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## FOURTH EVALUATION ROUND

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

### EVALUATION REPORT

### ALBANIA

Adopted by GRECO at its 63<sup>rd</sup> Plenary Meeting  
(Strasbourg, 24-28 March 2014)

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## EXECUTIVE SUMMARY

1. For more than a decade, the political climate in Albania has been unstable and polarised. Following the parliamentary elections of June 2013, a new Government was formed shifting the power from the Democratic Party to the coalition of the Socialist Party and the Albanian Movement for Integration. Consequently, Albania is in a transition phase with consequences for high-level appointments and legislative reviews. Over this decade, perceived levels of corruption in the country have remained elevated, with insignificant fluctuations on Transparency International's Corruption Perception Index (3.40 in 2008, 3.10 in 2011 and 3.30 in 2012).

2. Albania has adopted very detailed anti-corruption and conflicts of interest regulations applicable to all three professional groups under review, i.e. members of parliament, judges and prosecutors. Nevertheless, the legislative framework, which consists *inter alia* of the constitutional provisions, the laws on the prevention of conflicts of interest and asset declaration, is highly complex, and its stability and the legal certainty have been undermined by numerous and frequent amendments which are, moreover, often subject to contradictory interpretation. Additionally, the existing regulations mainly focus on restrictions and prohibitions, to the detriment of public disclosure and transparency, which curtails their effect. Further efforts are therefore needed not only to close the implementation gap but also to ensure that the information on persons exercising an official function, which is considered to be in the public interest, is disclosed in a timely and efficient manner. Moreover, the lack of a clear commitment to ethical conduct has been marked, the mechanisms for obtaining help, advice or training limited and the procedures for responding to ethical violations non-effective. Available data confirms that the reforms implemented so far have not yielded significant results or impacted on citizen's views regarding the level of misconduct in the country

3. As concerns members of parliament, the openness and transparency of the National Assembly's work is hampered by the lack of access to pieces of draft legislation before their formal adoption. The vulnerability of MPs to possible undue influence is apparent but is not subject to regulation. The importance of having clear, enforceable, publicly-shared standards of professional conduct is not considered a priority, and a system for case by case notification of conflicts of interest does not exist. Moreover, the contents of asset declarations made by MPs are not being published promptly on an official web site and their full audit is carried out only every three years. Most importantly, despite the largely praised amendments to the Constitution which had limited MPs' (and judges') immunity, their implementation has been obstructed by the absence of corresponding amendments to the Criminal Procedure Code.

4. For years, the Albanian judiciary has been suffering from the low level of public trust and high corruption perception rate. This is partly explained by its weak position vis-à-vis other branches of power. The judiciary lacks control over the selection of the High Court justices, and the right to initiate disciplinary proceedings against district and appeal court judges belongs exclusively to the Minister of Justice. Additionally, the National Judicial Conference - the principle judicial self-governing body - was not fully operational for a long time, which had a negative impact on the selection, career progression, training and disciplinary proceedings against judges, and last but not least, ownership and controls of the judicial ethics.

5. Turning to the Prosecution Service, the requisite objective and transparent criteria have not been established for evaluating whether candidates have the high ethical qualities expected, a set of clear ethical standards or code of professional conduct has not been established for the Service as a whole, and mandatory regular in-service training on ethics has not been provided.

## **I. INTRODUCTION AND METHODOLOGY**

6. Albania joined GRECO in 2001. Since its accession, Albania has been subject to evaluation in the framework of GRECO's First (in April 2002), Second (in October 2004) and Third (in November 2008) Evaluation Rounds. The relevant Evaluation Reports, as well as the subsequent Compliance Reports, are available on GRECO's homepage ([www.coe.int/greco](http://www.coe.int/greco)).

7. 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 public administration, and the Third Evaluation Round, which focused on corruption prevention in the context of political financing.

8. 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.

9. As regards parliamentary assemblies, the evaluation focuses on members of national Parliaments, including all 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. In preparation of the present report, GRECO used the responses to the Evaluation Questionnaire (Greco Eval IV (2013) 9E) by Albania, 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 Albania from 28 October to 1 November 2013. The GET was composed of Ms Zorana MARKOVIC, former Director of the Anticorruption Agency (Serbia), Ms Michelle MIZZI BUONTEMPO, Deputy Director, Securities and Markets Supervision Unit, Malta Financial Services Authority (Malta), Mr Xenophon PAPARRIGOPOULOS, Attorney-at-law, Alternate Professor of Methodology and Theory of Law, University of Thessaly, Member of the Scientific Service of the Hellenic Parliament (Greece) and Mr Georgi RUPCHEV, State Expert, Directorate of International Cooperation and European Affairs, Ministry of Justice (Bulgaria). The GET was supported by Ms Liubov SAMOKHINA from GRECO's Secretariat.

10. The GET interviewed representatives of the National Assembly of Albania, including its Legislation Commission, Council for Mandate and Immunity Issues and Commission for Elections and Appointments. Moreover, the GET held interviews with representatives of political parties and parliamentary groups. The GET also met with members of the judiciary (including from the High Court, appellate, district courts, the High Council of Justice, the School of Magistrates and the Association of Judges) and the Prosecution Service of Albania (including from the Prosecutor General's Office, appellate and district prosecution offices, the Council of Prosecutors and the Association of Public Prosecutors). Furthermore, the GET interviewed representatives of the Ministry of Justice, High Inspectorate for Declaration and Audit of Assets, Finally, the GET spoke with representatives of Transparency International Albania, a business association "Confindustria" and the media.

11. The main objective of the present report is to evaluate the effectiveness of measures adopted by the authorities of Albania 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 Albania, which are to determine the relevant institutions/bodies responsible for taking the requisite action. Albania has no more than 18 months following the adoption of this report, to report back on the action taken in response.

## II. CONTEXT

12. For more than a decade, the political climate in Albania has been unstable and polarised. Following the parliamentary elections of June 2013, a new Government was formed shifting the power from the Democratic Party to the coalition of the Socialist Party and the Albanian Movement for Integration. Consequently, Albania is in a transition phase with consequences for high-level appointments and legislative reviews. Over this decade, perceived levels of corruption in the country have remained relatively elevated. On Transparency International's Corruption Perception Index, the fluctuations have been insignificant - (3.40) in 2008, (3.10) in 2011 and (3.30) in 2012.

13. According to the 2013 Global Corruption Barometer, the perception of corruption within the judiciary is the highest (81% of respondents). In the opinion of the Heritage Foundation, a culture of impunity and political interference has made it difficult for the judiciary to deal with high-level and deeply rooted corruption, and the implementation of deeper institutional reforms to increase judicial independence and eradicate lingering corruption remains critical.<sup>1</sup> The seriousness of judicial corruption has also been reiterated in the reports of the European Commission<sup>2</sup> and of the Commissioner for Human Rights of the Council of Europe.<sup>3</sup>

14. The political parties and parliamentarians are perceived to be the second and third most corrupt institutions (72% and 66% of respondents, respectively), according to the 2013 Global Corruption Barometer. In the past few years, three cases of MPs suspected of corruption and/or abuse of office were investigated; none were found guilty.

15. The available data suggests that the legal and practical reforms undertaken to tackle corruption have not impacted significantly on citizen's views regarding the level of misconduct in the country. As affirmed by many sources,<sup>4</sup> Albania's anti-corruption and good governance legal framework is relatively strong; still, efforts to close the large implementation gap need to be stepped up considerably for additional progress to occur. Also, the regulations are very complex, and their stability is undermined by numerous and frequent amendments. In this regard, important pieces of legislation relevant to this Round were not made available to the GET ahead of or during the visit. Therefore, the GET was precluded from properly and accurately assessing their impact while in Tirana.

16. At the debriefing meeting with the GET, an overview of the future anti-corruption strategy was provided by a representative of the Department of Internal Administration Control and Anti-Corruption (DIACA). One of the strategy's key priorities would be to combat corruption within the judiciary and among high-level officials. The responsibility for the strategy's implementation and co-ordination with relevant stakeholders has been assigned to the Minister of State on Local Issues, as the newly designated national anti-corruption co-ordinating authority.

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<sup>1</sup> <http://www.heritage.org/index/pdf/2014/countries/albania.pdf>.

<sup>2</sup> [http://ec.europa.eu/enlargement/pdf/key\\_documents/2013/package/al\\_rapport\\_2013.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2013/package/al_rapport_2013.pdf).

<sup>3</sup> <https://wcd.coe.int/com.instranet.InstraServlet?Index=no&command=com.instranet.CmdBlobGet&InstranetImage=2422021&SecMode=1&DocId=2093512&Usage=2>.

<sup>4</sup> See e.g. <http://www.globalintegrity.org/report/Albania/2010/scorecard>.

### **III. CORRUPTION PREVENTION IN RESPECT OF MEMBERS OF PARLIAMENT**

#### Overview of the parliamentary system

17. Albania is a parliamentary republic with a multi-party system, whose Constitution dates from 1998. The unicameral National Assembly is composed of 140 members (deputies) who are elected for a four-year term under proportional representation within each of the country's 12 multi-member constituencies. Candidates may be presented by political parties, coalitions of parties and groups of voters. Mandates for each electoral district are divided between political parties which receive at least 3% of the valid votes cast in the respective district (5% for party coalitions) and independent candidates presented by groups of voters. Every citizen who has attained the age of 18 has the right to vote – except for those declared mentally incompetent by a final court decision – as well as the right to be elected - except for those serving a prison sentence and except for certain officials enumerated in the Constitution<sup>5</sup> (e.g. judges, prosecutors or mayors).

18. Deputies represent the people and are not bound by their mandate. They act in the name of the Republic and the law, and according to their oath. While exercising their mandate, they enjoy a specific status which derives from the Constitution and the law.<sup>6</sup>

19. A deputy's mandate terminates in case of failure to take the oath, resignation, incompatibilities determined by the Constitution (see further below), expiry of the Assembly's term, absence for more than six consecutive months without reason or conviction for a crime by a final court decision. Exercise of public duties other than those of a Council of Ministers' member is prohibited.

20. The Assembly's internal organisation and conduct of work are governed by the Constitution and the Rules of Procedure and decided upon by the Bureau, which reflects the Assembly's political spectrum. The Bureau is composed of the Speaker, his/her Deputy and four secretaries, of whom two are responsible for budgetary issues. The Assembly elects standing committees and may establish *ad hoc* and inquiry committees, the latter on the request of one-fourth of its members.

21. In the most recent parliamentary elections held on 23 June 2013, seats were obtained by the following parties: Socialist Party (65), Democratic Party (50), Socialist Movement for Integration (16), Party for Justice, Integration and Unity (4), Republican Party (3), Unity for Human Rights Party (1) and Christian Democratic Party (1). Of those elected, only 14 are women and 65 deputies were elected for the first time.

#### Transparency of the legislative process

22. The right to take a legislative initiative is conferred on a deputy, the Council of Ministers<sup>7</sup> and groups of 20,000 voters. A draft law is voted on three times: in principle, article by article, and in its entirety. At the request of the Council of Ministers, or one-fifth of the Assembly's members, a bill may be reviewed and approved in an expedited procedure, but no sooner than one week from the beginning of the review process (except for certain bills requiring the approval of three-fifths of the Assembly's members<sup>8</sup>). Draft laws must be accompanied by reports justifying financial expenses for their implementation. A bill submitted by a non-governmental organisation, which foresees increase of State expenditure or which diminishes income, may only be approved if accompanied by the Council of Ministers' opinion. All submitted bills are

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<sup>5</sup> Article 69 of the Constitution.

<sup>6</sup> Article 2 of "The Status of Deputy" Act.

<sup>7</sup> Draft legislation is initiated by Government in 95% of cases and by MPs and citizens - in 5% of cases.

<sup>8</sup> E.g. laws on institutions provided for in the Constitution, citizenship, local elections, referenda, codes, the state of emergency, the status of public servants, amnesty. The procedure may not apply to more than three bills over the Assembly's 12-week work programme and more than one bill over a 3-week programme.



entered into a register, following which the Speaker of Parliament orders their distribution to deputies, responsible committee(s), as well as the media and interested parties upon their request.

23. The Assembly's sessions are open and may only be held *in camera* upon motivated request by the President of the Republic, the Prime Minister or one-fifth of its members, following an open majority vote in favour; this however, does not apply to deliberations on the budget or financial bills. Decisions are taken, as a rule, by a majority vote, in the presence of more than half of the Assembly's members. Voting is open for the adoption of a political programme and composition of the Council of Ministers, discussion of a presidential decree, voting on a budget and directly related financial bills as well as constitutional amendments. Secret voting, except when it is not permitted, can be requested by at least 7 deputies and is decided by vote. Full and summarised minutes are kept and full transcripts are published on-line following their adoption by the next plenary.<sup>9</sup> In addition to the live web cast of each session, around 16 TV channels follow and broadcast the Assembly's work (five - in real time).

24. Committee meetings, as a rule, are open as well.<sup>10</sup> By a majority vote by its members, a committee can decide to hold a meeting or a part of it *in camera*. A committee may organise public hearings with members of the Council of Ministers, high representatives of State and public institutions, experts and representatives of civil society and interest groups and is obliged to do so in case of a motivated written request from one-third of its members. Decisions are taken by an open majority vote, in the presence of more than half of a committee's members. Full and summarised minutes are kept, and if important, the committee can decide to make a meeting's recording public. The opinion of the majority, the minority, invited experts and groups of interests are to be reflected in the minutes. Except when they contain classified information, the minutes are systematically placed on the Assembly's web site and distributed to the media and other interested parties upon their request.

25. The President of the Republic promulgates an approved law within 20 days from its submission. S/he has the right to return the bill for review only once, and if it is overruled by the majority of the Assembly's members, the decree for review loses its effect. A draft law enters into force at least 15 days following its publication in the Official Journal. In cases of necessity or emergency and following a prescribed procedure, a law may enter into force immediately, but only once it has been made known publicly. The law is then published in the next edition of the Official Journal.

26. In principle, the Rules of Procedure provide for adequate transparency in the Assembly's functioning. In addition to the openness of plenary and committee meetings (with certain exceptions), tools that are meant to ensure such transparency include *inter alia* public participation in the law-making process, publication of parliamentary documents and the Assembly's web page. Article 105 (2/1) of the Rules of Procedure stipulates that the web page is to contain updated versions of the bills and explanatory reports and the amendments received and approved by committees.<sup>11</sup> The GET was informed, however, that the bills submitted to Parliament were not posted on its web site and instead distributed to journalists, civil society and other interested parties upon request, ahead of a concrete meeting. Tracking amendments to individual pieces of draft legislation was therefore impossible as these were not public until formal adoption (i.e. after the third reading), and the situation was not remedied by public access to detailed plenary and committee minutes. Consequently, transparency would be further improved and inclusive and effective involvement in the law-making process of all interested

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<sup>9</sup> [http://www.parliament.al/web/Dokumente\\_Parlamentare\\_16\\_1.php](http://www.parliament.al/web/Dokumente_Parlamentare_16_1.php).

<sup>10</sup> They are referred to as open when the media, interest groups or visitors are allowed to attend them - Article 35 (1) of the Rules of Procedure.

<sup>11</sup> This is reiterated by Article 106 of the Rules of Procedure, which attributes laws and their drafts to "parliamentary documentation" and provides for their accessibility on the Assembly's web page.

parties facilitated, if bills were systematically placed on the Assembly's web site, as is foreseen by its Rules of Procedure.

27. Furthermore, according to the GET, the vulnerability of MPs to lobbying activities and vested interests is apparent and underscores the importance of clarifying possibilities for third party influence on the legislature's work. A number of factors are seen as contributing to risks of undue influence. Firstly, there are no restrictions on contacts between MPs and third parties and these are not regulated in terms of disclosure or source. Secondly, although there is a legal obligation for officials to avoid conflicts of interest, with regard to MPs this mainly entails controls over incompatibilities (qualified as situations of "continued conflicts of interest") but not *ad hoc* notification of conflicts or MPs' withdrawing from voting. Thirdly, while MPs' private interests are subject to annual reporting via asset declarations, information on some of them is not considered as being in the public interest and not subject to public disclosure. The situation is compounded by the absence of standards defining appropriate conduct. In view of the concerns expressed in paragraphs 26 and 27, **GRECO recommends that the transparency of the legislative process be further improved by i) ensuring the timely implementation of the requirement under the Rules of Procedure to publish on the official web site of the National Assembly draft legislation, including the initial bills, and amendments; and ii) regulating deputies' contact with lobbyists and other third parties seeking to influence the legislative process.**

#### Remuneration and economic benefits

28. Rights and privileges enjoyed by MPs are provided for by "The Status of Deputy" Act and the Assembly's decisions. Although the above law does not specify whether a deputy is to work full or part time, Article 28 of the law "On the prevention of conflicts of interest in the exercise of public functions" prohibits full time employment of officials, including MPs, on another post.<sup>12</sup> In the official classification, deputies' salaries are ranked immediately below ministerial salaries. The salary of the Speaker of Parliament is ranked immediately below the salary of the President of the Republic, and the salary of the Deputy Speaker is equivalent to that of the Deputy Prime Minister.<sup>13</sup> A monthly salary covers participation in a Plenary (40%), committees (50%) and other parliamentary activities (10%). The monthly gross salary of an MP in January 2014 was 156 770 Albanian lek (ALL)/EUR 1 112, whereas the national monthly gross average wage in the public sector was 46 665 ALL/EUR 330.85.

29. An MP is furthermore entitled to additional remuneration for committee work (2 000 ALL/EUR 14 per meeting), a committee vice/chairmanship (2 200 ALL/EUR 15.6 and 2 500 ALL/EUR 17.7, respectively) and leadership of a parliamentary group (5-15% of salary, depending on the number of members). Moreover, deputies residing outside Tirana are entitled to service allowance/per diem for each Assembly/committee/parliamentary group meeting (75 240 ALL/EUR 533 for 12 days per month), while those residing in the capital - for activities outside Tirana (37 620 ALL/EUR 267 for 6 days per month). The per diem is equal to 4% of a committee chair's/deputy chair's and regular MP's monthly salary and, in case of non-attendance without good reason, is withheld. Deputies also have the right to severance pay, a supplementary pension, priority housing arrangements or long-term loans<sup>14</sup>, as well as compensation for domestic travel (283 EUR per month). For MPs residing outside Tirana and renting housing in the capital, rental expenses are compensated at the rate of 210 EUR per month, subject to presentation of the pertinent documentation and verification of their

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<sup>12</sup> In the course of the visit, the GET learned that some MPs exercised the profession of a doctor or university lecturer on a part-time basis.

<sup>13</sup> Article 13 (1) of the "Status of Deputy" Act.

<sup>14</sup> As per Decision of the Council of Ministers No. 600 of 12.9.2007 "On the treatment with housing of civil servants of the state senior administration and of political functionaries". This decision was repealed on 5 February 2014, bringing an end the granting of all soft loans to public officials.

housing needs by the Parliament's Chancellery. The legitimate use of MPs' benefits and expenses is subject to annual control by the Audit Service, pursuant to the law "On internal audit in the public sector".

30. An MP is provided with an office at the Assembly's headquarters and free subscription to official journals and other documentation. Telephone and fuel expenses are reimbursed, the former at the rate of 17 000 ALL/EUR 120.5 per month for a regular MP and 20 000 ALL/EUR 141.8 for a committee chair and chairs of parliamentary groups. In co-operation with local government units, the Assembly also maintains in each administrative district offices for the ruling majority and the opposition. There is currently no prohibition on MPs receiving other sources of funding in connection with the exercise of their duties. In the course of the visit, no concerns were raised with the GET regarding the manipulation and/or misuse of public funds or any irregularities linked with the other sources of funding of parliamentarians and their offices.

#### Ethical principles and rules of conduct

31. Deputies take an oath of office, which stresses conscientious and dignified performance of duties by them as representatives of the people.<sup>15</sup> Several acts define the rules of conduct and ethical principles applicable: the Constitution (obligation not to be bound by any instruction, incompatibility with other public offices), the Criminal Code (prohibition of corruption, trading in influence, divulgence of state secrets), the Act "On the prevention of conflicts of interest in the exercise of public functions" (PCI) (rules on conflicts of interest, accessory employment, activities and financial interests, gifts and contracts with state authorities), "The Status of Deputy" Act, which largely restates the incompatibilities under the Constitution and the PCI, and the Rules of Procedure and parliamentary decisions (order and comportment in the Assembly). Pursuant to Article 40 of the Rules of Procedure, while in office, MPs are to respect the Code of Conduct, which however, has not been drawn up.

32. Interviews held with a large group of deputies indicated that having clear, enforceable, publicly-shared standards for professional conduct is not considered a priority, despite the explicit requirement for such a code in the Rules of Procedure. The main argument for rejecting the code has been the extensive existing regulations. However, the added value of bringing together the legal and regulatory obligations of MPs in a single document is obvious to the GET. It would not only serve as a reference and source of guidance but could also be used as a tool for enhanced accountability and public scrutiny, in particular by helping to check whether the deputies are living up to standards and public expectations. Moreover, as regards strengthening political credibility, the process of developing the code would generate an important debate on the best way to sustain MPs' legitimacy and repair rifts between them and society. Once adopted, it would be essential for the code to be equipped with an enforcement mechanism and accompanied by training, advice and counselling for MPs on issues which remain rather poorly understood, such as the form, manner and extent of permissible contacts with interest groups and lobbyists, the disclosure of *ad hoc* conflicts of interest, organisational ethics and corruption prevention. It also flows from the above that the adopted code is to be made accessible to the public. Accordingly, **GRECO recommends that i) the Code of Conduct for members of parliament, foreseen by the Rules of Procedure of the National Assembly, be elaborated and properly enforced; and ii) training, guidance and counselling be made available to deputies on issues such as the form, manner and scope of permissible contacts with interest groups and lobbyists, the disclosure of *ad hoc* conflicts of interest, ethics and corruption prevention within their own ranks.**

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<sup>15</sup> Article 4, Rules of Procedure.

## Conflicts of interest

33. A conflict of interests is defined by the PCI as a situation of conflict between public duty and private interests, direct or indirect, which affects, might affect or seem to inappropriately affect the performance of public responsibilities and duties. Definitions of "actual", "apparent", "potential", "case by case" and "continuing" conflicts of interest (the latter constitutes an incompatibility between public duties and private interests) are also provided. The PCI applies to officials, including MPs<sup>16</sup>, as well as persons "related" to them (i.e. spouses, adult children, parents and parents-in-law). The PCI's primary objective is to ensure the earliest possible and most effective prevention of conflicts of interest, therefore it imposes an obligation to avoid and resolve them, ahead of time, according to circumstances and needs, in a graduated manner.<sup>17</sup> The PCI defines concrete procedural steps, sets out time limits and other rules under which officials, including MPs, are to give up certain duties, functions or private commitments.

34. Violation of the conflicts of interest rules is punishable by administrative and disciplinary sanctions. Administrative fines are imposed by the High Inspectorate for Declaration and Audit of Assets (HIDAA) in respect of MPs, persons related to them, trustees and company managers. Failure to make a spontaneous or requested case by case declaration of private interests that might lead to a conflict of interests is punishable by a fine ranging between 30 000 ALL/EUR 210 and 50 000 ALL/EUR 350, whereas failure to resolve incompatibilities ("continuing" conflicts of interest) is sanctioned by a fine ranging between 100 000 ALL/EUR 700 and 300 000 ALL/EUR 2 100. Since any violation of the PCI constitutes misconduct, regardless of the administrative or criminal liability, it is also reported by the HIDAA to the Assembly. In cases of incompatibilities (see further below), the parliamentary mandate is terminated.

35. Detailed and complex regulations on conflicts of interest, accompanied by rules on asset declaration, apply to a large circle of Albania's officials, including MPs. As regards "continuing" conflicts of interest, constitutional provisions, read in conjunction with Article 28 PCI, regulate incompatibilities between an MP's functions and the holding of certain other offices and performance of other activities. These identify cases of "continuing" conflicts of interest, whether real, perceived or potential, and create an obligation to choose between them and holding of office. When it comes to the regulation of "case by case" conflicts of interest, the provisions and the interpretation given to them by MPs is however less clear. The issue of *ad hoc* conflicts of interest, which may arise during the performance of duties, was extensively discussed while on-site. As there are no exemptions in the law, it was generally assumed that the relevant PCI chapter, which requires their identification and registration, *did* apply to MPs. However, no unanimity existed on whether and to whom MPs were to report such conflicts, which situations fall under this concept and what are the consequences for failure to report.<sup>18</sup> It also transpired that the only possibility to identify such conflicts was by scrutinising MPs' asset declarations, which is the HIDAA's primary responsibility. In addition, even though it was expressly acknowledged that the Assembly, as a superior to MPs, is empowered to address and resolve conflicts of interest, mechanisms internal to Parliament, allowing for their case by case declaration and registration, as required by Article 11 PCI, have not been established and withdrawal of MPs from voting not practiced. Bearing in mind that contacts between MPs and third parties are not regulated, full audit of MPs' asset declarations is performed only every three years and the information on certain private interests is not publicly disclosed, it is considered paramount that a mechanism be established within Parliament for the *ad hoc* notification of conflicts of interest by MPs. This would augment the legal certainty and facilitate the correct interpretation and

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<sup>16</sup> By virtue of Article 7 PCI read in conjunction with Article 4 (1)(c) and 4 (1)(ç) PCI.

<sup>17</sup> Article 37 PCI.

<sup>18</sup> Subsequent to the visit, the GET was informed of a template developed by the HIDAA to facilitate the *ad hoc* declaration of conflicts of interest by officials, including MPs, for the purpose of withdrawing from voting, commissions, etc. On-site discussions, however, did not reveal that MPs are aware of or use such forms.

effective implementation by MPs of conflicts of interest regulations. In view of the foregoing, **GRECO recommends that a mechanism for the “case by case” notification of conflicts of interest by members of parliament be established within the National Assembly and that the operation of this mechanism be subject to monitoring.**

#### Prohibition or restriction of certain activities

##### *Incompatibilities, accessory activities, financial interests and post-employment restrictions*

36. MPs may not exercise other public duties, except being a member of the Council of Ministers<sup>19</sup> and may not be judges, prosecutors, members of the military on active duty, or of the police or the National Security Service, diplomatic representatives, mayors of municipalities, or communes or prefects in the place where they carry out their duties, chairs/members of election commissions, the President of the Republic or high State administration officials.<sup>20</sup> As for private interests, the PCI prohibits MPs from: a) being a director or member of the management bodies of a profit-making organisation; b) generating income from individual entrepreneurship, partnerships of any form, exercising the profession of notary, attorney, licensed expert or consultant, agent or representative of a profit-making organisation or being employed full time on another post; and c) possessing, in an active manner, any share or capital share of a commercial company in a dominant position on the market (this restriction also applies to persons “related” to a deputy).<sup>21</sup> Apart from these rules, there are no restrictions on the holding of financial interests by MPs or persons related to them. Information on the financial interests and income from lawful private activities of MPs and persons related to them is reported, irrespective of thresholds, via their asset declarations (see further below).

37. The procedure for assessing whether a company occupies a dominant position on the market is established in Article 34 PCI and responsibility for it is assigned to the Competition Authority. The GET was told that the procedure was cumbersome to apply and follow up in practice and that, due its complexity, the preferred solution for many officials, including MPs, was to get rid of the shares belonging to them and their family members. GRECO believes that, in view of the obvious complexity and length of the assessment process, as confirmed by criticisms expressed while on-site, it would be desirable for the authorities to consider whether maintaining this system is reasonable.

38. No post-public employment restrictions apply to deputies. Although examples of cases where an MP would have abused power to favour a certain company with a view to ingratiating him/herself and gaining future employment, were not brought to the GET’s attention, it is convinced that, in order to protect the public interest, the imposition of measures such as a “cooling off” period of an appropriate duration would be justified. The authorities are therefore invited to examine possible vulnerabilities arising from the absence of “revolving door” regulations and to consider taking appropriate and effective measures to reduce opportunities for MPs to exercise undue influence or to use information obtained while in office.

#### *Gifts*

39. By virtue of Article 23 PCI, in the exercise of his/her duties, an MP and persons related<sup>22</sup> to him/her may not solicit or receive, directly or indirectly, gifts, favours,

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<sup>19</sup> As of 2014, combining the position of MP with that of Government member is not accepted in practice.

<sup>20</sup> Articles 69 and 70(2) of the Constitution.

<sup>21</sup> Article 28 PCI.

<sup>22</sup> In such instances, the circle of persons “related” to a deputy extends to any natural or legal person who, in connection with the gift, may play an intermediary role or expect a returned favour.

promises or preferential treatment from any person, except for protocol gifts, the latter being governed by the Council of Ministers' decision.<sup>23</sup> The aforementioned decision contains a definition of gifts, including "indirectly" received/offered gifts and those offered/received "outside duties". Protocol gifts above 10 000 ALL/EUR 70 are to be reported on the asset declarations of MPs and their family members (see further below). Such gifts must be also declared within 30 days to the Parliament's Chancellery, which keeps an inventory and can assess a gift's value in case of doubt. MPs wishing to keep the gifts above 70 EUR can do so if they pay to the Chancellery the difference in value; gifts of a monetary nature may not be kept. Violation of the above rules carries an administrative fine ranging between 100 000 ALL/EUR 700 and 200 000 ALL/EUR 1 400, which is applicable to an MP, persons related to him/her, a trustee and company manager. The Assembly is to be notified of violations by the High Directorate for Declaration and Audit of Assets so that disciplinary proceedings can be instituted.

40. The definition of gifts is comprehensive and covers, e.g. not only cash, deposits and loans but also favours, such as invitations to receptions, free or discounted services, entertainment, transportation, vacations, scholarships and insurance coverage. The procedure for the declaration and reporting of gifts is clearly determined and subject to supervision by authorities within and outside Parliament. In case of violations, sufficiently dissuasive sanctions can be applied. While on-site, no concerns were expressed on the acceptance of inappropriate gifts by MPs. That being said, the threshold for acceptable gifts appears to be elevated compared to the average per capita income in Albania and could be reconsidered by the authorities.

41. Members of parliament are furthermore prohibited from accepting bribes by virtue of Article 260 of the Criminal Code (passive corruption by high State officials and locally elected persons). This provision makes it a criminal offence for an MP to solicit or take, directly or indirectly, any irregular benefit or any promise thereof for him/herself or a third person, or to accept an offer or a promise deriving from an irregular benefit, in order to act or refrain from acting in relation to his/her duty. Such an offence carries a sentence of up to twelve years and a fine of up to 5 million ALL/ EUR 34 900. It is worth observing that a more severe sanctioning regime is foreseen for MPs than for judges and prosecutors who are subject to other corruption-related provisions of the Criminal Code.

#### *Contracts with State authorities and misuse of public resources.*

42. Pursuant to Article 70 (3-4) of the Constitution, deputies may not carry out any profit-making activity that stems from the property of the state or local government, and may not acquire such property. On the motion of the Speaker of Parliament or one-tenth of its members, the Assembly decides whether a case related to this rule should be sent to the Constitutional Court, to determine the incompatibility. Additionally, as per Article 21(1) PCI, an MP or a person related to him/her may not enter into a contract with a public institution or benefit from state funds, for him/herself or a commercial company, partnership or simple company in which s/he (or persons related to him/her) owns, actively or passively, shares or capital shares in any amount. An administrative fine ranging between 100 000 ALL/EUR 700 and 200 000 ALL/EUR 1 388 applies to MPs and persons related to them. As before, violations of this provision are to be reported to the Assembly so that disciplinary proceedings can be commenced. In 2008, the Constitutional Court found the mandate of one MP to be incompatible with the benefits obtained through public tenders (after his mandate was validated, upon election, by the Central Election Commission). There are no other rules on the misuse of public resources specifically by MPs.

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<sup>23</sup> Decision of the Council of Ministers No. 714 of 22.10.2004.

### *Misuse of confidential information*

43. Pursuant to the Act "On information classified as state secret," parliamentarians are to keep classified information confidential. Before being granted access, MPs undergo a security clearance and obtain a certificate from the Directorate on Security of Classified Information. Divulging secret documents and data by a public official, including an MP, in breach of his/her duties is also a criminal offence (Article 295 (a) of the Criminal Code). It is punishable by a fine or imprisonment of up to five years.

### Declaration of assets, income, liabilities and interests

44. MPs and persons related to them are to submit declarations of assets pursuant to the law "On the declaration and audit of assets, financial obligations of elected officials and some public officials" (LDAA). Such declarations are to be made within 30 days from taking up duties, by 31 March annually and not later than 15 days after departure from office. Prior to filling in a declaration, declarants are given advice and made aware that the declarations and accompanying documents are qualified as "official" and that refusal to declare, non-declaration, concealment or false declaration incur criminal liability punishable by a fine or imprisonment of up to three years.<sup>24</sup> Recently, criminal liability has been extended to persons "related" to officials, including MPs, with a legal obligation to declare.

45. The initial declaration covers: 1) immovable property and rights thereof; 2) registered movable property; 3) objects of special value over 500 000 ALL/EUR 3 500; 4) value of shares, securities and parts of capital owned; 5) the value of liquidities, the condition in cash, in revolving accounts, in deposits, treasury bonds and loans, in Lek and foreign currency; 6) financial obligations to any person, in Lek and foreign currency; 7) personal annual income from salary or membership of boards, commissions or any other income-generating activity; 8) income-generating licenses and patents; 9) gifts and preferential treatment over 10 000 ALL/EUR 70 with identity of the donor whether a natural or legal person; 9) commitments to a profit-making activity in the private sector or any other income-generating activity, and income, including in-kind, generated by it; 10) private interests that overlap, contain, are based on or derive from family or cohabitation arrangements; 11) any "declarable" expenses over 500 000 ALL/EUR 3 500 during the reporting period (e.g. for education, health care, holidays). Other private interests may be disclosed upon request (e.g. heads of livestock, olive trees). Subsequent annual declarations are only to detail changes to the original declaration and indicate assets, liabilities, interests, income and declarable expenses. Each declaration is accompanied by an authorisation to the appropriate bodies to perform checks within and outside the country and to contact any person. A register containing deputies' names and filing dates is kept by the Assembly.

46. The declarations are submitted on paper to the High Inspectorate for Declaration and Audit of Assets (HIDAA), in the format approved by its Inspector General, and include the assets of an MP, his/her spouse and adult children. When property is divided and registered as such, declarations are to be filed separately by each family member and are to accompany the MP's declaration.<sup>25</sup> Moreover, the Inspector General may ask any person to submit a declaration if there is a link to an MP's declaration or in case of problems identified during the checks (e.g. suspected illegal assets or revenue, gifts, interest-free loans). Such persons are then qualified as being "related to an official other than a family member, a trusted person or a partners/cohabitee". Inconsistent or incomplete declaration as well as failure or refusal to submit a declaration in due time and without good reason, by an MP or a person related to him/her are punishable by an administrative fine ranging between 50 000 ALL/EUR 347 and 100 000 ALL/EUR 694. In

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<sup>24</sup> Article 257(a) of the Criminal Code.

<sup>25</sup> The procedure for the declaration of assets by MPs' family members is provided in Article 22 LDAA.

case of a refusal or failure to submit a declaration, following the imposition of an administrative measure, the HIDAA refers the case to the Prosecution Service for criminal proceedings. All cases of non-submission are notified to the Assembly and the public. For an MP, failure to make a declaration also entails loss of mandate for which relevant proceedings are instituted.

47. The contents of each declaration are available upon request at a fee (currently 100 ALL/EUR 0,7 per declaration), subject to limitations provided by laws "On the right to information on official documents" and "On protecting personal data," and in accordance with constitutional and legal criteria for each specific case.<sup>26</sup> Personal data (e.g. addresses, names of banks) as well as declarable expenses and private interests, since it is not considered to be in the public interest to access such information, are not disclosed. The declarations can however only be shared with interested third parties upon completion of a HIDAA-performed audit (see below) and are to be accompanied by its compliance certificate.

48. The adoption of the LDAA has been generally viewed as a significant step towards greater transparency. Nevertheless, the balance between legitimate public interest in obtaining information on persons exercising an official function and the right of MPs and persons related to them to privacy has not been fully achieved. The GET is concerned that the length of audits performed by the HIDAA - only following which an MP's asset declaration can be made available to interested third parties - compromises the preventive effect of public disclosure and is ill-suited for elected officials who have a limited term in office. In addition, it is widely acknowledged that, in comparison to other categories of public officials, political nominees should be subject to more stringent accountability and transparency standards and might expect less privacy. Therefore, ensuring the timely on-line publication of MPs' asset declarations, whether on the official web site of the HIDAA or the National Assembly, is appropriate and would further enhance democratic control and satisfy legitimate public interest in obtaining information on financial and other private interests of MPs as soon as it becomes available. That is, moreover, the practice that is currently being followed by many GRECO member States.<sup>27</sup> Consequently, **GRECO recommends that the contents of asset declarations of members of parliament are made public on an official web site and in a timely manner, with due regard to the privacy and security of deputies and persons related to them who are subject to a reporting obligation.**

### Supervision and enforcement

#### *Supervision over conflicts of interest and additional employment and other activities*

49. Compliance by MPs with the rules on "continued" conflicts of interest (incompatibilities), additional employment and other activities is subject to triple control. Within Parliament supervision is exercised by the Council for Rules of Procedure, Mandates and Immunities and, externally, by the HIDAA and the Constitutional Court. In 2009-2010, an MP's mandate was invalidated by the Constitutional Court due to a conflict of interests found in an asset declaration of the MP concerned. In 2010-2012, another MP was subject to a 2 100 EUR fine for a conflict of interests arising from the exercise of his functions as a Minister (he had appointed a "trusted person" as a member of the supervisory body of an institution subordinated to his Ministry). Furthermore, in 2013 a group of MPs submitted a request to the Assembly asking to invalidate an MP's

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<sup>26</sup> The right of the public to access the officials' and their family members' asset declarations was challenged before the Constitutional Court as violating their right to privacy. In its decision of 11 November 2004, the Court rejected the complaint but set the limits, on the basis of the existing data protection legislation, on the manner and scope in which the asset declarations were to be made accessible to the public.

<sup>27</sup> E.g. Bulgaria, Croatia, Denmark, Finland, Georgia, Hungary, Iceland, Ireland, Latvia, Lithuania, Portugal, Romania, the United Kingdom - See "Using Asset Disclosure for Identifying Politically Exposed Persons" by I.Rossi with L.Pop, F.Clementucci, L. Sawaqed, 2012 IBRD/IDA of the World Bank, p. 26.



mandate based on the information found in his asset declaration, which allegedly constituted a conflict of interests.

50. The existing monitoring system appears to be generally adequate and capable of uncovering cases of incompatibility between the official function of an MP and his/her auxiliary employment and other activities and private interests. As for compliance with the rules on *ad hoc* declaration and registration of conflicts of interest, GRECO understands that the relevant supervisory mechanism does not exist. This issue is already analysed and addressed via a recommendation in paragraph 27 above.

#### *Supervision over declarations of assets, income, liabilities and interests*

51. The HIDAA is also the sole institution exercising supervision over asset declarations by officials, including MPs. Established in 2003, it enjoys an independent status and reports periodically to the Assembly, which decides on its budget, including the number and salaries of staff. The HIDAA is composed of 42 persons, and its Inspector General is elected by Parliament on a proposal by the President of the Republic for a five-year term. Administrative investigations are conducted by the HIDAA *ex officio* or following an external complaint. Asset declarations are subject to annual preliminary checks<sup>28</sup> and full audit, consisting of arithmetical and logical control. In respect of MPs, a full audit is carried out every three years, except for MPs who are Ministers whose declarations are audited every two years. Certain officials, including MPs, are furthermore subject to annual (electronic) random selection audits, which cover at least 4% of the total number of declarations, the exact number of officials per each professional group being determined via an annual risks assessment. Lastly, ad-hoc audits and administrative investigations may be conducted by order of the Inspector General in respect of those statements where problems have been identified by means of an arithmetical or logical control or where information from legitimate sources casts doubts on the veracity and accuracy of data contained in the declarations.<sup>29</sup> Information may be sought from the public registers, banks,<sup>30</sup> other state institutions and certified experts. At the end of an audit, a report summarising violations or irregularities is transmitted to the Inspector General for a decision on an eventual administrative sanction and, if need be, a proposal for criminal prosecution.

52. Information from the paper declarations is stored in four registration systems. General information on MPs (i.e. function, date of election/end of office, delivery date) is contained in the so-called "Basic registry". The "List of submissions" retains information on the mode of submission. The "Internal database system" stores information on persons "related to an MP". And, finally, all forms are scanned and uploaded into the so-called "Internal system for management of declaration forms" where they are kept for 10 years. Full control was exercised by the HIDAA in respect of 53 cases concerning MPs in 2010, 13 cases in 2011, and 83 cases in 2012. Following media, civil society and peer reports, six MPs were subject to *ad hoc* audits in 2010-2011. In 2012, one MP was fined 300 000 ALL/EUR 2 100 for an incompatibility in the exercise of his/her function as a Minister (appointment of a "trusted person" as a member of the supervisory board of an institution subordinated to his Ministry).

53. The discussions on-site highlighted the clear priority given to asset declaration by officials and the regular in-depth monitoring carried out by the HIDAA. The asset disclosure regime extends to a large number of officials (currently some 4 670 persons) as well as their family members, "trusted persons" and "partners/cohabitantes". The GET

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<sup>28</sup> According to Article 24 LDAA, the preliminary processing of a declaration entails verifying the regularity of its completion, including annexes, and the correctness of supporting documents and their legality.

<sup>29</sup> By virtue of Articles 25/1(4) and 25/2 LDAA.

<sup>30</sup> Pursuant to Article 26 LDAA, banks and other subjects exercising banking and financial activity in Albania are obliged to provide all requested data about deposits, accounts and transactions of persons subject to a reporting obligation.

was informed that, due to the HIDAA's limited capacity to process all declarations and carry out checks in a timely fashion, the LDAA was amended in 2012 introducing a differentiated treatment for various categories of officials. Thus, the full audit of MPs' declarations is now performed every three years and is complemented by random annual checks, where the name of the official concerned is selected via a lottery held in the presence of the media and civil society, and by possible *ad hoc* audits. Despite certain positive characteristics, the existing monitoring system could be further improved. Given the duration of their mandate, the three-year time lapse between audits may be insufficient to identify any potential abuses of the asset disclosure regime by some MPs (and this does not include the length of the HIDAA-performed verifications). As concerns random checks, allegations of their selectiveness are strong, and the GET was told that it was not uncommon for the same persons, mostly from the opposition, to be repeatedly targeted. Furthermore, as emphasised by many interlocutors, in all these years the HIDAA has not produced a single significant case, despite suspicions that certain officials have harboured wealth abroad. Although the system of regular mutual notifications between the HIDAA and other relevant state institutions in charge of the fight against corruption and economic crime has been established and is functioning well, their co-operation could be further strengthened. The asset disclosure regime would become more trustworthy if the scrutiny of the sincerity and accuracy of MPs' declarations was performed on a more frequent basis and co-operation between the HIDAA and relevant state institutions (i.e. tax and money-laundering authorities) stepped up. Accordingly, **GRECO recommends that i) the asset declarations of members of parliament be subject to more frequent full audits; and ii) the co-operation between the High Inspectorate for the Declaration and Audit of Assets and relevant state institutions be stepped up.**

54. Moreover, in the course of the visit the GET was made aware that the HIDAA's staff was put under considerable pressure not only from outside – due to soaring public disenchantment with its work – but also from within, following the appointment in 2012 of its new Director, the Inspector General. The staff's discontent was even publicly expressed via an open letter published in the media. Bearing in mind the HIDAA's role as the sole independent institution charged with the supervision of asset declarations by officials/MPs, GRECO calls upon the authorities to avoid any politicisation of its activities, which would only decrease democratic control and hamper building public trust in the country's officials.

#### *Other duties*

55. Deputies are additionally subject to the disciplinary powers of the Assembly for breaches of order and misbehaviour in plenary and committee sittings. Applicable disciplinary measures are: a warning, a reprimand, expulsion from the plenary, and expulsion from a plenary or committee sitting for up to 21 days (in certain cases, this period can be doubled).<sup>31</sup> Reprimands are issued by the chair of the sitting, while expulsion is imposed by the Bureau, upon the chair's proposal or written proposal by at least 7 deputies and is accompanied by a financial penalty equivalent to a daily payment rate applicable for the duration of the measure.

56. An MP enjoys functional immunity in that s/he is not liable for opinions expressed in the Assembly and votes cast, except in the case of defamation. As for procedural immunity, a deputy may not be arrested or deprived of liberty in any way or subjected to a personal or house search without the Assembly's consent. In September 2012, constitutional amendments altered the previous regime for MPs' arrest and detention when apprehended in *flagrante delicto* or immediately after the commission of a crime. The revised Article 73 of the Constitution stipulates that these measures may now be applied without the Assembly's permission and are subject to immediate notification by

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<sup>31</sup> Articles 63-66 of the Rules of Procedure.

the Prosecutor General. If the Assembly determines that these measures are ill-founded, it asks for them to be lifted. Additionally, in 2011, the Assembly adopted a decision, which became an integral part of its Rules of Procedure. It allows an MP to voluntarily restrict his/her immunity for the duration of the mandate by consenting in writing to the launch of a criminal prosecution for active and passive corruption.<sup>32</sup> Over the past few years, three cases where MPs were suspected of corruption and/or abuse of office were investigated. None were found guilty.

57. For years, the immunity of high-level officials, including MPs and judges, has been a barrier to the effective fight against corruption in Albania. From this perspective, the revised constitutional provisions represent an important milestone and facilitate the investigation of suspicious acts and corruption offences committed by MPs. At the same time, while on-site, the aforementioned legislative amendments were subject to contradictory interpretation: while some interlocutors did not put into doubt the direct applicability of the constitutional provisions, others insisted that no major corruption cases had emerged since 2012 due to the absence of corresponding amendments to the Criminal Procedure Code, without which constitutional provisions were inapplicable in practice. The authorities are therefore encouraged to remove any obstacles to the implementation of the revised Article 73 of the Constitution to avoid its arbitrary interpretation.

#### Training, advice and awareness

58. Ahead of the Assembly's first session, each newly elected deputy is given a file of documents which explain the relevant constitutional and legal framework and copies of applicable legislation, including the PCI and the LDAA. Also, queries can be addressed to the Assembly's Chancellery which offers advice and provides assistance to MPs on the applicable legislative framework, and parliamentary groups can use external consultants, including those from the HIDAA.

59. The interviews conducted on-site underscored that, upon assuming their duties, MPs receive fairly limited information and advice on their rights, duties and obligations as parliamentarians. Both the high turnover in the Assembly (as previously stated, in the June 2013 elections, 65 deputies out of 140 were elected for the first time) and a relatively short parliamentary tradition in Albania require a clear emphasis to be placed on systematic and on-going training to be offered particularly for newly elected deputies. Such training needs to accompany the promulgation of a code of conduct for parliamentarians, as provided for in the Assembly's Rules of Procedure and recommended in paragraph 32 above. It is therefore essential that the authorities proceed with the swift implementation of this recommendation, which calls for the establishment of standards for conduct and personal integrity for MPs, fully aligned with the Assembly's mission and values.

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<sup>32</sup> Such an authorisation does not extend to the following measures and procedural acts: a) coercive measures that cause a restriction on the freedom of movement, b) personal search, c) a search of an MP's office or residence, d) observation of the person, e) arrest.

#### **IV. CORRUPTION PREVENTION IN RESPECT OF JUDGES**

##### Overview of the judicial system

60. The judicial power in Albania is exercised by the High Court, the appeal courts and the district courts. Courts for particular areas, but not *ad hoc* courts, may be established by law. Although the Constitutional Court does not belong to the judicial power, any person who has exhausted other legal remedies may challenge before it the irregularity of the judicial process on the grounds that it has violated his/her right to a fair trial.<sup>33</sup>

61. The High Court consists of 19 judges and is the highest judicial authority governed by the law "On the organisation and functioning of the High Court of the Republic of Albania" (LOFHC). It has original jurisdiction when adjudicating criminal charges against the President of the Republic, the Prime Minister, members of the Council of Ministers, MPs, justices of the High and Constitutional Courts, and review jurisdiction over decisions of district and appeal courts. For the purpose of unifying or changing the judicial practice, the High Court may select cases for review by joint colleges.

62. There are 23 district courts and 6 courts of appeal (including one district court and one court of appeal for serious crime) with general jurisdiction in civil, family, commercial, social security, criminal and military-criminal matters established pursuant to laws "On the organisation and functioning of the judiciary in the Republic of Albania" (LOFJ) and "On the organisation and functioning of courts for serious crime." In 2012, administrative courts (6 district courts and one court of appeal) were set up for the first time in Albania.<sup>34</sup> Operational as from November 2013, they have jurisdiction in labour and administrative disputes.

63. A presidential decree provides for a total of 383 judicial posts in district and appeal courts. Currently 288 judges sit in the ordinary courts (220 in district courts and 68 in courts of appeal), 24 judges in the serious crime courts (15 in district courts and 9 in courts of appeal) and 43 judges in the administrative courts (36 in district courts and 7 in the court of appeal), of whom 151 are female and 195 male.

64. Judges are independent and subject only to the Constitution and the laws.<sup>35</sup> Constitutional safeguards include: appointment for life, irremovability, a ban on transferring a judge (with certain exceptions), prohibition from being a member of a political party, prohibition on reducing judges' salaries and benefits. Interference in the activity of courts or judges is illegal. The courts have a separate budget which they administer themselves.

65. In its previous pronouncements, GRECO has stressed that judicial independence and the impartiality of judges are fundamental principles in a State governed by the rule of law; they benefit society at large by protecting judicial decision-making from improper influence and are ultimately a guarantee of fair trial. GRECO notes that reform of the judiciary has been a strategic objective of Albania which featured prominently e.g. in the 2007-2013 National Strategy for Development and Integration. Between 2011 and 2013, pursuant to the Justice Reform Strategy and the accompanying action plan, several legislative acts came into force, including notably amendments to the Constitution which limited judicial immunity and the new laws on the High Court and the National Judicial Conference. Nevertheless, on the path to full independence and impartiality, further breakthroughs are yet to be achieved. In the existing system of checks and balances, the judiciary lacks control over the selection of the High Court justices and the right to initiate disciplinary proceedings against district and appeal court judges belongs

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<sup>33</sup> Article 131(f) of the Constitution.

<sup>34</sup> Pursuant to law "On the organisation and functioning of administrative courts and administrative disputes".

<sup>35</sup> Articles 138, 143, 144 and 145 of the Constitution and Articles 20, 22, 23, 28 LOFJ.

exclusively to the Minister of Justice. These as well as other sources of concern are analysed in the relevant sections of this report.

### Judicial self-governing bodies

66. The key judicial self-governing bodies are the High Council of Justice (HCJ) and the National Judicial Conference. The HCJ, operating pursuant to the law "On the organisation and functioning of the High Council of Justice", is a constitutional body consisting of 15 members: the President of the Republic (Chair), the High Court Chief Justice, the Minister of Justice, 3 members elected by Parliament<sup>36</sup> and 9 judges of all levels elected by the National Judicial Conference<sup>37</sup>. The tenure of elected members is five years, without the right to immediate re-election. The HCJ decides on appointment, evaluation, promotion, transfer, career, training, disciplinary liability and dismissal of district and appeal court judges. Decisions are taken by an open majority vote of the members present. Attached to the HCJ is an Inspectorate composed of a Chief Inspector and 15 inspectors selected via a public competition from among judges meeting the criteria for appointment as an appeal judge or, if none apply, from jurists with not less than five years of working experience as a judge. Successful candidates are nominated by the HCJ's Deputy Chair and appointed by the HCJ for a renewable five-year term. The Inspectorate deals, among others, with external complaints concerning judges' conduct, information provided by court presidents, and external complaints addressed to the Minister of Justice and transferred for treatment to the Inspectorate.

67. The National Judicial Conference brings together district, appeal and High Court judges. Governed by the law "On the organisation and functioning of the National Judicial Conference", it is convoked annually and presided over by the High Court Chief Justice. One of the Conference's permanent structures is the Ethics, mandate verification and continuous professional development Committee. It observes judges' compliance with the Code of Judicial Ethics (see further below) and may give recommendations on the judges' initial and continuous professional development programmes to the School of Magistrates. Judges who are members of the School's board also sit on this Committee.

68. As the principle judicial self-governing body, the National Judicial Conference (NJC) plays a pivotal role by electing the nine judges to be HCJ members as well as the judges to be members of its "Ethics, mandate verification and continuous professional development committee". From the time of its establishment in 2000, however, the Conference's functioning has not been stable. Originally conceived as a structure for all judges (except for the Constitutional Court justices), membership was made only voluntary by amendments to law in 2004. These were challenged before the Constitutional Court and invalidated in 2009. Finally, in 2012 a new law was adopted, giving the NJC's work a fresh new impetus. The prolonged stalemate across that period – during which the Conference remained virtually non-operational – had negative consequences for the judiciary as a whole and, as the GET was told, more specifically, for the processes of selection, career progression, training and disciplinary proceedings against judges. Ownership and controls on judicial ethics have also been affected. The restoration of the Conference's original status, which increases its sense of ownership and its credibility, is, therefore, a welcome development capable of bringing a lasting and positive impact to the administration of justice in Albania.

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<sup>36</sup> Such members are to be jurists, not judges, with not less than 15 years of experience in the profession – Article 4 (2) of the law "On the organisation and functioning of the High Council of Justice" (LOFHCJ).

<sup>37</sup> Members elected by the National Judicial Conference are to have been judges for not less than 10 years – Article 4 (1) LOFHCJ.

## Recruitment, career and conditions of service

69. Recruitment requirements are laid down in Article 136 of the Constitution and Article 11 LOFJ. Any Albanian citizen of full legal capacity, with a university degree in law, who has completed studies in the School of Magistrates, with high moral qualities and professional abilities, not sentenced by a final court decision for the commission of a crime may be appointed as a judge. Exceptionally, persons who have not graduated from the School of Magistrates but have previously acted as a judge may be (re)appointed to this post; their number, however, may not exceed 10% of the total number of judges.

70. The selection procedure is governed by the LOFJ, the LOFHCJ and the law "On the School of Magistrates of the Republic of Albania". All vacant posts are announced in the media. The initial recruitment (i.e. for posts of district court judge, except in administrative and serious crime courts) is carried out by the HCJ in co-operation with the School of Magistrates. Competitive examinations are held and, in addition to legal requirements, other criteria are accounted for (e.g. study results, publications). To fill vacancies in courts of appeal, document-based competitions are held. Eligible candidates can be asked to sit a test and are attributed points. A Special Commission under the HCJ, consisting of its Deputy Chair, the Minister of Justice, 3 HCJ members elected by the National Judicial Conference, one HCJ member elected by Parliament and the HCJ Chief Inspector, oversees the selection process. The HCJ makes the final selection by a majority vote and submits its proposal to the President of the Republic. Candidates for the position of a judge are subject to integrity checks, which are performed by two inspectorates: the one previously mentioned under the HCJ and the other - under the Ministry of Justice. Additionally, candidates are screened by the High Inspectorate for Declaration and Audit of Assets.

71. District and appeal court judges are appointed for an indefinite term by the President of the Republic upon the HCJ's proposal, except for serious crime court judges who are appointed for a renewable nine-year term, the renewal being decided by the HCJ. A judge may be appointed to a serious crime court if s/he: 1) has served for not less than five years in a district court; 2) is distinguished for his/her professional skills and high ethical and moral qualities; 3) has professional skills evaluated as "very good" in the last two appraisals; and 4) is not the subject of a disciplinary measure. Identical criteria have also been set out for candidate appeal judges, except that they are to have not less than 7 years of experience. Presidents of district and appeal courts are appointed for a four-year renewable term by the HCJ. The criteria for appointment are: 1) to have worked for not less than four years as a judge in the same level or higher instance court; 2) to have attained "very good" in the last two appraisals; 3) to not be the subject of a disciplinary measure; 4) to have organisational and management skills; and 5) not to be an HCJ member.

72. The High Court justices and Chief Justice are appointed by the President of the Republic with the Assembly's consent for a nine-year term without the right to re-appointment. Justices are selected from among judges with not less than 10 years' experience or prominent jurists with not less than 15 years' experience.<sup>38</sup> Recent amendments to the LOFHC have refined the appointment-related criteria and procedure: the concepts of "eminent judge" and "eminent jurist" are more clearly defined, and a quota allowing for the recruitment of not more than one quarter of the total number of justices from eminent jurists was introduced.

73. District and appeal court judges are subject to ethical and professional evaluation by the HCJ every three years, on the basis of defined criteria.<sup>39</sup> Subject to evaluation are *inter alia* the length of trials, caseload, quality of judicial decisions and the outcome of

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<sup>38</sup> Article 3 LOFHC.

<sup>39</sup> Articles 1-2 LOFHCJ and Article 13 LOFJ.

appeal proceedings. Evaluation as “acceptable” triggers a judge’s re-evaluation within a year, whereas “incapable” constitutes grounds for his/her dismissal. Since the evaluation system was introduced fairly recently, only 16 judges were evaluated in 2012 and 237 judges in 2013 for their work in 2005-2006.<sup>40</sup> The performance of those three judges was rated “acceptable”, while no judge was considered “incapable.” The evaluation results may be challenged before an administrative court.

74. The central role in the selection and promotion of district and appeal court judges is played by the HCJ, with significant input from the School of Magistrates during the initial recruitment phase. The selection and appointment of candidates to the post of High Court justice however is entirely at the discretion of members of parliament and the President of the Republic. The procedure is vulnerable to undue political influence, not transparent enough and does not require the HCJ’s involvement. The fact that the High Court, as the supreme judicial authority, has jurisdiction over criminal charges against the country’s top officials, including those who are responsible for the selection and appointment of its justices, and over the decisions of lower courts, including those challenging a disciplinary measure that could lead to a judge’s dismissal, magnifies the importance of transparency and the need to avoid any improper influence in the selection and appointment of justices of the High Court.

75. Additionally, the recently introduced system for ethical and professional evaluation of judges cannot be considered effective and efficient due to the significant time lapse between evaluation and the reference period.<sup>41</sup> GRECO does not share the opinion of the authorities who assert that such evaluation cannot be managed in real time as the average duration of trial before the three instances is up to three years. A well-conceived system of periodic assessments allows not only for the monitoring of a judge’s performance and its progression over time but also for the early detection of problems, such as the high caseload and backlog which many judges confront and which can and should be addressed at an earlier stage. In light of the high public perception of corruption in the judiciary, another source of concern to which consideration needs to be given is the apparent lack of well-formulated criteria for periodic evaluation of a judge’s ethical qualities (as a continuation of the integrity checks that are carried out before appointment). In view of the analysis contained in paragraphs 74 and 75, **GRECO recommends that i) the selection and appointment of the High Court justices be made transparent and that the opinion of the judiciary (e.g. the High Council of Justice itself) be sought in those processes; and ii) the periodic evaluation of professional and ethical performance of a judge is conducted in a timely manner and that consideration be given to ensuring that the criteria for evaluating a judge’s ethical conduct are objective and transparent, with due regard to the principle of judicial independence.**

76. District and appeal court judges are subject to thematic and territorial inspections by the Ministry of Justice which examine the organisation and work of the judicial administration and services.<sup>42</sup> The inspections are carried out on the initiative of the Minister, based on external complaints or information available to the Ministry or the HCJ’s Inspectorate. As part of an inspection, the Minister may ask the HCJ’s Inspectorate to perform some of the checks. The inspection results may be used by the Minister to initiate disciplinary proceedings against a judge.

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<sup>40</sup> In January 2014, the evaluation for 2005-2006 was finalised in respect of the remaining 43 judges. On 16 December 2013, the HCJ adopted a new 2014 evaluation programme covering the period 2007 to 2009. By 26 February 2014, files and information had been collected in respect of 40 judges; of those, the evaluation of 3 judges had been completed, and evaluation of the other 37 judges was pending.

<sup>41</sup> In contrast to prosecutors, a template used for the evaluation of judges was not provided to the GET; therefore, it was precluded from assessing its comprehensiveness and relevance of the evaluation criteria.

<sup>42</sup> Article 31 LOFHCJ. The court chancellor, appointed by the Minister of Justice, directs and is responsible for auxiliary court services and judicial administration – Article 37 LOFJ.

77. The transfer of judges to another court is made by the HCJ and is possible: 1) with a judge's consent, in which case the rules for filling a vacancy for the first time are followed; 2) without a judge's consent, for the purposes of judicial reorganisation or as a disciplinary measure; or 3) by means of delegation to alleviate other courts' workload (applicable in certain cases only, in accordance with established criteria).

78. A judge's mandate terminates in case of resignation, attainment of 65 years of age, conviction of a crime by a final court decision or dismissal from office.<sup>43</sup> A district or appeal court judge may be removed by the HCJ for the commission of a crime, mental or physical incapacity, acts and behaviour seriously discrediting judicial integrity and reputation, or professional insufficiency. The removal can be appealed before the High Court, which is to decide by joint colleges. A chair of a district or appeal court is removed by the HCJ if this is requested in writing by not less than five HCJ members, the HCJ's Deputy Chair or the Minister of Justice without disciplinary proceedings having to be launched. The mandate of a High Court justice terminates if s/he: is convicted of a crime by a final court decision; fails to appear for duty without reason for more than six months; reaches 65 years of age; resigns; or is declared incapable by a final court decision.<sup>44</sup> A justice may also be removed from office by two thirds of the Assembly's members for violation of the Constitution, commission of a crime, mental or physical incapacity, or acts or behaviour seriously discrediting the judicial reputation and integrity. Such a decision is subject to review by the Constitutional Court.

79. The base salary of a district court judge is equal to 60% of the salary of a High Court justice. After 5 years of service, for every year of seniority this salary is increased by 2%, up to 25 years of service. Additionally, a 10% supplement is paid to district court judges for serious crime as compensation for special work conditions.<sup>45</sup> The above formula is also used for the remuneration of district court presidents (in their case, a 10% supplement is paid for exercising managerial duties), as well as for the president of the Tirana district court (10% for special work conditions and 10% for court management). As concerns the base salary of an appellate judge, it is equal to 75% of the salary of a High Court justice and, after 15 years in service, it is increased by 2% for every year of seniority, up to 25 years of service. A 10% supplement is paid to court presidents, except for presidents of the Tirana Court of Appeal and of court of appeal for serious crime who receive a 10% supplement for special work conditions and 10% - for court management.<sup>46</sup> The salary of a High Court justice is equal to that of a Minister, while the salary of the High Court Chief Justice is 20% higher.<sup>47</sup> As of November 2013, the gross monthly salary of a district court judge was 87 380 ALL/EUR 623, of an appellate judge - 122 332 ALL/EUR 872.5, and of the High Court justice - 174 760 ALL/EUR 1 246.5. A judge who performs urgent duties on weekends or official holidays earns a supplement equal to 50% of his/her daily salary. Judges are also entitled to long-term housing loans on the same conditions as members of parliament.<sup>48</sup> After the visit, the GET was informed of amendments to the LOFJ which increased judges' salaries as of 1 January 2014.

80. The interviews conducted on-site pointed to the conspicuously poor working conditions and the lack of basic court infrastructure. Particularly frequent references were made to inadequate court rooms, meaning some judges were compelled to hold hearings in their offices. Undoubtedly, these factors tarnish the image of the judiciary and contribute to the low public trust in it. The authorities are therefore called upon to take expeditious and determined steps to rebuild or modernise, where appropriate, court premises and to ensure appropriate and dignified working conditions for judges. This

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<sup>43</sup> Article 20 LOFJ.

<sup>44</sup> Article 139 (1) of the Constitution.

<sup>45</sup> Article 26 LOFJ.

<sup>46</sup> Article 27 LOFJ.

<sup>47</sup> Article 22 LOFSC.

<sup>48</sup> See footnote 14 above.



would furthermore qualify as a powerful corruption prevention measure and would be perceived as such both within and outside the judiciary.

#### Case management and court procedure

81. Depending on the type of procedure, cases are randomly assigned to judges via an electronic case management and information system (ICMIS), in accordance with the LOFJ, procedural laws and the HCJ's decisions.<sup>49</sup> The principle of random assignment is applied in all courts. Additionally, at the beginning of each month, court presidents assign to judges – in alphabetical order – responsibility for cases involving expedited arrests and detention, security measures and other requests submitted as part of an investigation.<sup>50</sup> The electronic distribution of cases has been in use since 2002 and piloted by the Tirana District Court. However, in 2006-2007, a parallel case management system was installed in some courts as part of a World Bank project. The GET was told that as the software of the two systems is incompatible, there are problems accessing case law (i.e. approximately 300 000 judgements of the Tirana District Court, which has a 60% share of the entire workload of courts) and transferring and/or merging court archives. The authorities are therefore encouraged to put in place an electronic case management system that is accessible by all courts.

82. The right of everyone to have his/her case tried within reasonable time is laid down in the Constitution, procedural laws, as well as the LOFJ which treats intentional delays as a "very serious" violation leading to a judge's dismissal.<sup>51</sup> The HCJ accords priority attention to this issue and has been exercising dual control. Firstly, within the evaluation system, the duration of trials is one of the criteria for determining a judge's effectiveness. Secondly, the length of trials is subject to audits conducted by the HCJ's Inspectorate. Where it is found that unjustified delays have impinged on the constitutional rights of the parties or the administration of justice, the audit results are used to institute disciplinary proceedings against responsible judges. Where one or more cases cannot be reviewed within a reasonable time, a court president is to send a substantiated request to the HCJ asking for judges to be delegated to his/her court. As mentioned above, such delegation is only possible under certain conditions and is arranged by lot. In the past decade, some 50 judgments of the European Court of Human Rights have established a violation by Albania of Article 6 of the European Convention of Human Rights on the grounds of the excessive length of judicial proceedings. Attempts to accelerate the judicial process have been pursued *inter alia* via the re-allocation of judges in accordance with workload, the establishment of administrative courts, reform of procedural laws and the introduction of audio-visual equipment in courts. While these measures are to be praised, further efforts need to be made in order to accelerate proceedings and improve the court case monitoring system.

83. Pursuant to both the Civil and Criminal Procedure Codes<sup>52</sup>, hearings are open, with certain exceptions. In civil proceedings, a hearing or part of it may be held *in camera* in the interest of morals or public order, protection of private life, interests of juveniles, classified information, trade or invention secrets, the divulgation of which may affect the interests protected by law, or for any other reason deemed to prejudice the interests of justice.<sup>53</sup> Similar grounds are also listed in the Criminal Procedure Code.<sup>54</sup> All judicial decisions must be reasoned, and in every case verdicts are to be pronounced publicly. There is furthermore a constitutional obligation on the High Court to publish its decisions

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<sup>49</sup> Please refer in particular, to Article 9 LOFJ, Article 154(a) of the Civil Procedure Code and the HCJ's Decision No. 238/1 of 24 December 2008.

<sup>50</sup> Article 18(3)(c) LOFJ.

<sup>51</sup> Article 32 LOFJ.

<sup>52</sup> Article 26(1) of the Code of Civil Procedure and Article 339(1) of the Code of Criminal Procedure.

<sup>53</sup> Article 173 of the Civil Procedure Code.

<sup>54</sup> Article 340 of the Criminal Procedure Code.

and dissenting opinions in the Official Journal. Decisions of all other courts are published in the ICMIS.

#### Ethical principles and rules of conduct

84. As stated earlier, both the LOFJ and the LOHCJ refer to high ethical and moral qualities as the key criteria for appointment as a judge. At the start of their career, judges take an oath of office before the HCJ, pledging *inter alia* to respect the rules of professional ethics. Article 147 (6) of the Constitution and Article 23(2) LOFJ place an obligation on judges to avoid acts and behaviour seriously discrediting their position and image (which are also grounds for a judge's dismissal). Furthermore, violation of ethical norms governing relations with parties, colleagues, the court president and staff, experts, prosecutors and lawyers incurs disciplinary liability.<sup>55</sup>

85. A Code of Judicial Ethics was adopted by the National Judicial Conference (NJC) in 2000 and amended in 2006. It applies to judges and court officials and consists of the general rules, rules on exercising judicial duties and extrajudicial activities and implementation provisions. Central to the Code is the duty of a judge to protect and uphold the independence and impartiality of the judiciary, respect and implement the Constitution and the law, and act in such a way as to increase public confidence in the judiciary. Judges must not tarnish the prestige of their office and are to avoid inappropriate and illegal conduct and acts that cast doubt on their moral standing. At the earliest opportunity judges are to regulate their activities and relationships in line with the Code and, in case of breaches by peers, to take measures, including by reporting to the relevant authorities. If a judge contravenes the Code, the Ethics, mandate verification and continuous professional development Committee under the National Judicial Conference (Ethics Committee) is to send a recommendation to the HCJ's Inspectorate and the Minister of Justice. The Committee is furthermore responsible for interpreting the Code and may provide judges and the HCJ's Inspectorate with an advisory opinion on compliance and ethical dilemmas (however with no binding effect on the settlement of similar cases by the HCJ or the High Court).

86. The Code of Judicial Ethics sets out rules for professional and extra-professional conduct of judges and, although its text is not available on an official web site, all judges are aware of its content. However, due to the reasons described above, the official "keeper" and the body in charge of the interpretation of the Code - the Ethics Committee - has had a low profile and been mainly assigned with a task of issuing ethical performance certificates to judges in connection with a promotion, upon their request. In order to be credible, the Committee has to assume a proactive role and firmly establish itself as an authority in charge of the regulation and implementation of standards for professional conduct. This requires not only properly reacting to misconduct but also offering advice, guidance and counselling with a view to preventing violations. Given its expertise, the Committee's involvement in the design of training programmes, jointly with the School of Magistrates, is also desirable. The lack of attention given to judicial ethics was expressly acknowledged by the School's representative: even though it is included in the initial curriculum, ethics is not a mandatory component of in-service training. Moreover, it is to be recalled that a substantial proportion of judges (up to 10%) may be selected from persons other than the School's graduates who are likely to have rudimentary knowledge of ethics fundamentals. Additionally, bearing in mind the complexity and instability of the legislation on conflicts of interest (see further below), the imperative of ensuring greater awareness of and compliance with the Code, including through mandatory in-service training, cannot be underestimated. Accordingly, **GRECO recommends that i) the "Ethics, mandate verification and continuous professional development Committee" under the National Judicial Conference fulfils its mandate and ensures, in a proactive manner, the enforcement of**

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<sup>55</sup> Article 32 LOFJ.

**ethical rules; and that ii) guidance, counselling and mandatory in-service training be provided to judges on ethics, conflicts of interest and corruption prevention within their own ranks.** Furthermore, it would be appropriate for the Code of Judicial Ethics to be made available to the public by posting it on an official web site. This would carry a great symbolic value and signify the commitment to ethics and compliance of Albanian judges. This would also raise public awareness of the conduct to be expected from judges.

#### Conflicts of interest

87. Within the judicial process, conflicts of interest are governed by the Criminal and Civil Procedure Codes. These require a judge to withdraw from specific proceedings in case of a conflict of interests (see further below) and allow for challenging the judicial acts adopted under those circumstances.<sup>56</sup> The identification and registration of judges' private interests and the handling of case by case conflicts of interest is carried out by the respective court presidents. As concerns actions outside the proceedings, these are subject to the previously mentioned Act "On the prevention of conflicts of interest in the exercise of public functions" (PCI), which is applicable also to members of parliament.<sup>57</sup> The identification, registration and solving of continuous conflicts of interest cases (incompatibilities) is carried out by the High Inspectorate for Declaration and Audit of Assets (HIDAA), as well as human resources departments in each court (which are responsible for preventing conflicts of interests under the PCI). The latter also maintain conflicts of interest registers within courts. Violations under the PCI are sanctioned by administrative fines, which are applicable to judges and persons related to them and which range between 100 000 ALL/EUR 700 and 300 000 ALL/EUR 2 100. Since any breach of the PCI-prescribed obligations constitutes judicial misconduct, each violation identified by the HIDAA is reported to the HCJ and the Minister of Justice for the application of a disciplinary measure.

88. Conflicts of interest are furthermore regulated by the Code of Judicial Ethics. It states in particular that judges are to resist being influenced by vested interests and not take up duties that conflict with their office or use their authority to achieve personal interests or the interests of others, or provide grounds for others to form such an impression. Extra-judicial activities are to be carried out in a way that avoids or minimises the risk of a conflict with the judge's official duties.

#### Prohibition or restriction of certain activities

##### *Incompatibilities, accessory activities, financial interests and post-employment restrictions*

89. Being a judge is incompatible with any other public, private or political activity, or any other activity except for teaching/lecturing at a university.<sup>58</sup> Moreover, judges may not be members of political parties, engage in political activities, participate directly or indirectly in the administration or management of companies or act as experts or arbitrators. Judges' academic activities are regulated via decisions of the HCJ, and their exercise is only possible with the latter's consent. As concerns private interests, Article 33 PCI, prohibits High Court justices and judges who are HCJ members from actively holding shares or capital shares in profit-making organisations, including if these are registered in the name of a person "related" to a judge (spouse, adult child, parents or parents-in-law).

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<sup>56</sup> Articles 494 and 449 of Codes of Criminal and Civil Procedure, respectively.

<sup>57</sup> See above under "Corruption prevention in respect of members of parliament."

<sup>58</sup> Article 143 of the Constitution and Articles 22 and 23 LOFJ.

90. Former judges are free to engage in any paid or unpaid private sector activity, as no post-employment restrictions apply to them. Although no specific cases of acceptance by former judges of outside employment subsequent to taking an improper advantage of their previous office were communicated to the GET, such situations constitute a potential source of conflicts of interest. Introducing post-employment restrictions, or at least imposing an appropriate "cooling off" period for judges might therefore be considered an important corruption-prevention tool and, for this reason, the matter deserves to be kept on the authorities' anti-corruption agenda.<sup>59</sup>

#### *Recusal and routine withdrawal*

91. According to Articles 17-19 of the Criminal Procedure Code, a judge is to recuse him/herself from a criminal case: a) when s/he has an interest in the proceedings or when one of the parties or defence lawyers is his/her or his/her spouse's or child's debtor or creditor; b) when s/he is a tutor, attorney or an employer of the defendant or of one of the parties or when the defence lawyer or the attorney of one of the parties is a close relative of him/her or his/her spouse; c) when s/he has provided advice or expressed an opinion about relevant proceedings; d) there is a dispute between him/her, his/her spouse or any of his/her close relatives and the defendant or one of the parties; e) when his/her or his/her spouse's relatives have been injured as a result of the criminal offence; f) when his/her or his/her spouses' relatives exercise or have exercised the functions of prosecutor in the proceedings; g) in cases of incompatibilities enumerated in the Code; or i) in case of other important partiality issues. A judge may recuse him/herself or is disqualified following a motion by a party. Similar rules also apply in civil law cases.<sup>60</sup> The records on self-recusal, disqualification and the re-assignment of cases are kept within each court. In 2011, a judge of the Tirana District Court who took part in the retrial of a case for which he had previously given a final decision was subject to disciplinary proceedings and received a reprimand. The obligation of a judge to withdraw from a hearing is also reflected in the Code of Judicial Ethics.

#### *Gifts*

92. Under Article 32 (2)(d) LOFJ, the acceptance of a promise or the taking - directly or indirectly - of benefits, gifts, favours or any other improper treatment in the exercise of judicial functions constitutes a "very serious" violation and incurs dismissal of a judge. Additionally, as is the case for MPs, judges and persons related to them are subject to Article 23 PCI and the 2004 decision of the Council of Ministers, which prohibit the solicitation and receipt, directly or indirectly, of gifts, favours, promises or preferential treatment from any person, with the exception of protocol gifts, and sets the procedure for reporting them via a judge's and his/her family members' asset declarations.<sup>61</sup> If a fine is imposed on a judge for a violation of Article 23 PCI, a court president is to be notified by the High Inspectorate for Declaration and Audit of Assets, for the taking of disciplinary measures. The ban on accepting bribes under Article 319(a) of the Criminal Code also applies. It carries a sentence of up to 10 years and a fine of up to 4 million ALL/ EUR 28 000. The enforcement of rules on gifts and other preferential treatment appears to be adequate, and the GET only wishes to reiterate its concerns regarding the relatively high declaration threshold established by Article 23 PCI compared to the average per capita income in Albania.

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<sup>59</sup> Subsequent to the visit, the GET was informed that former public servants and employees are subject to a two-year ban which prohibits them from representing a person in a conflict or a commercial relationship with the state, if this relates to their previous employment or is a continuation thereof (Article 17, Law "On rules of ethics in the public administration"). This law however does not apply to judges.

<sup>60</sup> Pursuant to Articles 72-76 of the Civil Procedure Code.

<sup>61</sup> See "Corruption prevention in respect of members of parliament".

### *Third party contacts and confidential information*

93. The making of public statements about a process, including those threatening its impartiality, and the disclosure of opinions expressed during a hearing which have not taken the form of a decision, are incompatible with the post of a judge.<sup>62</sup> Moreover, the publication in full or in part of confidential acts or information pertaining to a case or its content in the media as well as the disclosure, in full or in part, of acts of judicial review where the hearing is conducted *in camera*, are prohibited.<sup>63</sup> A ban on publication is lifted following expiry of limitations established by the law "On the state archives" or 10 years after the decision has become final, provided the disclosure is authorised by the Minister of Justice. While not a criminal offence, violation by a judge of a publication ban incurs disciplinary liability. Additionally, the disclosure of secret data in breach of a judge's duties is qualified as a criminal offence (Article 295(a) of the Criminal Code) and carries a fine and imprisonment of up to five years.

### Declaration of assets, income, liabilities and interests

94. In accordance with Article 3 of the law "On the declaration and audit of assets, financial obligations of elected officials and some public officials" (LDAA), all judges are to declare their assets, income, liabilities and interests, in the same scope and under the same terms as MPs, to the High Inspectorate for Declaration and Audit of Assets.<sup>64</sup> Violation of the reporting rules is sanctioned by administrative fines, except for refusal or failure to declare, the concealment or false declaration of assets, which are criminal offences under Article 257(a) of the Criminal Code and "very serious" disciplinary offences under the LOFJ, conducive to a judge's dismissal.

95. As previously stated, the asset disclosure regime is widely regarded as an important tool for combating corruption and achieving greater transparency of private interests of officials, including judges. Nevertheless, the shortcomings that arise from the absence of the timely on-line publication of MPs' asset declarations<sup>65</sup> have the same effect in respect of all categories of judges and contribute to diminished public trust in the judiciary. That being said, the risks generated by this delayed public disclosure are mitigated to a certain extent by the length of a judge's service which is not time-barred. For this reason, GRECO foregoes issuing a separate recommendation on this matter; still it encourages the authorities to ensure the timely publication of asset declarations by judges on an official web site, having regard to the privacy and security of judges and their family members who are subject to a reporting obligation.

### Supervision and enforcement

#### *Supervision over conflicts of interest*

96. Within the judicial process, the observance of conflicts of interest rules is monitored by a court president who decides to replace a judge when there are reasonable grounds to doubt their impartiality in a particular case. In cases where a judge is disqualified following a motion by a party, a separate panel composed of three judges is to decide on his/her disqualification from proceedings. Additionally, as previously mentioned, the establishment of a conflict of interests triggers the review of the judicial act adopted by the judge, on the basis of Article 494 of the Civil Procedure Code or Article 449 of the Criminal Procedure Code. Outside the judicial process, responsibility for ensuring compliance with the conflicts of interest rules under the PCI is vested in the High Inspectorate for Declaration and Audit of Assets (HIDAA). It identifies

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<sup>62</sup> Article 22 (d-f) LOFJ. Rules 10 and 11 of the Code of Judicial Ethics are also relevant.

<sup>63</sup> Article 103 of the Criminal Procedure Code.

<sup>64</sup> See above under "Corruption prevention in respect of members of parliament."

<sup>65</sup> See above under "Corruption prevention in respect of members of parliament."

violations based on its own investigations or external complaints and reports them to the HCJ and the Minister of Justice for the taking of disciplinary measures. No violation of the conflicts of interest rules by judges have been brought to the HIDAA's attention in the course of the past few years.

#### *Supervision over declarations of assets, income, liabilities and interests*

97. The supervision of judges' asset declarations is also assigned to the HIDAA. It is carried out in a manner identical to that applied in respect of MPs,<sup>66</sup> except that the declarations of the High Court justices and judges who are HCJ members are to be audited every two years, those of appellate judges – every three years, and finally, the declarations of district court judges are subject to annual random audits. In case of refusal or failure to declare, concealment or false declaration of assets, the HIDAA refers the case to the Prosecution Service for criminal proceedings, and to the HCJ and the Minister of Justice - for disciplinary measures of dismissal from office. In 2010, 27 files in respect of judges were audited, in 2011 – 49 files, and in 2012 – 44 files. Due to irregularities, fines were imposed on one judge in 2011 and two judges in 2012; in 2011, two cases were referred to the Prosecution Service. As concerns disciplinary proceedings, in 2012 the HCJ reviewed a request from the Minister of Justice to dismiss a judge from the district court of Berat for failure to declare a part of his assets. After the HCJ had rejected this sanction, the imposition of another disciplinary measure was not proposed by the Minister. The GET notes that a graduated approach has been pursued, whereby, depending on seniority, some categories of judges are subject to more frequent scrutiny of their assets. Such regularity of audits can be regarded as justified in the context of the judiciary. Nevertheless, the concerns expressed earlier about the functioning of the HIDAA are also valid as regards the quality of its supervision of judges.<sup>67</sup>

#### *Supervision over ethical principles, rules of conduct and auxiliary activities*

98. Judges' respect for ethics and work discipline is supervised by the respective court presidents. Additionally, the HCJ's Inspectorate collects and verifies information on the implementation of rules on conduct and professional ethics, as part of the judges' evaluation.<sup>68</sup> Auxiliary employment, which can only take the form of teaching/lecturing at a university, is subject to the HCJ's consent and is also supervised by its Inspectorate. External complaints alleging judicial misconduct may be submitted to either or both the HCJ Inspectorate<sup>69</sup> and the Ministry of Justice, the latter being the sole authority with the right to institute disciplinary proceedings against judges. Verifications performed by the HCJ's Inspectorate may impact the judges' evaluation or lead to disciplinary action. Checks may also be performed for proceedings proposed by the Ministry, when it is considered appropriate and requested by the HCJ. With a view to harmonising the inspection procedures and avoiding overlaps, in 2012, a Memorandum of co-operation was signed between the HCJ and the Ministry of Justice, complemented by an Inspection Manual. In 2013, 539 complaints were registered by the HCJ's Inspectorate, 31 of which concerned alleged ethical violations and had resulted in verifications being launched by the HCJ's Chief Inspector.

99. As mentioned above, judges are disciplinarily liable for violations of law and commission of acts and conduct discrediting their reputation and integrity. "Very serious" violations (e.g. non-compliance with incompatibility rules; refusal to declare, failure to declare, hiding or false declaration of assets; obtaining, directly or indirectly, gifts, favours, promises or preferential treatment, in the exercise of duties; failure to withdraw from a trial; the absolute absence of reasoning in a judicial decision) are sanctioned by

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<sup>66</sup> See above under "Corruption prevention in respect of members of parliament."

<sup>67</sup> Ibid.

<sup>68</sup> Regulations "On the HCJ Inspectorate" (Article 21, paragraph 5) and "On the system of evaluation and professional ethics of judges".

<sup>69</sup> A special portal and register have been established for this purpose at the HCJ's web site.

removal from office. "Serious" violations (e.g. repeated and unjustified procedural delays; interference with or any kind of other influence exerted on another judge; violation of ethical norms in relations with parties, colleagues, court president and staff, experts, prosecutors and lawyers) are punishable by a transfer for one to two years to a lower instance or same level court outside the judicial district of a judge's appointment. Finally, "minor" violations lead to a reprimand or a reprimand with a warning.<sup>70</sup>

100. Disciplinary proceedings are carried out by the HCJ.<sup>71</sup> The period of limitation is one year from the date the violation is found by/reported to the Minister of Justice and five years from the date of its commission. Decisions are made by an open majority vote of the HCJ members present, except for the Minister of Justice who does not vote. In proceedings against an HCJ member, the Council may decide by a majority vote of its members present that the decision on disciplinary action be made by a secret vote. Decisions imposing dismissal can be appealed before the High Court which decides by the joint colleges, while other decisions are appealed to the Tirana Court of Appeal. As the result of disciplinary proceedings, in 2011, two judges received reprimands, and in respect of three judges, the disciplinary measure of dismissal was rejected. In 2012, two judges were reprimanded, three judges were reprimanded with a warning of discharge from duties, one judge was dismissed, and in respect of two judges the disciplinary measure of dismissal was rejected. In 2013, the HCJ submitted 20 requests for initiating disciplinary proceedings to the Minister of Justice. So far, one judge has been dismissed, in respect of another dismissal has been rejected, in one case the proceeding was terminated after the Minister of Justice has withdrawn the request to initiate proceedings, and in two other cases, the proceedings for dismissal have been suspended by the Minister. The statistics show that some judges have been subject to repeated disciplinary proceedings.

101. The overlapping inspection competences and lack of co-ordination pertaining thereto between the HCJ Inspectorate and the Ministry of Justice have been the topic of numerous discussions and reports in recent years. The essence of the problem is that both may carry out inspections into the work of the same judge without informing one another. The complaints about double inspections were rejected by the authorities who insisted that the signing of the memorandum between the Ministry and the HCJ Inspectorate provided for an acceptable temporary solution (i.e. pending proper structural reform) and facilitated mutual notifications and exchange of information. The right of the Ministry of Justice to examine the functioning of judicial services and court administration through "territorial and thematic inspections" is not questioned by the GET and is considered appropriate in the overall system of checks and balances. What is alarming, however, is that the exercise of this right, as stems from Article 31 LOFHCJ, is only possible in the context of disciplinary proceedings against a judge. The exact scope of such inspections is also not clearly established by law. This represents a stark contrast, for example, with the very detailed regulation provided in Article 56 of the law "On the organisation and functioning of the Prosecution Service in the Republic of Albania". This Article (Relations with the Ministry of Justice) circumscribes in a very precise and detailed manner the possible subjects of the Ministry of Justice's inspections. In the opinion of the GET, a similar approach could be followed in regard to inspections of the courts. Additionally, the exclusive right of the Minister of Justice to initiate disciplinary proceedings against judges is seen as creating ample opportunities for inappropriate influence, and a more balanced solution would require attributing similar rights to the respective court presidents. Accordingly, **GRECO recommends that i) with a view to ensuring protection against arbitrary intervention in the administration of justice, the extent of the right of the Ministry of Justice to examine the functioning of judicial services and court administration, as provided under Article 31 of the law "On the organisation and functioning of the**

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<sup>70</sup> Articles 32 and 33 LOFJ.

<sup>71</sup> According to Article 34 LOFJ and Article 2 of the LOFHCJ.

**High Council of Justice” be clearly defined; and that ii) the respective court presidents, including the High Court Chief Justice, be vested with the right to initiate disciplinary proceedings against judges.**

102. As concerns the Ethics Committee under the National Judicial Conference, the analysis of problems precluding its operation in the past and the proposals on how to strengthen its role, including with regard to observance of ethical conduct by judges, are already presented, respectively, in paragraphs 68 and 86 above.

#### *Judicial immunity*

103. All judges enjoy immunity for the opinions expressed and decisions taken in the exercise of their functions. In civil lawsuits related to their duties, judges are not held liable except for cases provided by law. Criminal prosecution in respect of a High Court justice may only be pursued with the Constitutional Court’s consent. As concerns other categories of judges, Article 137 of the Constitution, which was revised in September 2012, made the initiation of a criminal prosecution in their regard possible without the permission of the HCJ. Furthermore, when apprehended in *flagrante delicto* or immediately after the commission of a crime, all judges may now be arrested or detained and subject to personal and house search, of which the Prosecutor General immediately notifies the Constitutional Court (for the High Court justices) or the HCJ (for other judges). In other cases, such measures may only apply with the aforementioned bodies’ consent. Where criminal proceedings are launched, a judge is to be suspended from duties until a final court decision. The abolition of immunity from investigation for corruption offences in respect of a vast number of judges is a much anticipated and welcome development. However, as in the case of members of parliament,<sup>72</sup> the arbitrary interpretation of the revised constitutional provisions, which were not followed by corresponding amendments to the Criminal Procedure Code and the LOFJ, may jeopardise the impact expected of this important reform. The authorities are therefore called upon to ensure a uniform interpretation of the revised constitutional provisions so as to yield their effective implementation.

#### Training, advice and awareness

104. Under Article 23 of the law “On the School of Magistrates”, district and appeal court judges are to undergo mandatory professional training. This provision is reiterated by the Code of Judicial Ethics, which states that judges are to increase the level of their professional development. The School’s training programmes are designed by its Director with input from the High Court Chief Justice, the Prosecutor General, the Minister of Justice, the HCJ and the School’s Pedagogical Council and Governing Board. The average duration of a professional training programme is at least one year, under condition that it does not exceed 20 days per annum and 60 days over five years. At the end of the training, judges receive a certificate which is placed in their personnel files. Issues pertaining to judges’ professional development are co-ordinated by the respective court presidents with the School of Magistrates, the HCJ and the Ministry of Justice, and their proposals for the judges’ attendance are subject to the HCJ’s approval. The indispensability of reinforced in-service training, advice and counselling is already articulated in the recommendation under paragraph 86 above. These measures are to be centred on the Code of Judicial Ethics and other relevant ethical rules with a view to ensuring their consistent implementation.

105. Apart from the HCJ’s web portal for the submission of online complaints against district and appeal court judges and the publication of HCJ’s acts and decisions on its web site ([www.kld.al](http://www.kld.al)), there are no specific channels via which information on the conduct to be expected of a judge is made available to the public. The lack of properly channelled

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<sup>72</sup> See “Corruption prevention in respect of members of parliament.”



communication between the courts and the media and public is a distinct weakness, which might reinforce the perception that judges are unaccountable and corrupt. There is no doubt that a balanced public relations policy aimed, on the one hand, at providing exhaustive information on all aspects of the work of the courts and, on the other, striking a balance between the publicity of trials and the prohibition on judges from expressing an opinion on pending cases, would help to gradually reinstate public confidence in the judiciary.

## **V. CORRUPTION PREVENTION IN RESPECT OF PROSECUTORS**

### Overview of the prosecution service

106. The Prosecution Service is a constitutional body which exercises criminal prosecution, represents the state in court, oversees the execution of criminal court decisions and performs other duties provided by law (e.g. management of and control over the judicial police). Article 148 (2) of the Constitution stipulates that "prosecutors are organised and operate as a centralised organ attached to the judicial system". The Service is neither a part of the executive nor of the judicial branches of power; due to the nature of its functions, it is a *sui generis* body, the only one of its kind, the guarantees of its autonomy being reinforced through a ban on membership of a political party and administration of its own budget. The Prosecutor General is accountable to Parliament and reports periodically on the status of criminality and the Service's priorities in this regard.

107. The Act "On the organisation and functioning of the Prosecution Service of the Republic of Albania" (LOFPS) determines the competence, organisation and management of the Prosecution Service, as well as the status, rights, duties and liability of the Prosecutor General and other prosecutors. The Service operates on the principle of a single and centralised management. Its internal structure reflects the system of courts and consists of three tiers: the first instance is represented by 23 district offices (including one for serious crime) with 278 prosecutors, the second instance by seven appeal offices (including one for serious crime) with 28 prosecutors. The highest authority is the Office of the Prosecutor General who manages the Service's activities directly or through heads of offices, with 24 prosecutors. The total number of prosecutors in Albania is 330, of whom 244 are male and 86 female.

108. In the exercise of their powers, prosecutors are subject to the Constitution and the laws and are to respect the principles of fair, indiscriminate and duly ordered legal proceedings and to protect lawful human rights, interests and freedoms.<sup>73</sup> They are to take measures for the carrying-out of criminal prosecution and the implementation of lawful instructions and decisions and orders of courts and, generally, to assist the good administration of justice. Hierarchical relations within the Service are regulated by the Criminal Procedure Code and the LOFPS. The latter empowers senior prosecutors to issue reasoned written instructions and orders which are binding on their subordinates.<sup>74</sup>

109. The Council of Prosecutors is a collegial advisory body supporting the Prosecutor General in the exercise of his/her functions. It consists of seven members, of whom six are prosecutors and one is a representative of the Minister of Justice. A representative of the President of the Republic may also participate in the Council's meetings. Those Council members who are prosecutors must have over five years' experience and are to be elected every three years by the General Assembly of Prosecutors. Three of them are to represent district offices, two – appeal offices, and one – the Prosecutor General's

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<sup>73</sup> Article 4 LOFPS.

<sup>74</sup> Article 4/3 LOFPS and Article 24(4) and (5) of the Criminal Procedure Code.

Office. The Council is *inter alia* responsible for: (1) organising competitions for prosecutorial posts and providing an opinion on the appointment, promotion, transfer, dismissal and disciplinary measures taken in respect of prosecutors; (2) examining the outcomes of prosecutors' evaluations and dealing with any complaints; and (3) giving an opinion on the annual inspection plan proposed by the Prosecutor General as well as the results of audits carried out by the Ministry of Justice. Opinions, which are to be taken by an open vote, must be reasoned and presented in writing; the dissenting opinions must also be attached. If the Prosecutor General disagrees with the Council's opinion, s/he is to provide a reasoned decision. The Council's organisation and functioning are determined by the Prosecutor General, with due regard to the opinion of the Council.<sup>75</sup>

110. The Ministry of Justice conducts periodic and *ad hoc*<sup>76</sup> inspections of the Prosecution Service. Included within their scope are e.g. a) progress in implementing the Council of Ministers' recommendations on the fight against crime; b) compliance with the time lines prescribed for a preliminary investigation and pre-trial detention; c) respect for fundamental rights and freedoms in criminal proceedings; and d) the regularity of investigative actions.<sup>77</sup> Notification of an inspection is to be given in advance, and the controls can be performed only in respect of cases for which an investigation has been terminated. The results of an inspection may be used to address a recommendation to the Prosecutor General, e.g. to proceed with a disciplinary measure. Both the Ministry's recommendation and the Prosecutor General's decision are communicated to the President of the Republic. A report on the inspections is presented at least once a year to the National Assembly. Also, each year, by 31 March, the Minister of Justice - in the name of the Council of Ministers - submits to the Prosecutor General recommendations on the fight against crime for the year in progress. The recommendations are analysed by senior prosecutors and made public. There is an explicit prohibition on the Council of Ministers making a recommendation on how to proceed in a concrete case.

111. The Prosecution Service enjoys a level of autonomy that is adequate for the exercise of its mandate. The scope of its powers is clearly delineated by law and it accounts periodically and publicly for its activities directly to the National Assembly. Similarly to judges, the Prosecution Service falls under the scrutiny of inspectors from the Ministry of Justice. These inspections mostly target district prosecution offices and focus on the application of the Council of Ministers' recommendations and policies on the fight against crime. The GET was assured that the Ministry can only examine files that are closed and not any open cases. Furthermore, even though the Minister is empowered to propose the initiation of disciplinary proceedings against prosecutors, the final decision on this matter rests with the Prosecutor General.

#### Recruitment, career and conditions of service

112. Recruitment requirements for a prosecutor are laid down in the LOFPS. Applicants must be citizens of Albania, of at least 25 years of age, of full legal capacity, with a university degree in law, graduates from the School of Magistrates, with high moral and professional qualities, who have not been convicted by a final court decision for the commission of a crime or removed from public administration for a disciplinary offence within the last three years, or five years in the case of former judges, prosecutors, police officers, notaries and lawyers. Up to 10% of the total number of prosecutors may be recruited from among persons who have not graduated from the School of Magistrates in case they meet the other criteria above and have worked as judges or prosecutors before, or as judicial police officers for at least five years. Persons who have completed

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<sup>75</sup> Currently operating on the basis of Regulation No. 79 of 16.04.2010 "On the organisation and functioning of the Council of Prosecutors."

<sup>76</sup> These are carried out on the basis of information submitted by other state bodies, institutions or interested persons.

<sup>77</sup> Article 56 LOFPS.

two years of study at the School of Magistrates and one year training in a prosecution office may also be appointed.<sup>78</sup>

113. The Prosecutor General is appointed by the President of the Republic with the Assembly's consent for a renewable five-year term.<sup>79</sup> Jurists of high integrity with working experience of not less than 10 years distinguished for their professional skills may be elected as the General Prosecutor. Other prosecutors are appointed indefinitely by the President of the Republic on a proposal by the Prosecutor General. Vacancies are publicly announced. Promotion is based on criteria, such as merit and experience, established by the LOFPS and the Prosecutor General's orders, and a document-based competition. Candidates for the serious crime office are eligible if they: a) have at least five years working experience in a district office; b) are distinguished for their professional skills; c) their professional skills have been evaluated "very good" in the last two evaluations; d) have a clean disciplinary record; and e) have high ethical and moral qualities. Similar requirements apply to candidates for appeal offices and the Prosecutor General's Office, except that an extended working experience is required.<sup>80</sup> Detailed rules on the submission, selection, verification and testing of candidates are contained in the Prosecutor General's orders and the Council of Prosecutors' regulations.<sup>81</sup> Evaluation and selection are carried out by the Council of Prosecutors, which presents its opinion to the Prosecutor General. The appointment and promotion of heads/directors of the Prosecution Service is carried out in an identical manner.<sup>82</sup>

114. All prosecutors undergo an annual evaluation by their respective heads of office which is submitted - via the Council of Prosecutors - to the Prosecutor General for adoption.<sup>83</sup> As in the case of judges, "satisfactory" evaluation triggers a prosecutor's re-evaluation within a year, and being rated "incompetent" constitutes grounds for dismissal. If an evaluation is challenged, it is to be reviewed by the Inspections and Human Resources Directorate under the Prosecutor General's Office as well as the Prosecutors' Council, which is to submit the final preliminary evaluation to the Prosecutor General for approval. A new evaluation is to be prepared when a prosecutor is promoted or transferred, unless the last evaluation has been adopted in the last six months. By end of 2013, all district prosecutors had been evaluated for their performance in 2012. As the system of annual appraisal of prosecutors was introduced fairly recently - in 2012 - it is not yet possible to estimate its full potential, impact and effectiveness. It is, however, a welcome innovation which is fully supported by GRECO.

115. "High moral qualities" have been established as a general requirement for prosecutors' appointment and promotion. However, the GET was told that, when reviewing the data on individual candidate prosecutors, the Council of Prosecutors relies on the preliminary opinion of human resources departments of the School of Magistrates and the judicial police, and does not perform separate integrity checks. The GET notes that the detailed rules on submitting, selecting, verifying and testing candidate prosecutors are set by the Prosecutor General. The latter also determines the internal evaluation criteria and issues rules on the system of points for promotion. The examination of a sample evaluation form however indicates that the criteria for

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<sup>78</sup> Article 23 LOFPS. After completion of training, the President of the Republic issues a decree on appointment to a prosecution office, depending on the latter's needs.

<sup>79</sup> Article 149 of the Constitution.

<sup>80</sup> For the appointment in an appeal office - not less than 7 years of working experience in a district office, and for appointment in the Prosecutor General's Office - not less than 5 years of working experience in an appeal office or 12 years in a district office - see Article 43 LOFPS.

<sup>81</sup> Article 3/5 of the Regulation on Appointments of the Council of Prosecutors stipulates that the selection of candidates that fulfil the legal requirements is to be based on an evaluation of their respective documents and data that clearly distinguishes one candidate from the other.

<sup>82</sup> See also Article 27/a LOFPS.

<sup>83</sup> In line with the "Internal Regulation on the evaluation system of work performance and professional and moral skills of prosecutors".

evaluating prosecutors' moral and ethical qualities have not been established.<sup>84</sup> Accordingly, with a view to enhancing uniformity, predictability and transparency of prosecutors' appointment and promotion, **GRECO recommends to further refine the criteria for assessing a prosecutor's ethical qualities, in particular by ensuring that the criteria are objective and transparent.**

116. Prosecutors may not be transferred to another office without their consent, except where this is required by the office re-organisation or when such a measure is imposed as the result of disciplinary proceedings. Decisions on transfers are made by the President of the Republic upon proposal by the Prosecutor General who takes into account the opinion of the Council of Prosecutors.

117. The service of a prosecutor is terminated in case of resignation, retirement or loss/limitation of legal capacity by a final court decision. A prosecutor is dismissed if: (1) s/he is convicted of a crime; (2) s/he is subject to dismissal for revealing an investigation secret or other confidential data or for committing an act that seriously discredits the image or is incompatible with the functions of a prosecutor; or (3) s/he is evaluated as being incompetent.<sup>85</sup> On the Assembly's proposal, the Prosecutor General may be discharged by the President of the Republic for violating the Constitution or serious violations of law while in office, for mental or physical incapacity, or acts and behaviour that seriously discredit prosecutorial integrity and reputation.

#### *Salaries and benefits*

118. Salaries and benefits of prosecutors are defined in Articles 47-48 and 52 LOFPS. The salary of a Prosecutor General is equal to that of the High Court Chief Justice, whereas the salaries of prosecutors within the Prosecutor General's Office are equal to those of the High Court justices. The base salary and pay supplements for seniority and special work conditions of a prosecutor and head of office are equivalent to those of a judge and court president of corresponding courts. A pay supplement of 50% of the daily pay is provided for the performance of duties outside working hours. A 20% pay supplement for the performance of complex tasks and an additional supplement for professional merits may also be awarded on a proposal by the head of office, approved by the Prosecutor General. Prosecutors are moreover entitled to favourable housing loans on the same conditions as judges and MPs.<sup>86</sup> At present, the annual salaries are as follows: the Prosecutor General earns 2 516 544 ALL/EUR 17 612, an appeal prosecutor – 1 937 739 ALL/EUR 13 560, and a district prosecutor – 1 216 330 ALL/EUR 8 512.

#### Case management and procedure

119. The "Internal Regulation on the organisation and functioning of the district prosecution offices" and the Prosecutor General's order "On readiness for duty in a district prosecution office" contain rules on the assignment of cases. Materials referred for investigation are allocated by senior prosecutors or heads of office in accordance with a "monthly alert schedule" on the basis of specialisation and equal distribution of work. As a general rule, a prosecutor is made responsible for cases, proceedings or charges, of which s/he was made aware while on duty. In case of an *ex officio* prosecution, a head of office registers a criminal case and makes a reasoned decision on its assignment to a subordinate, based on the above-mentioned allocation criteria. Within two days, the assigned case is entered into the criminal register. A prosecutor may be removed from a case on the basis of a reasoned request by a head of office or at his/her own request, if

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<sup>84</sup> The rather detailed evaluation form focuses on six groups of criteria, namely prosecutors' general professional skills, personal skills, social conduct skills, management and leadership skills, work discipline and disciplinary measures.

<sup>85</sup> Article 27 (3) LOFPS.

<sup>86</sup> See footnote No. 14.

there are grounds to doubt his/her impartiality (see further below) or any other acceptable reasons.

120. Within the criminal prosecution and trial, a prosecutor is independent in the exercise of his/her duties on a case. At the end of an investigation, before sending a case to trial, or before withdrawing or closing the proceedings, the head of a district office is duty-bound to check the conformity of his/her subordinate's act against the legislation in force and in, case of irregularities, to modify or repeal the act. If the subordinate disagrees with the head of office, s/he may appeal to a higher-ranking prosecutor or the Prosecutor General. The appeal is to be reviewed within 10 working days, and a motivated response provided to the complainant.

121. The orders and instructions of senior prosecutors are mandatory for their subordinates.<sup>87</sup> Limitations on the powers of a superior prosecutor are laid down in Article 3(c) LOFPS. Thus, a subordinate is to refuse – in a written form and in a reasoned way – an order or instruction from a senior prosecutor if it is “clearly against the law”. This does not apply to hierarchical decisions implementing the criminal procedure law and the Prosecutor General's orders and instructions. In case of refusal, the head of office or senior prosecutor who had given the order or instruction can replace the subordinate by initiating disciplinary proceedings or by assigning the case to another subordinate. Cases of disagreement with the decision or position of a prosecutor's superior/head of office can be appealed before the General Prosecutor by virtue of the Prosecutor General's Order 147/2008. As concerns the administrative decisions, they can be appealed before court pursuant to the Administrative Procedure Code.

122. The discussions on site underscored the appropriate level of autonomy prosecutors enjoy in the exercise of their legislatively mandated duties and the lack of exposure to undue influence. The existing rules are clear and unambiguous and meet the requirements of impartiality and independence.

123. Safeguards for dealing with cases without undue delay are laid down in the Constitution,<sup>88</sup> the Criminal Procedure Code<sup>89</sup> and the “Internal Regulation on the organisation and functioning of the district prosecution offices”. A preliminary investigation is to be conducted within a three-month period and can be prolonged provided its total length does not exceed two years. In extraordinary cases, an extension of up to one more year can be ordered by the Prosecutor General, on condition that each prolongation does not exceed three months. The defendant and the injured party are notified of the prolongation which can be appealed before a district court. Once an investigation is over, a prosecutor is to decide, within a short and reasonable time whether to withdraw/terminate, not initiate or to prosecute the case. Pursuant to Article 13 of the aforementioned Regulation, prosecutors are to take all measures and to plan as effectively as possible proper procedural actions so as to avoid unnecessary delays. In case of non-compliance, the heads of office are to inform the Prosecutor General thereof and to initiate disciplinary proceedings.

124. The legality of the Prosecution Service's activities is subject to regular general periodic inspections (not less than once every three years for each prosecution office) and partial *ad hoc* checks by the Inspections and Human Resources Directorate under the Prosecutor General's Office.<sup>90</sup> The inspections may have as their objective a preliminary assessment of a prosecutor's professional skills (following a negative annual evaluation) and investigation and review of external complaints about a prosecutor's professional

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<sup>87</sup> Article 24(4) of the Criminal Procedure Code.

<sup>88</sup> Article 28 of the Constitution.

<sup>89</sup> Articles 323 and 324 of the Criminal Procedure Code.

<sup>90</sup> Detailed rules on the inspections and the functions of the Directorate are contained in the LOFPS, Regulation No. 78 of 16.04.2010 “On the performance of inspection and disciplinary procedures” and Internal Rules of the Prosecution Service.

conduct. Also, an administrative investigation may be launched into an alleged disciplinary violation to substantiate disciplinary charges and collect relevant documentation for further use by the Council of Prosecutors.

#### Ethical principles and rules of conduct

125. Prosecutors take an oath of office, pledging to respect the Constitution, the laws in force and to maintain an immaculate image. As already mentioned, high ethical and moral qualities are mentioned as key pre-requisites for the initial recruitment and career progression of prosecutors. Non-respect for standards of professional conduct and the commission of acts that seriously discredit the image of a prosecutor constitute a disciplinary offence liable to dismissal from office.<sup>91</sup>

126. In 2005, the Association of Prosecutors adopted a Code of conduct, which is available on its web site. The Code consists of three parts: fundamental principles (professionalism, impartiality, independence, honesty and justice); institutional relations, relations with colleagues, the injured party, witnesses, the accused and the media; and enforcement. Failure to respect the Code constitutes an ethical violation over which the Association's Ethics Commission has exclusive competence.<sup>92</sup> The Commission may adopt decisions which contain an observation, impose a fine or request a member's expulsion from its ranks. The Commission may furthermore refer a case to an appropriate body if it finds that a disciplinary offence has been committed. An appeal filed with the Association's General Assembly against the Commission's decision does not preclude the launching of disciplinary proceedings on the same matter by the Prosecutor General.

127. No code of conduct or ethics applies to the Prosecution Service as a whole. Since membership of the Association of Prosecutors is voluntary and does not cover all Albanian prosecutors,<sup>93</sup> not all of them are bound by the Code developed by the Association or fall within the jurisdiction of its Ethics Commission. Moreover, as the GET was told, the Commission itself is not operational and, since its establishment, it has not considered any breaches of ethical rules. Similarly, the authorities explained that no alleged conflicts of interest have been entered in the register kept by the Inspections and Human Resources Directorate under the Prosecutor General's Office due to the very strict rules applicable in this area. As in the case of MPs and judges, the importance of a code of conduct as the cornerstone for standards of ethical behaviour and integrity in an organisation warrants express recognition. Such a code needs to serve both as a summary of the most important applicable policies, rules and laws and as a practical tool, easy to consult and apply in the case of an ethical dilemma. The indispensability of the code in the Albanian context is magnified by the complexity of the existing legal framework, which includes the LOFPS, the Acts "On the prevention of conflicts of interest in the exercise of public functions" and "On the declaration and audit of assets, financial obligations of elected officials and some public officials", the Criminal Procedure Code and the aforementioned Code of Conduct of the Association of Prosecutors. The GET also notes that, as in the case of judges, the in-service training offered to prosecutors by the School of Magistrates does not include mandatory courses on the ethical dimensions of prosecutorial work and regulation of conflicts of interest. Accordingly, **GRECO recommends that i) a set of clear ethical standards/code of professional conduct applicable to all prosecutors be elaborated and properly enforced; and ii) guidance, counselling and mandatory in-service training be made available to prosecutors on ethics, conflicts of interests and corruption prevention within their own ranks.**

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<sup>91</sup> Articles 27 (3) (b) and 32 (d) LOFPS.

<sup>92</sup> Article 10 of the Code.

<sup>93</sup> Only approximately half of 330 Albanian prosecutors are members of the Association.

## Conflicts of interest

128. Similarly to judges, within the criminal justice process, the case by case identification, registration and handling of prosecutors' private interests are regulated by the Criminal Procedure Code. It places an obligation on prosecutors to withdraw from specific proceedings in case of a conflict of interests (see further below) and invalidates the decisions taken in such a situation. The LOFJ furthermore sets out rules for the avoidance of conflicts of interest by senior prosecutors. When facing a conflict of interests, they may not give written orders or instructions to their subordinates or influence them in another way, and they are to notify the Prosecutor General in writing thereof. If the Prosecutor General him/herself is confronted with a conflict of interests, relevant instructions are to be issued by the most senior prosecutor on duty in the Prosecutor General's Office.<sup>94</sup>

129. As concerns prosecutors' actions outside the criminal justice process, they are subject to the Act "On the prevention of conflicts of interest in the exercise of public functions" (PCI), which establishes the definition, procedures and tools for preventing and resolving conflicts of interest and which applies also to judges and MPs.<sup>95</sup> Violations of the PCI incur administrative and disciplinary liability. Administrative fines are applicable to prosecutors and persons related to them and range between 100 000 ALL/EUR 700 and 300 000 ALL/EUR 2 100.

## Prohibition or restriction of certain activities

### *Incompatibilities, accessory activities, financial interests and post-employment restrictions*

130. Limitations on the exercise of prosecutors' auxiliary activities are laid down in Article 39 LOFPS. As concerns public functions, the position of prosecutor is incompatible with any other public duty or activity or electoral mandate (including running for election). Educational and teaching activities are the exception and are authorised by the Prosecutor General's order. Prosecutors are furthermore prohibited from double employment, with the exception provided above. Any violation of the aforementioned rules is subject to disciplinary action, including dismissal from office. Turning to private interests, there is a ban on prosecutors participating in the management bodies of commercial companies. As concerns specifically the Prosecutor General, by virtue of Article 33 PCI, s/he is prohibited from actively holding shares or capital shares in profit-making organisations, including those registered in the name of a person "related" to him/her (i.e. spouse, adult child, parents or parents-in-law).

131. There are no post-public employment restrictions that would prohibit prosecutors from being recruited in certain private sector posts or functions or engaging in other paid or non-paid activities following their resignation from office. Although the GET did not find this to be a particular source of concern in Albania, it encourages the authorities, as in the case of judges, to examine the need for introducing rules which would preclude private sector employment of former prosecutors or at least impose an appropriate "cooling off period" if it might give rise to conflicts of interests (for instance, situations where a former prosecutor might attempt to influence former colleagues to favour his/her new private sector employer).<sup>96</sup>

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<sup>94</sup> Article 3/ç LOFJ.

<sup>95</sup> See above under "Corruption prevention in respect of judges" and "Corruption prevention in respect of members of parliament".

<sup>96</sup> <sup>96</sup> Subsequent to the visit, the GET was informed that former public servants and employees are subject to a two-year ban, which prohibits them from representing a person in a conflict or a commercial relationship with the state, if this relates to their previous employment or is a continuation thereof (Article 17, Law "On rules of ethics in the public administration"). This law however does not apply to prosecutors.

### *Recusal and routine withdrawal*

132. Similarly to judges, prosecutors are to recuse themselves from proceedings in case of partiality on the grounds listed under Article 17 of the Criminal Procedure Code.<sup>97</sup> A prosecutor may recuse him/herself, or is disqualified following a motion by a party. Articles 26 and 27 of the Code prescribe the procedure for the withdrawal and replacement. Each prosecution office keeps a register of prosecutors' recusals and disqualifications as well as details concerning the re-assignment of cases.

### *Gifts*

133. In comparison to judges, for whom a prohibition on gifts is explicitly included in their organic law<sup>98</sup> and violations can lead to dismissal, prosecutors are not subject to an identical ban under the LOFPS. Prosecutors, MPs and judges, however do fall under Article 23 PCI and the 2004 decision of the Council of Ministers, by virtue of which they may not solicit or receive, directly or indirectly, gifts, favours, promises or preferential treatment from any persons, with the exception of protocol gifts.<sup>99</sup> Gifts above 10 000 ALL/EUR 70 are to be reported via prosecutors' and their family members' asset declarations (see further below). The imposition of administrative fines for violations of Article 23 PCI is to be notified to the Prosecutor General by the High Inspectorate for Declaration and Audit of Assets, for taking disciplinary measures. The ban on accepting bribes under Articles 319(a) of the Criminal Code also applies. It carries a sentence of up to 10 years and a fine of up to 4 million ALL/EUR 28 000. While on-site, the GET was under the impression that prosecutors did not consider it permissible for them to accept gifts in the performance of their duties; nevertheless, it uses the opportunity to reiterate the concerns expressed earlier regarding the high declaration threshold for gifts under the PCI.

### *Third party contacts, confidential information*

134. Article 40 LOFPS imposes a prohibition on making public and sharing with third parties data, including confidential data, which may damage a case under investigation or adjudication. It also bans the making of statements or voicing of opinions on other state bodies' activities. Violations of the aforementioned rules are disciplinary offences subject to dismissal from office. Like MPs and judges, prosecutors are furthermore subject to the law "On information classified as state secret." Additionally, divulging secret documents and data, as well as failure to comply with the obligations laid down in Article 103 of the Criminal Procedure Code (see paragraph 93 above) constitutes a criminal offence (under Article 295 (a) of the Criminal Code) and carries a sentence of up to five years.

### Declaration of assets, income, liabilities and interests

135. All prosecutors are to declare their assets, income, liabilities and interests, in the same scope and under the same terms as MPs and judges to the High Inspectorate for Declaration and Audit of Assets (HIDAA).<sup>100</sup> Violations are sanctioned by administrative fines, except for refusal or failure to declare, the concealment or false declaration of assets which are criminal offences<sup>101</sup> and very serious disciplinary offences that trigger dismissal from office. As in the case of judges, the absence of a timely on-line disclosure of contents of prosecutors' asset declarations erodes transparency and undermines the legitimate public interest in obtaining information on persons exercising an official

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<sup>97</sup> See above under "Corruption prevention in respect of judges."

<sup>98</sup> Under Article 32(2)(d) LOFJ.

<sup>99</sup> By virtue of Article 23 PCI and the 2004 decision of the Council of Ministers. See above under "Corruption prevention in respect of members of Parliament" and "Corruption prevention in respect of judges".

<sup>100</sup> See above under "Corruption prevention in respect of members of parliament" and "Corruption prevention in respect of judges."

<sup>101</sup> Article 257(a) of the Criminal Code.



function. Although GRECO abstains from addressing this matter by means of a separate recommendation, it invites the authorities to publish such data on the official web site of the Prosecution Service or the HIDAA, with due regard being paid to the privacy and security of prosecutors and persons related to them who are subject to a reporting obligation.

### Supervision and enforcement

#### *Supervision over conflicts of interest and auxiliary employment and other activities*

136. Within the criminal justice process, the identification, registration and handling of conflicts of interest is carried out by the head of office who decides to withdraw a subordinate from specific proceedings if there are reasonable grounds to doubt a prosecutor's impartiality. Outside the criminal justice process, the control is dual and assigned to the HIDAA and the Inspections and Human Resources Directorate under the Prosecutor General's Office. The HIDAA monitors cases of "continuing" conflicts of interests (incompatibilities), mainly via irregularities identified in asset declarations and is authorised to impose sanctions directly on the prosecutors concerned. Since every breach of the PCI constitutes misconduct, regardless of criminal or administrative liability, each violation established by the HIDAA is also notified to the Prosecutor General for disciplinary sanctions. In the course of the last few years, no violations of the conflicts of interest rules by prosecutors have been revealed by or reported to this body. Turning to the Inspections and Human Resources Directorate, as mentioned previously, it has established a conflicts of interest register for the entire Service, which, for the moment, remains empty. It also adopted internal regulations "On the prevention of conflicts of interests" which are disseminated to all prosecutors for implementation and awareness-raising purposes. To prevent any incompatibilities, the Directorate carries out regular checks and co-operates with the LDAA, the Department of Taxation, the Bar Association and the National Licensing and Registration Centres (their registers are publicly available on-line). As concerns the supervision of additional employment and accessory activities of district and appeal prosecutors, it is performed by heads of offices. The authorities report that there have been no cases of prosecutors' unlawful employment.

#### *Supervision over declarations of assets, income, liabilities and interests*

137. Prosecutors' asset declarations are monitored by the HIDAA in a similar manner and scope as for judges and MPs,<sup>102</sup> albeit with certain exceptions: declarations by the Prosecutor General are to be audited every two years, by appellate prosecutors and those assigned to the Prosecutor General's Office – every three years, and those made by other categories of prosecutors are subject to annual random checks. The Inspections and Human Resources Directorate under the Prosecutor General's Office provides guidelines on the mode of filling in declarations to all prosecutors and submits the duly completed forms to the HIDAA, within the timelines established by law. In 2010, 32 files were audited, in 2011 – 28 files, and in 2012 – 26 files. Because of irregularities, one prosecutor was fined in 2011 and three prosecutors in 2012. As in the case of judges, a graduated approach is applied, whereby, depending on seniority, some categories of prosecutors are subject to more regular in-depth checks. Within the context of the Prosecution Service, such regularity appears to be justified but the deficiencies in the HIDAA's functioning already discussed in this report are not to be overlooked.<sup>103</sup>

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<sup>102</sup> See above under "Corruption prevention in respect of members of parliament" and "Corruption prevention in respect of judges."

<sup>103</sup> Ibid.

### *Supervision over ethical principles and conduct*

138. Supervision over ethical principles and conduct, work discipline and other disciplinary matters is carried out by the respective heads of offices. They also ensure that their subordinates meet the requirements established by law for evaluation. Heads of office furthermore provide logistical support and information for inspection teams from the Prosecutor General's Office and the Ministry of Justice, and co-ordinate with the School of Magistrates and other services with a view to enhancing professional competences of prosecutors.

139. Prosecutors are disciplinarily liable for: (1) failure to take the oath or breach of oath; (2) serious or systematic delays in proceedings or other obligations, or failure to fulfil their duties; (3) disclosure of an investigation secret or other confidential data; (4) absence from work without reason for more than five days; and (5) committing an act that seriously discredits the image or is incompatible with the functions of a prosecutor.<sup>104</sup> Disciplinary proceedings are initiated by the Prosecutor General, based on the information revealed in the course of an inspection ordered by him/her. A disciplinary proceeding can be launched within six months from the reporting/identification of an offence and not more than three years from the moment of its commission. The proceedings are conducted by the Council of Prosecutors. Possible sanctions are: reprimand, reprimand with a warning of discharge from duty, downgrading and dismissal. Except for the latter measure, which is effected by the President of the Republic on the proposal of the Prosecutor General, all other sanctions are imposed by the Prosecutor General. A disciplinary measure can be appealed before the Tirana Court of Appeal, or the nearest court of appeal – for prosecutors assigned to the former court.<sup>105</sup>

140. The disciplinary proceedings are open to participation (without the right to vote) by representatives of other state bodies, such as the Ministry of Justice and the decisions on disciplinary measures are published, as media notifications, on the official web site of the Prosecutor General's Office. For example, in December 2013, one prosecutor was downgraded for six month for inappropriate communication with the parties under investigation and in January 2014, disciplinary measures (reprimand and downgrading for six month) had been imposed on two prosecutors, for unjustified procedural delays. Additionally, decisions on dismissal from office of a prosecutor issued by the President of the Republic on a proposal by the Prosecutor General are published in the Official Journal.

### *Immunity*

141. Prosecutors do not enjoy immunity from criminal proceedings. If a criminal offence is committed, it is the Prosecutor General who orders the launching of criminal proceedings in respect of a prosecutor. If a criminal case is initiated, a prosecutor may be suspended from duty by order of the Prosecutor General.

### Training and awareness

142. Prosecutors are obliged to attend periodic professional training. Perfecting knowledge and identifying needs for further training form part of a prosecutor's annual evaluation. As in the case of judges, the previously mentioned School of Magistrates offers mandatory in-service training programmes with a duration of 12 to 20 days per annum for each prosecutor.<sup>106</sup> The content of training is based on requests from prosecutors and other pertinent themes. Furthermore, in 2010, the Prosecutor General issued an Order "On the process of prosecutors' training", in pursuance of which the "Board for Training Organisation" (BTO) was established. It acts as an advisory body and

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<sup>104</sup> Article 32 LOFPS.

<sup>105</sup> Article 34 LOFPS.

<sup>106</sup> See "Corruption prevention in respect of judges."

decides on the planning and organisation of prosecutorial training. Based on suggestions from each of its members, the BTO proposes themes for inclusion in the curriculum of the School of Magistrates.

143. Training courses on professional ethics were offered to groups of prosecutors in 2010, 2011 and 2013. Furthermore, training on conflicts of interest and asset declaration is provided by the Inspections and Human Resources Directorate of the Prosecutor General's Office, with the HIDAA's assistance. The authorities also refer to the HIDAA's statutory duty to provide advice and counselling on conflicts of interest and asset declaration to relevant institutions on request. Moreover, training courses focusing on best practices in the prevention, investigation and adjudication of corruption have been organised by the School of Magistrates and the Open Fund for Southeast Europe, Legal Reform (GIZ), a project funded by the EU and the German Government. Mandatory training on corruption was also part of two EU-funded twinning projects, one of the beneficiaries of which was the Prosecutor General's Office.

144. GRECO has already drawn attention to the lack of specific and consistent attention to integrity issues within the Prosecution Service as well as the absence of mandatory in-service training on ethics and conflicts of interests for all prosecutors. It wishes to emphasise yet again that robust training programmes are key prerequisites for ensuring that a set of ethical standards/code of professional conduct takes root throughout an organisation. Within the Prosecution Service, the structure and contents of such training would need to be designed and implemented following risk assessment. Furthermore, such training programmes would need to be revised and updated in the face of new emerging challenges. Since this issue is already covered by the recommendation in paragraph 127 above, GRECO renews its invitation to invest considerable efforts and resources in the provision of training, advice and counselling for prosecutors throughout their career.

145. Pursuant to Article 6 LOFPS, the Prosecution Service is duty-bound to inform the public about its activities. Communication with the public and media is managed notably via: 1) official media notifications on issues to which public opinion is sensitive; 2) interviews given by Service representatives; 3) periodic communication on cases under investigation; 4) the official web page of the Prosecutor General's Office ([www.pp.gov.al](http://www.pp.gov.al)), which allows for direct submission of complaints and suggestions by citizens.

## **VI. RECOMMENDATIONS AND FOLLOW-UP**

146. In view of the findings of the present report, GRECO addresses the following recommendations to Albania:

### *Regarding members of parliament*

- i. that the transparency of the legislative process be further improved by i) ensuring the timely implementation of the requirement under the Rules of Procedure to publish on the official web site of the National Assembly draft legislation, including the initial bills, and amendments; and ii) regulating deputies' contact with lobbyists and other third parties seeking to influence the legislative process (paragraph 27);**
- ii. that i) the Code of Conduct for members of parliament, foreseen by the Rules of Procedure of the National Assembly, be elaborated and properly enforced; and ii) training, guidance and counselling be made available to deputies on issues such as the form, manner and scope of permissible contacts with interest groups and lobbyists, the disclosure of *ad hoc* conflicts of interest, ethics and corruption prevention within their own ranks (paragraph 32);**
- iii. that a mechanism for the "case by case" notification of conflicts of interest by members of parliament be established within the National Assembly and that the operation of this mechanism be subject to monitoring (paragraph 35);**
- iv. that the contents of asset declarations of members of parliament are made public on an official web site and in a timely manner, with due regard to the privacy and security of deputies and persons related to them who are subject to a reporting obligation (paragraph 48);**
- v. that i) the asset declarations of members of parliament be subject to more frequent full audits; and ii) the co-operation between the High Inspectorate for the Declaration and Audit of Assets and relevant state institutions be stepped up (paragraph 53);**

### *Regarding judges*

- vi. that i) the selection and appointment of the High Court justices be made transparent and that the opinion of the judiciary (e.g. the High Council of Justice itself) be sought in those processes; and ii) the periodic evaluation of professional and ethical performance of a judge is conducted in a timely manner and that consideration be given to ensuring that the criteria for evaluating a judge's ethical conduct are objective and transparent, with due regard to the principle of judicial independence (paragraph 75);**
- vii. that i) the "Ethics, mandate verification and continuous professional development Committee" under the National Judicial Conference fulfils its mandate and ensures, in a proactive manner, the enforcement of ethical rules; and that ii) guidance, counselling and mandatory in-service training be provided to judges on ethics, conflicts of interest and corruption prevention within their own ranks (paragraph 86);**
- viii. that i) with a view to ensuring protection against arbitrary intervention in the administration of justice, the extent of the right of the Ministry**

**of Justice to examine the functioning of judicial services and court administration, as provided under Article 31 of the law "On the organisation and functioning of the High Council of Justice" be clearly defined; and that ii) the respective court presidents, including the High Court Chief Justice, be vested with the right to initiate disciplinary proceedings against judges (paragraph 101);**

*Regarding prosecutors*

- ix. to further refine the criteria for assessing a prosecutor's ethical qualities, in particular by ensuring that the criteria are objective and transparent (paragraph 115);**
- x. that i) a set of clear ethical standards/code of professional conduct applicable to all prosecutors be elaborated and properly enforced; and ii) guidance, counselling and mandatory in-service training be made available to prosecutors on ethics, conflicts of interests and corruption prevention within their own ranks (paragraph 127).**

147. Pursuant to Rule 30.2 of the Rules of Procedure, GRECO invites the authorities of Albania to submit a report on the measures taken to implement the above-mentioned recommendations by 30 September 2015. These measures will be assessed by GRECO through its specific compliance procedure.

148. GRECO invites the authorities of Albania 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.

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### 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](http://www.coe.int/greco).

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