed judges and prosecutors. This institution also issues certificates on pre-professional and professional training undertaken by judges and prosecutors. The Academy organises in-service courses, expertise programmes in certain fields, seminars, symposiums, conferences and similar activities.

196. Article 4 of Law No. 4954 stipulates that the Academy is affiliated to the Ministry of Justice and, since 2014, (when the law was changed) its President is elected by the Government among three candidates nominated by the Minister of Justice (Article 9). Moreover, the Ministry of Justice is well represented in the General Assembly (Article 12) as well as on the Executive Board (Article 15) of the Academy. The GET is concerned about the strong links between the executive authorities and all the decision-making bodies of the Justice Academy. In the view of the GET, the Justice Academy should preferably be seen as an arm of the judiciary and the Ministry's involvement be limited to a minimum concerning administrative matters, if at all[30]. The GET is fully aware of Article 6 of Law No. 4954, which provides that the Justice Academy, when fulfilling its tasks, is to cooperate with the supreme courts, the HCJP, law faculties, the Bar etc. This is to be welcomed; however, this cooperation is not further defined in law and it appears critically weak in comparison with the Ministry's involvement in the various bodies of the

[30] See also CCJE Opinion no.4, Chapter II.

Academy, including those that establish the training programmes. The legal changes, in 2014, strengthened this domination even further as the election process was changed in a way that the Ministry of Justice and the Government now control the appointment of the leadership of the Academy. The GET is concerned about this development which it interprets in a wider context of increased influence over the judiciary by the executive authorities. The GET acknowledges that the Justice Academy in Turkey plays an important role in educating, training and evaluating new judges/prosecutors. In such a system it would appear particularly important to avoid the perception that the judicial training is influenced and controlled by the executive power. Consequently, **GRECO recommends that the organisational links between the executive authorities and the Justice Academy be reviewed in order to strengthen the involvement of the judiciary as the main interlocutor of the Academy.**

197. Preparatory training (organised by a dedicated department) is provided to candidate judges and prosecutors during two years in the Justice Academy combined with practical training in courts. The GET was informed that this training comprises a course on judicial ethics (8 hours). The training includes information on the Turkish Constitution, legislation and international instruments such as the "Bangalore Principles of Judicial Conduct" (judges) and the "Budapest Guidelines" (prosecutors).

198. The in-service training has been organised by a dedicated department since 2014. The Academy decides on a variety of different courses every year that are announced on the web pages of the Justice Academy and by the HCJP. Attending this training is normally voluntary and the HCJP (First Chamber) is in charge of giving the individual judges/prosecutors permission to attend. Some training provided is mandatory, for example, in relation to new comprehensive legislation. The authorities mentioned the following training event organised in respect of ethics: 1) a Judicial Ethics Symposium was held from 15 to 16 November 2012, hosted by the HCJP and in cooperation with the Council of Europe, concerning judges and prosecutors on posts in High courts and First Degree courts; 2) an educational seminar was held in 2013 by the Justice Academy on "Crimes Derived from Corruption", and 3) an educational seminar was held by the Justice Academy from 8 to 10 December 2014, named "Professional Ethics".

199. As far as advice to judges and prosecutors is concerned, the authorities report that, to increase the awareness on judicial conduct and ethics, disciplinary decisions for violations committed by judges and prosecutors are made publicly available on the webpage of the institution, without revealing the personal data of the persons concerned.

200. The GET acknowledges that the Justice Academy is an important institution in Turkey and that its main role is about educating new recruits to the judiciary. It would appear that the preparatory training programmes are well developed and that these include subjects such as judicial ethics etc. as permanent features that all students (candidates) need to attend and in respect of which they also need to pass an exam. This is to be welcomed. That said, the GET is of the opinion that the in-service training ought to be further developed with such training possibilities. The authorities have only referred to some limited seminars, which do not appear sufficient in the view of the GET. The need for more regular training adapted to judges' and prosecutors' particular needs will be required once new Codes of Ethics have been established (as recommended in paragraphs 162 and 230 respectively). In view of this, **GRECO recommends that the special in-service training developed for judges and prosecutors be extended to include regular training on corruption prevention and judicial ethics in line with ethical norms and codes of conduct yet to be established in respect of these two distinct professions.**

201. The GET also noted a need to develop some form of advice mechanism available to judges that are confronted with situations, such as conflicting interests etc. The availability of summarised disciplinary measures on-line is a good initiative; however,

there could be much merit in a system where individual judges can ask for advice concerning appropriate conduct or further interpretation of ethical standards etc. Such a mechanism would appear particularly useful for judges as the majority of them work alone in single judge courts (as opposed to prosecutors, who are hierarchically organised under the chief public prosecutors). **GRECO recommends that a mechanism be established to provide confidential counselling on ethics and integrity issues to judges in the course of their duties.**

V. CORRUPTION PREVENTION IN RESPECT OF PROSECUTORS

Overview of the prosecution service

202. The Prosecution Service and prosecutors in Turkey are to a large extent co-regulated with courts and judges in the Constitution as well as in legislation and - in many respects - prosecutors and judges belong to the same professional "corpus". *The current chapter (Chapter V) is therefore drafted with cross references to Chapter IV to avoid unnecessary repetitions.*

203. The structure of the Prosecution Service follows that of the courts. Article 16 of the Law on Establishment, Duties and Capacities of First Instance Courts and Regional Courts of Appeal in Civil Jurisdiction (No. 5235) establishes the current structure of the Prosecution Service; in each province and district where a court structure is in place, a chief public prosecutor's office to be named after that city or district is established. In a chief public prosecutor's office, there is a chief public prosecutor and a number of public prosecutors, depending on the size of the office. Where necessary, one or more than one deputy chief public prosecutor is also to be appointed. In this decentralised prosecution system, the prosecutors are accountable to the central judicial powers, i.e. the High Council of Judges and Prosecutors (HCJP) and the Ministry of Justice.

204. In addition, civil judiciary chief public prosecution offices are established at the level of higher courts, namely the Court of Cassation (Law No. 2797, Article 6), the Council of State (Law No. 2575 on the Council of State, Article 60), the Court of Accounts (Law No. 6085 on the Court of Accounts, Article 18), and Regional Courts of Appeal (Law No. 5235, Article 30). The Constitutional Court does not include a chief public prosecutor's office. However, Article 57, Paragraph 5 of Law No. 6216 on the Establishment and Rules of Procedure of the Constitutional Court governs that the Chief or Deputy Chief Public Prosecutor of the Court of Cassation shall assume the duty of prosecutor in the trials to be conducted at the Constitutional Court when acting as a supreme court.

205. Moreover, Article 3.1.b. LJP defines prosecutors as, provincial and district chief public prosecutors, deputy chief public prosecutors, public prosecutors, public prosecutors of the Court of Cassation, prosecutors working in administrative positions of the central, affiliated and associated agencies of the Ministry of Justice in the civil judiciary, prosecutors of the Council of State and prosecutors working in administrative positions of the central, affiliated and associated agencies of the Ministry of Justice in the administrative judiciary.

206. Public prosecutors have judicial and administrative functions. Their main judicial duties are to conduct investigative procedures following an examination of reports and complaints of crime (Article 160 of the Code of Criminal Procedure); to file a criminal case when there is evidence of sufficient suspicion of a criminal offence or to decide not to file a criminal case when there is no such evidence (Article 172 of the Code of Criminal Procedure); to represent the prosecution and to resort to legal remedies within the context of the cases pending in the heavy criminal courts (Articles 18/3, 19/3 and 20/1 of the Criminal Code); to file certain civil cases and to seek legal remedies against the result of these cases; to conduct research on evidence during criminal procedures, to resort to the necessary protection measures and to apply to the court to seek approval where it is due; and to conduct the procedures for the execution of judgments. The main administrative duties of public prosecutors are to act as the authorising officer of the funds reserved for the expenses of the organisation of the Ministry of Justice; to supervise the justice chambers; to manage and supervise prisons and detention centres; to take the necessary precautions for the maintenance of the buildings, housing, vehicles and equipment reserved for justice services; and to supervise notaries public.

207. Article 140 of the Constitution provides that prosecutors, like judges, are to serve in civil and administrative judiciary as professional prosecutors. That said, prosecutors are not covered by the same fundamental provisions concerning independence that apply in respect of judges under Article 138 or in respect of the discharge of their duties under Article 140.2 of the Constitution. Pursuant to Article 139 of the Constitution, prosecutors (and judges) shall not be dismissed, or unless they request, shall not be retired before the age prescribed by the Constitution; nor shall they be deprived of their salaries, allowances or other rights relating to their status, even as a result of the abolition of a court or a post. In line with Article 140, Paragraph 3 of the Constitution, the qualifications, appointment, rights and duties, salaries and allowances of judges and public prosecutors, their promotion, temporary or permanent change in their posts or place of duty, the initiation of disciplinary proceedings against them and the imposition of disciplinary penalties, the conduct of investigation concerning them and the subsequent decision to prosecute them on account of offences committed in connection with, or in the course of their duties, the conviction for offences or instances of incompetence requiring their dismissal from the profession, their in-service training, and other matters relating to their personal status shall be regulated by law in accordance with the principles of the independence of the courts and the security of tenure of judges.

208. Furthermore, it is indicated in Article 44 LJP that prosecutors (and judges) may not be dismissed, that they may not be deprived of salary, benefits and other personal rights or forced to retire before the age of 65 even if a court or cadre position is abolished, and that the exceptions set out by the law are reserved for those who are convicted of a crime which requires dismissal or who are established to be incapable of performing their duties because of health problems or who are considered to have become inappropriate for the judicial profession. Consequently, prosecutors are, similar to judges, under protection especially against influence from the executive powers to ensure that prosecutors duly perform their duties without being subject to any sort of influence.

209. Article 5.1 LJP stipulates that the Minister of Justice has the right of supervision over prosecutors (and judges) except for duties related to the exercise of the judicial power and, under Paragraph 4, that public prosecutors (like judges) are attached to the Ministry of Justice as far as their administrative functions are concerned.

210. The authorities submit that a previous possibility for the Minister of Justice to instruct prosecutors under the Criminal Procedure Code was abolished in 2004. However, the Minister’s permission to investigate certain foreign offences still exists.

211. In accordance with Article 5 of the LJP, chief prosecutors of heavy criminal courts have the authority of judicial supervision and control over the central public prosecutors and chief prosecutors and prosecutors of affiliated districts. This authority is reiterated under Article 18 of Law No. 5235 and it is stated that the chief public prosecutor is to represent the chief public prosecution. Again, under Article 18, it is indicated that chief public prosecutors are responsible, among other duties, for ensuring that the chief public prosecutor's office works in an efficient, coherent and coordinated manner and for conducting the division of work. Article 19 of Law No. 5235 states that deputy chief public prosecutors shall examine the proceedings of public prosecutors related to judicial and administrative duties and shall inform the chief public prosecutor about this, and Article 20 of the same Law stipulates that public prosecutors are to carry out the judicial and administrative tasks assigned by the chief public prosecutor. They may review and assess the decisions of non-indictment and non-prosecution rendered by public prosecutors, return the investigation file to the relevant public prosecutor for the correction of the legal deficiencies, take over the investigation under the same jurisdiction or hand it over to another public prosecutor. The chief public prosecutor, being the representative of prosecution, uses his/her authority, supervision and control in accordance with the law.

212. In case of a divergence between the chief public prosecutor and public prosecutor concerning the judicial proceedings pertaining to an investigation, the lower prosecutor may agree with the chief public prosecutor on the handling of a case and change his/her opinion and conclude the investigation in line with the legal justifications put forward by the chief public prosecutor. On the other hand, if s/he cannot agree, s/he may ask the chief public prosecutor to personally take over the investigation or ask it to be handed over to another public prosecutor.

213. A total of 4 903 prosecutors are employed in the Prosecution Service in Turkey (94% men and 6% women).

Judicial self-governing bodies

214. The High Council of Judges and Prosecutors (HCJP) is established under Article 159 of the Constitution with the main functions to appoint, transfer and promote prosecutors (and judges); to inspect whether prosecutors (and judges) perform their duties in compliance with the normative framework and to deal with disciplinary matters and punishment as well as offences in connection with or during the exercise of their duties. The establishment, duties and competence, working methods and principles of the HCJP are regulated in the LHCJP. The functions and findings concerning this body and its three Chambers are described under Chapter IV "Corruption Prevention in respect of Judges", paragraphs 111-126).

215. The GET recalls its opinion and recommendation in Chapter IV (relating to judges) as regards the involvement of the Ministry of Justice in the organisational structure and work of the HCJP *vis-à-vis* the independence of the judiciary. The GET wishes to stress that the independence of prosecutors – which is essential for the rule of law – is to be guaranteed similarly to that of judges[31], in particular in a system where the Prosecution Service is an integrated part of the judiciary. The recommendation made in paragraph 127 therefore applies equally to judges and prosecutors.

Recruitment, career and conditions of service

216. The recruitment system for prosecutors is identical to that of recruitment of judges. In fact, candidates to the judiciary are initially recruited for either of these professions and a decision on whether the candidate is recruited to become a judge or a prosecutor is only taken at a later stage. The description of the recruitment procedures is contained in Chapter IV (paragraphs 128-132).

217. As prosecutors belong to the judiciary on an equal footing with judges the GET refers to the details, reasoning and recommendation in Chapter IV (paragraph 133), with the additional reference to the 2014 opinion of the Consultative Council of European Prosecutors which, *inter alia*, stresses that the proximity and complementary nature of the missions of prosecutors and judges create similar requirements for their recruitment.

218. As far as the integrity checks of candidate prosecutors are concerned, the GET refers to the same details, reasoning and recommendation as in respect of judges, Chapter IV (paragraph 134) as, again, exactly the same situation is at hand with respect to both these categories of officials.

219. The career of prosecutors, is very similar to that of judges; it follows a system of categories, grades and degrees. The system concerning promotions of prosecutors and judges is largely similar and, as is the case in respect of judges, the GET takes the view that the evaluations of prosecutors are particularly critical in this process. It therefore

[31] E.g. CCPE Opinion No.9 (2014)

refers to the description, assessments and recommendation provided in Chapter IV (paragraphs 136-140).

220. Also as regards the mobility of prosecutors, the same applies to them as in respect of judges; the Turkish judiciary has a system of rotation of prosecutors. The Law on Regulation on Appointment and Transfer of Judges and Prosecutors divides the locations where prosecutors have to perform their duties into five different geographical zones, within which they have to stay for a certain duration. In addition, there is a vast number of situations whereby transfers may be justified. The details of the system, the assessment and recommendation apply to prosecutors in the same way as they do to judges, see Chapter IV, (paragraphs 141-146).

221. As far as prosecutors' salaries and benefits are concerned, the authorities refer to Article 128 of the Constitution, which stipulates that salaries and allowances of all civil servants are to be regulated by law. In this context, the provisions regarding the financial rights of prosecutors (which are equal to those of judges) are included in Article 102 and subsequent articles of the LJP. The details are described under Chapter IV (paragraphs 147-149).

222. A prosecutor at the start of his/her career, receives annually, including judicial allowances and supplementary payments, a gross salary of 76 044.12TL (€22 300). The Chief Public Prosecutor of the Court of Cassation receives an annual gross salary of 162 080.16TL (€47 560).

Case management and procedure

223. The authorities reported that the system of distribution of cases within the prosecutor's office of first instance was amended in 2014, according to decision no. 752, dated 09.10.2013 of the High Council of Judges and Prosecutors. In particular, an automatic system has been introduced and integrated into the "National Judicial Network Project" (UYAP), in order to assign files randomly among the public prosecutors. Prior to the establishment of this software, chief public prosecutors were responsible for conducting the division of work among public prosecutors, as part of their authority of supervision and control.

224. Since the introduction of the new system, investigation files are automatically distributed by the UYAP system among the public prosecutors, assigned by the chief public prosecutors to conduct investigations. Criteria, such as the number of parties, the gravity of the offence, whether the investigation calls for special procedures, arrested suspects etc. are assessed by the system prior to the distribution of the files. In this manner, the system is to guarantee that the workload of the chief public prosecutor's office is distributed in a fair manner, in accordance with the information provided and a previously determined points system. Also, the Prosecutor's Offices of the High Court of Appeals and the Council of State have a software system integrated into the UYAP Information System, which allows an automatic distribution of files among prosecutors, along the same basis.

225. That said, the GET was informed that the chief public prosecutors also have the power to assign a case to a public prosecutor they deem suitable for the task or to take over an investigation file as part of their authority of supervision and control (Article 5 LCP). Chief public prosecutors may also make changes in the division of work among public prosecutors or remove a prosecutor from an investigation and hand over the case to another prosecutor. The GET was told that this power may be used where the superior is of the opinion that the prosecutor is not applying correctly the law, or s/he is delaying the investigation etc. The chief public prosecutor might also personally take over the case or assign it to another prosecutor. Another reason may be an ongoing disciplinary

procedure against the prosecutor. The GET understood that a transfer of a case from one prosecutor to another would be noted in the electronic "UYAP-system".

226. The GET welcomes the establishment of a system for distributing cases between prosecutors randomly as a main rule and the appropriate software developed to this end. The GET did not come across any misgivings in respect of this system as such; however it notes that despite this automatic distribution system, the chief public prosecutors may still distribute particular cases to certain prosecutors they deem particularly suitable. Moreover, the chief prosecutors may also re-distribute cases, when that is deemed necessary as well as take over cases him/herself. The GET is of the opinion that such powers are logical and acceptable in a hierarchical structure where the chief public prosecutor has supervisory and control functions. However, such decisions ought to be guided by strict criteria and be justified in writing in order to avoid arbitrary decisions[32]. Consequently **GRECO recommends that the removal of cases from subordinate prosecutors be guided by predefined criteria and that the reasons for such decisions be justified in writing.**

Ethical principles, rules of conduct and conflicts of interest

227. Similarly to the situation in respect of judges, the basic principles concerning ethics and conduct are provided for in the Constitution (Article 138 and 140) and in the law, in particular the LJP, the LHCJP and the law on Declaration of Assets and Combat Against Bribe and Corruption etc. The authorities also refer to the European Guidelines on Ethics and Conduct for Public Prosecutors, the "Budapest Guidelines"[33], which have been adopted by the HCJP and therefore apply in Turkey.

228. As has been described in respect of judges in Chapter IV, the legal framework provides for a range of fundamental principles that apply to prosecutors as well as judges in carrying out their duties. However, these provisions are scattered under different provisions; they do not take sufficient and coherent account of conflicting interests, nor in respect of risks of corruption. Notably they do not provide a general definition of conflicts of interest. Although, it is to be welcomed that the so called "Budapest Guidelines" have been taken on board by the HCJP, these international standards have not been adapted to fit the particular situation in Turkey. The GET was informed that within the scope of IPA (Instrument for Pre-accession Assistance) a project "Strengthening Judicial Ethics in Turkey" had been initiated by Turkey and the European Union. Partners in this Project are the HCJP and Turkish Justice Academy. GRECO welcomes this initiative, which should preferably be carried out in the light of the current report.

229. The GET is of the opinion that a specific set of professional and personal rules of conduct are necessary, in order to clearly identify the standards of integrity and conduct to be observed by prosecutors and to assist them meet those standards, as well as to inform the public of the conduct it is entitled to expect from prosecutors. Moreover, the GET takes the view that ethical rules need to be adapted to the particular situation in a given country in order to render "ownership" among the users. Furthermore, Turkey needs to provide for a definition of the concept of conflicts of interest, preferably coupled with references to practical examples as such a code can go further than legislation. A code must not be developed without the solid participation by prosecutors in order to make it specific to this profession. Furthermore, it needs to be a "living instrument", i.e. to be able to evolve over time as appropriate. Furthermore, a code of ethics would also be an excellent tool for training prosecutors in ethical dilemmas, whether in relation to induction or in-service training. The GET wishes to stress the need to make such a code

[32] See Venice Commission CDL-AD(2010)040, Report on European Standards as regards the independence of the Judicial System- Part II, The Prosecution Service, paragraphs 58-60.
[33] www.coe.int/t/dghl/cooperation/ccpe/conferences/CPGE/2005/CPGE_2005_05LignesDirectrices_en.pdf

specific to the profession of prosecutors, which is rather distinct from other professions, including that of judges.

230. In view of the above, **GRECO recommends (i) that a code of ethics be established for the particular functions of prosecutors, including practical examples offering adequate guidance on, specifically, conflicts of interest and other integrity related matters (gifts, recusal, third party contacts and handling of confidential information etc.) and (ii) that it be made accessible to the public and be used in the training of all categories of prosecutors.**

Prohibition or restriction of certain activities

Incompatibilities, accessory activities and post-employment restrictions

231. As far as incompatibilities, accessory activities and post-employment restrictions are concerned, the GET notes that the same rules apply to prosecutors as to judges, as noted in Chapter IV (paragraphs 164-167).

Recusal and routine withdrawal

232. Contrary to the situation in respect of judges, prosecutors in Turkey are not subject to regulations of recusal. It means that there is no legal obligation upon prosecutors to declare whether they have an interest in a case they are investigating and should withdraw from the case.

233. The authorities explain that the lack of rules on recusal in respect of prosecutors is linked to the particular obligations of prosecutors. When performing their duties, prosecutors act "on behalf of the public" and are obliged to gather all evidence, in favour as well as against the suspect, in an objective manner. Furthermore, according to the principle of indivisibility of the public prosecution office, any public prosecutor may perform all duties under the competence of his/her office, during the investigation and the trial. That said, if the chief public prosecutor is aware that a conflict of interest touches a prosecutor under his/her supervision, s/he may take over the case personally or assign it to another prosecutor.

234. The GET does not accept that the explanation given by the authorities justifies the fact that there are no explicit rules on recusal in respect of prosecutors at any stage of the criminal justice process. While it has no doubt that prosecutors may reveal potential conflicts of interest in practice, and that such cases may then be re-distributed as a consequence, the GET is critically concerned that there are no regulations or guidelines guiding prosecutors to report situations of conflicts of interest (personal, financial etc.) and to withdraw from a case in such situations. The GET is of the opinion that such rule of law requirements are as important in respect of prosecutors as they are for judges and that situations of conflicts of interest ought to be clearly regulated in law as well as in ethical codes. However, considering the hierarchical structure of the prosecution service in Turkey, the decision to withdraw from a case may have to be taken by a superior prosecutor. Consequently, **GRECO recommends (i) that clear rules/guidelines on recusal be developed in respect of public prosecutors, including an obligation to report such situations within the hierarchical structure of the prosecution service; and (ii) that measures to address a prosecutor's failure to adhere to such standards are ensured.**

Gifts

235. As far as the regulations on gifts are concerned, the same regulations apply in respect of prosecutors as described in respect of judges, see Chapter IV (paragraphs 169-172).

Third party contacts, confidential information

236. As far as the regulations on third party contacts and confidential information are concerned, the same regulations apply in respect of prosecutors as described in respect of judges (paragraphs 173-176). In addition to what applies to public officials and judges, pursuant to Law No. 5271, public prosecutors may not use the records obtained through recording of correspondence via telecommunications, undercover investigators and surveillance by technical means for purposes other than the criminal investigation or prosecution. Should the circumstances entailed in the law occur, the records obtained are destroyed within the periods specified in the law under the supervision of the public prosecutor.

237. The GET draws the same conclusion here as it did in respect of judges, namely that third party contacts could well be further developed in a code of ethics dedicated to prosecutors. A recommendation to this end has been included in paragraph 230.

Declaration of assets, income, liabilities and interests

238. Prosecutors like judges and other public officials are subject to the obligation to submit declarations of assets, according to the Act on Declaration of Property and Combat Fight against Bribery and Corruption (Law No. 3628), including assets of his/her spouse and children under his/her guardianship. The GET refers to the details of the system provided in Chapter IV (paragraphs 177-179).

Supervision and enforcement

239. In respect of non-criminal proceedings (disciplinary proceedings) as well as criminal proceedings, the same rules apply to prosecutors as in respect of judges. Reference is therefore made to the details, assessment and recommendations provided in Chapter IV, paragraphs 180-194.

Advice, training and awareness

240. The Justice Academy (Law No 4954) is tasked to conduct educational programmes in respect of prosecutors as well as judges. The description of this institution and its educational and training remit, the assessment thereof and attached recommendations described in Chapter IV, paragraphs 195-200, are also applicable to prosecutors, with the additional remark that the training needs to be adjusted to the particular needs of prosecutors, whenever required.

VI. RECOMMENDATIONS AND FOLLOW-UP

241. In view of the findings of the present report, GRECO addresses the following recommendations to Turkey:

Regarding members of parliament

i. **that the transparency of the legislative process be enhanced by (i) further developing the rules on public consultations in respect of civil society groups and citizens; and (ii) ensuring that draft legislation is presented in a reasonable format (e.g. avoiding that large quantities of unrelated pieces of legislation are treated as one single package) and within adequate timelines to allow for meaningful public consultation and parliamentary debate** (paragraph 46);

ii. **that a code of ethics/conduct for members of parliament be adopted covering various situations of conflicts of interests (gifts and other advantages, accessory activities, post-employment situations, third party contacts, including with lobbyists etc.)** (paragraph 57);

iii. **that a requirement of "*ad hoc* disclosure" be introduced for members of parliament for situations of personal/financial conflicts of interest which may emerge during the parliamentary proceedings and that rules for such situations be developed** (paragraph 60);

iv. **that the accessory activities which are incompatible with the duties and functions of members of parliament be reviewed and that comprehensive and enforceable legislation be ensured, to remedy any conflicts of interest resulting from such activities** (paragraph 65);

v. **(i) that the regime of asset declarations of members of parliament be accompanied by a system of verification of their accuracy and veracity as well as effective, proportionate and dissuasive sanctions for violations of the rules; and (ii) that the content of these declarations be made publicly available promptly after their submission to Parliament (it being understood that information concerning spouses and dependent family members would not necessarily need to be made public)** (paragraph 77);

vi. **that determined measures be taken in order to ensure that the procedures for lifting parliamentary immunity are dealt with as matters of priority and do not hamper criminal investigations in respect of members of parliament suspected of having committed corruption offences** (paragraph 85);

vii. **(i) that the parliamentary authorities establish dedicated induction and in-service training for members of parliament on corruption prevention, conflicts of interest and ethical conduct and (ii) that a mechanism for confidential counselling be established to provide advice on ethical questions and possible conflicts of interest in relation to their functions and duties** (paragraph 94);

Regarding judges and/or prosecutors

viii. **that determined measures be taken to strengthen the independence of the High Council of Judges and Prosecutors (HCJP) in respect of potential threats to its independence from the executive authorities and political influence** (paragraph 127);

ix. **that the involvement and the responsibility of the judiciary in respect of the process of selecting and recruiting candidates to become judges/prosecutors be considerably strengthened** (paragraph 133);

x. **that all candidates to the judiciary be subject to checks concerning their ethical conduct and integrity, based on precise and objective criteria which are open to the public and in accordance with European standards** (paragraph 134);

xi. **that evaluations of judges/prosecutors concerning their ethical conduct and integrity be guided by precise and objective criteria, which are open to the public and in conformity with European standards** (paragraph 140);

xii. **(i) that the security of tenure for judicial officeholders be considerably strengthened, by reducing the possibility to transfer judges/prosecutors against their will, that such processes be guided by objective criteria and subject to a review mechanism (appeal); and (ii) that the powers of the Ministry of Justice to intervene in the process concerning temporary assignments be abolished** (paragraph 146);

xiii. **(i) that a code of ethics be established for the particular functions of judges, including practical examples offering adequate guidance on conflicts of interest and other integrity related matters (gifts, recusal, third party contacts and handling of confidential information etc.) and (ii) that it be made accessible to the public and used in the training of all categories of judges** (paragraph 162);

xiv. **that judges – upon appointment – be obliged to take an oath to adhere to fundamental principles of judicial independence and impartiality when carrying out their judicial functions** (paragraph 163);

xv. **(i) that the system of disciplinary proceedings against judges and prosecutors be subject to an in-depth evaluation aiming at establishing a process guided by objective criteria without undue influence from the executive powers and (ii) that this process, measures and sanctions be subject to review by judicial authorities** (paragraph 188);

xvi. **that the power of the Minister of Justice to grant permission for the lifting of functional immunity of judges and prosecutors be transferred to the judiciary (e.g. a panel of high-ranking judges or the High Council of Judges and Prosecutors - HCJP) and that the legislation be made clear to that end** (paragraph 194);

xvii. **that the organisational links between the executive authorities and the Justice Academy be reviewed in order to strengthen the involvement of the judiciary as the main interlocutor of the Academy** (paragraph 196).

xviii. **that the special in-service training developed for judges and prosecutors be extended to include regular training on corruption prevention and judicial ethics in line with ethical norms and codes of conduct yet to be established in respect of these two distinct professions** (paragraph 200);

xix. **that a mechanism be established to provide confidential counselling on ethics and integrity issues to judges in the course of their duties** (paragraph 201);

xx. **that the removal of cases from subordinate prosecutors be guided by predefined criteria and that the reasons for such decisions be justified in writing** (paragraph 226);

xxi. **(i) that a code of ethics be established for the particular functions of prosecutors, including practical examples offering adequate guidance on, specifically, conflicts of interest and other integrity related matters (gifts, recusal, third party contacts and handling of confidential information etc.) and (ii) that it be made accessible to the public and be used in the training of all categories of prosecutors** (paragraph 230);

xxii. **(i) that clear rules/guidelines on recusal be developed in respect of public prosecutors, including an obligation to report such situations within the hierarchical structure of the prosecution service; and (ii) that measures to address a prosecutor's failure to adhere to such standards are ensured** (paragraph 234).

242. Pursuant to Rule 30.2 of the Rules of Procedure, GRECO invites the authorities of Turkey to submit a report on the measures taken to implement the above-mentioned recommendations by 30 April 2017. These measures will be assessed by GRECO through its specific compliance procedure.

243. GRECO invites the authorities of Turkey to authorise, at their earliest convenience, the publication of this report, to translate the report into the national language and to make the translation publicly available.

About GRECO

The Group of States against Corruption (GRECO) monitors the compliance of its 49 Member states with the Council of Europe's anti-corruption instruments. GRECO's monitoring comprises an "evaluation procedure" which is based on country specific responses to a questionnaire and on-site visits, and which is followed up by an impact assessment ("compliance procedure") which examines the measures taken to implement the recommendations emanating from the country evaluations. A dynamic process of mutual evaluation and peer pressure is applied, combining the expertise of practitioners acting as evaluators and state representatives sitting in plenary.

The work carried out by GRECO has led to the adoption of a considerable number of reports that contain a wealth of factual information on European anti-corruption policies and practices. The reports identify achievements and shortcomings in national legislation, regulations, policies and institutional set-ups, and include recommendations intended to improve the capacity of states to fight corruption and to promote integrity.

Membership in GRECO is open, on an equal footing, to Council of Europe Member states and non-Member states. The evaluation and compliance reports adopted by GRECO, as well as other information on GRECO, are available at: www.coe.int/greco.